

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Jean H. Toal, Circuit Court Judge

Case No. 2019-002126

Jerry Howard Crawford, individually and as Personal Representative of the Estate of Evelyn Kay Crawford, Respondent

v.

Celanese Corporation, Aurora Pump Company; Carrier Corporation, CNA Holdings, LLC, f/k/a Hoechst Celanese Corporation; Covil Corporation; Crane Co., Daniel International Corporation f/k/a Daniel Construction Company, Inc.; Flowserve Corporation, individually and as successor-in-interest to Anchor/Darling Valve Company, and individually as successor-in-interest to Durco Pumps; Flowserve, US Inc.; Fluor Constructors International, f/k/a Fluor Corporation; Fluor Constructors, International, Inc.; Fluor Daniel Services Corporation, Fluor Enterprises, Inc.; Ford Motor Company; Genuine Parts Company, d/b/a Rayloc (a/k/a NAPA); The Goodyear Tire & Rubber Company; Goulds Pumps, Inc.; Grinnell, LLC f/k/a Grinnell Corp., f/k/a ITT Grinnell Corp.; Honeywell International, Inc., f/k/a Allied-Products Liability Signal, Inc., sued as successor-in-interest to Bendix Corporation; Ingersoll-Rand Company; John Crane, Inc., Metropolitan Life Insurance Company, a wholly owned subsidiary of Metlife Inc.; National Automotive Parts Association, (NAPA); Parker-Hannifin Corporation, Pneumo Abex, LLC, successor-in-interest to Abex Corporation; Spirax Sarco, Inc.; SPX Cooling Technologies, Inc., individually and as successor-in-interest to Marley Cooling Towers, Co.; Standard Motor Products, Inc.; sued as successor-in-interest to EIS Automotive, United States Fidelity & Guaranty Company; and The William Powell Company, Defendants,

Of Which, Covil Corporation is the Appellant.

Clarkson, 267 S.C. at 125-26. In fact, the Court, citing *Mims v. Coleman*, 248 S.C. 235, 149 S.E.2d 623, went on to restate the rule:

‘An order granting a new trial on factual grounds is not appealable. But the question of existence or nonexistence of evidence is one of law; and to that extent such an order is subject to our review. . . . Our inquiry here must, therefore, be limited to the question of whether there was any evidence from which the jury might reasonably have inferred that respondent's injuries were proximately caused by negligence of the appellant. If that question is answered in the affirmative the appeal must be dismissed, for this court has no power to weigh conflicting evidence in a law case. But if there was no evidence of actionable negligence on the part of the appellant, there was no conflicting evidence to be weighed, and the order granting a new trial on the ground stated by the trial judge would be erroneous as a matter of law.’

Id. at 127. Importantly, the *Clarkson* Court specifically refused to “overrule our prior decisions in which the statement is made that an order granting a new trial upon the facts is not appealable[.]”

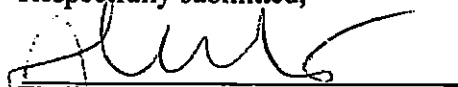
Id. Further, the Court went on to state that the rule had been “soundly applied to limit review . . . to a determination of whether there was an abuse of discretion amounting to an error of law.” *Id.*

Judge Toal’s order granting Respondent a new trial based on the facts and new evidence presented to her is not a question of whether there has been an error of law. The decision was based solely on the facts. Covil’s appeal challenging that order is not appealable pursuant to precedent from this state and the appeal must be dismissed.

CONCLUSION

For the above reasons and the reasons expressed in Respondent’s opening motion, Respondent respectfully requests that this Court dismiss Appellant Covil Corporation’s Notice of Appeal as the Circuit Court’s Order granting Respondent a new trial pursuant to SCRCF 60(b)(2) and 60((b)(3) is not immediately appealable as the Order was not based solely on an error of law. Consequently, Respondent requests that this matter be remanded to the Circuit Court for further proceedings.

Respectfully submitted,



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COUNSEL FOR RESPONDENT

February 10, 2020

RESPONDENT'S REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL

Respondent offers this brief reply in support of his motion to dismiss Appellant Covil Corporation's appeal of Judge Toal's Order granting Respondent a relief from judgment pursuant to SCRPC 60(b)(2) and 60(b)(3), given that the grant of a new trial was based upon questions of fact or upon mixed questions of law and fact. Covil's arguments to the contrary, this Court should grant Respondent's motion to dismiss.

Covil spends much of its response in opposition to Respondent's motion to dismiss prematurely arguing the merits of its appeal. In doing so, Covil highlights the factual intricacies in this appeal and that this appeal present mixed questions of law and fact. It is clear from both Respondent's motion and Covil's response thereto that Judge Toal's granting of a new trial was wholly based on the facts presented to Judge Toal during the time of trial and during presentation of Respondent's motion for relief. As such, according to the holding in *Robinson v. Fuller*, 249 S.C. 342, 344, 154 S.E.2d 431 (1967); *Rowe v. Frick*, 250 S.C. 499, 159 S.E.2d 47 (1968); *Sellers v. Sears Roebuck & Co.*, 252 S.C. 271, 166 S.E.2d 1 (1969); and *Taylor v. Devore*, 253 S.C. 393, 171 S.E.2d 158 (1969), Covil's appeal should be dismissed.

In support of its opposition, Covil cites *South Carolina State Highway Dept. v. Clarkson*, 267 S.C. 121 (1976), a case which does not overrule any of the cases cited by Respondent in support of his position that Covil's appeal should be dismissed. In fact, the *Clarkson* Court approvingly cited a number of cases supporting Respondent's position that Covil's appeal must be dismissed. In *Sellers v. Collins*, 212 S.C. 26, 46 S.E.2d 176, the Court wrote, as acknowledged by the *Clarkson Court*, that

'It is well settled in this State that an order granting or refusing a new trial when based solely on an error of law is subject to review by this Court. But when the order is based upon questions of fact, or upon both questions of law and fact, it is not appealable.'

Clarkson, 267 S.C. at 125-26. In fact, the Court, citing *Mims v. Coleman*, 248 S.C. 235, 149 S.E.2d 623, went on to restate the rule:

‘An order granting a new trial on factual grounds is not appealable. But the question of existence or nonexistence of evidence is one of law; and to that extent such an order is subject to our review. . . . Our inquiry here must, therefore, be limited to the question of whether there was any evidence from which the jury might reasonably have inferred that respondent’s injuries were proximately caused by negligence of the appellant. If that question is answered in the affirmative the appeal must be dismissed, for this court has no power to weigh conflicting evidence in a law case. But if there was no evidence of actionable negligence on the part of the appellant, there was no conflicting evidence to be weighed, and the order granting a new trial on the ground stated by the trial judge would be erroneous as a matter of law.’

Id. at 127. Importantly, the *Clarkson* Court specifically refused to “overrule our prior decisions in which the statement is made that an order granting a new trial upon the facts is not appealable[.]”

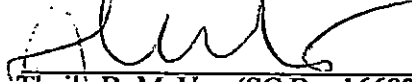
Id. Further, the Court went on to state that the rule had been “soundly applied to limit review . . . to a determination of whether there was an abuse of discretion amounting to an error of law.” *Id.*

Judge Toal’s order granting Respondent a new trial based on the facts and new evidence presented to her is not a question of whether there has been an error of law. The decision was based solely on the facts. Covil’s appeal challenging that order is not appealable pursuant to precedent from this state and the appeal must be dismissed.

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Respectfully submitted,



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COUNSEL FOR RESPONDENT

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

Jean Hoefer Toal, Chief Justice of the Supreme Court of South Carolina (Retired)
Acting as Circuit Court Judge

Appellate Case No. 2019-002126
Case No. 2017-CP-42-04429

Jerry Howard Crawford, Individually and as Personal Representative of the Estate of Evelyn Kay Crawford, Respondent,

v.

Celanese Corporation; Aurora Pump Company; Carrier Corporation; CAN Holdings LLC, f/k/a Celanese Corporation f/k/a Hoechst Celanese Corporation; Covil Corporation; Crane Co.; Daniel International Corporation f/k/a Daniel Construction Company, Inc.; Flowserve Corporation, individually and as successor-in-interest to Anchor/Darling Valve Company and individually and as successor-in-interest to Durco Pumps; Flowserve US Inc.; Fluor Constructors International, f/k/a Fluor Corporation; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; Ford Motor Company; Genuine Parts Company, d/b/a Rayloc (a/k/a NAPA); The Goodyear Tire & Rubber Company; Goulds Pumps, Inc.; Grinnell, LLC, f/k/a Grinnell Corp, f/k/a ITT Grinnell Corp.; Honeywell International, Inc., f/k/a Allied-Products Liability Signal, Inc., sued as successor-in-interest to Bendix Corporation; Ingersoll Rand Company; John Crane, Inc.; Metropolitan Life Insurance Company, a wholly-owned subsidiary of Metlife Inc.; National Automotive Parts Association (NAPA); Parker-Hannifin Corporation; Pneumo Abex, LLC, successor in interest to Abex Corporation; Spirax Sarco, Inc.; SPX Cooling Technologies, Inc., individually and successor in interest to Marley Cooling Towers Co.; Standard Motor Products, Inc., sued as successor-in-interest to EIS Automotive; United States Fidelity & Guaranty Company; The William Powell Company, Defendants,

Of Which Covil Corporation is the Appellant.

PROOF OF SERVICE

I certify that I have served Respondents' Reply in Support of His Motion to Dismiss Civil Appeal (2019-002126) on Appellants by depositing a true and correct copy of it in the United States Mail, postage prepaid, on February 10, 2020, addressed to its attorneys of record, Ashley K. Brathwaite of Ellis & Winters, LLP; 4131 Parklake Avenue; Suite 400; Raleigh, North Carolina 27612.

Respectfully submitted,



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February 10, 2020

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
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SC Court of Appeals


Re: *Jerry Howard Crawford, etc., et al. v. Celanese Corporation, et al.; of whom Covil Corporation is the Appellant.*
Appellate Case No.: 2019-002126

Dear Ms. Kitchings:

Enclosed herewith please find the original and one (1) copy of Respondents' Reply in Support of His Motion to Dismiss Notice of Appeal of Covil Corporation in connection with the above-entitled matter, along with our Proof of Service of same. Please file the original and a clocked copy me to me via the courier delivering this letter.

Thank you for your consideration of this request. By copy of this letter, I am serving a copy of the enclosed on counsel of the appellant.

Yours very truly,


Elizabeth C. Moultrie
Senior Paralegal to John D. Kassel,
Theile B. McVey and Jamie Rae Rutkoski

TBM:ecm

Enclosures

cc: Ashley M. Braithwaite, Esquire (w/enclosures)
ACOR as appropriate