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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the South Carolina
Worker's Compensation Commission

WCC File No. 1609593
Appellate Case No. 2019-000560

RECEIVED
FEB 20 2020
SC Court of Appeals

Gena Cain Davis, Claimant,.....Appellant,

v.

S.C. Department of Corrections, Employer, and
State Accident Fund, Carrier,.....Respondents.

MOTION TO STRIKE

TO STEPHEN B. SAMUELS, ATTORNEY FOR THE APPELLANT, GENA CAIN DAVIS:

PLEASE TAKE NOTICE that the Respondents, the S.C. Department of Corrections and the State Accident Fund, hereby move the Court of Appeals to strike the "Statement of the Facts" section of the Appellant's Brief pursuant to Rules 208, 210, 211, and 240 of the South Carolina Appellate Court Rules and based upon the following:

1. The Appellant's Brief to the Court of Appeals contains a 2 page "Statement of the Facts" that purports to directly quote medical opinions and other documents, refers to alleged witness statement and opinions, and purports to summarize other contested matters which are not part of the Record in this case. (Final Brief of the Appellant pp.3-4).

2. The Appellant's "Statement of the Facts," contains no references to any transcript, exhibit, or evidentiary submission in the Record that could possibly "support the salient facts alleged." Indeed, not even the alleged quotations contained in the "Statement of the Facts" are cited to the Record.
3. Despite purporting to quote directly from and otherwise summarize the records and alleged opinions of a Dr. Gee, a Dr. Byrd, and a Dr. Hunt, no record from *any* doctor and no transcript of *any* testimony was ever submitted into evidence before the Workers' Compensation Commission in accordance with S.C. Code Reg. 67-612.
4. The Appellant admits that there has never been an evidentiary hearing in this workers' compensation claim and that no evidence, documentary or otherwise, has ever been introduced into the evidentiary record in this case. The Appellant further admits that no record from *any* doctor and no transcript of *any* testimony is contained in the Record on Appeal. Indeed, the Appellant admits that her "Statement of the Facts" is supported by nothing more than her own self-serving declarations contained in a "pre-hearing brief." (*See* Appellant's Brief, footnote 1).
5. However, simply by including self-serving declarations regarding contested matters in a pleading does not render these self-serving declarations "evidence." Instead, the admission of expert reports as evidence is governed by S.C. Code Reg. 67-612 alone.
6. Pursuant to Rule 208(b)(1)(C), S.C.A.C.R., any statement of the case contained in a brief to the Court of Appeals "shall not contain contested matters." Despite this mandatory prohibition, the "Statement of the Facts"

contained in the Appellant's Brief is comprised solely of contested matters¹ manufactured out of whole cloth, yet presented as established facts supported by actual evidence.

7. Pursuant to Rule 208(b)(4), S.C.A.C.R., "brief shall contain references to the ... materials which may be properly included in the Record on Appeal to support the salient facts alleged." Despite this strict requirement, the Appellant's "Statement of the Facts" references no material to support the salient "facts" alleged because no such materials could be properly included in the Record on Appeal, as there has never been an evidentiary hearing in this case and the Workers' Compensation Commission neither received, nor considered any evidence. (*See* Rule 210(c), S.C.A.C.R., which mandates that the "Record shall not, however, include matter which was not presented to the lower court or tribunal.>").
8. The Respondents respectfully contend that the Appellant's recitation of and argument regarding matters, which were never submitted into evidence before the Workers' Compensation Commission and that are not contained in the Record on Appeal, is grossly prejudicial to the Respondents, especially considering that there exist documents and opinions to rebut the Appellant's alleged "facts." However, because there has never been an evidentiary hearing in this case, it would be inappropriate for the Respondents to refer to such matter in their Brief to the Court of Appeals. Furthermore, even if the Record

¹ The sole exception to the uncontested matters contained in the Appellant's "Statement of the Facts" is the third paragraph, which is comprised of a single sentence: "[t]he Fund filed a Form 15 (Section I) on August 3, 2016 starting temporary total disability compensation."

did contain disputed evidence, one could not ethically represent to the Court of Appeals that such contested evidence represented undisputed “facts”

THEREFORE, because the Appellant’s Brief violates the requirements of Rules 208, 210, and 211 of the South Carolina Appellate Court Rules by representing highly prejudicial and unsubstantiated matters that are outside of the Record on Appeal as “facts,” the Respondents respectfully request that the Court of Appeals Strike the “Statement of the Facts” contained in the Appellant’s Brief.

Respectfully submitted,



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February 18, 2020

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PROOF OF SERVICE

The undersigned hereby certifies that the above-referenced Appellant, Gena Cain Davis, was served with the attached Respondents' Motion to Strike this 18th day of February, 2020 depositing copies of the same in the United States Mail, first class postage prepaid, addressed to counsel of record, as follows:

Stephen B. Samuels, Esq.
1320 Richland Street
Columbia, SC 29201

February 18, 2020

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February 18, 2020

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Gena Cain Davis v. SC Department of Corrections
W.C.C. File No.: 1609593
Appellate Case #: 2019-000560
Carrier File No.: 2016-2181
Date of Accident: July 14, 2016

Dear Ms. Kitchings:

Enclosed herewith for filing, please find the original and six (6) copies of our Motion to Strike, along with our original Proof of Service of the same, in the above-referenced matter. By a copy of this correspondence, I am serving the other counsel of record with a copy of our Motion. Also enclosed, please find our check in the amount of \$50.00 for the filing of this Motion.

Yours very truly,

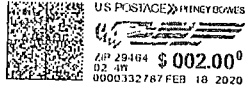
Kirsten L. Barr

Kirsten L. Barr

KLB/cab/les
Enc.

cc: Kori Tabor, South Carolina State Accident Fund (w/enc.) (email only)
Russell Rush, SC Dept. of Corrections (w/enc.) (email only)
Stephen B. Samuels, Esq. (w/enc.)





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