

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

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APR 20 2020

Appellate Case No. 2019-000369
W.C.C. File Nos. 1322451, 1319203, 1420487

SC Court of Appeals

Terry Capone,Appellant,

v.

City of Columbia, Employer, and
Companion Third Party Administrator, LLC, Carrier, Respondents.

**RETURN OF RESPONDENTS IN OPPOSITION TO APPELLANT'S
EMERGENCY MOTION TO VACATE JUDGMENT/ ORDER RULE 59/60
FRAUD ON THE COURT AND OTHER VIOLATIONS OF LAW AND TO
TAKE MANDATORY JUDICIAL NOTICE DATED APRIL 9, 2020 AND
APPELLANT'S MOTION TO SEAL DATED APRIL 10, 2020**

Respondents City of Columbia, Employer, and Companion Third Party Administrator, LLC, Carrier, ("Respondents") submit this return in opposition to the Emergency Motion to Vacate Void Judgment/ Order Rule 59/60 Fraud on the Court and Other Violations of Law and to Take Mandatory Judicial Notice dated April 9, 2020, and the Motion to Seal dated April 10, 2020, of Appellant Terry Capone ("Appellant").

Appellant's motion to vacate appears to challenge this Court's March 27, 2020 Order denying his request to supplement the record as well as the validity of the underlying orders denying benefits in S.C. W.C.C. File Nos. 1322451, 1319203, and 1420487 – the very same orders at issue on appeal. As to the March 27, 2020 Order denying leave to supplement the

record, Appellant fails to point out anything this Court may have overlooked or any error of law that warrants reconsideration or a different result. As such, the motion to vacate the March 27, 2020 Order should be denied. Inasmuch as Appellant's motion pertains to the underlying orders of the Workers' Compensation Commission, it is premature. The validity of the orders on appeal should and will be decided by this Court in accordance with the South Carolina Rules of Appellate Procedure and the Court's normal operating procedures. As such, the motion should be denied on this additional basis.

Appellant's motion to seal the record likewise should be denied as it does not specify which documents should be protected beyond generic reference to medical and VA records. As an initial matter, most, if not all, of the supporting documentation submitted by Appellant to date has been filed without appropriate redaction or other efforts by Appellant to shield his private and/or personally identifying information, thereby waiving confidentiality of those materials. In the event the Court determines Appellant retains the right to confidentiality in these materials, the record should be served and filed with appropriate redactions as outlined in South Carolina Supreme Court Order 2014-04-15-02 and this Court's March 8, 2019 correspondence to the parties. These redactions should be sufficient, and a motion to seal the entire record is unnecessary. Accordingly, Plaintiff's motion to seal should be denied.

CONCLUSION

For the reasons stated herein, Respondents respectfully submit that Appellant's Emergency Motion to Vacate Void Judgment/ Order Rule 59/60 Fraud on the Court and Other Violations of Law and to Take Mandatory Judicial Notice dated April 9, 2020, and the Motion to Seal dated April 10, 2020, should be denied.

(Signature page to follow.)

April 15, 2020

By: 

Cynthia C. Dooley (SC Bar No. 13623)
Carmelo B. Sammataro (SC Bar No. 69746)
TURNER PADGET GRAHAM & LANEY P.A.
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ATTORNEYS FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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W.C.C. File Nos. 1322451, 1319203, 1420486 SC Court of Appeals

Terry Capone,Appellant,

v.

City of Columbia, Employer, and
Companion Third Party Administrator, LLC, Carrier, Respondents.

PROOF OF SERVICE

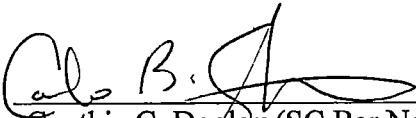
I certify this 15th day of April 2020 that I have served a copy of the RETURN OF RESPONDENTS IN OPPOSITION TO APPELLANT'S EMERGENCY MOTION TO VACATE JUDGMENT/ ORDER RULE 59/60 FRAUD ON THE COURT AND OTHER VIOLATIONS OF LAW AND TO TAKE MANDATORY JUDICIAL NOTICE DATED APRIL 9, 2020 AND APPELLANT'S MOTION TO SEAL DATED APRIL 10, 2020, by mailing same, postage prepaid in the United States mail, addressed to the following:

Terry Capone
130 Summerlea Drive
Columbia, SC 29203

APPELLANT, *PRO SE*

(Signature page to follow.)

April 15, 2020

By: 
Cynthia C. Dooley (SC Bar No. 13623)
Carmelo B. Sammataro (SC Bar No. 69746)
TURNER PADGET GRAHAM & LANEY P.A.
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April 15, 2020

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box-11629
Columbia, SC 29211

Re: Terry Capone v. City of Columbia and Companion Third Party Administrator, LLC
Appellate Case No.: 2019-000369
File No.: 15030.119

Dear Ms. Kitchings:

Enclosed please find the originals and one copy each of Respondents' Return of Respondents in Opposition to Appellant's Emergency Motion to Vacate Judgment/ Order Rule 59/60 Fraud on the Court and Other Violations Of Law and to Take Mandatory Judicial Notice dated April 9, 2020 and Appellant's Motion to Seal dated April 10, 2020, and the Proof of Service regarding the above-referenced matter. Please file the original filings and return clocked copies to me via the enclosed envelope. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj

Enclosures

cc: Terry Capone, Appellant *pro se* (w/enc.)

Turner Padget

P.O. Box 1473 Columbia, SC 29202

15030 119

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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