

STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

SCWCC File No. 1619767

Appellate Case No. 2018-001111

Veronica Rodriguez, Employee, Respondent

v.

Peggy Evers, Employer, and NorGuard Insurance Company, Carrier, Appellants

RECEIVED

May 22 2020

SC Court of Appeals

**APPELLANTS' MOTION FOR LEAVE OF THE COURT TO PURSUE SCRCP 60
RELIEF FROM JUDGEMENT BEFORE SOUTH CAROLINA WORKERS
COMPENSATION COMMISSION**

George D. Gallagher
Bar No. 12149
Speed, Seta, Martin, Trivett & Stublely
Post Office Box 11669
Columbia, SC 29211
803.748.2259
ggallagher@speed-seta.com

Pursuant to SCAR 240, Appellants hereby move for leave to pursue collateral relief from the judgement of the South Carolina Workers Compensation Commission (“Commission) pending their Appeal to this Court. Such Motion is based on the following grounds:

- 1) SCRCPP 60 (b) (3) provides a mechanism for a party to obtain relief from a judgement or order via Motion based on “fraud, misrepresentation, or other misconduct of an adverse party.” The rule further provides that “[d]uring the pendency of an appeal, leave to make the motion must be obtained from the appellate court.” (emphasis added).
- 2) Appellants’ appeal is currently pending before the Court. Specifically, by Order dated May 6, 2020 the Court affirmed the Commission’s dismissal of Appellants’ appeal and Appellants have timely filed a Petition for Rehearing.
- 3) In order to provide the Court with sufficient context and basis for their proposed Rule 60 Motion, and without delving too deeply into the merits in a manner that may unduly prejudice Respondent, Appellants submit that the Commission’s award of compensation benefits in this case was based on perjured testimony from Respondent regarding her inability to work. *See Exhibit # 1 (highlighted excerpt from Hearing Transcript of Claimant’s testimony)*. Specifically, Claimant was arrested and entered a guilty plea to a charge of giving a false statement regarding her testimony at the Hearing before the single commissioner. *See Exhibit # 2 (Indictment and clocked guilty plea)*. The single commissioner’s Order specifically cites her “sworn testimony” as a basis for his TTD award. *See Exhibit # 3 (highlighted excerpt from Commissioner’s Order)*.

- 4) Appellants submit the “intrinsic fraud” of Respondent’s perjury, coupled with other acts and instances of ongoing “extrinsic fraud” throughout the life of this case justify relief from the Commission under SCRCP 60 (b).
- 5) In the case of Ray v. Ray, 374 S.C. 79, 374 S.E.2d 237 (SC 2007) the Court held that perjury *accompanied* by an intentional act or “scheme to defraud or mislead the court” rises to the level extrinsic fraud justifying equitable relief from the judgement under SCRCP 60.
- 6) For purposes of the current Motion seeking leave to proceed, Appellants submit they have outlined a sufficient offer of proof for their proposed SCRCP 60 action before the Commission. To be clear, Appellants are not seeking SCRCP 60 equitable relief before this Court; they are merely seeking leave to do so with the Commission below as required by the Rule.

WHEREFORE Appellants pray for leave from the Court to pursue collateral action before the Commission for equitable relief from judgement per SCRCP 60.

Respectfully submitted,


George D. Gallagher
Bar No. 12149
Speed, Seta, Martin, Trivett & Stublely
Post Office Box 11669
Columbia, SC 29211
803.748.2259
ggallagher@speed-seta.com

MAY 31, 2020
Columbia, SC

Exhibit 1

1 Q. What did she tell you to do with it?

2 COMMISSIONER: Do you want to introduce
3 that or --

4 MR. GIBSON: Yeah. Well, that's -- we
5 can introduce it, but I'm okay with just leaving
6 it.

7 COMMISSIONER: Okay. That's fine.

8 A. She said that she was -- she once had
9 an accident, and that she was taking that for the
10 pain, and that could help me as well.

11 Q. Did you know whether or not Peggy was a
12 nurse or had any doctor or medical experience?

13 A. I don't know.

14 Q. Did it help you?

15 A. It would calm my pain down at that
16 moment, but, afterwards, it would start hurting
17 again.

18 Q. Do you remember when you got your last
19 paycheck from Peggy?

20 A. The last one was by the week of
21 January.

22 Q. January 18th?

23 A. Yes.

24 Q. And that was for \$604.04?

25 A. Yes.

1 Q. Have you worked since?

2 * A. No.

3 Q. Have you had any opportunities to start
4 your own business since?

5 A. No.

6 Q. Do you still need medical help?

7 A. Yes.

8 Q. Do you need help with your pay to help
9 make up for the lost money you've had?

10 A. Yes.

11 Q. Do you want to go to a doctor and -- a
12 specialist to look at your body parts?

13 A. Yes.

14 MR. GIBSON: Okay. I'm about finished.

15 COMMISSIONER: Okay. That's fine.

16 MR. GIBSON: Bear with me for just a
17 second.

18 COMMISSIONER: Okay.

19 BY MR. GIBSON:

20 Q. I'm going to ask you one final
21 question. Have you ever paid anybody else, since
22 you were working with Peggy, with the money she
23 gave you for your work to someone else to help
24 you?

25 A. No.

Exhibit 2

0-30 days

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
 STATE)
 vs.)
VERONICA RODRIGUEZ TEXCAHUA)
 AKA:)
 Race: H Sex: F Age: 45)
 DOB: 07/18/1973 SS#: 910-73-7850)
 Address: 2551 Midland Park Road, Lot 97)
 City, State, Zip: North Charleston, SC 29406)
 DL# _____ SID# _____)
 *CDL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019-GS-10 - 04119
 A/W#: 2019A1010202618
 Date of Offense: 11/03/2017
 S.C. Code §: 38-55-540
 CDR Code #: 2391

SENTENCE SHEET ALFORD

In disposition of the said indictment comes now the Defendant who was
 TO: Making a false statement or misrepresentation less than \$1,000

CONVICTED OF or PLEADS

In violation of § 38-55-540(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2391
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS. §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (def.'s initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. TS

ATTEST: [Signature] 102260 Veronica R. [Signature] 101454
 Assistant Attorney General SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
 for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 49 Days

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____
 Set by SCDPPPS

Obtain GED
 Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
 Substance Abuse Counseling

*Fine:		\$	
§14-1-206 (Assessments 107.5%)		\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	<u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	
§56-5-2995 (DUI Assessment)	\$12	\$	
§56-1-286 (DUI Breath Test)	\$25	\$	
Proviso (Public Def/Probation)	\$500	\$	
§14-1-212 (Law Enforce. Funding)	\$25	\$	<u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$	
§50-21-114 (BUI Breath Test Fee)	\$50	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
3% to County (if paid in installments)		\$	<u>3.75</u>

Random Drug/Alcohol Testing
 Fine may be pd. in equal consecutive weekly/monthly
 pmts. of \$ _____ Beginning _____
 \$ _____ Paid to Public Defender Fund

TOTAL \$ 128.75

Other: _____

Clerk of Court/Deputy Clerk April Dickerson
 Court Reporter: Joy Ruzel

Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.
 Presiding Judge [Signature]
 Judge Code: 2137
 Sentence Date 7/10/19

DOCKET NO. 2019-GS-10-

WITNESSES

S/A David Weaver - SLED

The State of South Carolina

County of Charleston

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

TERM 2019

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2019A1010202618

THE STATE

Defendant

vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

D.O.B. 07/18/1973

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

MAKING A FALSE STATEMENT OR MISREPRESENTATION LESS THAN \$1,000

SC CODE: 38-55-540

CDR Code: 2391

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on _____, the Grand Jurors of Charleston County present upon their oath:

MAKING A FALSE STATEMENT OR MISREPRESENTATION LESS THAN \$1,000

That Veronica Texcahua did, in Charleston County, on or about November 3, 2017, commit the crime of Making a False Statement or Misrepresentation Less than \$1,000, to wit: Veronica Texcahua did report under oath at a Workers' Compensation Hearing that she was unable to work due to an injury but was video recorded one day prior providing cleaning services under the employment of a private homeowner. All in violation of Section SC Code of Laws §38-55-540(A)(1), as amended, (1976).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

OFFICE OF THE ATTORNEY GENERAL

ALAN WILSON (JEH)
ATTORNEY GENERAL

Exhibit 3

2. However, due to the withholdings from the Claimant's payments by the Employer for workers' compensation insurance premiums and pursuant to § 42-1-400 of the ACT, I hereby find Defendants are responsible for providing workers compensation benefits under the Act to the Claimant. Based on a preponderance of the evidence, particularly the financial records of the defendant Peggy Evers/Cleaner Concepts, I find that the Claimant worked personally as a singularly self-employed house cleaner and subcontractor for the owner. The defendant Peggy Evers testified she collected and paid workers compensation insurance premiums to the carrier on all of her subcontractors which consist of as many as 40 workers (Ht 65, lln4-9) all of whom were in the cleaning business. I find the doctrine of estoppel prevents the carrier from denying coverage.
3. Therefore, based on a preponderance of the medical evidence and the sworn testimony of the Claimant, I hereby find Claimant sustained a compensable injury to her right knee.
4. Claimant is not at MMI.
5. A determination of permanency is premature at this time.
6. Claimant is entitled to all past causally-related expenses for her right knee.
7. Claimant is entitled to an evaluation and all causally-related treatment, if recommended, by a physician of the Defendants' choosing, with a specialty to the knee.
8. Claimant is entitled to an evaluation of her neck, by a physician of the Defendants' choosing, with a specialty to the cervical spine.
9. Claimant is entitled to an evaluation of her back, by a physician of the Defendants' choosing, with a specialty to the back.
10. Defendants' chosen specialists are to be provided with all past causally-related medical records.
11. Defendant's chosen specialists are not to be physicians that have previously treated the Claimant nor from practices that have previously treated the Claimant.
12. Defendants are to schedule appointments with specialists within 30 days of the service date of this Order.
13. With regard to Claimant's AWW and CR, based on the Claimant's sworn testimony and payment records, and absent any documentary evidence reflecting payments to other individuals from the wages paid to the Claimant, I hereby find the proper calculation of Claimant's AWW shall be based on the amounts reflected on Claimant's payment history from Exhibit 1, for the four quarters prior to her accident. Thus, I find that the Claimant AWW is \$569.69 which yields a CR of \$379.81.
14. Absent documentation reflecting the Claimant was offered light duty to accommodate her work restrictions and based on sworn testimony, I hereby find Claimant is entitled to an award of TTD from the last date she was paid by the Employer and continuing.
15. All other issues are held in abeyance at this time.

CONCLUSIONS OF LAW

1. **Statutory Employment and Subject Matter Jurisdiction** arises pursuant to §42-1-400 of the ACT. I find the Claimant is a singular, self employed sub-contractor (cleaning lady) who works and does the physical labor of cleaning for the Owner Peggy Evers/Cleaner Concepts. "It is South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act." *Fortner v. Thomas M. Evans Const. and Development, LLC (S.C. App. 2013) 402 S.C. 421, 741 S.E.2d538.*
2. **Notice of the Accident and Injuries.** Pursuant to §42-15-20 and §42-15-40 of the Act, as amended (2007) proper notice of the injury was given to direct employer by

PROOF OF SERVICE OF APPELLANTS' PETITION FOR REHEARING

STATE OF SOUTH CAROLINA
In the Court of Appeal

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Veronica Rodriguez, Employee, Respondent

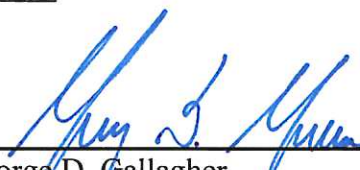
v.

Peggy Evers, Employer, and NorGuard Insurance Company, Carrier, Appellants

PROOF OF SERVICE

I certify that I have served the Appellants' Motion for Leave of the Court to Pursue SCRP 60 Relief from Judgement before South Carolina Workers Compensation Commission on Veronica Rodriguez by depositing a copy of it in the United States Mail, postage prepaid, **on May 22, 2020**, addressed to her attorney, Don C. Gibson, Post Office Box 60669, North Charleston, SC 29419 and via electronic mail at dgibson@dgibsonlaw.com.

May 22, 2020


George D. Gallagher
Speed, Seta, Martin, Trivett & Stublely
Bar No. 12149
Post Office Box 11669
Columbia, South Carolina 29211
Attorney for Appellants

SPEED, SETA, MARTIN, TRIVETT & STUBLEY, LLC
ATTORNEYS AT LAW

WALLACE SPEED (GA & TN)
LESLI R. SETA (GA & FL)
SETH C. MARTIN (GA & FL)
ERIC L. TRIVETT (GA)
M. STEPHEN STUBLEY (SC)
STEPHANIE A. ROCKWELL (GA & TN)
JAMES E.L. FICKLING (SC & NC)

REPLY TO
P.O. BOX 11669
COLUMBIA, SOUTH CAROLINA 29211
PHONE (803) 748-2919
FAX (803) 748-2735
www.Speed-Seta.com

ALEXANDER ADKINS (GA & TN)
SCOTT H. ANDREWS (GA)
HUNTER CHANDLER (GA & TN)
MELISSA CRUZ (GA & TN)
JEREMY T. ENGLAND (AL & MS)
CARLY RECORD FEDELE (GA)
C. BENTON HILBURN (GA)
SARA P. MORRIS (SC)
ANDREA S. OWEN (GA)
TRACEY R. PERLMAN (SC)
CALEY A. PITTS (GA)
KELSIE L. QUEEN (SC & NC)
JENNIFER S. RAY (GA)
DAMIEN REES (GA)
BRITTANY SCHWANITZ (GA)
SARAH V. SNIPES (GA)
BRIGGS P. TUCKER (SC)
BRITTANY BELL TURNER (GA & FL)
LILY D. WILKERSON (GA & FL)

May 22, 2020

VIA EMAIL: CTAPPFILINGS@SCCOURTS.ORG

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

RE: *Veronica Rodriguez v. Peggy Evers*
Appellate Case No.: 2018-001111
WCC No.: 1619767
Claim No.: PEWC734403-001
DOA: 12/5/16
Our File No.: 1700-0612

∞
GEORGE D. GALLAGHER (SC), of counsel

RECEIVED

May 22 2020

SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed our Motion for filing in the above-referenced matter.

By copy of this letter to Don C. Gibson, attorney for Respondent, I am serving him a copy of this Motion.

Sincerely,


George D. Gallagher

GDG/kgf

Enclosures

cc: Don C. Gibson, Esquire (w/encl)
Rosie Torres (w/encl)

SPEED, SETA, MARTIN, TRIVETT & STUBLEY, LLC
ATTORNEYS AT LAW

WALLACE SPEED (GA & TN)
LESLI R. SETA (GA & FL)
SETH C. MARTIN (GA & FL)
ERIC L. TRIVETT (GA)
M. STEPHEN STUBLEY (SC)
STEPHANIE A. ROCKWELL (GA & TN)
JAMES E.L. FICKLING (SC & NC)

REPLY TO
P.O. BOX 11669
COLUMBIA, SOUTH CAROLINA 29211
PHONE (803) 748-2919
FAX (803) 748-2735
www.Speed-Seta.com

ALEXANDER ADKINS (GA & TN)
SCOTT H. ANDREWS (GA)
HUNTER CHANDLER (GA & TN)
MELISSA CRUZ (GA & TN)
JEREMY T. ENGLAND (AL & MS)
CARLY RECORD FEDELE (GA)
C. BENTON HILBURN (GA)
SARA P. MORRIS (SC)
ANDREA S. OWEN (GA)
TRACEY R. PERLMAN (SC)
CALEY A. PITTS (GA)
KELSIE L. QUEEN (SC & NC)
JENNIFER S. RAY (GA)
DAMIEN REES (GA)
BRITTANY SCHWANITZ (GA)
SARAH V. SNIPES (GA)
BRIGGS P. TUCKER (SC)
BRITTANY BELL TURNER (GA & FL)
LILY D. WILKERSON (GA & FL)
∞
GEORGE D. GALLAGHER (SC), of counsel

May 22, 2020

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

RE: Veronica Rodriguez v. Peggy Evers
Appellate Case No.: 2018-001111
WCC No.: 1619767
Claim No.: PEWC734403-001
DOA: 12/5/16
Our File No.: 1700-0612

Dear Ms. Kitchings:

Please find enclosed our check in the amount of \$50.00 for the Motion filed May 22, 2020, in the above-referenced matter.

Sincerely,


George D. Gallagher

GDG/kgj
Enclosures

cc: Don C. Gibson, Esquire (w/encl)
Rosie Torres (w/encl)