

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

RECEIVED

Jun 05 2020

SC Court of Appeals

Veronica Rodriguez, Employee, Respondent

v.

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

**APPELLANTS' REPLY TO RESPONDENT'S RETURN TO APPELLANT'S MOTION
FOR LEAVE OF THE COURT TO PURSUE SCRPC 60 RELIEF FROM JUDGEMENT
BEFORE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION**

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

Pursuant to SCAR 240(f), Appellants hereby submit this Reply to Respondent's Return to Appellants' Motion for Leave to pursue relief from the judgement of the South Carolina Workers Compensation Commission ("Commission) pending their Appeal to this Court. Such Reply is based on the following grounds:

- 1) Respondent premises her argument regarding timeliness of Appellants' Motion for Leave on the following portion of the SCRCF 60: "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken." However, Respondent clearly overlooks the language in the same rule that follows: "**This rule does NOT limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.**" (Emphasis added). In so doing, Respondent fails to take account for her actions constituting the very act in which this exception is designed to remedy. As stated in Appellants' initial Motion for Leave, Respondent's initial award of benefits was, at least in part, due to her own perjured testimony regarding her inability to work. *See Exhibit #1.*
- 2) Moreover, in the seminal case on the issue of timeliness as it relates to SCRCF 60 relief, the court unequivocally states that there is in fact no statute of limitations with regard to the court's ability to set aside its judgment when that judgment is based on fraud upon the court pursuant to SCRCF 60. Chewning v. Ford Motor Co., No. 25727 (April 14, 2003) (emphasis added); see also Hagy v. Pruitt, 339 S.C. 425, 529 S.E.2d (2000) (court has the inherent authority to set aside a judgment on the ground of

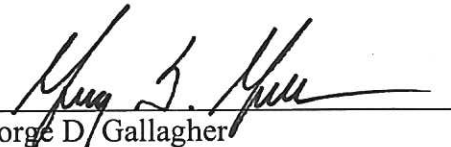
extrinsic fraud in spite of any facially applicable statute of limitations). As noted in Appellants' Motion for Leave, Appellants' submit, and case law from this state's highest court confirms, that perjury accompanied by an intentional act or "scheme to defraud or mislead the court" rises to the level of extrinsic fraud such that equitable relief from judgement is proper. Ray v. Ray, 374 S.C. 79, S.E.2d 237 (2007).

- 3) Further, Respondents erroneously rely on Fore v. Griffco of Wampee, Inc., 409 S.C. 360, 762 S.E.2d 37 (S.C. App. 2014), for the proposition that Exhibit #3 to the Appellants' Motion is not proper evidence of Respondent's fraud upon which Appellants' proposed SCRCP 60 action will be based. The facts and holding of Fore are wholly different from the issue here. In Fore, the matter inappropriately before the Commission was a letter from the Compliance Director of the Workers' Compensation Commission reporting mere allegations of fraud by the Claimant, which the Court held violated the Omnibus Insurance Fraud and Reporting Immunity Act. Fore, 409 S.C. 360, 762 S.E.2d 37. Here, the material submitted as *Exhibit #3* contains more than a mere allegation of suspected fraud. The clocked indictment and signed guilty plea serve as evidence of an actual crime and subsequent conviction of Respondent due to her false statement given during the initial hearing before Commissioner Campbell. Additionally, Rule 609(a)(2), SCROE, states that "evidence that any witness has been convicted of a crime **shall** be admitted if it involved honesty or false statement, regardless of the punishment."
- 4) Regardless, it is not appropriate for Respondent to raise the issue of admissibility at this juncture, nor is it this court's role to determine the admissibility and merit of the

evidence provided—that is a determination that should be left to the Commission in the Appellants’ SCRCP 60 action once leave is granted by this Court.

WHEREFORE Appellants respectfully request the Court grant Appellants’ prayer 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 & Stubley
Post Office Box 11669
Columbia, SC 29211
803.748.2259
ggallagher@speed-seta.com

6/5, 2020
Columbia, SC

PROOF OF SERVICE OF APPELLANTS' PETITION FOR REHEARING

STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

SCWCC File No. 1619767

Appellate Case No. 2018-001111

RECEIVED

Jun 05 2020

SC Court of Appeals

Veronica Rodriguez, Employee, Respondent

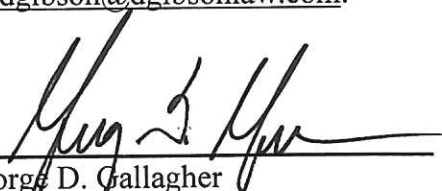
v.

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

PROOF OF SERVICE

I certify that I have served the Appellants' Reply to Respondent's Return to Appellant's Motion for Leave 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 June 5, 2020**, addressed to her attorney, Don C. Gibson, Post Office Box 60669, North Charleston, SC 29419 and via electronic mail at dgibson@dgibsonlaw.com.

June 5, 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)

June 5, 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

RECEIVED
Jun 05 2020
SC Court of Appeals

∞
GEORGE D. GALLAGHER (SC), of counsel

Dear Ms. Kitchings:

Please find enclosed the Appellants' Reply to Respondent's Return to Appellant's Motion for Leave of the Court to Pursue SCRCF 60 Relief from Judgment Before SC Workers' Compensation Commission 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)