

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2019-001254
WCC File No. 1506114

Frankie Padgett, Claimant Respondent,

v.

Cast & Crew Entertainment Services, Inc., Employer and
American Zurich Insurance Company, Carrier Appellants,

REPLY BRIEF OF APPELLANTS

Vernon F. Dunbar
McAngus Goudelock & Courie, LLC
55 East Camperdown Way
Suite 300
Greenville, South Carolina 29601
864-239-6735
vernon.dunbar@mgclaw.com
Attorney for Appellants

RECEIVED
JUL 29 2020
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENTS

I. THE COMMISSION’S FINDINGS AND LEGAL CONCLUSIONS
THAT RESPONDENT WAS AN EMPLOYEE OF CAST & CREW
WERE NOT APPEALED AND IS THE LAW OF THE CASE..... 1

II. THE COMMISSION DETERMINED THERE IS COMPELLING
EVIDENCE REFLECTING RESPONDENT DECEITFULLY USED
TWO VERSIONS OF HIS NAME TO OBTAIN RE-EMPLOYMENT
WITH CAST & CREW 3

III. THE ORDER COMPELLING THE PAYMENT OF BENEFITS IS
NULL AND VOID BECAUSE THE COMMISSION LACKS
SUBJECT MATTER JURISDICTION 5

CONCLUSION 8

TABLE OF AUTHORITIES

CASES

Addison v. Dixie Chevrolet Co.,
246 S.C. 86, 142 S.E.2d 442 (1965) 8

Brunson the American Koyo Bearings,
367 S. C. 161, 623 S. E. 2d 870 (Ct. App. 2005)..... 3, 4

Cooper v. McDevitt & Street,
260 S.C. 463, 196 S.E. 2d 833 (1973) 1, 2

Foxfire Village, Inc. v. Black & Veatch, Inc.,
304 S.C. 366, 404 S.E.2d 912 (Ct. App. 1991)..... 4

Hairston v. Re: Leasing, Inc.,
286 S.C. 493, 334 S.E.2d 825 (Ct. App. 1985)..... 5

Lemon v. Mt. Pleasant Waterworks,
429 S.C. 59, 837 S.E.2d 738 (Ct. App. 2019)..... 7

STATUTES & RULES

S.C. Code Ann. §§42-9-10 to 42-9-30 (2020)..... 7

S.C. Code Ann. §42-9-170 (2020)..... 7

ARGUMENTS

Respondent simply ignores the fact that the Commission is not empowered to award benefits under the workers' Compensation Act because it is deprived of jurisdiction on either one or two grounds: (1) the language of the clincher, judgment and/or judicial decree filed on October 22, 2012, voids any potential future employer/employee relationship between Respondent and Cast & Crew and/or (2) payment in excess of 500 weeks of disability benefits have been paid to Respondent.

I. THE COMMISSION'S FINDINGS AND LEGAL CONCLUSIONS THAT RESPONDENT WAS AN EMPLOYEE OF CAST & CREW WERE NOT APPEALED AND IS THE LAW OF THE CASE.

Respondent artfully argues on one hand that there is no employment relationship between Cast and Crew Entertainment Services and him. On the other hand, Respondent argues that the supposedly non-existent employment relationship cannot be voided based upon the common law defense set forth in the case of *Cooper v. McDevitt & Street*, 260 S.C. 463, 196 S.E. 2d 833 (1973).

Appellants never argued that the employment relationship between it and Respondent was voidable purely on the holding promulgated in the case of *Cooper v. McDevitt & Street*, *supra*. Rather, Appellants argued that Respondent willfully and knowingly breached the clincher agreement by seeking and securing re-employment with Cast & Crew. As such, Respondent's re-employment in 2015 violated/breached the contractual agreement, which should serve as a bar to Respondent's request for workers' compensation benefits. [R. p. 34, provision (I)].

Respondent's argument that his employment with Cast & Crew beginning in 2015 is not subject being voided or rescinded because of the holding in *Cooper v. McDevitt & Street, supra.*, is simply legally inapplicable, incorrect, incomprehensible and misleading to the Court.

Respondent first avers that an employment relationship was established beginning on March 30, 2015 between Cast and Crew Entertainment Services. To this end, Respondent asserts that the employment relationship cannot be voided. Ironically, Respondent, at the same time, advances a very perplexing and illogical argument that an employment relationship does not exist and never existed between the parties. In a feeble effort to advance this argument, Respondent argues that Cast and Crew was not his employer, but rather Danger Boy Productions. Respondent failed to appeal the Commission's findings of fact and rulings of law on this issue.

The Hearing Commissioner and Full Commission found as a fact and legally determined that Cast and Crew was in fact Respondent's employer at the time of his accident on May 6, 2015 in findings of fact 1-4. [R.pp. 6-7]. Specifically, the Full Commission's Order states:

- 1. Claimant was an employee of Cast & Crew Entertainment Services on May 6, 2015, the date of his accident. Claimant completed employment application documents dated March 30, 2015, that clearly reflect his employer was "Cast & Crew"...**
- 2. Cast & Crew Entertainment Services is listed as a business entity in public documents obtained from the South Carolina Secretary of State's office. No documents were submitted which reflects Danger Boy Production was a recognized business entity operating within the jurisdiction of the state of South Carolina. [R.pp. 48-49].**

3. **Cast & Crew Entertainment Services' designation as an employer was proven by "sic" preponderance of the evidence. Moreover, Cast & Crew's designation as an employer is analogous to an upstream contractor and a Professional Employer Organization (PEO). In both instances, the upstream contractor and the PEO are entities not directly controlling the daily operations of the employee, nevertheless, each entity is designated as the employer. See S.C. Code Ann. §§ 42-1-400 et. seq. and 40-68-60 "sic" 275 (2018).**
4. **Danger Boy Productions was the production company for the show which Claimant was providing transportation services, but was not Claimant's actual employer. Claimant's testimony that he thought Danger Boy Productions was his employer is not supported by the greater weight of the evidence. The greater weight of the evidence, including the personnel paperwork and Claimant's pay stubs, support a finding the Cast & Crew is Claimant's employer.**

Because Respondent failed to timely file an appeal with regard to the Commission's factual findings and legal conclusions that Cast & Crew was his employer, this argument is not preserved for review and will not be considered by this Court as a matter of law. *See Brunson the American Koyo Bearings, 367 S. C. 161, 165-166, 623 S. E. 2d 870, 872 (Ct. App. 2005).*

II. THE COMMISSION DETERMINED THERE IS COMPELLING EVIDENCE REFLECTING RESPONDENT DECEITFULLY USED TWO VERSIONS OF HIS NAME TO OBTAIN RE-EMPLOYMENT WITH CAST & CREW.

Respondent's argument that Appellants were not confused about his identity ignores the Commission's un-appealed findings of fact regarding Respondent's obvious deceit in securing employment and workers' compensation benefits by utilizing a drastic variation in his name.[R.pp. 37-47; 54-59; 90, ll. 12-25; 91, ll. 1-10; 102 ll. 1-5; 106-107; 109-110, ll.1-6; 232-234, 240 & 242]. In finding of fact 5, the Full Commission affirmed the Hearing Commissioner's finding that there was compelling evidence of breach of promise by deception committed by Respondent in order to conceal his true identity and avoid the contractual prohibition regarding re-employment with Cast & Crew. [R.p. 7]. *Foxfire Village, Inc. v. Black & Veatch, Inc.*, 304 S.C. 366, 404 S.E.2d 912 (Ct. App. 1991).

Again, Respondent failed to appeal the finding of fact that he acted in a deceitful and deliberate manner in concealing his identity and in breaching the contract/agreement preventing him for seeking future employment with Cast & Crew. As such, this argument is not preserved for review. *Brunson v. American Koyo Bearings*, 367 S. C. 161, 623 S. E. 2d 87 (Ct. App. 2005).

Last, Respondent's deception and acts to conceal his identity in view of the presupposition that he was contractually and legally prohibited from working with Cast & Crew after October 22, 2012, is reflected in finding of fact 5. [R.p. 7]. Specifically, the Full Commission affirmed the Hearing Commissioner by finding that:

[O]nce Claimant reviewed the hiring or initial paperwork and discovered that Cast & Crew was to pay his wages and did in fact pay his salary, he had ample opportunity [to] decline the assignment. However, the facts show Claimant expressly and knowingly accepted the work assignment with Cast & Crew, which violated the terms of the contract and the settlement agreement, and release.

There is no doubt from the findings of the Full Commission it unequivocally determined Respondent's actions were intended to breach the agreement/clincher and to deceive and confuse Appellants so that he could circumvent the settlement, judgment and judicial decree to obtain employment. As such, Respondent's disingenuous argument that he acted honorably and honestly should be dismissed and afforded no consideration.

III. THE ORDER COMPELLING THE PAYMENT OF BENEFITS IS NULL AND VOID BECAUSE THE COMMISSION LACKS SUBJECT MATTER JURISDICTION.

The decision of the Full Commission to order reinstatement of Respondents' temporary total disability compensation benefits absent subject matter jurisdiction constitutes an error of law. *See Hairston v. Re: Leasing, Inc.*, 286 S.C. 493, 334 S.E.2d 825 (Ct. App. 1985). In short, the Commission lacks subject matter jurisdiction on following three grounds.

First, the clincher agreement reached between the Appellants and Respondent with respect to the 2009 case rendered void any future employment relationship. In particular, Respondent's August 27, 2009, work related accident was resolved on October 22, 2012, by virtue of payment of \$150,000.00 as consideration for a settlement agreement and release or clincher. The clincher was also designated as an official act, judgment or decree of South Carolina. As such, the clincher, which is also designated as a judgment or judicial decree filed with the Commission on October 22, 2012, cannot be altered, amended, modified or interpreted in any other fashion according to *Section VIV* of the agreement. [R.p.36].

In short, the Commission violated *Section VIV* of the clincher by ignoring the plain and simple terms of the agreement restricting Respondent seeking re-employment and awarding

benefits by finding an employment relationship existed in view of Respondent's subversive actions.

Second, clincher agreement states that it shall serve a dual purpose. One purpose is to resolve the workers' compensation claim. The second purpose is the clincher agreement is to serve as a binding contract, only enforceable in a court of competent jurisdiction. [R.p. 34, provision (H)].

Respondent clearly now wishes to challenge the second purpose of the 2012 agreement, which is the validity of the agreement term precluding Respondent from seeking future employment with Cast & Crew. In order to challenge the validity of the employment clause reflected in the agreement, Respondent is legally and contractually required to dispute the provision that "he will not seek future employment" in a court of competent jurisdiction--which is not the South Carolina Workers' Compensation Commission.

Because our courts do not restrict parties' right to contract and Respondent's failure to properly challenge the validity of the employment provision in a court of competent jurisdiction, the prohibition against Respondent seeking future employment with Cast & Crew remains binding upon Respondent and Appellants. *S.C. Code Ann. §42-9-390 (2020)*. See also, *Stonhard, Inc., v. Carolina flooring Specialists, Inc.*, 366 S.C. 156, 621 S.E.2d 352 (2005). Accordingly, absent proof or evidence in a court of competent jurisdiction that the judicial decree, judgement or act should be vacated or rescinded, the terms of the document are binding and controlling. *Id.*

Third, Respondent has been paid in excess of 500 weeks of compensation benefits as a result of the 2009 and 2015 claims. Temporary total disability benefits resulting from the 2015 claim are currently being paid pursuant to the order of the Full Commission. [R.p. 9, second paragraph under "AWARD" heading].

Respondent conveniently overlooks the fact the clincher states that the payment of \$150,000.00 was in consideration for his demand of payment of permanent disability benefits for various bodily injuries suffered in 2009. As such, Respondent was paid \$150,000.00 in permanent disability benefits in 2012, which is equivalent to 1,704.56 weeks of compensation according to the terms of the clincher.

Respondent had pled in a Form 50 dated November 19, 2010, he was disabled by virtue of general disability (section 42-9-10 to wit: left and right leg; and left and right hip); wage loss (42-9-20); and scheduled loss of numerous body parts--left foot, left and right leg, back, left and right hip, and skin--for permanent and total disability (section 42-9-30). *S.C. Code Ann. §§41-9-10 to 42-9-30 (2020)*. Respondent's unilateral demand for an allocation of a lump sum payment for payment of permanent disability benefits over 1,704.56 weeks is uncontroverted. Undoubtedly, Respondent has been paid in excess of 500 weeks of benefits in contravention to the 500 week limitation as set forth in section 42-9-170. *S.C. Code Ann. §42-9-170 (2020)*.

Respondent's reliance upon *Lemon v. Mt. Pleasant Waterworks*, 429 S.C. 59, 837 S.E.2d 738 (Ct. App. 2019) is factually and legally misplaced and is not applicable to the case at bar. *Lemon v. Mt. Pleasant Waterworks*, *supra*, does not stand for the legal proposition that Appellants are not entitled to credit for benefits previously paid; and that Respondent can recover in excess of 500 weeks of benefits in the absence of involvement by the Second Injury Fund. Simply, section 42-9-10(A) does not remotely enter into the legal analysis because of allegations on the Form 50 alleging Respondent was disabled because of loss of both legs and hips per section 42-9-10(B) or in the alternative, he was disabled for loss of use of the left foot, left hip, back and disfigurement per section 42-9-30. [R.p. 39].

Respondent has been paid in excess of 500 weeks of disability compensation benefits, therefore, payment of additional benefits cannot be lawfully ordered. Because jurisdiction is a question of law, the findings and conclusions of the Commission are reviewable and are subject to appellate review. In such case, this Court can reach its own legal conclusions. *Addison v. Dixie Chevrolet Co.*, 246 S.C. 86, 142 S.E.2d 442 (1965).

Recognizing that this Court is empowered to make its own findings and conclusions with regard to the jurisdictional and legal issues raised in this appeal, the Court must consider the fact disability compensation benefits with regard to the 2015 claim has been paid continuously since May 7, 2015 to the present.¹ Thus, as of June 3, 2020 Respondent will have been paid an additional 265 weeks of workers' compensation benefits. Even when calculating the most conservative figures regarding the number of weeks paid pursuant to the 2009 claim, Respondent has been paid in excess of 639 weeks of compensation benefits.² Hence, payment of additional benefits are not warranted under the Act. As a result, the Commission did not possess subject matter jurisdiction to lawfully order additional benefits beyond the payment of 500 weeks of benefits.

CONCLUSION

In summary, the arguments set forth in Respondent's brief simply ignore the obvious fact the South Carolina Workers Compensation Commission lacks subject matter jurisdiction over this proceeding. Furthermore, Respondent's argument that the 2012 clincher is void under public policy is not persuasive and is not factually or legally supported.

¹ Weeks of compensation paid for 2015 claim from May 7, 2015 through June 3, 2020 and continuing presently totals 265 weeks.

² Weeks of compensation paid for 2009 claim reflects 154.84 weeks of temporary total disability benefits was paid. A minimum of 220.14 weeks of permanent disability benefits have been paid [\$150,000.00 divided by a compensation rate of \$681.36]. A grand total of 374.98 weeks were paid as a result of the 2009 claim.

The 2012 clincher is deemed an act, judgement or judicial decree, in addition to being deemed a contract, and subject to enforcement by a “court of competent jurisdiction”. [R.p. 34, provision (H)]. Candidly, the use of the words “court of competent jurisdiction” deprives the Commission of jurisdiction. Thus, the Commission’s award of benefits are null and void. Accordingly, the decision of the Full Commission must be reversed.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

A handwritten signature in black ink, appearing to read "Vernon F. Dunbar", is written over a horizontal line.

Vernon F. Dunbar

Post Office Box 2980

55 East Camperdown Way, Suite 300 (29601)

Greenville, South Carolina 29602

(864) 239-4000

July 27, 2020

Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2019-001254
WCC File No. 1506114

RECEIVED

JUL 29 2020

SC Court of Appeals

Frankie Padgett, Claimant Respondent,

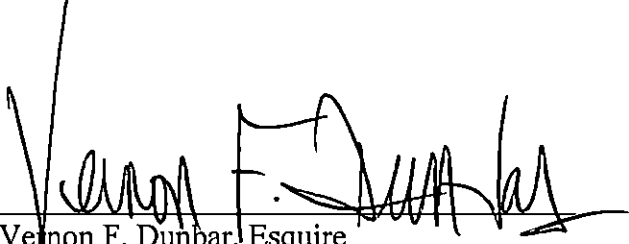
v.

Cast & Crew Entertainment Services, Inc., Employer and
American Zurich Insurance Company, Carrier Appellants,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief and Final Reply Brief of Appellants comply with Rule 211(b), SCACR.

July 27, 2020


Vernon F. Dunbar, Esquire
McAngus, Goudelock & Courie LLC
Post Office Box 2980
Greenville, South Carolina 29602
(864) 239-6735
Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2019-001254
WCC File No. 1506114

RECEIVED

JUL 29 2020

SC Court of Appeals

Frankie Padgett..... Respondent,

v.

Cast & Crew Entertainment Services, Inc.,..... Employer,

and

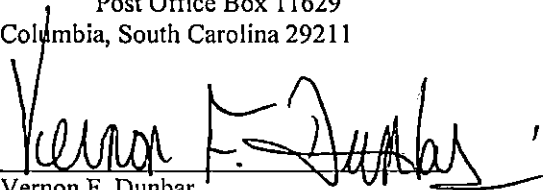
American Zurich Insurance Company c/o
Zurich North America,Appellants,

PROOF OF SERVICE

I hereby certify that I have this 27th day of July 2020, caused to be served a copy of the Appellants' Final Brief and Final Reply Brief via electronic service a copy of same, as follows:

Stephen B. Samuels, Esquire
Samuels Reynolds Law Firm
1320 Richland Street
Columbia, South Carolina 29201

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



Vernon F. Dunbar
McAngus, Goudelock & Courie LLC
Post Office Box 2980
55 East Camperdown Way, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000
Attorneys for Appellant
July 27, 2020

Reply To

VERNON F. DUNBAR
Direct Dial: (864) 239-6735
vernon.dunbar@mgclaw.com

July 27, 2020

RECEIVED

JUL 29 2020

SC Court of Appeals

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

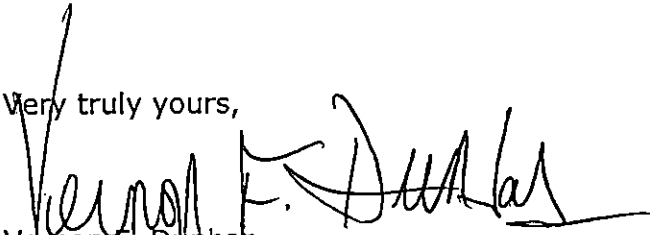
RE: Frankie Padgett v. Cast & Crew Entertainment Services, Inc. and American
Zurich Insurance Company c/o Zurich North America
Date of Accident: May 6, 2015
Appellate Case No: 2019-001254
WCC File No.: 1506114
Our File No.: 20216.17069

Dear Ms. Kitchings:

Please see enclosed the certificate of counsel and certificate of service reflecting that we have served the Final Brief and Final Reply Brief of Appellants upon Stephen B. Samuels, Esquire, counsel for Respondent.

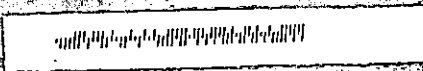
Pursuant to the Court's rule, I am also placing into regular mail the unbound and original copy of the Final Appellants Brief and Reply Brief. If you have any questions, please do not hesitate to contact me.

With kindest regards, I remain

Very truly yours,

Vernon F. Dunbar

VFD/_amc

Enclosures: Brief, Reply Brief and certificates of service and counsel
Cc: Stephen B. Samuels, Esquire
Shana'e Montgomery, Zurich North America



mgc | INSURANCE
DEFENSE

POST OFFICE BOX 1160
GREENVILLE, SC 29602

RECEIVED
JUL 29 2020
SC Court of Appeals

20216.17069/VFD/_amc
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211