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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

James Lockemy, Court of Appeals Judge  
John D. Geathers, Court of Appeals Judge  
Blake A. Hewitt, Court of Appeals Judge

Case No.: 2020-001194

Veronica Rodriguez, ..... Respondent

V.

Peggy Evers and NorGuard Insurance Company, ..... Appellants

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APPELLANTS' REPLY TO RESPONDENT'S RETURN TO APPELLANTS'  
AMENDED PETITION FOR WRIT OF CERTIORARI

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## ARGUMENT

### I. PETITIONERS' REPLY TO RESPONDENT'S COUNTER-STATEMENT OF THE CASE.

In its counter statement of the case, Respondent attempts to characterize several of Petitioners' statements of fact as inaccurate or a misrepresentation of the record. In turn, Petitioners would respectfully direct the Court's attention to Petitioners' statement of the case and records citations (Pet. Amended Writ. pg. 1-4). Briefly, Petitioners provide reply to Respondent's characterization of Petitioners' knowledge and subsequent motion to introduce the video footage of Respondent cleaning a home on November 2, 2017. Specifically, Respondent states that defense counsel's lack of knowledge of the surveillance and its availability at the time of hearing is "directly contrary to the record." (Pet. Amended Writ. p. 2). In fact, Petitioners' contention that defense counsel was unaware of the availability of the surveillance on the day of the November 3, 2017 hearing is in the record and is cited to as such in Petitioners' statement of the case. (Pet. Amended Writ. p. 2). ("Unknown to then defense counsel at the time of the original Hearing on November 3, 2017, surveillance efforts commissioned by the carrier revealed Respondent working cleaning houses on November 2, 2017, which is the VERY DAY BEFORE THE HEARING AND HER TESTIMONY THAT SHE HAS BEEN UNABLE TO WORK DUE TO HER INJURIES SINCE SHORTLY FOLLOWING HER ACCIDENT. (R. pp. 23-24)"). Petitioners in no way misrepresent that that surveillance video of Respondent were obtained, as stated clearly in Petitioners' Amended Writ and above. The key distinction that Respondent attempts to discredit is that on the day of the hearing, Petitioners' counsel was not aware that the surveillance had been completed and therefore could not have presented it as part of the defense.

II. RESPONDENTS INAPPROPRIATELY ATTEMPT TO ARGUE THE MERITS OF THE UNDERLYING APPEAL TO THE FULL COMMISSION, WHICH IS NOT APPROPRIATE.

In its return, Respondent provides several arguments directly related to the merits of the claim that was on appeal before the Full Commission before it was summarily and erroneously denied. Petitioners are seeking review by this Court of the Court of Appeals' decision denying their Petition for Rehearing, thus continuing to deny Petitioner the opportunity to appeal the single commissioner's decision regarding the merits of the claim. As stated in their Amended Writ, "Petitioners now pray that the Supreme Court grant this Petition for Writ of Certiorari, review the issues presented, correct the Court of Appeals' patently erroneous and unjust decision to affirm the Commission's summary dismissal of Petitioners' appeal, and remand back to the Commission for consideration of same on the merits." (Pet. Amended Writ. p. 4). As such, the merits of the claim are not the issue before the Court and argument regarding the same is improper. The merits of the claim will need to be ruled upon by the Full Commission after reinstatement of the Appeal, which Petitioners are seeking through their Amended Writ of Certiorari.

III. ABENT JUDICIAL REVIEW, PETITIONERS WILL NOT HAVE A REMEDY TO APPEAL THE SINGLE COMMISSIONER'S DECISION AS TO COVERAGE AND COMPENSATION UNDER THE ACT DURING A FINAL ADJUDICATION OF THE CLAIM.

In its return, Respondent argues that Petitioners' Motion to Reinstate Appeal is not a final judgment on the merits, and thus not subject to judicial review. (Res. Ret. p. 6). In so doing, Respondent relies on the decision of this Court in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), for the assertion that "a final judgment must be issued in a workers'

compensation claim before the claim is applicable to a higher court.” (Res. Ret. p. 7). However, and as discussed in depth in Petitioners’ Amended Writ, this Court has since delineated an exception to this general holding which is relevant to the case at bar. Specifically, Respondent’s Reply entirely fails to address the inadequate remedy exception identified by this Court in Hilton v. Flakeboard of America Ltd., 418 S.C. 245, 791 S.E.2d 719 (2016), that allows Petitioners to bring this appeal before the Court for judicial review. Rather, they simply recite the Court of Appeals’ ruling and make conclusory statements that completely overlook the existence of Hilton and its ostensible application to this case. In Hilton, this Court held that an injured worker’s appeal from an interlocutory order of the Commission was subject to immediate judicial review because the appellant would not have an adequate remedy otherwise. Specifically, the Hilton Court held, “under these unique circumstances where the Commission has ordered relitigation of the entire dispute without regard to the matters raised by the appealing party, we find that requiring Hilton to wait until the final agency decision to appeal would not provide him an adequate remedy.” Hilton at 418 S.C. p. 250. Here, the Single Commissioner’s erroneous findings as to the Respondent’s coverage and entitlement to benefits under the Act will become the finding of the case and effectively unchallengeable before the full Commission without the availability of the Petitioners to seek judicial review. *See* Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (Ct. App. 1999) (holding that an unappealed finding of the single commissioner regarding medical treatment was the law of the case for future proceedings before the Commission). Therefore, Petitioners seek the only available avenue of remedy to appeal the single Commissioner’s decision—judicial review before this Court.

IV. THE COMMISSION’S DISMISSAL OF PETITIONERS’ APPEAL AMOUNTS TO DENIAL OF PROCEDURAL DUE PROCESS BECAUSE IT HAS DEPRIVED THEM OF THEIR STATUTORY RIGHT OF APPEAL TO THE FULL COMMISSION.

Respondent’s argue that Petitioners have failed to proffer evidence of the deprivation of due process rights as a result of the Commission’s denial of Petitioners’ appeal to the Full Commission. (Res. Ret. p. 12). In fact, Petitioners’ Amended Writ of Certiorari is riddled with evidence to substantiate the argument by way of well-settled case law and statutory authority. Specifically, S.C. Code §42-17-50 states that upon appeal of a single commissioner’s decision, the Full Commission may “review the award and, if good grounds be shown, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the award.” While Petitioners concede that the calendaring error made caused the untimeliness of its filing of the appellate brief to the full Commission, Petitioners argue that it was simply that—an honest mistake, not one of any ill-minded or otherwise dubious intentions. These types of mistakes, which in NO way prejudiced the opposing party, should not bar Petitioners from the opportunity to seek an appeal regarding the merits of the claim. As held in Micronics v. S.C. Department of Revenue, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001), “where there is a good faith mistake of fact and no attempt to thwart the judicial system, there is a basis for relief. This is consistent with South Carolina policy favoring disposition of issues on their merits rather than technicalities.” The Micronics Court outlined several factors in determining its basis for reinstating the cause of action, including: “[a] good faith mistake, its swift action to remedy the situation, the existence of a meritorious defense, and the lack of prejudice.” *Id.* In so doing, this Court held that the Administrative Law Judge had in fact, abused its discretion in failing to reinstate the cause of action— thus depriving the appealing party of due process. As discussed more fully in Petitioners’

Amended Writ, these facts are vastly similar to those in the case at bar. Most importantly that Petitioners made an honest, good faith mistake in its calendaring and Respondent was not in any way prejudiced. Further, Petitioners made haste to rectify the error as soon as it was known to them. Therefore, Petitioners utterly disagree with Respondent's thinly veiled argument that Petitioners' due process rights were not violated by the Commission failure to reinstate the appeal. Again, as this Court has held, an administrative dismissal of a claim for a technical failure to submit an appellate filing where no prejudice can be shown was not intended to bar a final disposition on the merits of a claim.

V. CONTRARY TO RESPONDENT'S ASSERTION, PETITIONERS SUBMITTED AMPL EVIDENCE OF GOOD CAUSE TO REINSTATE ITS APPEAL BEFORE THE FULL COMMISSION.

Even a cursory review of Petitioners' Amended Writ would reveal Respondent's argument that Petitioners have failed to show good cause for reinstatement of their Appeal to the Full Commission is without merit and clearly untrue. Petitioners have provided ample evidence to support their position, which is clearly stated in Petitioners' Amended Writ ("[t]he good cause shown here is that Respondent suffered no immediate prejudice as a result of Petitioners' mistake in not timely filing their brief. Whether the brief was filed when purportedly due per the Commission's Notice, or whether it was filed after any reinstatement of the appeal, Respondent's position is *status quo*- she will still have the same right and opportunity to respond and be heard on the merits of the case"). (Pet. Amended Writ. p. 11). In its argument, Respondent cites an unpublished<sup>1</sup> opinion, Morris v. BB&T, IN RE: Proffitt v. SCWCC, Appellate Case No. 2018-

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<sup>1</sup> "Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." Rule 268(d)(2), SCACR.

000532 (S.C. Ct. App. Aug. 12, 2020) for the proposition that a calendaring error does not amount to good cause. In so doing, Respondent overlooks several crucial differences between Morris and the case at bar. First, defense counsel in Morris is seeking reinstatement of an appeal regarding a single commissioner's order denying his petition for attorney's fees. Here, Petitioners are seeking review of the denial of the immediate availability of an interlocutory order from the Court of Appeals. Moreover, as Respondent fails to mention, the decision issued by the Court of Appeals in Morris is currently before the court by way of a Petition for Rehearing by the Appellant. While the Court of Appeals August 12<sup>th</sup> decision is currently the law of the case, should the petition for rehearing be granted, the decision would be moot. As such, Petitioners submit that Morris should not be relied as persuasive authority.

### CONCLUSION

For the foregoing reasons, and by way of incorporation of Petitioners' Amended Writ of Certiorari, Petitioners respectfully request this Court grant its Writ for Certiorari, reserve the Court of Appeals' decision, and remand back to the Full Commission for consideration of their appeal on the merits.

Respectfully submitted,

  
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