

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
OCT 16 2020
SC Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

The Honorable Roger E. Henderson, Circuit Court Judge

Civil Action No. 2018-CP-16-00696
Appellate Case No. 2020-001268

James Roosevelt Gee Respondent,

v.

Hartsville, LLC d/b/a Carolina Pines Medical
Center Appellant.

**REPLY IN SUPPORT OF
APPELLANT’S PETITION FOR REHEARING
OR MOTION FOR REINSTATEMENT**

Appellant Hartsville, LLC d/b/a Carolina Pines Medical Center, through its undersigned counsel and pursuant to Rule 240(f), SCACR, respectfully submits this brief Reply in Support of its Petition for Rehearing or Motion for Reinstatement in response to Respondent’s Return to Appellant’s Petition for Rehearing or Motion for Reinstatement.¹

¹ Appellant notes that: (a) Respondent’s return was not requested pursuant to Rule 221(a), SCACR; and (b) while Rule 240(e), SCACR, provides that “[a]ny party opposing a motion or petition shall have ten (10) days from the date of service thereof” to file and serve a return, Respondent’s return was served on October 9, 2020, fifteen (15) days after Appellant’s Petition for Rehearing or Motion for Reinstatement and Supporting Memorandum was served. However, Appellant anticipates that the court will exercise its discretion to consider Respondent’s return and thus addresses the substantive arguments raised therein.

Appellant acknowledges the discussions regarding the appealability of summary judgment orders in Ballenger v. Bowen, 313 S.C. 476, 443 S.E.2d 379 (1994), and Watson v. Underwood, 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014). However, Appellant submits that there is some tension between the general principles discussed in those cases and this court's holding in Cooke v. Palmetto Health Alliance, 367 S.C. 167, 624 S.E.2d 439 (Ct. App. 2005), that the circuit court's ruling on the statutory employment defense was appealable in light of the fact that "the circuit court weighed the evidence and concluded that the exclusivity provision did not apply because Cooke was [not] a statutory employee . . . of the Hospital." Id. at 174, 624 S.E.2d at 442.

In this case, Judge Henderson was presented with: (a) the Affidavit of Sue Shugart (the chief operating officer of Carolina Pines Regional Medical Center at the time of the incident described in the Complaint); (b) Respondent's Reply to Appellant's Requests for Admissions; and (c) Respondent's deposition testimony. Like the circuit court in Cooke, Judge Henderson "weighed the evidence and concluded that the exclusivity provision did not apply because [Respondent] was [not] a statutory employee" of Appellant.² The only distinction between this case and Cooke is that Judge Henderson weighed the evidence in the context of a motion captioned as one for summary judgment whereas the circuit court in Cooke conducted what this court identified as "a non-jury hearing on the merits of the Hospital's exclusivity defense." Id. at 173, 624 S.E.2d at 442. Appellant respectfully submits that this is a distinction without

² Judge Henderson's specific conclusion was as follows: "I find that [Respondent] cannot be considered a statutory employee of [Appellant] and therefore [Respondent] is not barred from any additional recovery from [Respondent] due to the exclusive remedy clauses under the South Carolina Worker's Compensation Act, S.C. Code Ann. §§ 42-1-10 to 42-19-50." Summary Judgment Order at 5.

a difference, as the outcomes were the same in both cases: the circuit judges weighed the evidence presented to them and rejected the exclusivity defense.

If the dismissal of this appeal stands, Appellant will immediately file a Motion for Non-Jury Hearing on the Merits of its Exclusivity Defense with the circuit court, which will subsequently conduct a third hearing on the issue, after which the losing party will inevitably appeal once again to this court. That strikes Appellant as a waste of judicial resources—particularly since the only basis for dismissal of this appeal is how the underlying motion was captioned—when this court could simply go ahead and review the statutory employment issue now.

For the reasons stated herein and in its Petition for Rehearing or Motion for Reinstatement and Supporting Memorandum, Appellant respectfully requests that the court grant rehearing of its Order filed September 23, 2020 or, in the alternative, reinstate the appeal.



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October 14, 2020

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James Roosevelt Gee Respondent,

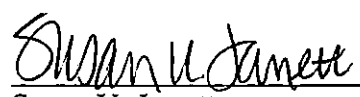
v.

Hartsville, LLC d/b/a Carolina Pines Medical
Center Appellant.

PROOF OF SERVICE

I, the undersigned employee of Barnes, Alford, Stork & Johnson, LLP, do hereby state that I have on October 14, 2020 served copies of **REPLY IN SUPPORT OF APPELLANT'S PETITION FOR REHEARING OR MOTION FOR REINSTATEMENT** by depositing copies of the documents in the United States Mail, sufficient postage prepaid, with the return address clearly noted, addressed as follows:

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Weeks Law Office, LLC
35 South Sumter Street
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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: James Roosevelt Gee v. Hartsville, LLC d/b/a Carolina Pines Regional
Medical Center
Appellate Case No. 2020-001268
Case No. 2018-CP-16-00696
BASJ File No. 213.21605
Client File No. 009726

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Proof of Service and Reply in Support of Appellant's Petition for Rehearing or Motion for Reinstatement in the above-referenced matter. Please file the original and return the clocked-in copy in the envelope provided for your convenience.

By copy of this letter to the Plaintiff's attorney, I am serving him with a copy of our Proof of Service and Reply in Support of Appellant's Petition for Rehearing or Motion for Reinstatement.

With best personal regards, I am

Very truly yours,

Weldon R. Johnson

WRJ/suj
Enclosures


cc: J. David Weeks, Esquire (sent w/enclosures)

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