

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

S.C. SUPREME COURT

J. Mark Hayes, II, Circuit Court Judge

Case No. 2017-CP-42-03726  
Appellate Case No. 2019-001382

Raquel Martinez, Employee,

Respondent,

v.

Spartanburg County, Employer, and  
S.C. Association of Counties  
Self-Insurance Fund, Carrier,

Appellants.

**MOTION TO ARGUE AGAINST PRECEDENT**

Appellants Spartanburg County and South Carolina Association of Counties Self-Insurance Fund respectfully file this Motion to Argue Against Precedent pursuant to Rule 217 of the South Carolina Appellate Court Rules. Oral argument in this case is set for November 17, 2020.

The precedent in question is Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013) (3-2 decision) (Hearn, J., dissenting) (rejecting the Court's interpretation of the term "final judgment" in section 1-23-390). As argued in their brief, Appellants contend Bone's interpretation of the meaning of a final judgment under S.C. Code Ann. § 1-23-390 (Supp. 2007) violates workers' compensation employers' and carriers' equal protection and due process rights. (See Brief of Appellants, pp. 37-50). Appellants believe the constitutional issues raised in the present case are of first impression for this Court.

Also, the majority in Bone indicated its decision regarding the interpretation of “final judgment” under Section 1-23-390 would further judicial economy. Bone, 404 S.C. at 81, 744 S.E.2d at 560. However, the actual application of Bone has done the exact opposite of furthering judicial economy. As a direct result of Bone, the present case has been stuck in a perpetual cycle of remands for years, with no end in sight. This was one of the specific concerns Justice Hearn expressed in her dissenting opinion in Bone: “Taken to its logical conclusion, the majority’s position could have cases trapped in a cycle of remands for years.” Bone, 404 S.C. at 92, 744 S.E.2d at 566 (Hearn, J., dissenting).

Appellants would further assert that the decision in Bone was subsequently diluted by this Court’s decision in Shatto v. McLeod Reg’l Med. Ctr., 406 S.C. 470, 753 S.E.2d 416 (2013). Section 1-23-390 of the Administrative Procedures Act, which governs further review within the judiciary, states:

An aggrieved party may obtain a review of a final judgment of the circuit court or the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases.

S.C. Code Ann. § 1-23-390 (2020). In Bone, the primary issue was the meaning of “final judgment” under section 1-23-390, but the Court also provided its interpretation of the final phrase “in the manner provided by the South Carolina Appellate Court Rules as in other civil cases.” See Bone, 404 S.C. at 74, 744 S.E. 2d at 556. In Footnote 3, the majority noted this phrase “simply refers to following the same procedures for briefing schedules, preparation of records, etc., as in other civil cases, ***and these rules do not supersede the APA provisions.***” (emphasis added). Id.

In Shatto,<sup>1</sup> which like Bone also involved further appellate review within the courts and was thus controlled by section 1-23-390, the question of this Court’s jurisdiction to hear the case

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<sup>1</sup> Shatto was decided approximately six months after Bone.

was raised, and this Court determined it had jurisdiction to hear the appeal. Shatto, 406 S.C. 470, 753 S.E.2d at 418. However, instead of addressing whether the court of appeals' decision was a "final judgment" as required by section 1-23-390, this Court held:

...Section 1-23-390 concludes by providing that appeals from the court of appeals shall be pursued "by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil case." Rule 242(a), SCACR, authorizes this Court to issue a writ of certiorari "to review a final decision of the Court of Appeals." The parties concede that the court of appeals' decision is final. Indeed, the rule speaks in terms of reviewing a "final decision" of the court of appeals, not a "final judgment."

Shatto, 406 S.C. 470, 753 S.E.2d at 418.

While this Court specifically noted in Bone that the South Carolina Appellate Court Rules "do not supersede the APA provisions," this Court subsequently used these rules to elude the final judgment requirement provided by section 1-23-390. Pursuant to Shatto, if the court of appeals' decision is a "final decision," then this Court has the authority to review it. Shatto essentially eliminates the "final judgment" requirement as defined by Bone in all cases arising under the present law, which requires appeals from the Commission to go directly to the court of appeals.<sup>2</sup>

However, for all cases arising under the prior law, including the present case, appeals from the Commission must be first taken to the circuit court,<sup>3</sup> and in these cases, the appellate process has been complicated due to the creation of multiple standards for appealability within the judiciary under the APA. Pursuant to Bone, a party can only pursue further judicial review of a *circuit court's review* of an administrative agency's decision if the circuit court's order is a "final judgment." Yet, under Shatto, a party can seek further judicial review of a *court of appeal's review*

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<sup>2</sup> For all injuries occurring on or after July 1, 2007, appeals from the Commission are taken directly to the Court of Appeals. See S.C. Code Ann. § 42-17-60 (2020); S.C. Code Ann. § 1-23-390 (2020);

<sup>3</sup> See S.C. Code Ann. §42-17-60 (2005)

of an administrative agency's decision with this Court so long as the court of appeals issues a "final decision."

Consequently, Appellants argue that Bone should be overruled. Appellants further argue that Justice Hearn's interpretation of the meaning of "final judgement," as outlined in her dissenting opinion in Bone, be adopted:

In my view, the test which has heretofore been applied to determine whether an appellate decision is a "final judgment" eligible for further review under section 1-23-390 is whether the order finally determines an issue affecting a substantial right on the merits.

Bone, 404 S.C. at 85, 744 S.E.2d at 562 (Hearn, J., dissenting). Appellants assert Justice Hearn's test would provide a consistent and equitable standard for appealability within the judiciary under the APA.

Given the procedural status of this claim and this Court's previous decision in Bone, Appellants are compelled to file this Motion and respectfully request the Court grant leave to allow for oral argument against precedent.

Respectfully submitted,



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