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Jun 09 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Kenneth L. Barr, Claimant, ..... Appellant,

v.

Darlington County School District, Employer, and  
S.C. School Boards Insurance Trust, Carrier, ..... Respondents.

Appellate Case No. 2018-001237

Appeal From The Workers' Compensation Commission

Opinion No. 5815 Heard February 2, 2021 – Filed April 7, 2021

**REPLY TO RESPONDENTS' RETURN TO  
MOTION OF AMICUS CURIAE INJURED WORKERS' ADVOCATES  
FOR LEAVE TO FILE AMICUS BRIEF**

Injured Workers' Advocates (IWA) hereby files their Reply to Respondents' Motion for Leave to File Amicus Brief.

Respondents raise both procedural and substantive objections to the Amicus Brief. Each will be addressed in turn.

**1. Procedural Objections.**

Respondents argue that an amicus brief is untimely because “pursuant to the mandates of Rule 211, SCACR, final briefs were required to be filed no later than March 27, 2021. [Return, page 1, ¶ 1]. Respondents reasoning is incorrect. While Rule 213 requires a brief of an amicus curiae to comply with Rules 208 (B) and 211, the compliance required is as to form, not timing. Rule 213, SCACR.

Amicus curiae briefs are permitted only with leave (or by request) of the appellate court. Id. They serve an unique role in our appellate system. An amicus brief can help the Court understand issues from a larger perspective than that presented by the litigants. As such, they articulate broader concerns that the parties themselves – who are focused on the specific result in the case – may not fully present to the Court. Because amici are not advocates for a particular party, the need for their participation may not arise until after the appellate court issues its decision. Or, an amicus may not be aware that a particular issue of significant public interest is pending before an appellate court. For this reason, our appellate court rules leave the decision to grant or deny a motion for leave to file an amicus curiae brief up to the court itself upon motion.

Historically, there are numerous instances where an amicus curiae brief has been allowed late in the process – even at the rehearing stage. In Bone, the Court accepted an amicus curiae brief from the South Carolina Defense Trial Attorneys Association. The brief was filed on October 30, 2012 – nearly three months *after* the initial opinion was published.<sup>1</sup> The amicus brief must have been both timely and persuasive as the South Carolina Supreme Court substantially modified its original opinion consistent with the position set forth by the amicus curiae. Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013). See also James v. Anne’s Inc., 701 S.E.2d 730, 390 S.C. 188 (2010)(supreme court reversed original decision after allowing amicus curiae to file briefs and participate in oral argument after original decision was filed).

In short, there is no set time limit on when an amicus curiae brief must be filed. Acceptance or denial of a conditionally filed brief is entirely within the discretion of the appellate court. Our appellate courts have previously accepted amicus briefs during the rehearing period. So should the

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<sup>1</sup>Counsel for Respondents was an attorney of record for the amicus curiae in Bone.

Court in this case. Therefore, IWA requests that the Court grants its motion for leave to file amicus curiae brief and accept the conditionally filed brief.

2. Substantive Objections.

Respondents argue the violation of § 42-15-95 is not preserved because Appellant “raised no objection” to the admission of Dr. Pritchard’s opinions. [Return, page 3, ¶ 8]. However, as Respondents note, “the Court of Appeals [failed] to recognize” this preservation argument and actually ruled on the issue.

As an amicus curiae, IWA takes no direct position on whether Appellant preserved his objection at trial, only noting that issue preservation rules in workers’ compensation are liberally construed.<sup>2</sup> IWA simply notes the Court did indeed engage in an extensive analysis of § 42-15-95, and that it was briefed by both parties. The issue is therefore squarely on the Court’s radar and is appropriately a subject for an amicus curiae brief. And if the issue is not preserved, the Court should remove the entire analysis from the opinion.

Respondents also argue that the Court improperly made its own findings of fact and conclusions of law as to Respondents violations of § 42-15-95 pertaining to Dr. Pritchard’s report. This would seem to be more properly addressed in a Return to the Petition for Rehearing or in a response to the Brief of Amicus Curiae. Because it is raised in the Return to the Motion, IWA will respond insofar as to say that the violations are patent. An appellate court does not invade the

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<sup>2</sup>When the appellate court can fairly infer the issue was raised, it will not dismiss an appeal on preservation grounds. Cf. Holston v. Allied Corp., 300 S.C. 174, 386 S.E.2d 793(Ct. App. 1989)(issue properly raised on appeal where the issue raised was reasonably clear from appellant’s arguments below); Palm v. General Painting Co., Inc., 296 S.C. 41, 370 S.E.2d 463 (Ct. App. 1988)(“it is inferable from the record that [claimant] raised this issue before the single commissioner”).

commission's fact finding role when only one inference can be drawn from the evidence. See, e.g. Polk v. E. I. duPont de Nemours Co., 158 S.E.2d 765, 250 S.C. 468 (1968)(“if the evidence is all one way . . . , then the issue becomes one of law for the court and not of fact for the Commission.”).

**CONCLUSION**

Therefore, IWA requests the Court grant the Motion for Leave to File Amicus Brief and accept the Brief conditionally filed with the Motion.

Respectfully Submitted,



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Columbia, South Carolina  
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PROOF OF SERVICE

I certify that I, Wanda Powell, Paralegal for the Samuels Reynolds Law Firm, LLC, have served the **Reply to Respondents' Return to Motion of Amicus Curiae Injured Workers' Advocates for Leave to File Amicus Brief** upon counsel for the parties and the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on June 9, 2021 and Via Email, addressed as follows:

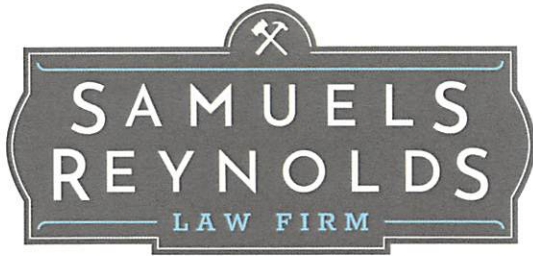
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Wanda Powell, Paralegal



STEPHEN B. SAMUELS  
P. JASON REYNOLDS  
ATTORNEYS AT LAW

June 9, 2021

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**SC Court of Appeals**

*Via email: ctappfilings@sccourts.org*  
The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: Kenneth L. Barr v. Darlington County School District  
Appellate Case No.: 2018-001237

Dear Ms. Kitchings:

Enclosed for filing please find attached the **Reply to Respondents' Return to Motion of Amicus Curiae Injured Workers' Advocates For Leave To File Amicus Brief.**

By copy of this letter and enclosure(s), we are serving a copy of our **Reply to Respondents' Return to Motion of Amicus Curiae Injured Workers' Advocates For Leave To File Amicus Brief** upon the counsel of record in this matter as indicated by the attached Proof of Service.

Thank you for your consideration in this matter. Please contact us with any questions or if further information is needed from our office.

With kindest regards, I am

Yours very truly,

Stephen B. Samuels

SBS/wp  
Enclosure (s)  
cc w/encl.: Kirsten L. Barr, Esquire  
Gerald Malloy, Esquire  
Preston F. McDaniel, Esquire

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