

SUPREME COURT OF SOUTH CAROLINA

Pikaart v. A & A Taxi, Inc., 393 S.C. 312

713 S.E.2d 267 (2011) · No. No. 26996 · Decided July 11, 2011

SUMMARY

The Supreme Court of South Carolina held that Robert Pikaart was an employee and general manager of A & A Taxi, Inc., rather than an independent contractor, for purposes of workers' compensation jurisdiction. Applying the right-to-control factors, the court found that the evidence supported an employment relationship and affirmed the circuit court's determination. The court also held that a challenge to the circuit court's additional findings concerning benefits was not preserved for appellate review.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Beatty; Chief Justice Toal; Justice Pleicones; Justice Kittredge; Justice Hearn
JURISDICTION	South Carolina
DECIDED	July 11, 2011
DOCKET	No. 26996
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a circuit court order determining that Pikaart was an employee of A & A Taxi when injured and was entitled to workers' compensation benefits. The Supreme Court of South Carolina certified the case from the Court of Appeals under Rule 204(b), SCACR.
STANDARD OF REVIEW	Under the South Carolina Administrative Procedures Act, the Court may reverse or modify a Commission decision when substantial rights have been prejudiced by an error of law or when the decision is clearly erroneous in view of the reliable, probative, and substantial evidence in the record as a whole. Because employee-versus-independent-contractor status is jurisdictional, the Court may take its own view of the preponderance of the facts supporting jurisdiction, while still considering the Commission's credibility findings.
PRECEDENTIAL VALUE	Published South Carolina Supreme Court opinion; precedential.

PARTIES

A & A Taxi, Inc., South Carolina Uninsured Employers' Fund v.
Robert Pikaart

TOPICS

workers compensation

employment law

administrative law

standard of review

appellate procedure

PRACTICE AREAS

workers compensation

employment law

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether Pikaart was an employee of A & A Taxi rather than an independent contractor, thereby subjecting his claims to the jurisdiction of the South Carolina Workers' Compensation Commission.
2. Whether the circuit court's additional findings concerning compensability, average weekly wage, benefit dates, and medical care could be challenged on appeal when the issue had not been presented to or ruled upon by the circuit court.

HOLDINGS

1. Pikaart was an employee and general manager of A & A Taxi, not an independent contractor, because the preponderance of the jurisdictional evidence, evaluated under the four-factor right-to-control test, established an employment relationship.
2. The challenge to the circuit court's additional findings concerning benefits was not properly before the Supreme Court because the argument was not presented to and ruled upon by the circuit court.

KEY QUOTATIONS

"The test is not the actual control exercised, but whether there exists the right and authority to control and direct the particular work or undertaking." (318)

"Based on the foregoing, we hold the circuit court correctly considered the jurisdictional facts and found, by a preponderance of the evidence, that Pikaart was the general manager of A & A Taxi and thus, its employee." (323)

"A matter may not be presented for the first time on appeal; rather, it must have been both raised to and ruled upon by the court below." (325)

FACTUAL BACKGROUND

Pikaart performed managerial, dispatching, and driving duties for A & A Taxi and was injured in two automobile accidents while using company-owned taxis to perform company errands. He testified that he managed the company's operations, hired and fired drivers, handled dispatching and business affairs, and drove when needed; the company owner disputed that Pikaart was a manager and characterized him as a lessee operating his own taxi business. A & A Taxi denied workers' compensation liability on the ground that Pikaart was an independent contractor and had no workers' compensation coverage.

PROCEDURAL HISTORY

A Workers' Compensation Commission commissioner found that Pikaart was an independent contractor and dismissed for lack of jurisdiction. The Commission's appellate panel affirmed. The circuit court took its own view of the jurisdictional facts, found Pikaart to be an employee, and awarded certain benefits. The Supreme Court affirmed the circuit court, holding that the employee-status issue was properly resolved in favor of Commission jurisdiction and that the challenge to additional factual findings was unpreserved.

DISPOSITION

affirmed

CASES CITED

- *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 689 S.E.2d 615 (2010)
- *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981)
- *Transportation Insurance Co. v. South Carolina Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 687 (2010)
- *Crim v. Decorator's Supply*, 291 S.C. 193, 352 S.E.2d 520 (Ct. App. 1987)
- *McLeod v. Piggly Wiggly Carolina Co.*, 280 S.C. 466, 313 S.E.2d 38 (Ct. App. 1984)
- *Wilkinson ex rel. Wilkinson v. Palmetto State Transportation Co.*, 382 S.C. 295, 676 S.E.2d 700 (2009)
- *Vines v. Champion Building Products*, 315 S.C. 13, 431 S.E.2d 585 (1993)
- *Wilson v. Georgetown County*, 316 S.C. 92, 447 S.E.2d 841 (1994)
- *Spivey v. D.G. Construction Co.*, 321 S.C. 19, 467 S.E.2d 117 (Ct. App. 1996)
- *Shuler v. Tri-County Electric Co-op.*, 385 S.C. 470, 684 S.E.2d 765 (2009)
- *Hill v. Eagle Motor Lines*, 373 S.C. 422, 645 S.E.2d 424 (2007)
- *Pilgrim v. Eaton*, 391 S.C. 38, 703 S.E.2d 241 (Ct. App. 2010)
- *Paschal v. Price*, 392 S.C. 128, 708 S.E.2d 771 (2011)
- *Shealy v. Aiken County*, 341 S.C. 448, 535 S.E.2d 438 (2000)
- *Kilgore Group, Inc. v. South Carolina Employment Security Commission*, 313 S.C. 65, 437 S.E.2d 48 (1993)
- *South Carolina Workers' Compensation Commission v. Ray Covington Realtors, Inc.*, 318 S.C. 546, 459 S.E.2d 302 (1995)
- *Chavis v. Watkins*, 256 S.C. 30, 180 S.E.2d 648 (1971)
- *Nelson v. Yellow Cab Co.*, 349 S.C. 589, 564 S.E.2d 110 (2002)
- *Dawkins v. Jordan*, 341 S.C. 434, 534 S.E.2d 700 (2000)
- *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998)
- *Leviner v. Sonoco Products Co.*, 339 S.C. 492, 530 S.E.2d 127 (2000)
- *Hill v. South Carolina Department of Health & Environmental Control*, 389 S.C. 1, 698 S.E.2d 612 (2010)
- *City of Rock Hill v. Suchenski*, 374 S.C. 12, 646 S.E.2d 879 (2007)
- *Stone v. Roadway Express*, 367 S.C. 575, 627 S.E.2d 695 (2006)
- *Nettles v. Spartanburg School District No. 7*, 341 S.C. 580, 535 S.E.2d 146 (Ct. App. 2000)

