

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H101874**

**CAROLINE G. STORMO,
EMPLOYEE**

CLAIMANT

**OAKLAWN RACING CASINO RESORT,
EMPLOYER**

RESPONDENTS

**AMERICAN ZURICH INS. CO./ZURICH INS. CO.,
INSURANCE CARRIER/TPA**

RESPONDENTS

**MICHAEL ROGER RADIMER (AN EMPLOYEE OF
OAKLAWN RACING CASINO RESORT),
IN HIS PERSONAL CAPACITY**

INTERVENOR

**OPINION AND ORDER TO DISMISS WITHOUT PREJUDICE
FILED SEPTEMBER 20, 2022**

Hearing conducted on Monday, September 19, 2022, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, via Zoom videoconference (Zoom) initiated from Little Rock, Pulaski County, Arkansas.

The claimant, Ms. Caroline G. Stormo, pro se, of Sevierville, Sevier County, Tennessee, appeared at the hearing via Zoom.

The respondents were represented by the Honorable Michael C. Stiles, Mayton, Newkirk & Jones, Little Rock, Pulaski County, Arkansas, who appeared at the hearing via Zoom.

The intervenor, Michael Roger Radimer, was represented by the Honorable Phillip M. Brick, Jr., Friday, Eldredge & Clark, Little Rock, Pulaski County, Arkansas, who appeared at the hearing via Zoom.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim on Monday, September 19, 2022, to determine whether this claim should be dismissed, upon the claimant's motion, for lack of prosecution pursuant to *Ark. Code Ann.* § 11-9-702(a)(4) (2022 Lexis Replacement) and Commission Rule 099.13 (2022 Lexis Repl.).

The claimant, Ms. Caroline G. Stormo (the claimant), filed her request to dismiss with the Commission via an email to the ALJ dated August 5, 2022, which the ALJ accepted as a written motion to dismiss without prejudice (MTD). Upon receipt of the claimant's email motion to dismiss the ALJ forwarded it via email to the attorneys representing the respondents and the intervenor. Pursuant to the Commission's current policy as set forth by then-Chief Administrative Law Judge Barbara Webb (which policy still remains in effect at this time), the ALJ set this matter for a Zoom hearing since the claimant has relocated from Malvern, Arkansas, and now is domiciled in Sevierville, Sevier County, Tennessee. In accordance with applicable Arkansas law, the claimant, respondents' attorney, and intervenor's attorney were all provided due and legal notice of both the claimant's MTD and the Zoom hearing. All parties appeared at the Zoom hearing. Neither the respondents nor the intervenor objected to the claimant's MTD. (It should also be noted the respondents filed a motion to dismiss for lack of prosecution and brief in support thereof with the Commission on March 2, 2022, which motion was held in abeyance.)

At the Zoom hearing of Monday, September 19, 2022, the ALJ advised the claimant of her right to counsel, and she stated she understood this right and felt comfortable proceeding with the hearing without the benefit of counsel, thereby voluntarily waiving this right. (The claimant had been represented in this claim by Ms. Laura Beth York of the Rainwater, Holt and Sexton law firm before the Commission granted her leave to withdraw as claimant's counsel. The file also reflects the claimant contacted and visited with the Commission's legal advisors) Thereafter, the ALJ administered the oath to the claimant so her testimony was taken under oath and penalty of perjury as is required by applicable law.

After having been due and legally sworn the claimant adamantly testified it was never her intention to file a workers' compensation claim in this matter. The Commission's file reflects this claim was filed with the Commission on February 23, 2021, via a Form AR-C signed by Mr. Patrick Lee of the Rainwater, Holt & Sexton law firm of Little Rock, Arkansas (the Rainwater Firm).

Sometime before the Rainwater Firm filed the Form AR-C with the Commission on February 23, 2021, the claimant filed a third-party lawsuit in the Circuit Court of Garland County, Arkansas, Third Division, the Honorable Lynn Williams presiding, styled *Caroline Stormo v. Oaklawn Jockey Club, Inc. d/b/a Oaklawn Racetrack and Casino and/or Oaklawn Racing Casino and Resort; Michael Roger Radimer and John Doe Entities 1-3*, Case No. 26CV-19-1533. The defendants in this lawsuit filed a "Motion For Leave To Seek Determination From the Arkansas Workers' Compensation Commission and Motion For Stay" requesting the court to stay the Garland County third-party lawsuit in order that the Commission could first determine whether the Arkansas Workers' Compensation Act's (the Act) "exclusive remedy" provision, codified at *Ark. Code Ann.* Section 11-9-105 (2022 Lexis Repl.), prohibited the claimant from filing a third-party lawsuit against the defendants on these facts. Since the applicable law provides the Commission has the sole jurisdiction to make this determination, Garland County Circuit Judge Williams granted the defendants' motion. The claimant was represented by Mr. Bryce Brewer of the Rainwater Law Firm in the Garland County third-party action.

In the Garland County Circuit Court's order filed May 14, 2020, Judge Williams specifically stated: "The parties are *granted leave* to pursue the issue of whether the exclusive remedy provision of worker's [sic] compensation bars the Plaintiff's claim. This Court will accept

the final ruling of the Arkansas Workers' Compensation Commission, including any and all appeals, as binding in this action [the Garland County lawsuit]. The present action is stayed pending resolution by the Arkansas Workers' Compensation Commission, including any and all appeals from the Commission's decision." (Bracketed material and emphasis added). J

In a second order entitled, "Order Granting Dismissal Without Prejudice" filed December 1, 2021, Judge Williams stated: "The Court has considered the Motion to Dismiss Without Prejudice filed by Plaintiff CAROLINE STORMO. The motion is GRANTED. Pursuant to Arkansas Rule of Civil Procedure 41(a), Plaintiff will have one year from this date to refile her claim." Again, the claimant was represented by Mr. Bryce Brewer of the Rainwater Law Firm at this time, as well.

In her workers' compensation claim (which, again, an attorney for the Rainwater Law Firm filed with the Commission on February 23, 2021); during the most recent prehearing teleconference conducted in this matter on June 28, 2022; in her email dated August 5, 2022, requesting her workers' compensation claim be dismissed; and in her sworn testimony at the September 19, 2022, Zoom hearing, the claimant consistently voluntarily, and adamantly, and stated she never intended to file a workers' compensation claim because she does not believe the February 23, 2019, incident was work-related. Under oath at the Zoom hearing the claimant specifically and sincerely testified she believed the February 23, 2020, work incident was simply a "freak accident."

Moreover, on the record at the September 19, 2022, Zoom hearing, both the intervenor's and the respondents' attorneys specifically reserved the right to request that the Commission

determine the applicability of the Act's "exclusive remedy" provision on these facts should the claimant once again pursue or attempt to pursue a third-party claim.

The record herein consists of the hearing transcript and any and all exhibits contained therein and attached thereto, as well as the Commission's entire file in this matter.

DISCUSSION

As set forth above, and consistent with *Ark. Code Ann.* § 11-9-702(a)(4), as well as our court of appeals' ruling in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, 192 S.W.3d 287 (Ark. App. 2004), the Commission scheduled and conducted a Zoom hearing on the claimant's motion to dismiss. Suffice it to say the preponderance of the evidence contained in the Commission's file and adduced at the hearing, as set forth in pertinent part above, conclusively demonstrates the claimant not only testified under oath she does not wish to prosecute her claim as required by the applicable Arkansas law, she never in fact intended to file a workers' compensation claim because she does not believe the subject February 23, 2019, incident was work-related. Furthermore, the record demonstrates the claimant has not requested a hearing within the last six (6) months, for the same reasons set forth immediately above. It should be noted the claimant not only has in the past had the benefit and advice of experienced private legal counsel who specializes in the representation of claimants in workers' compensation cases in this matter, she also has called the Commission's legal advisors and had the benefit of their information and counsel.

It should also be noted that on the record at the September 19, 2022, Zoom hearing, both the intervenor's and the respondents' attorneys specifically reserved the right to request that the Commission determine the applicability of the Act's "exclusive remedy" provision on these facts

should the claimant once again pursue or attempt to pursue a third-party claim in a court of competent jurisdiction.

Therefore, after a thorough consideration of the facts, issues, the applicable law, and other relevant matters of record, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.
2. After having been advised of her right to counsel on the record at the subject Zoom hearing, the claimant voluntarily waived her right to be represented by counsel at the hearing.
3. The claimant does not wish, neither does she intend, to prosecute this claim because she never intended to file a workers' compensation claim since she does not believe the subject February 23, 2019, incident was work-related, but was simply a "freak accident." In addition, for all the reasons immediately set forth above, the claimant has not requested a hearing on this claim within the last six (6) months.
4. Therefore, I find the claimant's motion to dismiss her claim filed with the Commission on February 23, 2019, which request for dismissal she filed with the Commission via email on August 5, 2022, should be and hereby is GRANTED; and this claim is dismissed without prejudice to its refiling pursuant to the deadlines prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b), and Commission Rule 099.13.

This opinion and order shall not be construed to prohibit the claimant, her attorney, any attorney she may retain in the future, or anyone acting legally and on her behalf from refiling the claim *if* it is refiled within the applicable time periods prescribed by *Ark. Code Ann.* § 11-9-702(a) and (b).

Furthermore, should the claimant attempt to pursue or in fact pursues a third-party claim in any court of competent jurisdiction, this ruling shall not be construed to prohibit either the intervenor and/or the respondents from requesting that the Commission be asked to determine the

applicability of the Act's "exclusive remedy" provision to the facts of this claim, which right both the intervenor and the respondents specifically reserved on the record at the subject September 19, 2022, Zoom hearing.

The respondents shall pay the court reporter's invoice within ten (10) days of their receipt thereof.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp