IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-WC-00913-COA

GAMMA HEALTHCARE INC. AND EMPLOYERS INSURANCE COMPANY OF WAUSAU — **APPELLANTS**

v.

ESTATE OF SHARON BURRELL GRANTHAM — **APPELLEE**

DATE OF JUDGMENT:	02/27/2019
TRIBUNAL FROM WHICH APPEALED:	MISSISSIPPI WORKERS' COMPENSATION COMMISSION
ATTORNEYS FOR APPELLANTS:	M. REED MARTZ D. BETH SMITH
ATTORNEY FOR APPELLEE:	STEVEN HISER FUNDERBURG
NATURE OF THE CASE:	CIVIL - WORKERS' COMPENSATION
DISPOSITION:	APPEAL DISMISSED IN PART AS MOOT; ORDERS OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION VACATED IN PART; ORDER IMPOSING SANCTIONS REVERSED AND RENDERED - 12/01/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

WILSON, P.J., FOR THE COURT:

¶1. Sharon Grantham experienced permanent paraplegia as a result of a work-related automobile accident. Her employer, Gamma Healthcare Inc., and its workers' compensation insurance carrier, Employers Insurance Company of Wausau (collectively, "the Employer/Carrier") began paying workers' compensation benefits and providing medical treatment, but disputes later arose regarding Grantham's requests for modifications to her

home and a wheelchair-accessible van. The administrative judge (AJ) ordered the Employer/Carrier to pay for necessary modifications and a wheelchair-accessible van. As relevant to this appeal, the AJ and the Workers' Compensation Commission also ordered the Employer/Carrier to replace the failed or failing septic and HVAC systems at Grantham's home and to pay for property/collision insurance for Grantham's van. In a separate order, the Commission also ordered the Employer/Carrier to pay attorney's fees of $4,000 as a sanction for appealing the AJ's order to replace the septic and HVAC systems.

¶2. On appeal, the Employer/Carrier challenges the Commission's orders regarding the septic and HVAC systems, insurance, and sanctions. Unfortunately, Grantham passed away after the appeal was filed. Grantham's Estate was substituted as the appellee, and the Estate concedes that Grantham's death abates the Employer/Carrier's obligations to make home repairs and pay for insurance on the van. For that reason, the primary issues in this appeal are moot, and the appeal from Commission's orders requiring the Employer/Carrier to replace the septic and HVAC systems and pay for van insurance is dismissed. In addition, the Commission's and AJ's orders on those subjects are vacated. We do not address the merits of those issues because they are moot, but we vacate the underlying orders because they require the Employer/Carrier to take actions that the parties agree are no longer required. Finally, we reverse and render the Commission's sanctions order. Sanctions were inappropriate because the Employer/Carrier presented at least a colorable legal argument in support of its appeal.

FACTS AND PROCEDURAL HISTORY[1]

¶3. In October 2015, Grantham experienced permanent paraplegia as a result of a work-related automobile accident. The Employer/Carrier reported the injury and began paying workers' compensation benefits and providing medical treatment.

¶4. Several months later, disputes arose between Grantham and the Employer/Carrier regarding the scope and nature of necessary modifications to Grantham's home. In August 2016, Grantham filed a petition to controvert with the Workers' Compensation Commission and a motion to compel the Employer/Carrier to make necessary modifications to her home. In February 2017, Grantham filed a motion to compel the Employer/Carrier to provide a wheelchair-accessible van. In March 2017, the AJ ordered the Employer/Carrier to make necessary home modifications, provide Grantham with a wheelchair-accessible van, and pay "for property/collision insurance premiums associated with the enhanced cost of the handicapped vehicle." The AJ later entered an order clarifying that Grantham would "be responsible for premiums associated with liability and/or uninsured motorist coverage and that the [Employer/Carrier would] be responsible for insurance premiums associated with property/collision coverage for the vehicle." The Employer/Carrier filed a petition for full Commission review of the AJ's ruling on insurance. However, the Commission declined to review the AJ's interlocutory ruling and dismissed the petition without prejudice.

¶5. In April 2017, Grantham filed a motion asking the AJ to appoint a "neutral case manager" to assist with recurring disagreements between the parties regarding home

[1] We recount only the facts and prior proceedings relevant to the issues of mootness and sanctions.

modifications. Grantham argued that "a neutral case manager appointed by the Commission to assess, observe and make recommendations to the [AJ] would be in the best interest of [Grantham] and would promote smooth administration of this claim." In response, Employer/Carrier argued that the Workers' Compensation Law did not authorize the AJ to appoint a neutral case manager and that a neutral case manager was "not needed." In June 2017, the AJ granted Grantham's motion and appointed Barbara Oltremari, a registered nurse, "to perform nurse case management services limited to . . . an inspection of [Grantham's] residence to include home modifications and to provide the parties and the [AJ] with a report and opinions as to whether the home modifications are complete, reasonable and adequate for [Grantham's] health and safety." Oltremari performed her inspection and submitted her report in July 2017.

¶6. In November 2017, Grantham filed a motion to compel the Employer/Carrier to pay for various home modifications that Oltremari had recommended. Among other things, Grantham asked the AJ to compel the Employer/Carrier "to have [her septic and HVAC] systems evaluated and repaired, if necessary." The AJ granted Grantham's motion.

¶7. Evaluations showed that Grantham's "septic system [was] not working at all" and needed to be replaced and that her HVAC system was "extremely old" and also needed to be replaced. The HVAC system failed completely and ceased working after the evaluation was performed. In July 2018, Grantham filed a motion to compel the Employer/Carrier to replace her septic and HVAC systems.

¶8. In response, the Employer/Carrier argued that the evaluation of the septic system

showed that the system's failure was the result of a myriad of "longstanding" issues that predated and were unrelated to Grantham's injury and were "not the responsibility of the [Employer/Carrier] to remedy." Similarly, the Employer/Carrier argued that the evaluation of the HVAC system showed that the system was already "two to four years beyond its life expectancy at the time of [Grantham's] accident" and revealed "numerous other problems with the system, most of which [were] attributable to lack of maintenance." They argued that the failure of the HVAC system was unrelated to Grantham's work-related injury and was "not the responsibility of the [Employer/Carrier] to remedy."

¶9. In September 2018, the AJ entered an order stating that she would "conference with the appointed nurse case manager before ruling on [Grantham's] motion."[2] In October 2018, the AJ directed the nurse case manager to conduct a new inspection and provide an updated report on the condition of Grantham's home. In November 2018, after considering the nurse case manager's updated report, the AJ ordered the Employer/Carrier to, among other things, replace Grantham's septic and HVAC systems.

¶10. The Employer/Carrier filed a petition for full Commission review of the AJ's order. As relevant to this appeal, the Employer/Carrier argued that the AJ's order to replace Grantham's septic and HVAC systems was "beyond the [Employer/Carrier's] obligations [under] Mississippi Code Annotated [section] 71-3-15(1)."[3] The Employer/Carrier also "re-

[2] The case had been reassigned to a new AJ in December 2017.

[3] "The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, artificial members, and other apparatus for such period as the nature of the injury or the process of recovery may require." Miss. Code Ann. 71-3-15(1) (Rev. 2011).

urge[d]" its prior petition for review regarding insurance for Grantham's van. Finally, the Employer/Carrier argued that the AJ's reliance on the opinions of a nurse case manager was an abuse of discretion and a due process violation. In a separate motion, the Employer/Carrier asked the Commission to admit additional evidence: a rebuttal report from "Accessible Housing Services."

¶11. In February 2019, the Commission entered a one-page order summarily affirming the AJ's order. The Commission also denied the Employer/Carrier's motion to admit additional evidence.

¶12. In addition, in a separate order entered the same day, the Commission sua sponte sanctioned the Employer/Carrier pursuant to Mississippi Code Annotated section 71-3-59(2) (Rev. 2011) and ordered the Employer/Carrier to pay $4,000 in attorney's fees. The Commission ruled that with respect to the AJ's order to replace Grantham's septic and HVAC systems, the Employer/Carrier had appealed "without reasonable grounds" because there was no "medical evidence" to dispute that the nature of Grantham's injuries required her to have working septic and HVAC systems.

¶13. After the Commission entered a final judgment in the case, the Employer/Carrier filed a notice of appeal. On appeal, the Employer/Carrier argues that (1) the Commission's orders requiring it to replace Grantham's septic and HVAC systems and pay for insurance on her van exceed the scope of relief available under the Workers' Compensation Law; (2) the Commission erred and violated the Employer/Carrier's due process rights by relying on the report of the nurse case manager and then excluding the Employer/Carrier's rebuttal

evidence; and (3) the Commission erred by awarding sanctions against the Employer/Carrier for appealing the AJ's order to replace the septic and HVAC systems.

¶14. Unfortunately, Grantham passed away while this appeal was pending. We granted Grantham's Estate's motion to be substituted as the appellee. *See* M.R.A.P. 43(a). We then ordered the parties to file supplemental briefs addressing the effect, if any, of Grantham's death on the appeal, including whether the appeal was moot and whether any of the Commission's orders should be vacated. Grantham's Estate candidly concedes that Grantham's death abates the Employer/Carrier's obligations to replace the septic and HVAC system and pay insurance premiums. However, the parties agree that the Commission's order imposing sanctions is not moot. In addition, the parties both argue that we may or should address other issues raised by the appeal under exceptions to the mootness doctrine. The parties disagree as to whether we should vacate the Commission's orders on any issues that we decline to address as moot.

ANALYSIS

I. The appeal of the merits of the case is moot and must be dismissed.

¶15. "A case is moot so long as a judgment on the merits, if rendered, would be of no practical benefit to the plaintiff or detriment to the defendant." *Fails v. Jefferson Davis Cnty. Pub. Sch. Bd.*, 95 So. 3d 1223, 1225 (¶10) (Miss. 2012) (brackets omitted) (quoting *Gartrell v. Gartrell*, 936 So. 2d 915, 916 (¶8) (Miss. 2006)). "This Court has no authority to 'entertain an appeal where there is no actual controversy.'" *Id.* (quoting *Gartrell*, 936 So. 2d at 916 (¶8)). "Cases in which an actual controversy existed at trial but the controversy has

expired at the time of review, become moot." *Id.* (quoting *Allred v. Webb*, 641 So. 2d 1218, 1220 (Miss. 1994)). We will not exercise appellate "review . . . for the purpose of settling abstract or academic questions, and . . . we have no power to issue advisory opinions." *Id.* (quoting *Allred*, 641 So. 2d at 1220).

¶16. As noted above, Grantham's Estate expressly concedes that due to Grantham's death, the Employer/Carrier are no longer obligated to replace the septic and HVAC systems or pay for insurance on the van. And while the parties disagree as to how exactly we should dispose of this appeal, there is no real dispute that the Employer/Carrier's appeal of those orders is moot in the sense that Grantham's death has already abated the obligations that the Employer/Carrier challenge on appeal. It is true that Grantham's death does not moot the Commission's separate order imposing sanctions, and the imposition of sanctions is related to the Commission's underlying order regarding the septic and HVAC systems. However, as we explain in Part III, *infra*, the order imposing sanctions must be reversed and rendered because the Employer/Carrier had at least a colorable legal basis for their appeal. In other words, we would reverse and render the sanctions order even if we were to affirm the Commission's underlying order. Therefore, a decision by this Court affirming or reversing the Commission's orders regarding the septic and HVAC systems and van insurance would have no practical effect. For that reason, the Employer/Carrier's appeal of those orders is moot and must be dismissed unless some exception to the mootness doctrine applies.

¶17. Our Supreme Court has recognized "an exception [to the mootness doctrine] for those cases which are capable of repetition yet evading review." *In re Validation of Tax*

Anticipation Note, Series 2014, 187 So. 3d 1025, 1032 (¶18) (Miss. 2016) (quoting *Miss. High Sch. Activities Ass'n Inc. v. Coleman ex rel. Laymon*, 631 So. 2d 768, 772 (Miss. 1994)). "The 'capable of repetition yet evading review' exception is limited to situations in which '(1) the action complained of is too short in duration to be fully litigated before its expiration and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.'" *Id.* at 1032-33 (¶18) (brackets and internal quotation marks omitted) (quoting *Coleman*, 631 So. 2d at 772). Applying the first prong of this test, "[our Supreme] Court has held that 'two separate prerequisites must be met before the exception may be applied, to wit: (1) the duration of the challenged action must have been short and (2) the time required to complete an appeal is lengthy." *Id.* at 1033 (¶18) (brackets omitted) (quoting *Coleman*, 631 So. 2d at 772).

¶18. The capable-of-repetition-yet-evading-review exception does not apply in this case. The orders at issue simply awarded relief to an injured employee under the Workers' Compensation Law. The issues raised in this appeal became moot only because the claimant died during the appeal. But for Grantham's death, the orders would not have become moot and could have been litigated to a final decision on appeal. If similar issues arise in another workers' compensation case, they can be appealed and decided in that case. Stated differently, the orders challenged and issues raised in this appeal do not present any inherent or unique risk of becoming moot during an appeal.

¶19. Our Supreme Court has also recognized "a public-interest exception to the mootness doctrine." *Id.* at 1033 (¶22). This exception applies only "when the question concerns a

matter of such nature that it would be distinctly detrimental to the public interest that there should be a failure by the dismissal to declare and enforce a rule for future conduct." *Id.* (quoting *Sartin v. Barlow*, 196 Miss. 159, 170, 16 So. 2d 372, 376 (1944)). We can identify no reason why a dismissal of this moot appeal "would be distinctly detrimental to the public interest." *Id.* Accordingly, this exception to the mootness doctrine does not apply either.

¶20. In summary, the appeal from the Commission's orders requiring the Employer/Carrier to replace Grantham's septic and HVAC system and for pay insurance on Grantham's van is moot. The additional procedural and evidentiary issues related to those orders—i.e., the AJ's appointment of a nurse case manager and the Commission's refusal to admit additional evidence—are also moot. Those are simply alternative grounds on which the Employer/Carrier challenge the substantive relief the Commission granted. Therefore, Grantham's death also renders those issues moot. Finally, no exception to the mootness doctrine applies. Accordingly, the appeal must be dismissed in part as moot. *Fails*, 95 So. 3d at 1226 (¶14).

II. The orders of the Commission and the AJ should be vacated to the extent that they require the Employer/Carrier to replace the septic and HVAC systems and pay for insurance.

¶21. In our order requiring supplemental briefs, we also directed the parties to address whether the Commission's orders should be vacated to the extent that they are now moot. Grantham's Estate argues that no orders should be vacated because the case was not moot when the Commission decided it. In contrast, the Employer/Carrier argues that it would be unfair to leave the Commission's orders in place without addressing the Employer/Carrier's

legal challenges to those rulings.

¶22. There is little Mississippi precedent on this issue. Grantham's Estate cites *Fails*, *supra*, in which our Supreme Court held that the decisions of this Court and the circuit court had to be vacated because the case was *already* moot when this Court and the circuit court decided it. *Fails*, 95 So. 3d at 1226 (¶13). However, *Fails* only holds that an appellate court *must* vacate the judgment of a lower tribunal when the case was already moot when the judgment was entered. *Id.* The Supreme Court did *not* hold or even imply that an appellate court cannot or should not vacate a lower tribunal's order when, as here, the case becomes moot during the appeal. *Fails* simply does not address that issue.

¶23. The general rule in federal court is that a lower court's judgment "must be" vacated when appellate "review is . . . prevented through happenstance—that is to say, where a controversy presented for review has become moot due to circumstances unattributable to any of the parties." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 23 (1994) (quotation marks omitted). As the United States Supreme Court put it, "A party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment." *Id.* at 25; *see also id.* at 25 n.3 (stating that "happenstance provides sufficient reason to vacate"). That rationale applies in this case, which became moot only because of the happenstance of Grantham's death.

¶24. In addition, there are practical reasons to vacate the Commission's orders and the prior orders of the AJ to the extent that they require Employer/Carrier to replace the septic and HVAC systems and pay for insurance. We may not address the merits of those orders

because they are moot, but there is a practical problem with leaving the orders in place. Grantham's Estate concedes that the Employer/Carrier are no longer obligated to replace the septic and HVAC systems or pay for insurance on the van. However, the Employer/Carrier remain under valid and binding orders to do precisely those things unless the orders of the Commission and the AJ are vacated. To avoid that practical difficulty, we vacate the Commission's and the AJ's orders to the extent they require the Employer/Carrier to replace the septic and HVAC systems and pay for insurance on the van.[4]

III. The Commission abused its discretion by sanctioning the Employer/Carrier because the Employer/Carrier presented at least a colorable legal argument in support of their appeal.

¶25. The one part of this appeal that is not moot is the Employer/Carrier's appeal from the Commission's order imposing sanctions. The Commission sanctioned the Employer/Carrier sua sponte pursuant to Mississippi Code Annotated section 71-3-59(2), which provides in relevant part:

> If the full commission determines that proceedings in respect to a claim have been instituted, continued or delayed, including by way of appeal to the commission, without reasonable ground, the full commission shall require the party who has so instituted, continued or delayed such proceedings or the attorney advising such party, or both, to pay the reasonable expenses, including attorney's fees, caused by such institution, continuance or delay to the opposing party.

The Commission sanctioned the Employer/Carrier for appealing the AJ's order requiring them to replace Grantham's septic and HVAC systems. The Commission found that the

[4] Our concern is with the direct effects of the orders, not any issue of collateral estoppel. Our Supreme Court has stated that the dismissal of an appeal as moot "will not prejudice the rights of the parties in other suits, and is not to be taken as res adjudicata." *Rawlings v. Claggett*, 174 Miss. 845, 847-48, 165 So. 620, 620 (1936).

Employer/Carrier lacked "reasonable grounds" for the appeal because they did not present a "medical opinion" or "medical evidence" disputing Grantham's need for working septic and HVAC systems.

¶26. We conclude that the Employer/Carrier had a "reasonable ground" for their appeal and that the Commission erred by finding otherwise. The Employer/Carrier argued that septic and HVAC systems were beyond the scope of relief available under the Workers' Compensation Law because neither was an "other apparatus" that was specially required by the nature of Grantham's injury. Miss. Code Ann. § 71-3-15(1). The Employer/Carrier pointed out that Grantham's septic system had failed due to longstanding problems that predated her injury and that her HVAC system was already beyond its expected useful life at the time of her injury and had "numerous other problems . . . , most of which were attributable to lack of maintenance." The Employer/Carrier did not dispute that Grantham should have working septic and HVAC systems. Rather, the Employer/Carrier made a legal argument that the Workers' Compensation Law did not require them to replace such basic components of Grantham's home.

¶27. The Commission is authorized to impose sanctions under section 71-3-59(2) only if a party has "instituted, continued or delayed" proceedings, "including by way of appeal to the commission, *without reasonable ground*." Miss. Code Ann. § 71-3-59(2) (emphasis added). "In an analogous context, our Supreme Court 'has held that pleadings found to be justiciable, viable, or colorable are not for the purpose of harassment or delay; thus, sanctions are inappropriate.'" *Wright v. Turan-Foley Motors Inc.*, 269 So. 3d 160, 173 (¶45) (Miss.

Ct. App. 2018) (quoting *Estate of McLemore v. McLemore*, 63 So. 3d 468, 490 (¶68) (Miss. 2011) (applying Mississippi Rule of Civil Procedure 11). Thus, we held in *Wright* that the Commission may not sanction a party or attorney for an argument that has "at least a 'colorable' basis in the law." *Id.* at 174 (¶47) (quoting *Estate of McLemore*, 63 So. 3d at 490 (¶68)). And in that case, we reversed and rendered sanctions imposed by the Commission because counsel had a "colorable" legal basis for his argument, and the argument was not foreclosed by any applicable "rules or reported cases." *Id.*

¶28. Likewise in this case, the Employer/Carrier made at least a colorable legal argument that a septic system or an HVAC system is not an "other apparatus" specially required by the nature of Grantham's injury that it may be ordered to provide under section 71-3-15(1). As in *Wright*, there is no clear rule or precedent that forecloses the Employer/Carrier's argument. Furthermore, the Commission itself has stated:

> The Employer/Carrier's payment of the prescribed disability benefit is their only legally required contribution to those things which wages ordinarily are used to purchase—food, clothing, shelter, etc. There is no provision in the Workers' Compensation Act for the employer, in addition to providing the statutory substitute for wages, to provide the ordinary necessities of life, other than in cases like this one where certain additional living expenses can, to a limited extent, be reasonably characterized as necessary medical expenses because they are uniquely and proximately attributable to a severe or catastrophic injury. We do not have the liberty or the license to convert the ordinary expenses of day-to-day living which are not uniquely attributable to a severe or catastrophic injury into reasonable and necessary medical expenses solely because the wage substitute determined by the legislatively prescribed formula is inadequate.

West v. Pierce Cabinets, No. 05-06400, 2006 WL 1895234, at *8 (Miss. Workers' Compensation Comm'n May 26, 2006). Following the Commission's reasoning, the

Employer/Carrier makes at least a colorable argument that a septic system and an HVAC system are "ordinary necessities of life," not items "uniquely and proximately attributable to [Grantham's] injury." *Id.*

¶29. Parties should not be sanctioned for making reasonable legal arguments in support of their positions. In this case, the Employer/Carrier's argument "had at least a colorable basis in the law. Thus, sanctions are inappropriate . . . ." *Wright*, 269 So. 3d at 174 (¶47) (quotation marks omitted). The Commission's order imposing sanctions is reversed and rendered.

CONCLUSION

¶30. We dismiss as moot the Employer/Carrier's appeal from the Commission's orders requiring the Employer/Carrier to replace Grantham's septic and HVAC systems and pay for van insurance. In addition, although we do not address the merits of those issues, we vacate the orders of the Commission and prior orders of the AJ to the extent that they require the Employer/Carrier to replace the septic and HVAC systems and pay for insurance. Finally, we reverse and render the Commission's separate order imposing sanctions on the Employer/Carrier.

¶31. **APPEAL DISMISSED IN PART AS MOOT; ORDERS OF THE WORKERS' COMPENSATION COMMISSION VACATED IN PART; ORDER IMPOSING SANCTIONS REVERSED AND RENDERED.**

BARNES, C.J., CARLTON, P.J., GREENLEE AND LAWRENCE, JJ., CONCUR. McCARTY, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. McDONALD, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION, JOINED BY WESTBROOKS, J.; McCARTY, J., JOINS IN PART.

McDONALD, J., CONCURRING IN PART AND DISSENTING IN PART:

¶32. I concur with the majority that the Commission's sanctions order should be reversed and rendered. I also concur that the appeal of the Commission's orders that compelled Wausau to replace Grantham's septic and HVAC system or, in lieu thereof, purchase her a three-bedroom home and repair her van is moot. But I disagree with the majority opinion that vacates the AJ's and Commission's orders on these issues because Grantham was alive when Wausau presented these issues to the Commission, and the controversy was viable at that time.

¶33. To recap the salient facts, on November 16, 2018, the AJ issued an order that summarized prior orders and the information contained in Grantham's case manager report and the report of an occupational therapist. The AJ ordered Wausau to pay for home modifications that the nurse care manager and occupational therapist recommended. In the alternative, Wausau could forego modifying the existing home and provide Grantham with a new or remodeled home if to do so would be more cost effective.

¶34. On December 5, 2018, Wausau appealed this order to the Commission and asked to present additional evidence. On February 27, 2019, the Commission issued two orders. In one, the Commission denied Wausau's motion to introduce additional evidence and affirmed the AJ's November 16, 2018 order. The other Commission order dealt with sanctions. Wausau appealed these Commission orders on June 4, 2019. While this appeal was pending, Grantham died on September 25, 2019.

¶35. As noted by the majority, appellate courts do not adjudicate moot questions. *Allred*

v. Webb, 641 So. 2d 1218, 1220 (Miss. 1994). When an actual controversy exists at trial, but has expired at the time of review, the issue becomes moot. *Alford v. Miss. Div. of Medicaid*, 30 So. 3d 1212, 1214 (¶8) (Miss. 2010) (citing *Monaghan v. Blue Bell Inc*., 393 So. 2d 466, 466 (Miss. 1980)). Accordingly, I agree that Grantham's death renders the issues regarding replacement of the septic and HVAC systems and payment of insurance for the van moot and do not fall under either the exception of being "capable of repetition, yet evading review" or being of such "public interest" that they should be decided by this Court. But I disagree with the majority that we should go further and vacate the orders of the AJ and Commission altogether.

¶36. Although the controversy over these issues became moot with Grantham's death in September 2019, the controversy over these repairs was not moot in February 2019, when it was decided by the Commission. Accordingly, I would not vacate the orders of the Commission or the AJ, opting to follow Mississippi precedent rather than the federal precedent the majority adopts. In *Fails v. Jefferson Davis County Public School Board*, 95 So. 3d 1223, 1226 (¶13) (Miss. 2012), the Mississippi Supreme Court provided guidance on when to vacate an order when an appeal is found to be moot. That case involved the appeal of a school board's revocation of the interdistrict transfer that the Fails had obtained for their daughter. *Id*. at 1224 (¶1). Even though the Failses moved to the transferee school district making the transfer no longer necessary, they appealed the school board's revocation decision to the Circuit Court of Jefferson Davis County, which affirmed the Board's decision. *Id.* at 1224 (¶2). The Fails further appealed to the Court of Appeals which

affirmed the circuit court, after which the Mississippi Supreme Court granted certiorari review. *Id*. at 1225 (¶7). Citing the principle that "a case is moot so long as a judgment on the merits, if rendered, would be of no practical benefit to the plaintiff or detriment to the defendant," *id*. at (¶10), the supreme court dismissed the appeal as moot and vacated the prior decisions in the case. *Id*. at 1226 (¶13). The supreme court explained that the case was moot before the Failses appealed to the circuit court. *Id.* Because there was no live controversy, the circuit court and this Court had no authority to decide the issues that the Failses presented. *Id.* In this case, the converse applied: the issues of house repairs and van insurance were not moot when the AJ and Commission heard them and, thus, they had authority to decide them. Consequently, their orders should not be vacated.

¶37. The majority contends that *Fails* does not preclude us from vacating the Commission's order in this case. I disagree. *Fails* is directly on point, because the home repair and van insurance controversies were not moot when the Commission and AJ considered them. For that reason, there is no authority under Mississippi law to vacate their orders.

¶38. Nor do we need to make new law and adopt federal precedent as the majority does. *Ante* at ¶23. In the seventy years since the United States Supreme Court's decision in *United States v. Munsingwear Inc.*, 340 U.S. 36 (1950), federal courts have created a body of law regarding how and when to grant a vacatur, if requested. *See U.S. Bancorp Mortg. Co. v. Banner Mall P'ship*, 513 U.S.18, 23-26 (1994). In *Banner Mall*, the United States Supreme Court noted that it has established guidelines for vacatur depending on various factors, such

as whether the actions of either party caused the case to be moot or concerns for the public interest. *Id.*[5] Our state courts have not created such a body of law, and I would decline to adopt federal precedent here. This is a Workers' Compensation case and it is well-settled law that worker's compensation is a creature of the state legislature. *L & A. Constr. Co v. McCharen*, 198 So. 2d 240, 242 (Miss. 1967). "There is no uniform national workers' compensation system. Workers' compensation is a creature of state law[.]" Michael K. Nisbet, *Workers' Compensation and Teacher Stress*, 28 J.L. & Educ. 531, 533 (1999). I prefer that we follow what Mississippi precedent we do have with regard to the vacatur of a state agency's decision, as stated in the *Fails* case.

¶39. The majority would also vacate the AJ's and Commission orders because it says these would remain valid and binding orders that require Wausau to take moot and unnecessary actions. The majority says this condition creates a practical problem for Wausau which would remain under valid and binding orders. I disagree that Wausau would be required to perform mooted actions because the Grantham estate has stated on the record that it agrees that Wausau is no longer required to pay for the home repairs and van insurance. Moreover, enforcement of the outstanding orders by some other third party is highly unlikely.

¶40. Because the controversy over repairs to Grantham's home and insurance for her van was not moot at the time it was decided by the AJ and the Commission, we should not vacate their orders concerning those issues. Moreover, to vacate the Commission's orders on these

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[5] "Judicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur." *U.S. Bancorp Mortg. Co.*, 513 U.S. at 26.

issues would be tantamount to ruling in favor of Wausau on them, which we are not doing.

WESTBROOKS, J., JOINS THIS OPINION. McCARTY, J., JOINS THIS OPINION IN PART.