**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2011-WC-01086-SCT**

***JOSEPH DEWAYNE JOHNSON***

***v.***

***SYSCO FOOD SERVICES AND NEW HAMPSHIRE INSURANCE COMPANY***

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| DATE OF JUDGMENT: | 07/01/2011 |
| TRIAL JUDGE: | HON. LILES B. WILLIAMS |
| COURT FROM WHICH APPEALED: | WORKERS' COMPENSATION COMMISSION |
| ATTORNEYS FOR APPELLANT: | CARLOS EUGENE MOORE<br>TANGALA LANIECE HOLLIS |
| ATTORNEYS FOR APPELLEES: | PAMELA S. RATLIFF<br>JEFFERSON PINCKNEY W. SKELTON |
| NATURE OF THE CASE: | CIVIL - PERSONAL INJURY |
| DISPOSITION: | DIRECT APPEAL ASSIGNED TO THE COURT OF APPEALS - 05/03/2012 |
| MOTION FOR REHEARING FILED: | |
| MANDATE ISSUED: | |

**EN BANC.**

**DICKINSON, PRESIDING JUSTICE, FOR THE COURT:**

¶1. Today we address the constitutionality of direct appeals from the Workers' Compensation Commission ("Commission") to this Court. We hold that they are constitutional, and that this Court has appellate jurisdiction over direct appeals from the Commission.

**BACKGROUND**

¶2. A 2011 amendment to Section 71-3-51 provides that, "from and after July 1, 2011," decisions of the Mississippi Workers' Compensation Commission may be appealed directly

to this Court, rather than to the circuit court, as required under the previous version of the statute.[1] On July 1, 2011, the Commission denied Joseph Dewayne Johnson's claim for benefits, so he appealed here. We ordered the parties to brief two issues: whether Section 71-3-51, as amended, is constitutional; and whether this Court has appellate jurisdiction over direct appeals from the Commission.[2]

**ANALYSIS**

¶3. When addressing a statute's constitutionality, we apply a *de novo* standard of review,[3] bearing in mind (1) the strong presumption of constitutionality; (2) the challenging party's burden to prove the statute is unconstitutional beyond a reasonable doubt;[4] and (3) all doubts are resolved in favor of a statute's validity.[5] When interpreting a constitutional provision, we must enforce its plain language.[6]

¶4. After receipt of this appeal, this Court – on its own motion – ordered the parties to brief the questions of whether Article 6, Section 146 of the Mississippi Constitution prohibits

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[1]Miss. Code Ann. § 71-3-51 (Rev. 2011).

[2]The order also granted the Attorney General of Mississippi leave to submit an amicus brief, under Mississippi Rule of Appellate Procedure 44, on the constitutionality of the statute.

[3]***Thoms v. Thoms***, 928 So. 2d 852, 855 (Miss. 2006) (citing ***Austin v. Wells***, 919 So. 2d 961, 964 (Miss. 2006)).

[4]***City of Starkville v. 4-County Elec. Power Ass'n***, 909 So. 2d 1094, 1112 (Miss. 2005) (citing ***Richmond v. City of Corinth***, 816 So. 2d 373, 375 (Miss. 2002)).

[5]***Smith v. Braden***, 765 So. 2d 546, 557-58 (Miss. 2000) (citing ***Loden v. Miss. Pub. Serv. Comm'n***, 279 So. 2d 636, 640 (Miss. 1973)).

[6]***Dye v. State ex. rel. Hale***, 507 So. 2d 332, 349 (Miss. 1987) (emphasis omitted) (citing ***State ex. rel. Greaves v. Henry***, 87 Miss. 125, 40 So. 152, 154 (1906)).

direct appeals from the Commission to this Court, and whether this Court has jurisdiction over such direct appeals.

**Section 71-3-51 is amended to allow direct appeals from the Commission to the Mississippi Supreme Court.**

¶5. Before July 2011, a party wishing to appeal a Commission order was required to file the appeal in circuit court; and the party aggrieved by the circuit court's decision could then appeal here. But in its 2011 session, the Mississippi Legislature enacted the following amendment to Section 71-3-51:

> The final award of the commission shall be conclusive and binding unless either party to the controversy shall, within thirty (30) days from the date of its filing in the office of the commission and notification to the parties, appeal therefrom to the Supreme Court.[7]

The matter at issue is whether this Court has jurisdiction to hear direct appeals from the Commission.

**Article 6, Section 146 of the Mississippi Constitution sets forth this Court's jurisdiction and authority to hear cases.**

¶6. Prior to 1984, our Constitution set forth this Court's jurisdiction in a single sentence: "The Supreme Court shall have such jurisdiction as properly belongs to a court of appeals."[8] While there were likely many opinions of what jurisdiction "properly" belonged to a court

[7]Miss. Code Ann. § 71-3-51 (Rev. 2011).

[8]Miss. Const. art. 6, § 146 (1983).

of appeals, our precedent records no serious challenges to this Court's jurisdiction under the pre-1984 provision.[9]

¶7. In 1984, the people of Mississippi amended Section 146 of their Constitution by retaining the prior language – "The Supreme Court shall have such jurisdiction as properly belongs to a court of appeals" – and adding the following language:

> and shall exercise no jurisdiction on matters other than those specifically provided by this Constitution or by general law. The legislature may by general law provide for the Supreme Court to have original and appellate jurisdiction as to any appeal directly from an administrative agency charged by law with the responsibility for approval or disapproval of rates sought to be charged the public by any public utility. The Supreme Court shall consider cases and proceedings for modification of public utility rates in an expeditious manner regardless of their position on the court docket.[10]

¶8. We find it compelling that the amended section retains the original language that grants this Court "jurisdiction as properly belongs to a court of appeal," and this Court long ago held that phrase meant appeals of decisions rendered by a tribunal clothed with judicial power.[11] And for reasons discussed below, we find the Commission is a quasijudicial body that renders judicial decisions. We also note that Section 71-3-51 is a general law, and Section 146's language "or by general law" is difficult to misinterpret.

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[9]*See* ***Glenn v. Herring***, 415 So. 2d 695 (Miss. 1982) (statute allowing parties to appeal if judge failed to enter final decree within six months violated Section 146 because it conferred appellate jurisdiction on Supreme Court when no final decree had been entered). *See also* ***Illinois Cent. R. R. Co. v. Dodd***, 105 Miss. 23, 61 So. 743 (1913); ***Yazoo Cent. R. R. Co. v. Wallace***, 90 Miss. 609, 43 So. 469 (1907).

[10]Miss. Const. art. 6, § 146 (1984).

[11]***Dodd***, 105 Miss. 23 (1913); ***Wallace***, 90 Miss. 609 (1907).

¶9. According to Black's Law Dictionary, an appellate court "has jurisdiction to review decisions of lower courts or administrative agencies."[12] The Mississippi Workers' Compensation Commission – unlike other commissions and agencies in state government – makes the final factual determination in a particular case; there is no trial *de novo*. As this Court has said, "appellate jurisdiction necessarily implies that the subject matter must have been acted upon by [a] tribunal whose judgment or proceedings are to be reviewed."[13] And the Commission's judgments may be – and often are – reviewed.

¶10. The cases brought before the Commission were cases heard in courts under the common law. The Legislature moved the venue of these suits filed by employees against their employers to the Commission. When the Commission decides a case in favor of the worker, the employer is ordered to make periodic payments to the employee.[14] And when an employer whose right to an appeal has been exhausted fails to comply with the Commission's award, Section 71-3-49 says that

> the commission may declare the entire award due and judgment may be entered in accordance with the provisions of this section. Such judgment shall be entered in the same manner, have the same effect, and be subject to the same proceedings as though rendered in a suit duly heard and determined by the circuit court, except that no appeal may be taken therefrom.[15]

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[12]*Black's Law Dictionary* 405 (9th ed. 2009).

[13]***Glenn v. Herring***, 415 So. 2d 695, 697 (Miss. 1982).

[14]Miss. Code Ann. § 71-3-47 (Rev. 2011).

[15]Miss. Code Ann. § 71-3-49 (Rev. 2011).

¶11. The Commission's judgments are filed in the circuit clerk's judgment roll; they do not pass through the circuit court or any other court. They are pursued and executed upon exactly the same as judgments rendered by the circuit court. Also compelling is that the Commission alone determines the facts of a workers' compensation case.

¶12. Some argue that, for this Court to have jurisdiction, the case must first filter through the circuit court. But we fail to see how cases can be nonjudicial while pending before the Commission – the very tribunal where the facts are finally adjudicated, and whose decisions this Court actually reviews – and then suddenly become judicial cases upon appeal to circuit court, whose decisions are not even reviewed by this Court.

¶13. Before the amendment to Section 71-3-51, the Commission's final decisions were appealed directly to circuit court,[16] which sat as an appellate court. And after the brief pause in circuit court, the cases were appealed here. Upon receipt, we reviewed the Commission's decision, not the circuit court's. In fact, we seldom even mentioned the circuit court's proceedings. For example, in ***Gregg v. Natchez Trace Electric Power Association***, after the Commission rendered its decision, the case filtered through circuit court and the Court of Appeals before coming here.[17] In reviewing the case, we stated:

> This Court granted Gregg's petition for certiorari to consider ***whether the Commission erred*** . . . . We reverse and remand to ***the Commission***. . . . This Court's review of a decision of the Workers' Compensation ***Commission*** is limited to determining whether the decision was supported by substantial

[16]H.R. 1078, 2011 Leg., Reg. Sess. (Miss. 2011). Article 6, Section 156 authorizes the Legislature to grant appellate jurisdiction to the circuit court. Miss. Const. art. 6, § 156 (1890).

[17]***Gregg v. Natchez Trace Elec. Power Ass'n***, 64 So. 3d 473, 474 (Miss. 2011).

> evidence. . . . The ***Commission*** erred by . . . . ***We reverse and remand this case to the Commission*** . . . .[18]

¶14. In the entire opinion, the circuit court was mentioned only once, and then only to set forth the chronology of appeals. The circuit judge had no power to call witnesses, receive evidence, or adjudicate facts. The reality is that, under the previous statute, the circuit judge's decision played no part in this Court's review or disposition of a workers' compensation case. For these reasons, we reject the notion that a circuit judge's ruling is required to place a "judicial proceeding" tag on a workers' compensation case.

¶15. To be clear, we do not hold today that this Court has direct appellate jurisdiction over all agency decisions. Today, we address only appeals of workers' compensation cases from the Commission.

¶16. In a legitimate exercise of its constitutional authority,[19] the Legislature created an inferior court when it gave the Commission the power and authority to make decisions that are "conclusive and binding."[20] Our opinion today is not inconsistent with ***Herring*** or ***Dodd***. In ***Herring***, we held that the statute at issue was unconstitutional, because it allowed an appeal where no final decision had been made.[21] Here, the Commission's decision on the merits is a final, appealable decision. And in ***Dodd***, we reasoned that the Legislature had not

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[18] ***Id.*** at 474-78 (emphasis added).

[19]Miss. Const. art. 6, § 172 (1890) ("The legislature shall, from time to time, establish such other inferior courts as may be necessary, and abolish the same whenever deemed expedient.").

[20]Miss. Code Ann. § 73-3-51 (Rev. 2011).

[21]***Herring***, 415 So. 2d at 697.

conveyed the Railroad Commission "the power to apply the law to a state of facts and to make a final declaration of the consequences which follow . . . ."[22] In contrast, Section 71-3-51 states that "[t]he final award of the commission *shall be conclusive and binding* unless either party to the controversy shall, within thirty (30) days . . . . appeal therefrom to the Supreme Court."[23]

¶17. As expressed in ***Dodd***, "'[t]he tribunal from which an appeal lies need not be called a court; but it must be one having the attributes of a court – a tribunal where justice is judicially administered.'"[24] Further, a judicial function occurs where a tribunal is the ultimate finder of fact, and where it is empowered to render a binding decision after applying the law to the facts. And the judicial power of a court includes "the power to hear and finally determine controversies between adverse parties."[25] Likewise, the Commission is the ultimate finder-of-fact, one whose judgment is binding after applying the law to the facts in cases involving adverse parties – a tribunal where justice is judicially administered.

## CONCLUSION

¶18. Today's narrow holding is that, pursuant to Article 6, Section 146 of the Mississippi Constitution, the Legislature is constitutionally empowered to confer appellate jurisdiction

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[22]***Dodd***, 105 Miss. 23, 61 So. 743 (1913).

[23]Miss. Code Ann. § 71-3-51 (Rev. 2011) (emphasis added).

[24]***Dodd***, 61 So. at 743 (quoting ***State Auditor v. Atchison***, ***T. & S.F.R. Co***., 6 Kan. 500 (1870)).

[25]***Id.***

on this Court over direct appeals from the Commission and as with all workers' compensation cases appealed to this Court, we assign this case to the Court of Appeals for decision, and the Clerk of Court is directed to issue a merits briefing schedule.

¶19. **DIRECT APPEAL ASSIGNED TO THE COURT OF APPEALS.**

**RANDOLPH, LAMAR, PIERCE AND KING, JJ., CONCUR. RANDOLPH, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY DICKINSON, P.J., LAMAR AND PIERCE. JJ. KITCHENS, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY WALLER, C.J., CARLSON, P.J., AND CHANDLER, J.**

**RANDOLPH, JUSTICE, SPECIALLY CONCURRING:**

¶20. The Mississippi Workers' Compensation Commission is a unique agency, as briefly alluded to by the Majority. (Maj. Op. ¶ 10) ("The cases brought before the Commission were cases [once] heard in courts under the common law. The Legislature moved the venue of these suits filed by employees against their employers to the Commission."). Specifically, the Commission "administer[s]" the statutorily created mechanism under which "most suits by injured workers against employers" have been removed from the tort system, with "[e]mployers receiv[ing] fixed levels of potential liability which they can anticipate and treat as a general 'cost of doing business'" in exchange for "[e]mployees receiv[ing] guaranteed compensation for covered injuries, bypassing the civil-litigation risks of either no recovery or uncollectible judgments against insolvent employers." Miss. Code Ann. § 71-3-1 (Rev. 2011); ***Franklin Corp. v. Tedford***, 18 So. 3d 215, 220-21 (Miss. 2009) (quoting Note, *Exceptions to the Exclusive Remedy Requirements of Workers' Compensation Statutes*, 96 Harv. L. Rev. 1641, 1641 (1983)). In its role as a "quasijudicial" tribunal, the Commission

"renders judicial decisions[,]" such that this Court would be exercising "appellate jurisdiction . . . over direct appeals from the Commission . . . ."[26] (Maj. Op. ¶¶ 8, 18). Accordingly, I concur with the Majority's specific and narrow holding that Article 6, Section 146, of the Mississippi Constitution authorizes the Legislature to confer appellate jurisdiction upon this Court by general law, as in Mississippi Code Section 71-3-51. *See* Miss. Const. art. 6, § 146. I write separately, however, to note that a provision within Section 71-3-51 is problematic under constitutional sections not argued in this appeal. I point out this infirmity simply to bring it to the attention of the Legislature and to urge its alleviation through statutory amendment. *See* ***Smith v. Fluor Corp.***, 514 So. 2d 1227, 1232 (Miss. 1987) ("The law has been well settled that the constitutionality of a statute will not be considered unless the point is specifically pleaded.").

¶21. Section 71-3-51 provides, in pertinent part, that:

> [t]he Supreme Court shall review all questions of law and of fact. If no prejudicial error be found, the matter shall be affirmed and remanded to the commission for enforcement. *If prejudicial error be found, the same shall be reversed and the Supreme Court shall enter such judgment or award as the commission should have entered*.[27]

Miss. Code Ann. § 71-3-51 (Rev. 2011) (emphasis added). In dictating the method of disposition, which is inherently judicial in nature, the Legislature failed to acknowledge that

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[26]I add that Mississippi is not unique in permitting direct appeals of workers' compensation matters to the state supreme court. *See* Idaho Code Ann. § 72-724; Mont. Code Ann. § 39-71-2904; Neb. Rev. St. Ann. § 48-185; N.H. Rev. Stat. Ann. § 281-A:43(I)(c); 85 Okla. St. Ann. § 340(D).

[27]The prior version of Section 71-3-51 used "circuit court" in place of "Supreme Court," but was otherwise identical to the quoted excerpt. Miss. Code Ann. § 71-3-51 (2010).

this Court has routinely remanded cases to the Commission for further proceedings, when warranted. *See*, *e.g.*, ***Gregg v. Natchez Trace Elec. Power Ass'n***, 64 So. 3d 473, 474 (Miss. 2011) (reversing and remanding "for a hearing on the issue of lost wage-earning capacity"); ***J.H. Moon & Sons, Inc. v. Johnson***, 753 So. 2d 445, 449 (Miss. 1999) (remanding for further determinations regarding "rate of compensation"); ***ABC Mfg. Corp. v. Doyle***, 749 So. 2d 43, 47 (Miss. 1999) (reversing and remanding following holding that statute of limitations was tolled). Directing this Court to reverse and render, in many instances, violates fundamental separation-of-powers principles. *See* Miss. Const. art. 1, §§ 1-2. First, the term "prejudicial error" begs the question, i.e., can any error exist which is not "prejudicial" to some degree? Does this mean that the existence of ***any*** error mandates that this Court reverse and render? If so, then the Legislature is improperly interfering with this Court's role to determine whether an error is harmless. *See*, *e.g.*, ***McGee v. River Region Med. Ctr.***, 59 So. 3d 575, 580 (Miss. 2011) (quoting ***Vaughn v. Miss. Baptist Med. Ctr.***, 20 So. 3d 645, 654 (Miss. 2009)) ("Unless we can safely say that the trial court abused its judicial discretion in allowing or disallowing evidence *so as to prejudice* a party in a civil case . . . we will affirm the trial court's ruling.") (emphasis added). Second, in the event that "prejudicial error" does exist, Section 71-3-51 inappropriately requires this Court to render "such judgment or award as the commission should have entered." Miss. Code Ann. § 71-3-51 (Rev. 2011). I fail to see how this Court is equipped to render a proper "judgment or award" in all instances of "prejudicial error." *Id*. For example, if the "prejudicial error" involves excluded evidence or witness(es), then the proper disposition would be to reverse and remand for a new hearing.

This is no less true if a case is improperly dismissed on statute-of-limitations grounds or if further "lost wage-earning capacity" or "rate of compensation" determinations are necessary. ***Gregg***, 64 So. 3d at 474; ***J.H. Moon***, 753 So. 2d at 449; ***Doyle***, 749 So. 2d at 47. For these reasons, I urge that the constitutional infirmity in this provision should be remedied by the Legislature.

**DICKINSON, P.J., LAMAR AND PIERCE, JJ., JOIN THIS OPINION.**

**KITCHENS, JUSTICE, DISSENTING:**

¶22. Article 6, Section 146, of the Mississippi Constitution gives the Legislature authority to expand this Court's jurisdiction by general law, but only for the performance of such functions as properly belong to a court of appeals. Article 6, Section 146, of the Mississippi Constitution reads, in pertinent part: "[t]he Supreme Court shall have such jurisdiction as properly belongs to a court of appeals and shall exercise no jurisdiction on matters other than those specifically provided by this Constitution or by general law." "[A]ppellate jurisdiction necessarily implies that the subject matter must have been acted upon by [a] tribunal whose judgment or proceedings are to be reviewed." ***Glenn v. Herring***, 415 So. 2d 695, 697 (Miss. 1982). A decision of the full Commission, however, is not equivalent to a final judgment of a court. Thus, under Mississippi Code Section 71-3-51 (Rev. 2011), this Court would not be exercising jurisdiction that "properly belongs to a court of appeals" in reviewing decisions of the Workers' Compensation Commission, which is an administrative agency, not a court. *See* Miss. Const. art. 6, § 146. Direct appeals to the Mississippi Supreme Court from the Commission are inconsistent with our constitutionally mandated authority.

¶23. "This Court has long since recognized that the legislature may constitutionally create administrative agencies and confer upon such agencies fact finding and quasi-judicial powers . . . ."[28] ***Walters v. Blackledge***, 220 Miss. 485, 506-07, 71 So. 2d 433, 440 (Miss. 1954). "Although exercising quasi-judicial powers," such administrative agencies "do not have the final authority to decide and to render enforceable judgments . . . ." ***Id.*** at 439 (citation omitted). There can be no execution, garnishment, or other collection action upon an order of the full Commission for the payment of money unless an employer defaults in the payment of compensation due an employee pursuant to a decision of the Commission. Miss. Code Ann. § 71-3-49 (Rev. 2011). Only then is the Commission's decision enforceable by means of an entry of judgment by the circuit clerk of the county in which the injury occurred or of the county where the employer's principal place of business is located. ***Id***.

¶24. In 1984, an amendment to Article 6, Section 146, of the state Constitution granted the Legislature the authority to confer original jurisdiction upon this Court over appeals from a particular administrative agency. "The Legislature may by general law provide for the Supreme Court to have original and appellate jurisdiction as to any appeal directly from an administrative agency charged by law with the responsibility for approval or disapproval of rates sought to be charged the public by any public utility to accord to the Legislature the power to convey by general law." Miss. Const. art. 6, § 146. This amendment, approved at

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[28]Given that I would characterize the Commission as a quasijudicial body, I reject the majority's conclusion that, in passing Section 71-3-51, the Legislature created an inferior court under Article 6, Section 172, of the Mississippi Constitution when it granted the Commission the power and authority to make decisions that are "conclusive and binding."

the polls by the people of Mississippi, constitutionally established the only authority by which the Legislature, by general law, may confer original jurisdiction upon this Court with respect to appeals from governmental entities other than courts. Clearly, this authority pertains only to the Public Service Commission, not to the Workers' Compensation Commission.

¶25. Finally, Section 71-3-51, as amended in 2011, is a statute similar to those struck down in ***Glenn v. Herring***, 415 So. 2d 695 (Miss. 1982); and ***Illinois Central Railroad Company v. Dodd***, 105 Miss. 23, 61 So. 743 (Miss. 1913). In ***Herring***, 415 So. 2d at 697, this Court invalidated a statute which: (1) required a chancellor or judge to issue a final decree six months after the later of either the date the matter was taken under advisement or the date set for final briefing or memoranda of authority; and (2) provided the right to direct appeal to the Supreme Court should the trial court fail to issue a final decree within six months. A party appealing was to proceed "as if a final decree [had] been rendered adversely." ***Id.*** In striking down the statute, this Court reasoned that, without a final judgment in the court below, we would be acting, not as an appellate court, but as a trial court, which ran afoul of Article 6, Section 146, of the state Constitution. ***Id.*** at 648. This Court concluded: "[I]t is clear that the function of trial courts is to render decisions in matters presented to them, and the function of this Court is to review and revise, if necessary, judicial decisions of inferior tribunals." ***Id.*** In support of this premise, the ***Herring*** Court reasoned:

> [***Illinois Central Railroad Company v. Dodd***, 105 Miss. 23, 61 So. 743 (Miss. 1913)] clearly teaches that appellate jurisdiction necessarily implies that the subject matter must have been acted upon by the tribunal whose judgment or

> proceedings are to be reviewed. In the case at bar the trial court has not rendered a judicial decision on the subject matter of the case, so there is no judgment to be reviewed on appeal.

***Herring,*** 415 So. 2d at 697.

¶26. Just as in ***Herring***, Section 71-3-51 would authorize direct appeal of the instant case from the full Commission, bypass the circuit court, and impermissibly require this Court to review an administrative determination that is in nowise a judicial decision. Under the previous version of Section 71-3-51, the circuit court has always served as the proper "intermediate court of appeals" for decisions of the full Commission. *See* ***Smith v. Jackson Const. Co.***, 607 So. 2d 1119, 1124 (Miss. 1992); ***Walker Mfg. Co. v. Cantrell***, 577 So. 2d 1243, 1247 (Miss. 1991); ***Hardin's Bakeries v. Dependent of Harrell***, 566 So. 2d 1261, 1264 (Miss. 1990). This Court distinguished the role of the circuit court from that of this Court in ***Dodd***, 61 So. at 745, as follows: "jurisdiction of the circuit court is very different from that of this [C]ourt. It may be that [the circuit court] was properly given the jurisdiction to review by certiorari the quasi judicial acts of a tribunal exercising quasi judicial powers."

¶27. Since "appellate jurisdiction necessarily implies" that this Court's proper role "is to review and revise, if necessary, judicial decisions of inferior tribunals," and no judicial decision of a lower court has occurred in the instant case, Section 71-3-51 impermissibly would require this Court to act as a court of original jurisdiction. *See* ***Herring***, 415 So. 2d at 648. The Attorney General attempts to distinguish ***Herring*** from the instant case by arguing that, while ***Herring*** struck down a statute conferring original jurisdiction upon the Supreme Court over trial court matters where a final judgment had not been entered, this case

involves a statute that seeks to confer appellate jurisdiction on this Court over final decisions of an administrative, nonjudicial agency. Section 71-3-51 cannot and does not impose appellate jurisdiction upon this Court. As such, ***Herring*** is not distinguishable from the case *sub judice*.

¶28. In ***Dodd***, 105 Miss. 23, 61 So. 743 (Miss. 1913), this Court struck down a statute which permitted direct appeal to this Court from any order of the Railroad Commission. In so doing, this Court reasoned:

> "[A]ppellate jurisdiction," spoken of in the Constitution, is that kind of appellate jurisdiction which had theretofore been exercised by the highest judicial tribunals of the respective states, and not an unlimited appellate jurisdiction over any matter or thing arising either in courts or out of courts which the wisdom or folly of any future Legislature might see fit to confer or impose upon it.

***Id.*** at 743. In ***Dodd***, the Court's analysis looked to the statute that had created the Railroad Commission, which the Court found had promulgated the existence of a "mere administrative agency" and had not conveyed to the Railroad Commission "the power to apply the law to a state of facts and to make a final declaration of the consequences which follow . . . ." ***Id.*** at 744. The ***Dodd*** Court held that a decision of an administrative agency is not sufficient to confer jurisdiction upon the Supreme Court. ***Id.*** at 743. "The fact that there has been a decision . . . is not sufficient; but there must have been a decision by a court clothed with judicial authority and acting in a judicial capacity." ***Id.*** (citation omitted). Ultimately, the Supreme Court found that a statute aimed at conferring jurisdiction on this Court to review the validity of a decision of an administrative agency such as the Railroad Commission had

the effect of calling upon the Court to "render an advisory opinion to one of the other departments of the state government," which the state Constitution prohibits this Court's doing. ***Id.*** at 745.

¶29. Sysco and the Attorney General argue that the ***Dodd*** decision is distinguishable because the statute at issue in that case allowed a direct appeal to this Court from the Railroad Commission, which was a rule-making agency charged with setting tariffs and rates (a legislative function, not a quasijudicial function). I fail to find ***Dodd*** distinguishable. While the full Commission is quasijudicial in nature and, thus, is imbued with some indicia of a court of record, its orders are not decisions rendered "by a court clothed with judicial authority and acting in a judicial capacity." ***Dodd***, 61 So. at 743.

¶30. The state Constitution does not provide the Legislature the authority to confer jurisdiction over direct appeals from the Commission to this Court. Our jurisdiction is "not an unlimited appellate jurisdiction over any matter or thing arising either in courts or out of courts which the wisdom or folly of any future Legislature might see fit to confer or impose upon" this Court. ***Dodd***, 61 So. at 743. Consequently, this Court does not have jurisdiction over Johnson's direct appeal. As such, the proper disposition is to dismiss this appeal. Otherwise, the Supreme Court of Mississippi will become the first, last, and only *court* to pass upon this and all future Mississippi workers' compensation cases in which appeals from the Commission are taken.

**WALLER, C.J., CARLSON, P.J., AND CHANDLER, J., JOIN THIS OPINION.**