The Supreme Court of South Carolina

RE: Lawyers Suspended by the South Carolina Bar

The South Carolina Bar has furnished the attached list of lawyers who have been administratively suspended from the practice of law pursuant to Rule 419(c)(1), SCACR. This list is being published pursuant to Rule 419(d)(1), SCACR. If these lawyers are not reinstated by the South Carolina Bar by April 1, 2007, they will be suspended by order of the Supreme Court and will be required to surrender their certificates to practice law in South Carolina. Rule 419(e)(1), SCACR.

Columbia, South Carolina
March 12, 2007

Attorneys Suspended for Nonpayment of 2007 License Fees
As of March 1, 2007

Keri Anne Allin
1185 Commerce Dr.
Decatur, GA 30030-5115

Evonne J. Bennett
5246 E. 86th St., Apt 201
Indianapolis, IN 46250-3021

Magalie Paul Boyer
502 Spring Forest
Central, SC 29630

Alan Lane Bryant
300 Addison Rd.
North, SC 29112

John E. Carbaugh Jr.
11100 Kings Cavalier Ct.
Oakton, VA 22124-1316

Mark Edward Carlson
Carlson Law Firm, PLLC
5808 Wedgewood Dr.
Charlotte, NC 28210

Whui Chang
ADAMAS Shanghai
Suite 607, 608 Dynasty Bus Ctr
No. 457 Urumqui Rd. N
Jing'an district, Shanghai 200040 China

Arthur Lee Coleman
Holland & Knight, LLP
2099 Pennsylvannia Ave., NW, Ste. 100
Washington, DC 20006-6801

Gloria E. Day
2401 Calvert St., NW, Apt. 827
Washington, DC 20008

Shirley Jane Esperanza
18001 Malakai Isle Dr.
Tampa, FL 33647

J. David Flowers
Crime Victims Legal Network
1900 Broad River Rd.
Columbia, SC 29210

Jeffrey I. Garfinkel
1317 Jody Lane
Atlanta, GA 30329

Heather Anne Glover
P.O. Box 37
Horatio, SC 29062-0037

Mary Lynne Grigg
Womble Carlyle Sandridge & Rice, PLLC
P.O. Box 831
Raleigh, NC 27602

David L. Harrell
Carlock Copeland Semler & Stair, LLP
134 Meeting St., Ste. 500
Charleston, SC 29401

Leslie A. Harvel
Yang-En University
c/o Foreign Affairs Office
Quanzhou, Fujian
Province PR China, 362014

Tiffiny Bree Hattaway
4459 Northside Pkwy, NW, Apt. 368
Atlanta, GA 30327-5257

Alice Shaw Heard
Heard & Thompson, PC
1515 Bass Rd. Ste. I
Macon, GA 31210

Charles Daniel Hoskins
NAI Earle Furman, LLC
101 E. Washington St., Ste. 40
Greenville, SC 29601

Lynn Davis Jarrell
221 Cordillo Pkwy.
Hilton Head Island, SC 29928

Kimla C. Johnson
P.O. Box 142
Nettleton, MS 38858

Christopher Blair Jones
241 Leslie Ct.
Bristol, TN 37620-5597

Horace Anderson Jones Jr.
Bush Doughty & Jones, LLC
1051 Oakland Ave.
Rock Hill, SC 29730

Beth J. Laddaga
801 Chinquapin Road Apt. 1108
Columbia, SC 29212

George C. Leventis
P.O. Box 61012
Columbia, SC 29206

Derek J. Lindenschmidt
Qualey & Beck LLC
23 Broad St.
Charleston, SC 29401

Katja Dunbar Loeffelholz
Gaw VanMale Smith Myers & Miroglio
1000 Main St., Third Floor
Napa, CA 94559

Matthew K. Mahoney
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402

Lynn Sandifer Martin
4676 Chippenham Dr.
Roanoke, VA 24018-3443

Gustave Charles Martschink III
Charleston County Public Defender's Ofc.
101 Meeting St.
Charleston, SC 29401-2214

Tammie T. McConnell
1809 Sagamore Ct.
Raleigh, NC 27604

Seth McLaughlin
30 N. Lombardy St.
Richmond, VA 23220

Melony Latanza Moore
2001 Edmund Halley Drive, A275
Reston, VA 20190

Veleka Renee Peeples-Dyer
MedImmune, Inc.
One MedImmune Way
Gaithersburg, MD 20878

Brenda R. Reddix-Smalls
Reddix-Smalls Law Firm
P.O. Box 24199
Columbia, SC 29224

Thomas Timothy Reynolds
822 Druid Oaks, NE
Atlanta, GA 30329-3266

Lenora Miles Rigby
Wilmer Hale
2445 M St., NW
Washington, DC 20037

John Austin Schill
Phillips & Assoc.
3030 N. 3rd St.
Phoenix, AZ 85258

James Boyd Stutler
2124 Summerchase Dr.
Woodstock, GA 30189-6833

James L. Thorne
The Electric Cooperatives of S.C.
808 Knox Abbott Dr.
Cayce, SC 29033

William M. Webster IV
Advance America Cash Advance Center Inc.
961 E. Main St.
Spartanburg, SC 29302

Lucinda J. Weller
Weller Law Firm
520 Madison Ave., Ste. 405
Toledo, OH 43604-1343

Virginia Kay Williams
111 Cooper Lane
Starkville, MS 39759

Ann Marie Williamson- Heath
13001 Justice Ave.
Baton Rouge, LA 70816

Ted W. Wooten III
210 Brandon Mill Circle
Fayetteville, GA 30214

Larnie B. Yuson
230 Peachtree St. , Suite 2618
Atlanta, GA 30303

The Supreme Court of South Carolina

In the Matter of Mendel J. Davis, Petitioner.

ORDER

The records in the office of the Clerk of the Supreme Court show that on April 1, 1970, Petitioner was admitted and enrolled as a member of the Bar of this State. By way of a letter addressed to Chief Justice Toal, dated December 19, 2006, Petitioner has submitted his resignation from the South Carolina Bar.

We reluctantly accept his resignation, and wish to express our appreciation to him for his many years of faithful service to the People of South Carolina. He served for ten years as an assistant to Congressman L. Mendel Rivers. After the death of Congressman Rivers, Petitioner was elected to Congress and served in the United States House of Representatives from 1971 to 1981. Since leaving Congress, he has continued to serve the

citizens of this State as a practicing attorney in Charleston County. He will be missed as a member of the Bar of this State.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court his certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of his resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that he has fully complied with the provisions of this order. The resignation of Mendel J. Davis shall be effective upon full compliance with this order. His name shall be removed from the roll of attorneys.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ E. C. Burnett, III J.

s/ Costa M. Pleicones J.

Waller, J., not participating.

Columbia, South Carolina

March 8, 2007

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 10

March 12, 2007
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Patricia Fici, Respondent/Petitioner,

v.

Karol Koon, Kerry Koon Stack, Century 21 Bob Capes Realtors, Inc., and Francis Hipp, Defendants,

Of whom Karol Koon and Kerry Koon Stack are the, Petitioners/Respondents,

And Century 21 Bob Capes Realtors, Inc., and Francis Hipp are the Respondents.

ON WRIT OF CERTIORARI TO
THE COURT OF APPEALS

Appeal from Richland County
Joseph M. Strickland, Master-in-Equity

Opinion No. 26283
Heard January 31, 2007 – Filed March 12, 2007

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED

Jean P. Derrick, of Lexington, for petitioners/respondents.

William E. Booth, III, of West Columbia, for respondent/petitioner.

JUSTICE MOORE: Respondent/petitioner Patricia Fici (Buyer) brought this action against petitioners/respondents Karol Koon and Kerry Koon Stack (Sellers) seeking specific performance of a contract for the sale of land. The master-in-equity found the contract violated the Statute of Frauds and was therefore unenforceable; he also denied Sellers' motion for attorney's fees. Both parties appealed. The Court of Appeals affirmed in an unpublished opinion. We affirm in part and reverse in part.

FACTS

The pertinent facts are largely undisputed. Sellers, who are sisters, jointly own fifty acres in Richland County. At Buyer's request, real estate agent Francis Hipp (Agent) contacted Sellers about their listing for the sale of thirty of the fifty acres. Agent acted as a dual agent for both Buyer and Sellers.[1]

The parties signed a form contract dated February 27, 2001, for the sale of thirty acres at a price of $375,000 based on a rate of $12,500 per acre. The contract lists the property to be sold as: "lot 2, Polock Road, tax map # 052000102" in Irmo, Richland County. This description actually refers to the entire fifty-acre parcel owned by Sellers.[2] The contract specifies that the property conveyed will have

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[1]Causes of action regarding Agent are not at issue in this appeal.

[2] This is public information from the assessor's office online at http://www.richlandonline.com/services/assessorsearch/assessorsearch.asp.

"at least thirty acres," that Sellers will have the property surveyed, and states: "purchaser and seller to agree on location of property lines."

On March 9, the parties met at the property site with a surveyor to determine where the property lines would be drawn. On an existing plat from 1960, the surveyor roughed in boundary lines and Sellers and Buyer signed their names. On the plat is written: "Survey to be performed week of March 12 by CTH Surveyors." Buyer and Sellers all testified they did not consider this rough plat as representing the actual parcel to be conveyed.

At this same meeting between the parties, there was some discussion of restrictions on the property, including a prohibition on subdividing, leasing, and the use of firearms. After Sellers left, Buyer told Agent that she had been advised by her attorney that any restrictions would not be valid because they were not included in the contract. Buyer's attorney subsequently contacted Agent and insisted that Sellers produce written restrictions. Because Sellers did not have an attorney, they used samples of restrictions supplied by Agent to draw up written restrictions. These restrictions applied to the entire fifty-acre parcel.

Meanwhile, the surveyor drew up a plat and delivered it to Agent on March 14. Sellers did not approve this plat. The surveyor delivered a second plat on March 20. The plat indicates three tracts: one in each of Sellers' names individually, and the third in their names jointly. Agent recorded this plat on March 21 along with the written restrictions because the surveyor told him a plat had to be filed in order to file any restrictive covenants. Buyer subsequently signed this plat indicating "property lines for tract 3 are OK with me." Sellers, however, never signed this plat. Sellers and Agent testified that Sellers were not satisfied with the property lines on either plat prepared by the surveyor.

Buyer, in turn, was unhappy with Sellers' written restrictions and wanted to compromise on new restrictions which Sellers refused to do. At the scheduled closing on March 30, Sellers appeared but refused to proceed.

Buyer subsequently brought this action. The master denied Buyer's request for specific performance of the contract finding the conveyance was unenforceable under the Statute of Frauds. Further, he denied Sellers' request for attorney's fees. The Court of Appeals affirmed.

ISSUES

1. Is the conveyance enforceable?

2. Are Sellers entitled to attorney's fees under the contract?

DISCUSSION

BUYER'S APPEAL

Statute of Frauds

The Statute of Frauds, S.C. Code Ann. § 32-3-10 (1991), provides in pertinent part:

> **§ 32-3-10. Agreements required to be in writing and signed.**
>
> No action shall be brought whereby:
>
> . . .
>
> (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them;
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> . . .
>
> Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

To satisfy the Statute of Frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled. Cash v. Maddox, 265 S.C. 480, 220 S.E.2d 121 (1975); Speed v. Speed, 213 S.C. 401, 49 S.E.2d 588 (1948).[3] The burden of proof is on the party seeking to enforce the contract. Cash, *supra.*

In the context of a land sale, a description of the property must be in a signed writing; parol evidence cannot supply this essential element. Jackson v. Frier, 118 S.C. 449, 110 S.E. 676 (1922); Hyde v. Cooper, 34 S.C. Eq. (13 Rich. Eq.) 250 (1867). Parol evidence may be used only to explain terms appearing in the description;[4] the signed writings must contain a sufficient description of the land to show with reasonable certainty what is to be conveyed. Cash, 265 S.C. at 484, 220 S.E.2d at 122.[5] A description that does not include the location of the land or its boundaries is inadequate. Humbert v. Brisbane, 25 S.C. 506 (1886). Where there is no adequate description of which part of a parcel is to be conveyed, the conveyance is unenforceable. Cash,

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[3]A contemporaneous writing specifically identified in the signed writing qualifies as part of the signed agreement. Hyde v. Cooper, *infra*.

[4] For instance, where the signed writings referred to "the house in which [the seller] resides," parol evidence was admissible to identify the house since there was only one piece of property fitting that description. Kennedy v. Gramling, 33 S.C. 367, 11 S.E. 1081 (1890).

[5]We note that Goodwin v. Hilton Head Co., 273 S.C. 758, 259 S.E.2d 611 (1979), is unclear on this issue. There the buyer sent an offer, including a description of the property, with a check. The seller deposited the check and then had the property surveyed and sent a copy of the plat to the buyer. The Court held, with no analysis, that the written documents satisfied the Statute of Frauds. Presumably, the seller's endorsement on the check attached to the offer was the signed writing that supported this conclusion. To the extent Goodwin may be read to hold otherwise, it is overruled.

supra; Cousar v. Shepherd-Will, Inc., 300 S.C. 366, 387 S.E.2d 723 (Ct. App. 1990).

Here, the master considered two signed writings—the form contract signed February 27 and the 1960 plat with roughed-in property lines. The form contract does not contain a description of the property to be conveyed except to specify that it is "at least thirty acres," and indicates that Buyer and Sellers were to agree on property lines. The 1960 plat, according to the testimony, was never intended to indicate the final boundaries but was to be the basis of the surveyor's plat. The master, affirmed by the Court of Appeals, found these documents insufficient to satisfy the Statute of Frauds. We agree. A conveyance of land is unenforceable if the contract provides only that the boundaries are to be determined upon agreement to a subsequent survey and plat. Hyde v. Cooper, *supra.* The signed form contract dated February 27 is nothing more than an agreement to agree which is unenforceable under the Statute of Frauds.

Buyer contends the master erred in failing to consider other documents surrounding the proposed sale which supply the required description of the land to be conveyed. Buyer points to the surveyor's plat recorded with the written restrictions. This plat divides the fifty-acre parcel into three tracts, two in Sellers' names individually and one jointly in both Sellers' names. The plat itself is not signed by Sellers. Sellers did sign the restrictions filed with the plat, but these restrictions apply to the entire fifty acres and do not indicate Sellers' assent to the property lines within the fifty-acre parcel for purposes of the sale to Buyer. In fact, the undisputed testimony indicates Sellers were never satisfied with the plats prepared by the surveyor. Buyer also points to a hold-harmless agreement with Richland County acknowledging that the county had no responsibility for maintaining the access road on the property. This document was signed by the parties in contemplation of dividing the property. It does not, however, include any description of individual tracts but refers only to the entire fifty-acre parcel.

The Statute of Frauds requires that the agreement to be enforced must contain a writing, signed by Sellers, with a description of the

property to be conveyed. The documents Buyer points to do not satisfy this requirement. Accordingly, we affirm the denial of specific performance. In light of our disposition on this issue, we need not address Buyer's remaining issues.

SELLERS' APPEAL

Attorney's fees

Sellers contend they are entitled to attorney's fees as the prevailing party under the contract. The contract provides:

> **19. DEFAULT** . . . . Upon default by the Seller, the Purchaser shall have the option of suing for damages or specific performance, or rescinding the Contract. . . . In any action to enforce the provisions of this Contract, the prevailing party and Broker(s) shall be entitled to the award of their costs, including reasonable attorney's fees.

(underscore added).

The master denied Sellers' request for attorney's fees under this provision based on his finding that the contract was unenforceable. The Court of Appeals affirmed, holding it was impossible for either party to default under the unenforceable contract and therefore attorney's fees were properly denied. We find this analysis incorrect because the contract is not void in its entirety.

First, paragraph 19 of the contract provides that if Sellers default, Buyer may bring an action to enforce the contract or may rescind it. Here, Buyer chose to bring an action to enforce the contract and it was her burden to prove a default. The attorney's fee provision, which applies "[i]n any action to enforce the provisions of this Contract," awards fees to the prevailing party. Sellers successfully proved there was no default since the conveyance is unenforceable. Under the terms of the contract, Sellers are entitled to attorney's fees as the prevailing party.

The Statute of Frauds does not affect the validity of the attorney's fee provision but is simply a defense to the conveyance. *See* Duckett v. Pool, 33 S.C. 238, 11 S.E. 690, 689-91 (1890) (a contract violating the Statute of Frauds is "neither void nor voidable . . . the validity of the contract is not affected but simply the right of action to enforce it."); Hillhouse v. Jennings, 60 S.C. 392, 38 S.E. 596 (1901). The Statute of Frauds is an affirmative defense. *See* Rule 8(c), SCRCP. As with any affirmative defense, the party successfully asserting it is a prevailing party and therefore entitled to attorney's fees where provided by contract. *Accord* Dickinson, Inc. v. Balcor Income Props. Ltd., 745 P.2d 1120 (Kan. App. 1988) (enforcing attorney's fee provision after finding other provision of agreement unenforceable under Statute of Frauds).

Sellers submitted proof of $43,483.28 in attorney's fees they incurred in defending Buyer's action. At the proceeding below, Buyer stipulated that this amount of attorney's fees claimed by Sellers under the contract is reasonable. Accordingly, we reverse the Court of Appeals and remand to the master for entry of judgment for attorney's fees in this amount.

In addition, Sellers contend they are entitled to attorney's fees from the bond posted under the terms of a temporary injunction dissolved by the master in his final order on the merits. The circuit court issued a temporary injunction prohibiting Sellers from conveying the property and charging them with maintaining it. As part of this order, the court required that Buyer maintain a bank account with the amount of the net sale proceeds ($325,335) as security during the pendency of the action. The order states that "such an arrangement will be adequate to protect [Sellers] for the payment of any costs or damages incurred by them as a result of the imposition of the Temporary Injunction."[6] Sellers claim they are entitled to attorney's

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[6]*See* Rule 65(c), SCRCP, (no temporary injunction shall issue except upon security by the applicant, in such sum as the court deems

fees from this security bond as "costs or damages" caused by the temporary injunction. Further, they contend the master should have held Buyer in contempt for closing this account before the resolution of post-trial motions.

Fees paid for defending an action to which the injunction is merely ancillary are not recoverable from the security bond. Walker v. Oswald, 181 S.C. 278, 186 S.E. 916, 919 (1936); Livingston v. Exum, 19 S.C. 223 (1883). In an action to determine the rights of parties in reference to land, as here, an injunction is considered ancillary. Hill v. Thomas, 19 S.C. 230 (1883). Attorney's fees for successfully ending the temporary injunction as part of this suit are therefore not recoverable under the injunction security bond. Since Sellers are not entitled to attorney's fees from this security bond, there is no harm from Buyer's closing of the account. Accordingly, we find the contempt issue moot. *See* Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 630 S.E.2d 474 (2006) (case is moot where a judgment rendered by the court will have no practical legal effect).

In conclusion, we affirm the denial of specific performance, reverse the denial of attorney's fees to Seller, and remand for entry of judgment in the stipulated amount of attorney's fees.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur.

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proper, for the payment of costs and damages incurred by any party wrongfully enjoined).

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Erasmus Edwards, Respondent,

v.

State of South Carolina, Petitioner.

ON WRIT OF CERTIORARI

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Opinion No. 26284
Submitted February 14, 2007 – Filed March 12, 2007

REVERSED

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Robert L. Brown, all of Columbia, for Petitioner.

Appellate Defender Robert M. Pachak, of South Carolina Commission on Indigent Defense, Division of Appellate Defense, of Columbia, for Respondent.

JUSTICE BURNETT: In this post-conviction relief (PCR) case, we granted the State's petition for writ of certiorari to review the grant of relief to Erasmus Edwards (Respondent). We reverse.

FACTUAL/PROCEDURAL BACKGROUND

Respondent pleaded guilty to second offense trafficking in crack cocaine and third offense possession with intent to distribute (PWID) crack cocaine. The plea judge sentenced Respondent to fifteen years' imprisonment for trafficking and fifteen years for PWID, to be served concurrently.[1] No direct appeal was taken.

Respondent filed this PCR application alleging the plea court lacked subject matter jurisdiction to sentence him for second offence trafficking and third offense PWID. The PCR judge found the plea court lacked subject matter jurisdiction to sentence Respondent for second offense trafficking and third offense PWID because the indictments listed the statutory provisions for first offenses. The PCR judge resentenced Respondent to ten years' imprisonment for first offense trafficking in crack cocaine and to fifteen years for first offense PWID crack cocaine.

ISSUE

Did the PCR judge err in finding the plea court did not have subject matter jurisdiction to sentence Respondent for second offense trafficking in crack cocaine and third offense PWID crack cocaine?

STANDARD OF REVIEW

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514,

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[1] Respondent also pleaded guilty to PWID crack cocaine within proximity of a school and second offense possession of marijuana. He was sentenced to ten years' imprisonment for PWID within proximity of a school and one year for possession of marijuana, to be served concurrently with his other sentences. These guilty pleas are not at issue in this PCR action.

517 (2000). This Court will uphold the findings of the PCR judge when there is any evidence of probative value to support them. *Id.* at 109-10, 525 S.E.2d at 517. This Court will reverse the PCR judge's decision when it is controlled by an error of law. Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004).

LAW/ANALYSIS

The State argues the PCR judge erred in finding the plea court lacked subject matter. We agree.

We address this issue in light of our decision in State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). In Gentry, we abandoned the view that, in criminal matters, the circuit court acquires subject matter jurisdiction to hear a particular case by way of a valid indictment. 363 S.C. at 101, 610 S.E.2d at 499. "[S]ubject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." *Id.* at 100, 610 S.E.2d at 498. Issues related to subject matter jurisdiction may be raised at any time. *Id.* at 100, 610 S.E.2d at 498.

In contrast, an indictment is a notice document. The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, *i.e.*, to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted. *Id.* at 102-03, 610 S.E.2d at 500; S.C. Code Ann. § 17-19-20 (2003). A defendant must challenge the sufficiency of an indictment before the jury is sworn. Gentry, 363 S.C. at 101, 610 S.E.2d at 499; S.C. Code Ann. § 17-19-90 (2003).

In light of Gentry, Respondent raised an issue related to the sufficiency of the indictments in his PCR application, rather than an issue of subject matter jurisdiction. The plea court, as a court of general sessions, had subject matter jurisdiction to accept Respondent's guilty pleas and to sentence Respondent as a subsequent offender. Gentry, 363 S.C. at 101, 610 S.E.2d at 499; see also State v. Smalls, 364 S.C. 343, 346, 613 S.E.2d 754, 756 (2005) (finding the court of general sessions has subject matter jurisdiction to try

criminal cases). Accordingly, the PCR judge erred in finding the plea judge did not have subject matter jurisdiction to accept Respondent's guilty pleas and to sentence Respondent.

CONCLUSION

We reverse the PCR judge's grant of relief and uphold Respondent's convictions. We need not address the State's remaining issue. See Hagood v. Sommerville, 362 S.C. 191, 199, 607 S.E.2d 707, 711 (2005) (appellate court need not address remaining issues when resolution of prior issue is dispositive).

TOAL, C.J., MOORE, WALLER and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Janice W. Vaughan, as Personal Representative of the Estate of Charles G. Vaughan, Jr., Appellant,

v.

McLeod Regional Medical Center, Theresa Gallagher, M.D., and Thomas Wilson, M.D., Defendants,

Of Whom McLeod Regional Medical Center and Thomas Wilson, M.D. are Respondents.

Appeal From Darlington County
Paul M. Burch, Circuit Court Judge

Opinion No. 26285
Heard January 31, 2007 – Filed March 12, 2007

AFFIRMED AS MODIFIED

Stephanie P. McDonald, of Senn, McDonald & Leinbach, LLC, of Charleston; and Mahlon E. Padgett, IV, of Padgett Law Office, of Bennettsville, for Appellant.

J. Boone Aiken, III, of Aiken, Bridges, Nunn, Elliott & Tyler, P.A., of Florence, for Respondents.

JUSTICE BURNETT: Janice W. Vaughan, as Personal Representative of the Estate of Charles G. Vaughan, Jr., (Appellant) appeals the circuit court's grant of summary judgment in favor of McLeod Regional Medical Center and Thomas Wilson, M.D. (collectively referred to as Respondents). We certified the appeal from the Court of Appeals pursuant to Rule 204(b), SCACR, and we affirm as modified.

FACTUAL/PROCEDURAL BACKGROUND

On November 4, 2000, Charles G. Vaughan, Jr. (Decedent) was treated at McLeod Regional Medical Center for injuries arising out of an automobile accident. Upon admission, Dr. Wilson noted Decedent had an elevated blood alcohol level, and Decedent was detoxed by Dr. Theresa Gallagher during his hospitalization.

On November 22, 2000, Appellant, who was Decedent's wife, and Decedent's adult daughter filed a petition for the appointment of a guardian for Decedent in the Marlboro County Probate Court. Appellant also petitioned for the appointment of a conservator for Decedent. On the same day, Judge P. Mark Heath appointed Dr. Wilson and Dr. Gallagher to examine Decedent and to report their findings regarding Decedent's mental capacity to the probate court, as required by S.C. Code Ann. § 62-5-303 (1987). At a hearing that day, Judge Heath heard testimony from Appellant and received the court-ordered reports from Dr. Wilson and Dr. Gallagher. The doctors described Decedent as a chronic alcoholic with dementia secondary to alcohol abuse. Both doctors found Decedent was an "incapacitated person"[1] and was impaired by reason of mental deficiency,

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[1] "Incapacitated person" is statutorily defined to mean "any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions

physical illness or disability, and chronic intoxication. Dr. Wilson and Dr. Gallagher further found this condition to be permanent. Based on the evidence, Judge Heath found Decedent was incapacitated. He appointed guardians, a conservator, and an attorney with the powers and duties of a guardian ad litem for Decedent. On January 31, 2001, Judge Heath signed an order declaring that Decedent was no longer incapacitated.[2]

Appellant subsequently brought this action against Respondents[3] alleging, among other things, Dr. Wilson and Dr. Gallagher negligently and erroneously informed her and the Marlboro County Probate Court that Decedent was permanently incapacitated. On Respondents' motion for summary judgment, the circuit court granted summary judgment in favor of Respondents.

ISSUE

Did the circuit court err in granting summary judgment in favor of Respondents?

STANDARD OF REVIEW

A circuit court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). In determining whether any triable

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concerning his person or property." S.C. Code Ann. § 62-5-101(1) (Supp. 2006).

[2] We note we placed Decedent, an attorney licensed to practice in this State, on incapacity inactive status on December 7, 2000 and we reinstated him to active status on January 22, 2003.

[3] Although Dr. Gallagher was originally named as a defendant, she is not a party to this appeal.

issues of fact exist, the circuit court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 385, 365 S.E.2d 24, 25 (1988). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

The issue of interpretation of a statute is a question of law for the court. Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) ("The determination of legislative intent is a matter of law."). We are free to decide a question of law with no particular deference to the circuit court. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000).

LAW/ANALYSIS

A. S.C. Code Ann. § 44-66-70(A)

Appellant argues the circuit court erred in finding Respondents were not subject to civil liability pursuant to S.C. Code Ann. § 44-66-70(A) (2002). During oral argument before this Court, Respondents conceded the circuit court erred in granting summary judgment on this ground.

South Carolina Code Ann. § 44-66-70(A) provides: "A person who in good faith makes a health care decision as provided in Section 44-66-30 is not subject to civil or criminal liability on account of the substance of the decision." Section 44-66-30 (2002) sets forth a prioritized list of persons who may make health care decisions for a patient who is unable to consent. Specifically, § 44-66-30(A)(3) gives priority to "a person given priority to make health care decisions for the patient by another statutory provision."

The circuit court determined § 44-66-30(A)(3) allows a person to make health care decisions for a patient unable to consent when priority is given by another statutory provision. The circuit court then held S.C. Code Ann. § 62-5-303 gave Dr. Wilson priority to make the health care decision that

Decedent was permanently incapacitated. Finding the record was devoid of any evidence that Dr. Wilson did not act in good faith, the circuit court granted summary judgment to Respondents based on the immunity provided by § 44-66-70(A).

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). If a statute's language is plain, unambiguous, and conveys a clear meaning, then "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

Section 44-66-70(A) gives immunity to a person who in good faith makes a health care decision pursuant to § 44-66-30 for a patient who is unable to consent. Section 44-66-30(A)(3) allows a person to make health care decisions for a patient who is unable to consent when priority is given by another statutory provision. Section 62-5-303 clearly is not another statutory provision that gives priority because § 62-5-303 sets forth the requirements for court appointment of a guardian upon a finding of incapacity.[4] See Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970) ("[W]here the language [of a statute] is clear and explicit, the courts cannot rewrite the statute and inject matters into the statute which are not in the legislature's language.").

The circuit court improperly construed § 62-5-303 to be another statutory provision giving priority as referenced by § 44-60-30(A)(3). Thus, the circuit court erred in applying the good faith immunity, provided by § 44-

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[4] South Carolina Code Ann. § 62-5-303(b) requires, in relevant part, that once a petition for guardianship is filed, "[t]he person alleged to be incapacitated shall be examined by two examiners, one of whom shall be a physician appointed by the court[,] who shall submit their reports in writing to the court."

66-70(A) for persons who make health care decisions under § 44-66-30, to Dr. Wilson's decisions pursuant to court appointment under § 62-5-303. Furthermore, Dr. Wilson did not make any health care decisions[5] pursuant to § 44-66-30 for Decedent. Dr. Wilson *provided* health care to Decedent by diagnosing, treating, and caring for Decedent during his hospitalization, and he performed a court-ordered examination of Decedent. Therefore, the circuit court erred in applying the good faith immunity provided by § 44-66-70(A) to Dr. Wilson's actions during Decedent's hospitalization and pursuant to his court appointment.

B. Common-Law Immunity

Respondents argue the grant of summary judgment in their favor should be affirmed on the ground of common-law immunity. We agree. See Rule 220(c), SCACR (appellate court may affirm for any reason appearing in the record).

The issue of whether common-law immunity extends to a physician, who is court-appointed to serve as an examiner of an allegedly incapacitated person in a guardianship proceeding, is analogous to the issue of whether common-law immunity extends to a private person, who is court-appointed to serve as a guardian ad litem in a private child custody proceeding. For that reason, this Court's analysis of the latter issue in Fleming v. Asbill, 326 S.C. 49, 483 S.E.2d 751 (1997) is instructive. In finding common-law immunity applied to court-appointed guardians ad litem for actions within the scope of their appointment, the Fleming Court explained:

> In addition to preserving the independence and neutrality of the guardian ad litem, a grant of immunity also is reasonable in light of the fact that many court-appointed guardians have not volunteered for the

[5] See S.C. Code Ann. § 44-66-20(1) (2002) (defining "[h]ealth care" to mean: "a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of a physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care").

> position. It is inequitable for persons who did not ask to be appointed as guardian to be exposed to unlimited liability.
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> . . .
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> Because one of the guardian's roles is to act as a representative of the court, and because this role can only be fulfilled if the guardian is not exposed to a constant threat of lawsuits from disgruntled parties, a finding of quasi-judicial immunity is necessary. Such a grant of immunity is crucial in order for guardians to properly discharge their duties. The immunity to which guardians ad litem are entitled is an absolute quasi-judicial immunity.

326 S.C. at 56-57, 483 S.E.2d at 755-56.

We find the reasoning that supports a finding of absolute quasi-judicial immunity for court-appointed guardians also supports a finding of absolute quasi-judicial immunity for court-appointed examiners in guardianship proceedings. Court-appointed examiners are essentially an arm of the judiciary. See generally Briscoe v. LaHue, 460 U.S. 325, 335, 103 S.Ct. 1108, 1115-16, 75 L.Ed.2d 96, 108 (1983) ("[T]he common law provided absolute immunity from subsequent damages liability for all persons-governmental or otherwise-who were integral parts of the judicial process."); Hartline v. Clary, 141 F.Supp. 151, 152 (E.D.S.C. 1956) ("[J]udicial officers, quasi judicial officers, judges, prosecuting attorneys, executive and ministerial officials of the government are immune from civil suit for acts committed by them in the performance of their official duties."); 70 C.J.S. Physicians and Surgeons § 101 (2005) ("A psychiatrist or other mental health practitioner appointed by the court to make a psychiatric evaluation of a person or to give an opinion as to his or her sanity enjoys immunity from suit for damages based on such opinion or evaluation, where he or she has acted in accordance with the governing statute."). Additionally, quasi-judicial immunity for acts performed within the scope of appointment is necessary to protect the court-appointed examiners from lawsuits by allegedly incapacitated persons who are upset by the results of the guardianship proceedings. If court-appointed examiners in guardianship proceedings are not afforded immunity, the exposure to liability will have a chilling effect on future acceptances of such appointments. We hold a physician, who is a

court-appointed examiner in a guardianship proceeding, has absolute quasi-judicial immunity for actions and opinions within the scope of the appointment.[6]

We must determine from the nature of Dr. Wilson's actions, not merely by his status as a court-appointed examiner, whether the absolute quasi-judicial immunity extends to the challenged acts in this case. See generally Falk v. Sadler, 341 S.C. 281, 288, 533 S.E.2d 350, 353-54 (Ct. App. 2000) ("It is the nature of the acts, not simply the status of the defendant as a guardian ad litem, that determines the availability of immunity for the challenged acts and the extent of protection afforded by that immunity."). Appellant does not dispute Decedent was temporarily incapacitated.

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[6] Other courts have extended immunity to physicians who are court-appointed for actions within the scope of their appointment. See Bartlett v. Weimer, 268 F.2d 860 (7th Cir. 1959) (determining court-appointed doctor, who opined that plaintiff was mentally incompetent, was acting as an officer of state probate court in giving opinion as to mental health of plaintiff, and thus, doctor was protected by quasi-judicial immunity); Cawthon v. Coffer, 264 So.2d 873 (Fla. Dist. Ct. App. 1972) (concluding psychiatrists who were appointed by the court to determine plaintiff's mental and physical condition were immune from suit by plaintiff for conduct within scope of appointment); Seibel v. Kemble, 631 P.2d 173 (Haw. 1981) (holding court-appointed psychiatrists were acting as arms of court in rendering an opinion on criminal defendant's competency, and thus, court-appointed psychiatrists were protected from suit by absolute judicial immunity); Linder v. Foster, 295 N.W. 299 (Minn. 1940) (holding a physician, who was a court-appointed examiner in an insanity proceeding, was a quasi-judicial officer, and as a quasi-judicial officer was immune from civil action for acts performed in connection with the court appointment); Mullen v. McKnelly, 693 S.W.2d 837, 838 (Mo. Ct. App. 1985) ("When a physician has been appointed to examine a person and give an opinion as to the mental health of said person the physician enjoys the same immunity extended to judges and other judicial officers."); Bailey v. McGill, 100 S.E.2d 860 (N.C. 1957) (holding court-appointed physicians, who were required to examine a patient and certify an opinion regarding the patient's mental competency, were immune from tort liability for actions arising out of their appointment).

Appellant alleges Dr. Wilson failed to properly diagnose Decedent's true condition and made an erroneous diagnosis of Decedent's condition. These allegations are based on Appellant's unhappiness with the doctor's finding of permanent incapacity. This type of allegation is precisely why absolute quasi-judicial immunity must be extended to court-appointed examiners in guardianship proceedings. Dr. Wilson's opinion that Decedent was permanently incapacitated was made within the scope of his court appointment; thus, he was protected from civil liability by absolute quasi-judicial immunity. See generally *id.* at 288, 533 S.E.2d at 354 ("A recommendation by the guardian ad litem, no matter how disagreeable to one of the parties, will not sustain an action against the guardian of this sort."); Bailey, 100 S.E.2d at 867 ("Physicians, who are witnesses, in judicial proceedings to commit an alleged mentally disordered person for confinement, have been accorded such absolute immunity from civil liability for their material and pertinent affidavits, certificates and testimony."). Accordingly, Respondents are entitled to summary judgment as a matter of law.

CONCLUSION

Because absolute quasi-judicial immunity protects the challenged acts and opinions of Dr. Wilson in this case, we affirm as modified the grant of summary judgment in favor of Respondents.

AFFIRMED AS MODIFIED.

TOAL, C.J., MOORE, WALLER and PLEICONES, JJ., concur.

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Michael H. May, Respondent.

Opinion No. 26286
Submitted January 23, 2007 – Filed March 12, 2007

PUBLIC REPRIMAND

Henry B. Richardson, Jr., Disciplinary Counsel, and Susan M. Johnston, Deputy Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Michael H. May, of Columbia, pro se.

PER CURIAM: The Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR, in which respondent admits misconduct and consents to the imposition of a letter of caution, admonition, or a public reprimand. We accept the agreement and issue a public reprimand. The facts, as set forth in the agreement, are as follows.

FACTS

Respondent was retained to close a real estate transaction on behalf of complainant and her husband on or about February 27, 2006. Respondent personally handled a portion of the closing on behalf of complainant's husband at some point during the day of

February 27, 2006. Afterwards, respondent went out of town for another real estate closing.

Respondent did not review the closing documents with complainant. He allowed his non-lawyer assistant to handle complainant's portion of the closing on February 27, 2006. Neither respondent nor any other lawyer was present at complainant's portion of the closing.

LAW

Respondent admits that, by his misconduct, he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 5.3(a) (lawyer shall make reasonable efforts to ensure firm has in effect measures giving reasonable assurance that a non-lawyer employee's conduct is compatible with professional obligations of lawyer); Rule 5.3(b) (lawyer having direct supervisory authority over non-lawyer shall make reasonable efforts to ensure that person's conduct is compatible with professional obligations of the lawyer); Rule 5.5(a) (lawyer shall not assist another person in the unauthorized practice of law); and Rule 8.4(a) (it is professional misconduct for a lawyer to violated the Rules of Professional Conduct). Respondent acknowledges that his misconduct constitutes grounds for discipline under the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, specifically Rule 7(a)(1) (it shall be ground for discipline for a lawyer to violate Rules of Professional Conduct).

CONCLUSION

We find that respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his misconduct.

PUBLIC REPRIMAND.

TOAL, C.J., MOORE, BURNETT and PLEICONES, JJ., concur. WALLER, J., not participating.

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Elizabeth H. Robinson, Respondent.

Opinion No. 26287
Submitted February 5, 2007 – Filed March 12, 2007

PUBLIC REPRIMAND

Henry B. Richardson, Jr., Disciplinary Counsel, and Joseph P. Turner, Jr., Assistant Disciplinary Counsel, both of Columbia, for the Office of Disciplinary Counsel.

Elizabeth H. Robinson, of Lancaster, pro se.

PER CURIAM: The Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR, in which respondent admits misconduct and agrees to the imposition of an admonition, public reprimand, or definite suspension not to exceed sixty (60) days. We accept the agreement and issue a public reprimand. The facts, as set forth in the agreement, are as follows.

FACTS

On September 1, 2006, respondent was arrested for shoplifting $796 worth of merchandise (a misdemeanor) from a department store. Respondent applied for and was accepted into the Pre-Trial Intervention program on October 31, 2006. Respondent's

charge was dismissed upon her successful completion of all requirements of Pre-Trial Intervention which included 50 hours of community service and 20 hours of counseling.

LAW

Respondent admits that by her misconduct she has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 8.4(a) (it is professional misconduct for lawyer to violate Rules of Professional Conduct); Rule 8.4(b) (it is professional misconduct for lawyer to commit a criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); Rule 8.4(c) (it is professional misconduct for lawyer to commit a criminal act involving moral turpitude); and Rule 8.4(d) (it is professional misconduct for lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent acknowledges that her misconduct constitutes grounds for discipline under the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, specifically Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct) and 7(a)(5) (it shall be ground for discipline for lawyer to engage in conduct tending to pollute the administration of justice or to bring the legal profession into disrepute or in conduct demonstrating an unfitness to practice law).

CONCLUSION

We find that respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for her misconduct.

PUBLIC REPRIMAND.

TOAL, C.J., MOORE, BURNETT and PLEICONES, JJ., concur. WALLER, J., not participating.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Jeffrey T. Spell, Respondent.

Opinion No. 26288
Submitted January 23, 2007 – Filed March 12, 2007

DEFINITE SUSPENSION

Henry B. Richardson, Disciplinary Counsel, and C. Tex Davis, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Elizabeth Van Doren Gray, of Columbia, for respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to a definite suspension from the practice of law of not less than four (4) nor more than twelve (12) months. He requests the Court allow the suspension to run retroactively from the date of his interim suspension.[1] We accept the agreement and impose a twelve (12) month suspension, retroactive to the date

[1] See In the Matter of Spell, 365 S.C. 42, 618 S.E.2d 929 (2005) (on August 24, 2005, respondent was placed on interim suspension).

of respondent's interim suspension. The facts, as set forth in the agreement, are as follows.

FACTS

Matter I

Client retained respondent to assist in negotiating several pending foreclosures. Client had several properties to sell in the hope that the proceeds from the sales would generate sufficient money to resolve the foreclosures.

Respondent was the closing attorney for the sale of three of the client's properties. The closings for the three properties occurred between December 2002 and January 2003. Each of the three closing settlement statements contained a line item for repairs which were to be conducted by a stated construction company. At client's request, respondent wrote checks from his trust account for the repair allowances payable to client and the construction company. Client endorsed the checks made payable to himself and the construction company. The mortgage broker accepted the checks on behalf of the construction company.

Later, at the request of the mortgage broker, respondent asked his bank to reissue the checks. The reissued checks were made payable only to the construction company as directed by the mortgage broker. The mortgage broker then delivered certified checks on behalf of the buyers in the amount shown on Line 303 of the HUD Settlement Statement to respondent. At that point, respondent realized the money for these checks came from a portion of the repair allowance noted on the HUD Settlement Statement; respondent, however, failed to amend the HUD Settlement Statement to accurately reflect the transaction.

Matter II

Between early 2002 and early 2003, respondent was the closing attorney in three of the four real estate transactions referred to in a federal

indictment. In the transactions, respondent failed to disclose to the lenders that the purchasers did not bring to the closing the funds represented on the HUD-1 Settlement Statement. Furthermore, respondent did not disclose to the lender that the sellers' funds as represented on the settlement statement were "shorted" in order to balance the statement.

Following the real estate closings at issue in the indictment, respondent was asked by other parties to reissue certain closing checks differently than as represented on the closing statement. Respondent agreed to reissue the checks as requested.

While it was alleged in the indictment that the co-conspirators committed a wide variety of fraudulent acts in connection with these transactions and received substantial funds from the proceeds of the transactions, respondent was not aware of these activities. Respondent did not receive any illicit funds but, rather, only his standard fee for conducting a closing.

Respondent terminated his business relationship with the parties in these transactions in the Spring of 2003. He did not repeat the misconduct. When respondent was contacted by law enforcement authorities, he fully cooperated with the investigation and provided substantial assistance to investigators who thereafter prosecuted four other individuals.

Respondent pled guilty in the United States District Court to a one count indictment alleging conspiracy to defraud two mortgage companies. He was sentenced to a period of house arrest, three years of probation, and ordered to pay restitution.

LAW

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation); Rule 8.4(a) (lawyer shall not violate Rules of Professional Conduct); Rule 8.4(b) (lawyer shall not commit a criminal act that reflects adversely on the lawyer's

honesty, trustworthiness, or fitness as a lawyer in other respects); and Rule 8.4(d) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). In addition, respondent admits that his actions constitute grounds for discipline under the following provisions of Rule 7, RLDE, Rule 413, SCACR: Rule 7(a)(1) (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct); Rule 7(a)(4) (it shall be ground for discipline for a lawyer to be convicted of a crime of moral turpitude or serious crime); and Rule 7(a)(5) (it shall be a ground for discipline for a lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute).

CONCLUSION

We accept the Agreement for Discipline by Consent and suspend respondent from the practice of law for twelve (12) months, retroactive to the date of his interim suspension. Within fifteen days of the filing of this opinion, respondent shall file an affidavit demonstrating he has complied with the requirements of Rule 30 of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR. Respondent shall not seek reinstatement until he has fully completed his house arrest and probation and complied with all other conditions imposed by his federal court sentence.

DEFINITE SUSPENSION.

TOAL, C.J., MOORE, BURNETT and PLEICONES, JJ., concur. WALLER, J., not participating.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

James R. Davis, Stephen King, Walter Robbie Robinson, Hannah R. Timmons, and Danny Young, individually and as members of the Recreation Commission of Richland County, Appellants,

v.

The Richland County Council as Governing Body of Richland County and Mark Sanford, as Governor of the State of South Carolina, Respondents.

Appeal From Richland County
J. Ernest Kinard, Jr., Circuit Court Judge

Opinion No. 26289
Heard October 4, 2006 – Filed March 12, 2007

REVERSED

Richard J. Breibart, of Lexington, for Appellants.

Attorney General Henry Dargan McMaster, Assistant Deputy Attorney General Robert D. Cook, Assistant Deputy Attorney General J. Emory Smith, Jr., for Respondent Governor. Larry

Cornell Smith, of Richland County Attorney's Office, M. Elizabeth Crum, Francenia B. Heizer, and Robert T. Bockman, all of McNair Law Firm, of Columbia, for Respondent Richland County Council.

JUSTICE WALLER: This is an appeal from the circuit court's denial of a temporary injunction to stay enforcement of Act No. 207, 2005 Acts 1961. At issue is the constitutionality of the Act, which altered the method of appointment of the members of the Richland County Recreation Commission (Commission). We hold Act No. 207 constitutes unconstitutional special legislation.

FACTS

The (Commission) was created by Act No. 873, 1960 S.C. Acts 2010. Act No. 873 provided that the Commission was to be "composed of five resident electors of the recreational district to be appointed by the Governor upon the recommendation of the Richland County Legislative Delegation. . ."

In 2005, by Act No. 207, the General Assembly passed Senate Bill 808, stating, in relevant part:

> The authority to make the appointment of the members of the Richland County Recreation Commission is **devolved from the Richland County Legislative Delegation to the governing body of Richland County**. The terms of the members of the commission appointed by the Richland County Legislative Delegation expire on June 30, 2005.

(Emphasis supplied). The Act took effect upon the Governor's approval on June 1, 2005.

On July 11, 2005, Davis, et. al. (Appellants), members of the Commission at the time the Act was passed, filed a summons and complaint seeking a declaratory judgment as to the constitutionality of the Act, and requesting an injunction. They also filed a motion for an ex parte temporary

restraining order to prevent the Richland County Council from enforcing Act No. 207. The circuit court granted the ex parte TRO, finding the plaintiffs would suffer irreparable harm from the existence of two competing boards. The court also found a likelihood of success on the merits under this Court's opinion in Hamm v. Cromer, 305 S.C. 305. 408 S.E.2d 227 (1991).

After a hearing, the circuit court denied the plaintiffs' motion for a preliminary injunction and dissolved the temporary injunction, finding they had not met the requirements for an injunction. The court found, *inter alia*, a) the plaintiffs lacked standing because they were no longer members of the Commission at the time they filed for an injunction, b) the plaintiffs were not in danger of an imminent threat of irreparable harm, c) the plaintiffs had little likelihood of success on the merits because they lacked standing, and d) the plaintiffs had an adequate remedy at law. This appeal follows.

ISSUES

1. Did the circuit court err in ruling the plaintiffs lacked standing to challenge Act No. 207 and that they had not met the requirements of demonstrating the need for an injunction?
2. Is Act No. 207 unconstitutional?

1. STANDING/INJUNCTION

The circuit court ruled Appellants lack standing to bring this action because they filed suit after their terms expired (pursuant to Act No. 207). This was error.

In numerous recent cases, this Court has found that standing is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance. Sloan v. Dep't of Transportation, 365 S.C. 299, 618 S.E.2d 876 (2005) (finding Sloan had standing to bring actions for alleged violation of statutory bidding violations by the DOT); Sloan v. Wilkins, 362 S.C. 430, 608 S.E.2d 579 (2005) (holding Sloan had standing to challenge legislative enactment). Additionally, both this Court and the Court of Appeals have found standing

in other cases of important public interest without requiring the plaintiff to show he has an interest greater than other potential plaintiffs. See id.; Sloan v. Sanford, 357 S.C. 431, 593 S.E.2d 470 (2004) (holding standing to challenge governor's commission as officer in Air Force reserve); Sloan v. Greenville Cty., 356 S.C. 531, 548, 590 S.E.2d 338, 347 (Ct.App.2003) (holding plaintiff had standing to bring declaratory judgment action alleging county failed to comply with ordinances governing procurement). Furthermore, under the public importance exception, standing may be conferred upon a party "when an issue is of such public importance as to require its resolution for future guidance." Baird v. Charleston Cty., 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999).

We find the Commissioners have standing to challenge the constitutionality of an Act which authorizes their removal from office. Accordingly, the circuit court's order is reversed in this regard.

2. CONSTITUTIONALITY OF ACT 207

In addition to seeking an injunction, the Commissioners sought a declaratory judgment establishing that Act No. 207 was unconstitutional. The circuit court did not reach the declaratory judgment issue, in light of its finding that Appellants did not have standing to challenge Act 207.[1]

This issue hinges upon an interpretation of this Court's prior opinions in Hamm v. Cromer, 305 S.C. 305. 408 S.E.2d 227 (1991) and Pickens County v. Pickens Water and Sewer Authority, 312 S.C. 218, 439 S.E.2d 840 (1994).

In Hamm, the governing body of the Newberry County Water and Sewer Authority was to be composed of seven resident electors of Newberry County, to be appointed by the Governor upon a recommendation of a

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[1] Because they also sought a declaratory judgment, we proceed to a review of the issue in the interest of judicial economy. See Jeter v. S.C. Dep't of Transp., 369 S.C. 433, 633 S.E.2d 143 (2006); Floyd v. Horry County School District, 351 S.C. 233, 569 S.E.2d 343 (2002); Furtick v. S.C. Dep't of Probation, Parole & Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003) (addressing merits of claim in the interest of judicial economy).

majority of the members of the Newberry County Legislative Delegation. In 1988, the Legislature adopted Act No. 784, 1988 S.C. Acts 6447, which changed the method of appointment for the governing body of the Sewer Authority, taking the recommendation authority away from the local legislative delegation, and giving it to the members of the Newberry County Council. The Act further provided that the terms of the present governing members of the Authority would expire on the effective date of the Act.

Hamm brought a declaratory action seeking to have Act No. 784 declared unconstitutional, claiming it violated the constitutional prohibition against special legislation contained in S.C. Const., art. VIII, §§ 1 and 7[2]. He also argued Act 784 did not fall within any exception or category of permissible special legislation, and that Act No. 784 was neither remedial nor transitional in nature. The trial court ruled in favor of respondents, and held Act No. 784 unconstitutional special legislation.

On appeal, this Court recognized that, by ratification of Article VIII in 1973, the General Assembly was prohibited from enacting laws for a specific county or municipality. A majority of this Court held:

> The prohibition of Section 7 is applicable to special legislation dealing with districts created prior to the ratification of Article VIII or the amendment of prior special legislation. . . . Because Act No. 784 amended prior special legislation which created the Authority, the prohibition of Section 7 of Article VIII applies. The enactment of Act No. 784 is exactly the type of special legislation which is prohibited by Sections 1 and 7 of Article VIII of the South Carolina

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[2] Article VIII, § 1 provides, "[t]he powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law." Section 7 provides, in pertinent part, "[n]o laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government." In Hamm, the Court recognized that the prohibition against special legislation contained in Article VIII, meant that no law could be passed concerning a specific county which related to those powers, duties, functions, and responsibilities, which under the mandated systems of government, were set aside for counties. 305 S.C. at 307, 408 S.E. 2d at 228, *citing* Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975).

Constitution as it was not intended that after the ratification of the constitutional amendment, the General Assembly could repeatedly inject itself into local affairs.

305 S.C. at 308, 408 S.E.2d at 228-229. The Court went on to recognize that Section 1 of Article VIII allowed the General Assembly to legislate to bring about an orderly transition to local home rule government, but that such authority was temporary and extended only so far as necessary to place Article VIII fully into operation.[3] "However, [Section 1] limited transitional legislation to a 'one shot' proposition so that the General Assembly could not repeatedly inject its will into the operation of county government." Id. at 308, 408 S.E.2d at 229. The Court recognized that once a legally constituted government has become functional, the Duncan exception ends, thereby precluding any further special legislation. The Court held, "the local form of government, a public service district, which was organized long before the ratification of Article VIII, has remained in continuous and successful operation since that time and thus, Act No. 784 cannot be considered remedial legislation." Id.[4]

Thereafter, in Pickens County v. Pickens Water and Sewer Authority, 312 S.C. 218, 439 S.E.2d 840 (1994), the County commenced a declaratory judgment action seeking a ruling that 1973 Act No. 757 was unconstitutional. Act No 757 created the Pickens County Water and Sewer Authority and empowered it with the authority to provide water and sewer service county-wide wherever such service was not provided by a municipality. Act No. 757 also repealed 1971 Act No. 240 which had created the Pickens County Water Authority. The trial judge declared Act No. 757 unconstitutional and ruled that Act No. 240 was revived. A majority of this Court held that Act No. 757 did not come under the transitional legislation exception and was squarely controlled by Hamm.

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[3] In Duncan v. York County, 267 S.C. 327, 228 S.E.2d 92 (1976), the Court held Section 1 of Article VIII allowed the General Assembly to legislate to bring about an orderly transition to local home rule government, but that such authority was temporary and extended only so far as necessary to place Article VIII fully into operation.

[4] Justice Toal dissented in Hamm and would have held the legislation was permissible, one-shot legislation.

Here, Act No. 207 takes the authority to recommend Richland County Recreation Commission members away from the Richland County Legislative Delegation, and gives that authority to the Richland County Council; it also provides that the terms of the then-current members of the commission appointed by the Richland County Legislative Delegation expire on June 30, 2005. Much like the Act held unconstitutional in Hamm, the Act here seeks to devolve appointment authority of a local body away from the Legislative Delegation, and confer it upon the County Council. Accordingly, Hamm and Pickens are squarely controlling, and Act No. 207 is indeed unconstitutional.

CONCLUSION

The circuit court erred in finding Appellants without standing to challenge the constitutionality of Act No. 207. In the interest of judicial economy, we address the merits of the underlying declaratory judgment action and hold that, under Hamm and Pickens, Act No. 207 is unconstitutional special legislation.

REVERSED.

MOORE and BURNETT, JJ., concur. TOAL, C.J., dissenting in a separate opinion in which PLEICONES, J., concurs.

CHIEF JUSTICE TOAL: I respectfully dissent for the same reasons that I dissented in *Hamm v. Cromer*, 305 S.C. 305, 309-10, 408 S.E.2d 227, 229-30 (1991). In my opinion, the majority continues to ignore the essential purpose and intent of the constitutional provisions enacted to aid in "home rule." *See* S.C. Constitution, Art. VIII, §§ 1 and 7 (significantly diminishing the power of the legislature to continuously engage itself in matters of local government).

Act No. 207 devolves the authority of the Richland County Legislative Delegation to recommend the appointment of the members of the Richland County Recreation Commission (Commission) to Richland County Council. This action clearly furthers the intent of §§ 1 and 7 to diminish legislative interaction in local government. Because Richland County Council has never had the legal authority to appoint the members of the Commission, in my opinion, the transfer of authority under Act No. 207 constitutes the establishment of initial county government. *See Horry County v. Cooke*, 275 S.C. 19, 23, 267 S.E.2d 82, 84 (1980) (limiting the *Duncan* exception to the establishment of initial county governments). Therefore, instead of continuing to invalidate such legislation and preserving legislative interference in local governmental affairs, I would hold Act 207 constitutional as "one shot" legislation under *Duncan v. County of York*, 267 S.C. 327, 228 S.E.2d 92 (1976).

Based on the reasons above, I respectfully dissent.

. **PLEICONES, J., concurs.**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Darlington County Magistrate James E. Thomas, Respondent.

Opinion No. 26290
Submitted February 13, 2007 – Filed March 12, 2007

DEFINITE SUSPENSION

Henry B. Richardson, Jr., Disciplinary Counsel, and Deborah S. McKeown, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Frederick A. Hoefer, II, of Ballenger Barth & Hoefer, LLP, of Florence, for respondent.

PER CURIAM: In this judicial disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RJDE, Rule 502, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of a public reprimand or definite suspension not to exceed sixty (60) days pursuant to Rule 7(b), RJDE, Rule 502, SCACR. We accept the agreement and impose a

sixty (60) day suspension. The facts as set forth in the agreement are as follows.

FACTS

Complainant had a child with respondent's son-in-law. On June 21, 2006, respondent's son-in-law appeared in Family Court for a hearing to determine the son-in-law's child support obligation to complainant. It is respondent's understanding that, based upon information provided by his son-in-law, the child support set at the hearing included an amount for the child's daycare fees at a college's Child Development Center.

After the hearing, the son-in-law expressed concern about whether the child was actually enrolled in the college's daycare center. Respondent's daughter, on behalf of her husband, contacted the college to inquire about whether the child was enrolled and attending the daycare. Respondent's daughter thereafter reported to respondent that the college would not release the information to her. At that time, respondent told his daughter to ask whether a subpoena from the magistrate's court would enable the college to release the information. Respondent's daughter did as respondent suggested and advised respondent the college would accept a subpoena.

Respondent then prepared and issued a subpoena which he captioned "South Carolina Family Court" with Case Number "0665954." The subpoena requested documents from the college regarding the child's enrollment and attendance at the daycare. The subpoena was sent to the college by facsimile with a cover sheet from the Hartsville Magistrate's Office and contained a notation that the documents should be forwarded to respondent's attention.

The college did not comply with the subpoena. On at least three occasions, respondent attempted to contact the college to determine when the documentation would be forwarded to him. A few days later, an attorney representing the college contacted respondent and questioned respondent's authority to issue the subpoena. At that

point, respondent told the attorney to shred the subpoena. At the attorney's request, respondent sent the attorney a message by facsimile to ignore the subpoena.

Respondent now realizes he used his judicial position for the benefit of his son-in-law and that he was unfaithful to the law in issuing the subpoena. Further, he realizes that, in effect, he may have misrepresented to college officials that they were bound by the subpoena when respondent knew or should have known that they were not. Respondent recognizes he committed judicial misconduct.

ODC states that respondent has fully cooperated with its inquiries into these matters.

Respondent has prior disciplinary history. On May 3, 2006, the Court issued an admonition to respondent. In that matter, respondent issued a $30.00 check from his civil magistrate account to a motel to cover a one night's stay for a litigant. After receiving notice of ODC's complaint in that matter, respondent deposited the $30.00 back into his civil magistrate account. Additionally, on March 15, 2005, the Commission on Judicial Conduct issued a letter of caution to respondent. In that matter, respondent had committed minor misconduct because he had improperly issued a temporary restraining order without first notifying the defendant and without conducting a hearing with the defendant being present.[1]

LAW

By his misconduct, respondent has violated the following Canons of the Code of Judicial Conduct, Rule 501, SCACR: Canon 1 (judge shall uphold integrity of the judiciary); Canon 1A (judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the

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[1] In signing the Agreement for Discipline by Consent which specifically addressed his disciplinary history, respondent has consented to the publication of the prior discipline.

integrity and independence of the judiciary will be preserved); Canon 2 (judge shall avoid impropriety and the appearance of impropriety in all activities); Canon 2A (judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary); Canon 2B (judge shall not allow familial relationships to influence his judicial conduct or judgment; a judge shall not lend the prestige of judicial office to advance the private interests of others); and Canon 3B(2) (judge shall be faithful to the law and maintain professional competence in it). Respondent further admits that his misconduct constitutes grounds for discipline pursuant to Rule 7(a)(1) (it shall be ground for discipline for judge to violate the Code of Judicial Conduct) and Rule 7(a)(9) (it shall be ground for discipline for judge to violate the Judge's Oath of Office) of Rule 502, RJDE.

CONCLUSION

We find respondent's misconduct warrants a suspension from judicial duties. We therefore accept the Agreement for Discipline by Consent and suspend respondent for sixty (60) days.

DEFINITE SUSPENSION.

TOAL, C.J., MOORE, BURNETT and PLEICONES, JJ., concur. WALLER, J., not participating.

The Supreme Court of South Carolina

In re: Amendments to the South Carolina Appellate Court Rules

ORDER

The South Carolina Bar has proposed amending Rule 401, South Carolina Appellate Court Rules, to allow students at the Charleston School of Law to appear on behalf of clients and engage in other permitted activities through clinical legal education programs at the Charleston School of Law. Currently, only students at the University of South Carolina School of Law are permitted to engage in such activities.

Because the American Bar Association's Council of the Section of Legal Education and Admissions to the Bar has voted to grant provisional accreditation to the Charleston School of Law, we hereby adopt the amendments as set forth in the attachment to this order. The amendments are effective immediately.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ E. C. Burnett, III J.

s/ Costa M. Pleicones J.

John H. Waller, Jr., J., not participating

Columbia, South Carolina

March 7, 2007

RULE 401
STUDENT PRACTICE RULE

(a) This Rule is adopted solely in aid of the clinical legal education programs at the University of South Carolina School of Law and the Charleston School of Law.

(b) An eligible law student may appear in any inferior court or before any administrative tribunal on behalf of any indigent person, with that person's written consent, or on behalf of the State or any of its departments, agencies, institutions, or political subdivisions, with the written approval of the Attorney General. If referred to the clinical legal education program by a state or federal court, department, agency, institution, or other department of the University of South Carolina School of Law or the Charleston School of Law, an eligible law student may also appear in an inferior court or before an administrative tribunal on behalf of a non-indigent person or non-profit organization with the written consent of the person or the written approval of the organization's governing body or executive officer. The consent or approval shall be filed in the record of the case and shall be brought to the attention of the judge or the presiding officer. In all cases, a supervising lawyer is required to be personally present throughout the proceeding.

(c) An eligible law student may engage in other activities, under a lawyer's general supervision, but outside the lawyer's presence, including:

> **(1)** preparation of the pleadings, briefs and other legal documents to be approved and signed by the supervising lawyer;
>
> **(2)** assisting indigent inmates of correctional institutions in preparing applications and supporting documents for post-conviction relief. If there is an attorney of record in the matter, all such assistance must be supervised by that attorney and all documents submitted to the court on behalf of the inmate must be signed by the attorney. Solicitation of representation of indigent inmates shall be a violation of this Rule.

(d) In order to make an appearance pursuant to this Rule, a law student must:

> **(1)** be enrolled in the University of South Carolina School of Law or the Charleston School of Law;

(2) have completed the equivalent of four (4) semesters of legal studies;

(3) be certified by the Dean of the respective School of Law as being of good character and competent legal ability, and as being currently enrolled in a clinical course. The certification shall be filed with the Clerk of the Supreme Court and shall remain in effect for eighteen (18) months or until the announcement of the results of the first Bar examination following the student's graduation, whichever is earlier. The certification of students who pass the Bar examination shall remain in effect until they are admitted to the Bar. The certification may be withdrawn by the respective Dean at any time upon written notice to the Clerk or may be terminated by the Supreme Court without notice or hearing and without any showing of cause;

(4) neither ask for nor receive any compensation or remuneration of any kind for services performed pursuant to this Rule. Nothing in this provision shall be interpreted to prevent the law student from receiving course credit from the respective School of Law for his participation in the clinical programs, or to preclude the clinical programs from seeking attorney's fees where appropriate; and

(5) certify in writing that the student is familiar with, and will be governed by the Rules of Professional Conduct adopted by the Supreme Court. Any student who violates the Rules of Professional Conduct or fails to abide by the conditions of this Rule shall be subject to disciplinary action by the Supreme Court.

(e) The supervising lawyer shall be approved by the Dean of the respective School of Law and shall assume personal professional responsibility for the student's guidance and for supervising the quality of the student's work.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Daniel Edwards, Jr., Appellant.

Appeal From Fairfield County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 4213
Heard February 2, 2007- Filed March 12, 2007

AFFIRMED

Tara Shurling, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Senior Assistant Attorney General Harold M. Coombs, Jr., all of Columbia; Solicitor John R. Justice, of Chester, for Respondent.

STILWELL, J.: Daniel Edwards, Jr. appeals his convictions for three counts of criminal sexual conduct with a minor. We affirm.

FACTS

The victim's parents divorced when she was five or six years old. She lived with her father until she was ten but had regular visitation with her mother and her mother's husband, the defendant, Daniel Edwards, Jr. When the victim was ten years old, she resumed living with her mother and Edwards. The victim's relationship with Edwards prior to this time was "a good one, like father/daughter." She stated they would go hunting and fishing together and she felt comfortable with him "until things started to happen." It was after the victim moved in with her mother and Edwards that the sexual assaults began.

Edwards was indicted on three counts of second-degree criminal sexual conduct with a minor, and his case was tried November 15-17, 2004. The victim was sixteen at the time of trial.

The trial began with the victim's testimony. The jury was excused to allow the solicitor to proffer evidence regarding prior instances of sexual abuse toward the victim by Edwards. The victim testified that the sexual abuse began when she, her mother, and Edwards lived on Golf Course Road in October, 1999. She stated she remembered the approximate date because it was "a couple of days after he got out of jail for my sister." She stated that Edwards started by sitting by her bed and touching her breasts and "down below." Edwards continued the abuse a few weeks later when they moved to Nickey Road. When her mother was at work in the evenings, he would sit by her bed and touch and rub her. The victim testified Edwards had sexual intercourse with her four times, three of which were on Nickey Road, as well as having her look at pornographic magazines and watch pornographic tapes. The victim testified that on August 25, 2000, her mother left for work, and Edwards took her into his bedroom, took her clothes off, and began touching her breasts. She said when he stepped out of the bedroom for a minute, she slipped out the back door and was able to call for help.

Edwards argued the evidence was inadmissible, because there was no common scheme pursuant to Lyle,[1] and because it was more prejudicial than probative. The trial judge disagreed and permitted the testimony. Counsel noted his continuing objection to the admission of the evidence.

In the course of her testimony, the solicitor asked the victim why she had complied with the things Edwards asked her to do. She answered, "because I have already heard that he's been hitting my mother." Edwards objected and moved for a mistrial, arguing he did not believe there was a curative instruction that could sufficiently remove the prejudice created by the victim's statement. The trial judge denied the motion for a mistrial and gave a curative instruction when the jury returned to the courtroom.

The victim's mother also testified in the case regarding threats made against the victim by Edwards. The record indicates that though they were then estranged, the victim's mother stayed with Edwards for three years after the charges were brought and was still in communication with him up to the time of the trial. The victim's mother testified that Edwards told her to tell the victim that she should not show up in court "because he had a hit out on her, that she wouldn't make it through the courtroom doors." The victim's mother also testified that Edwards said if he was convicted he would kill the victim when he got out of jail. The trial judge allowed this testimony finding that Edwards' statements could be construed as an admission of guilt and a threat to punish the witness should the jury find him guilty.

At the conclusion of the trial, the jury found Edwards guilty of all three charges. Edwards raises three issues on appeal, alleging the trial judge erred in (1) admitting testimony regarding prior sexual conduct between the victim and Edwards, (2) denying Edwards' motion for mistrial after the victim testified that Edwards had hit the victim's mother, and (3) in admitting testimony regarding threats made against the victim if she testified in court.

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[1] State v. Lyle, 125 S.C. 406, 118 S.E.2d 803 (1923).

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001); State v. Wood, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct. App. 2004). We are bound by the trial court's factual findings unless they are clearly erroneous. See State v. Abdullah, 357 S.C. 344, 349, 592 S.E.2d 344, 347 (Ct. App. 2004) ("On appeal from a suppression hearing, this court is bound by the circuit court's factual findings if any evidence supports the findings."). "This same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases." Wilson, 345 S.C. at 6, 545 S.E.2d at 829. The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error, which results in prejudice to the defendant. State v. Hamilton, 344 S.C. 344, 353, 543 S.E.2d 586, 591 (Ct. App. 2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

LAW/ANALYSIS

I. Admission of Prior Bad Acts

Edwards contends the trial judge erred in admitting evidence of prior acts of sexual misconduct, arguing the evidence did not constitute a common scheme or plan under Mathis and Lyle. We disagree.

The trial judge determined that based largely on State v. Mathis,[2] he would permit "some degree of testimony" relating to Edwards' alleged prior misconduct and that the probative value of the testimony outweighed the prejudice to Edwards under Rule 403 of the South Carolina Rules of Evidence.

Generally, South Carolina law precludes evidence of prior crimes or other bad acts to prove the defendant's guilt for the crime charged. State v.

[2] State v. Mathis, 359 S.C. 450, 597 S.E.2d 872 (Ct. App. 2004).

Pagan, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006); State v. Mathis, 359 S.C. 450, 462, 597 S.E.2d 872, 878 (Ct. App. 2004); see also State v. Beck, 342 S.C. 129, 135, 536 S.E.2d 679, 682 (2000) (finding that evidence of prior crimes or bad acts is inadmissible to prove bad character of defendant or that he acted in conformity therewith). Such evidence is admissible, however, when it tends to establish "a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others." State v. Lyle, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923); see also Rule 404(b), SCRE.

The common scheme or plan exception is commonly applied in cases of sexual assault where conduct both before and after the acts charged is held admissible to show "continued illicit intercourse between the same parties." Mathis, 359 S.C. at 879, 597 S.E.2d at 463 (citing State v. Weaverling, 377 S.C. 460, 469, 523 S.E.2d 787, 791 (Ct. App. 1999)). In Mathis, the court admitted evidence of three earlier assaults on the victim where "all [three were] attempted in the same manner and under similar circumstances." Id. at 879, 597 S.E.2d at 464. "Overall, the three prior incidents of sexual misconduct by Mathis show the same illicit conduct with the victim over the course of the nine months prior to [the date of the charged incident]." Id. at 880, 597 S.E.2d at 464-65.

In the present case, we find the admission of evidence of prior bad acts is consistent with the exceptions found in Lyle and particularly in Mathis. Edwards' prior acts occurred over an approximately ten-month span with the same victim and always when the victim's mother was at work. The conduct began with inappropriate touching, the removal of the victim's clothes, and finally escalated to sexual intercourse. Edwards also told the victim to "keep this a secret between me and you" and that he would "buy [her] things" to keep her quiet. These acts constitute a "continued illicit intercourse between the same parties." See Mathis, 359 S.C. at 879, 597 S.E.2d at 463. Additionally, we agree with the trial judge that the probative value of the alleged prior bad acts outweighs the prejudicial effect of admitting the evidence.

II. Denial of Motion for Mistrial

Edwards argues the trial judge erred in denying his motion for a mistrial where the jury improperly heard evidence that Edwards had hit his wife. We disagree.

The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005); State v. Rowlands, 343 S.C. 454, 458, 539 S.E.2d 717, 719 (Ct. App. 2000). Granting of a mistrial is a serious and extreme measure which should only be taken when the prejudice can be removed no other way. Stanley, 365 S.C. at 34, 615 S.E.2d at 460. "Generally, a curative instruction to disregard the testimony is deemed to have cured any alleged error." State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005); State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 850 (Ct. App. 1999).

The trial judge found the victim's statement that she "heard he [Edwards] had been hitting [her] mother" was "a classic non-hearsay statement because it's not offered for the truth of the matter asserted." We agree. The victim's statement went to her state of mind and was not offered to establish that Edwards had actually ever hit her mother. It was offered to explain why the victim behaved as she did.[3] Consequently, the statement was admissible.

Furthermore, we find that any prejudice to Edwards was cured by the judge's curative instruction. The jury was instructed to "disregard the last statement given by [the] witness in response to a question that was asked of her," and the trial resumed. The instruction was simple and refrained from reiterating or emphasizing the statement as much as possible. Even though the trial judge noted Edward's continuing objection, we find the instruction

[3] The trial judge found this statement was not intentionally elicited by the prosecution.

cured any alleged error. We can discern no abuse of discretion in the judge's denial of Edwards' motion for mistrial.

III. Admission of Threats Against a Witness

Edwards argues the trial judge erred in admitting evidence of alleged threats against the victim. We disagree.

This appears to be a novel issue to South Carolina, as we have been unable to locate any cases affirming the introduction of such threats into evidence. There are cases, however, addressing the subject but disallowing the evidence, primarily because the threats could not be directly attributed to the defendant. The first such case was State v. Rogers, 96 S.C. 350, 80 S.E. 620 (1914), in which the trial court admitted into evidence an unsigned letter threatening one of the state's witnesses. The defendant's conviction was reversed, and in doing so the court stated,

> [h]is Honor should not have admitted in evidence the letter complained of in the first exception . . . without connecting the defendant in some manner with it. It would have been better to require the State then and there after it was admitted to connect the defendant with it, and upon failure to do so to have ruled it out.

Id. at 352, 805 S.E.2d at 621. Similarly, in Mincey v. State, 314 S.C. 355, 368, 444 S.E.2d 510, 511 (1994), the court concluded it was error to allow closing argument about threats or dangers to witnesses unless there was evidence that connected the defendant to such threats.

These cases seem to indicate, without so holding, that had the threats been connected to the defendant they would have been appropriately admitted into evidence. Obviously, such threats and other attempts to intimidate witnesses can and do result in criminal charges pursuant to section 16-9-340 of the South Carolina Code (Rev. 2003). See State v. Preslar, 364 S.C. 466, 613 S.E.2d 381 (Ct. App. 2005) (affirming defendant's conviction

for intimidating victim/witness in connection with his trial for criminal sexual conduct).

Lacking explicit precedent in this state, we turn to other jurisdictions to seek guidance. In doing so, we find many other jurisdictions, particularly federal courts, including the Fourth Circuit Court of Appeals, have addressed the issue of the admissibility during the trial of threats against a witness made by the defendant. The federal court cases generally conclude such threats indicate the defendant's "consciousness of guilt" and are therefore admissible pursuant to Rule 404(b) of the Federal Rules of Evidence.[4] See U.S. v. Van Metre, 150 F.3d 339, 352 (4th Cir. 1998); U.S. v. Guerrero-Cortez, 110 F.3d 647, 652 (8th Cir. 1997) (acknowledging that "[a]n effort to intimidate a witness tends to show consciousness of guilt"); U.S. v. Gatto, 995 F.2d 449, 454-55 (3d Cir. 1993) (holding that evidence of threats or intimidation of a witness is admissible under Rule 404(b) to show consciousness of guilt); U.S. v. Maddox, 944 F.2d 1223, 1230 (6th Cir. 1991) ("[S]poliation evidence, including evidence that the defendant threatened a witness, is generally admissible because it is probative of consciousness of guilt."); U.S. v. Mickens, 926 F.2d 1323, 1329 (2d Cir. 1991) (holding that an effort to intimidate a witness is relevant to the issue of the defendant's state of mind

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[4] "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident . . . ." Fed. R. Evid. 404(b). Rule 404(b) of the South Carolina Rules of Evidence is similar to the federal rule, although as indicated by the reporter's comments, our state rule is slightly more restrictive regarding for what purposes evidence of other bad acts may be introduced. It provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE.

and admissible under Rule 404(b)); U.S. v. Pina, 844 F.2d 1, 9 (1st Cir. 1988) (holding that defendant's threats against adverse witness is probative because it shows "that the defendant is willing to go to extreme measures to exclude relevant evidence from trial").

Many state courts also permit the admission of evidence of threats against a witness. See People v. Iannone, 769 N.Y.S.2d 676, 678 (2003) ("Where, as here, there is some evidence connecting defendant to those threats, testimony concerning the threats is admissible on the issue of consciousness of guilt."); State v. Soke, 663 N.E.2d 986, 1001 (Ohio Ct. App. 1995) ("[W]e note that evidence of threats or intimidation of witnesses reflects a consciousness of guilt and is admissible as admission by conduct."); State v. Hicks, 428 S.E.2d 167, 177 (N.C. 1993) (overruled on other grounds by State v. Buchanan, 543 S.E.2d 823 (N.C. 2001)) ("An attempt by a defendant to intimidate a witness in an effort to prevent the witness from testifying or to induce the witness to testify falsely in his favor is relevant to show the defendant's awareness of his guilt."); Ransom v. State, 920 S.W.2d 288, 299 (Tex. Crim. App. 1994) (holding criminal acts designed to reduce the likelihood of conviction, including threats against witnesses, are admissible under Rule 404(b) as showing "consciousness of guilt"); People v. Lucas, 603 N.E.2d 460, 486 (Ill. 1992) ("[E]vidence of a plan to eliminate witnesses is admissible to show a consciousness of guilt where the scheme is connected to the defendant . . . ."); Bain v. State, 521 S.E.2d 832, 835 (Ga. Ct. App. 1999) (admitting evidence of defendant's threats against prosecution witness as "indicating a consciousness of guilt"); Ragland v. Com., 434 S.E.2d 675, 679 (Va. Ct. App. 1993) (quoting McMillan v. Com., 50 S.E.2d 428, 430 (Va. 1948)) ("Evidence that a defendant 'procured, or attempted to procure, the absence of a witness, or to bribe or suppress testimony against him, is admissible, as it tends to show the unrighteousness of the defendant's cause and a consciousness of guilt.'"); and People v. Pinholster, 824 P.2d 571, 611 (Cal. 1992) (admitting evidence of threatening phone call to prosecution witness as showing "consciousness of guilt").

While the precedents from other jurisdictions are not controlling, we find them persuasive and in this case elect to adopt their analysis. Just as conflicting statements and attempts to flee are indicative of "guilty

knowledge and intent,"[5] so too are the threats communicated here. Consequently, the trial judge did not err in admitting the evidence regarding threats by Edwards against the victim/witness.

We find the trial judge did not err in admitting prior acts of sexual conduct, denying a mistrial, and admitting evidence of threats against the victim. The decision of the trial judge is accordingly

AFFIRMED.

HEARN, C.J., and GOOLSBY, J., concur.

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[5] Town of Hartsville v. Munger, 93 S.C. 527, 529, 77 S.E. 219, 219 (1913); see also State v. Walker, 366 S.C. 643, 655, 623 S.E.2d 122, 128 (Ct. App. 2005) ("Unexplained flight is admissible as indicating consciousness of guilt, for it is not as likely that one who is blameless and conscious of that fact would flee.").

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Vaughn Development, Inc., Respondent,

v.

Westvaco Development Corporation, Appellant.

Appeal From Berkeley County
Roger M. Young, Circuit Court Judge

Opinion No. 4214
Heard February 7, 2007 – Filed March 12, 2007

REVERSED

G. Dana Sinkler, of Charleston; for Appellant.

Frank M. Cisa, of Mt. Pleasant; for Respondent.

STILWELL, J.: Vaughn Development, Inc. filed this breach of contract action against Westvaco Development Corporation. A jury awarded Vaughn Development $37,492.24, and the trial court awarded prejudgment interest. Westvaco appeals the award of prejudgment interest. We reverse.

FACTS

In 1999, Vaughn Development[1] purchased a 19 acre tract of land in Berkeley County from Westvaco for the purpose of developing the tract into single family lots. The contract provided, in part:

> That water, sanitary sewer, storm sewer and/or drainage outfalls are or shall be installed and operational within the road right-of-way adjacent to the boundary of the Property at no cost or expense to the Purchaser; that such utility installations are or shall be adequate and sufficient to provide such quantities, pressures, and capacities as will permit the utilization of the Property as herein contemplated, and that Purchaser shall be entitled to obtain, at Purchaser's expense, necessary water and sanitary sewer taps after payment of impact fees, if any, tap-on fees, and user charges as are normally and uniformly imposed by the utility companies or governmental agencies supplying such services[.]

Steve Vaughn, President of Vaughn Development, testified that Joe Collins of Westvaco assured him that Westvaco would pay for the sewer installation. Collins denied making any such assurance.

Vaughn Development hired Superior Utilities, Inc. to install two sewer mains and manholes and four service crossings at a cost of $88,691. Vaughn Development requested reimbursement from Westvaco for this amount by letter dated September 9, 2002. The letter included Superior Utilities' cost detail. Westvaco responded by stating it would pay only $18,746.12 for the sewer work, which represented the cost of one sewer main based on Superior Utilities' cost detail. The jury awarded Vaughn Development $37,492.24, a

[1] Vaughn Development is a successor in interest under the contract between Westvaco and Vaughn Homes, Inc.

sum equivalent to the cost of two sewer mains. The court awarded Vaughn Development prejudgment interest. Westvaco appeals.

LAW/ANALYSIS

Westvaco argues the trial court erred in awarding prejudgment interest because the measure of recovery could not have been determined at the time the claim arose. We agree.

Historically, the recovery of prejudgment interest was severely limited. Michael S. Knoll, A Primer on Prejudgment Interest, 75 Tex. L. Rev. 293, 294-98 (1996). "The roots of prejudgment interest law are based on centuries-old moral and religious proscriptions against interest and loans. Both the ancient Israelites and Greeks viewed the taking of any interest as usurious." Martin Oyos, Comment, Prejudgment Interest in South Dakota, 33 S.D. L. Rev. 484, 485-86 (1988). With the shift from agrarian economies in the common law European countries, and the emphasis in this country from the beginning on the mercantile influence, prejudgment interest has become more favored and the courts now allow prejudgment interest on liquidated amounts. James L. Bernard, Note, Prejudgment Interest and the Copyright Act of 1976, 5 Fordham Intell. Prop. Media & Ent. L.J. 427, 433 (1995). There has been, however, "growing dissatisfaction with the distinction between liquidated and unliquidated damages. As a result, many jurisdictions abandoned it. . . . With the breakdown and rejection of the distinction between liquidated and unliquidated damages, courts established more liberal rules for awarding prejudgment interest. Some courts looked to whether the claim was 'ascertainable.'" Id. at 434-36. This liberalization of prejudgment law has even led to recovery of prejudgment interest for personal injury damages, usually calculable from the time of a settlement offer or demand. See generally Diane M. Allen, Annotation, Validity and Construction of State Statute or Rule Allowing or Changing Rate of Prejudgment Interest in Tort Actions, 40 A.L.R.4th 147 (1985) (cases and statutes cited therein).

Turning to South Carolina, we find an initial similar trend. In the early part of the last century in South Carolina, the law regarding prejudgment

interest was strict. The failure of the party owing money to acknowledge a sum owed prevented a plaintiff from recovering prejudgment interest; the amount due had to be acknowledged and liquidated. Wakefield v. Spoon, 100 S.C. 100, 106, 84 S.E. 418, 420 (1915). However, even under this specific rule, the law surrounding prejudgment interest was muddled. Goddard v. Bulow, 10 S.C.L. (1 Nott & McC.) 45, 56 (1818) ("It is not a little extraordinary that a question of every day's occurrence, should have remained to this time unsettled . . . ."). Also similar to the trend in the United States, South Carolina liberalized the rules for awarding prejudgment interest. The governing statute looks to whether the claim is ascertainable. See S.C. Code Ann. § 34-31-20(A) (Supp. 2006) ("In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law . . . ."). "In South Carolina, interest may also be awarded in equity cases, conversion cases, and property cases." 11 S.C. Juris. Damages § 8 (1992).

In recent years, our supreme court has explained that prejudgment interest is permitted by operation of law "if the sum is certain or capable of being reduced to certainty." Smith-Hunter Constr. Co. v. Hopson, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005). In Butler Contracting, Inc. v. Court Street, LLC, 369 S.C. 121, 631 S.E.2d 252 (2006) our supreme court explained:

> Stated another way, prejudgment interest is allowed on a claim of liquidated damages; i.e., the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties. Prejudgment interest is not allowed on an unliquidated claim in the absence of an agreement or statute. The fact that the amount due is disputed by the opposing party does not render the claim unliquidated for the purposes of an award of prejudgment interest.

Butler, 369 S.C. at 133, 631 S.E.2d at 258-59 (internal citations omitted).

Despite Smith-Hunter and Butler, the issue of prejudgment interest remains confusing and is often litigated. Accordingly, as an intermediate appellate court, we are unwilling to go beyond these cases most recently decided by our supreme court. Vaughn Development relies on these cases to support the award of prejudgment interest. We find an award of prejudgment interest in this case would expand the interpretation of 'ascertainable' beyond that defined in Smith-Hunter and Butler Contracting.

In Smith-Hunter, our supreme court affirmed an award of prejudgment interest in a breach of contract action brought by a builder against homeowners. 365 S.C. at 128-130, 616 S.E.2d at 421-22. The court found "[t]he measure of recovery was fixed by conditions existing at the time the claim arose. The costs of the work completed by [the builder] at the time of [the homeowners'] breach of contract were established via [the builder's] invoices." Id. at 128, 616 S.E.2d at 421.

In Butler, a subcontractor sought to recover in an action to enforce a mechanic's lien. 369 S.C. at 125-27, 631 S.E.2d at 254-55. Our supreme court reversed the trial court's denial of prejudgment interest finding although there was an obvious dispute as to the amount owed the subcontractor, "[t]he proper test for determining whether prejudgment interest may be awarded is whether the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose." Id. at 133, 631 S.E.2d at 259.

Unlike Smith-Hunter and Butler Contracting, the measure of damages was not fixed in this case. There was an intermediate question that had to be decided before the measure of damages could be ascertained. Under the terms of the contract, the scope of the work required was not certain and the damages could only be measured after that determination was made. The contract provided that the sewer installation "shall be adequate and sufficient to provide such quantities, pressures, and capacities as will permit the utilization of the Property as herein contemplated . . . ." We find the contract is not sufficiently specific to determine the extent of work required by its terms. In addition to the extent of the work, the parties disputed the methods of installation and whether Westvaco would install the sewer or whether

Vaughn Development would hire a subcontractor to do the necessary work. These issues were not dictated in the contract. The uncertainty regarding the extent and nature of the construction required under the terms of the contract is the primary factor that distinguishes this case from those relied upon by Vaughn Development.

Because we find the measure of recovery was not fixed at the time the claim arose, we find the trial court erred in awarding prejudgment interest. Accordingly, the award of prejudgment interest is

REVERSED.

GOOLSBY and SHORT, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Mosseri, Mosseri, Castro, Respondent,

v.

Austin's at the Beach, Inc. and Paris, Inc., Defendants,

Of whom Austin's at the Beach is the Appellant.

Appeal From Horry County
John L. Breeden, Circuit Court Judge

Opinion No. 4215
Submitted January 1, 2007 – Filed March 12, 2007

REVERSED

Richard L. Whitt, Austin, Lewis & Rogers, P.A., of Columbia, for Appellant.

Mosseri, Mosseri, Castro, *pro se*, Respondents.

WILLIAMS, J.: Austin's at the Beach (Austin's) appeals the circuit court's ruling affirming the magistrate's order retaining jurisdiction over causes of action brought by the plaintiff landlord (Mosseri) against the defendant tenant (Austin's) and over the counterclaims brought by Austin's against Mosseri. We reverse.

FACTS

Mosseri owns commercial property in Myrtle Beach, South Carolina, which has been used as a restaurant. Mosseri leased the property to Paris, Inc., which later assigned the lease to Austin's. Austin's operated a restaurant on the property for several years. Rent for the property was payable in two installments of $14,000 due March 1 and September 1 of each year. Austin's made a partial payment of $6,999 on September 1, 2000, leaving a balance of $7,001. Austin's also failed to pay the water bill.

Austin's claims it was justified in not paying the remaining rent on the property because it was in deplorable condition. Austin's alleges the restaurant was electrically unsafe, was not heated or cooled, and had plumbing which was in a state of disrepair. Austin's also avers that Mosseri placed a "for rent" sign in front of the restaurant, causing customers to be confused and ultimately hurting the business. Consequently, on November 30, 2000, Austin's vacated the premises claiming it was constructively evicted.

On February 13, 2001, Mosseri filed the underlying suit in magistrate's court for breach of the lease contract, demanding damages under the $7,500 jurisdictional limit. Austin's counterclaimed alleging several causes of action including: (1) three causes of action for constructive eviction, seeking damages of $23,330, $5,835.50, and an amount to be determined; (2) conversion of electrical service; (3) two causes of action for unjust enrichment; (4) loss of business revenue totaling $8,500; and (5) failure to return the security deposit.

Austin's attempted to remove the case to circuit court pursuant to Section 22-3-30 of the South Carolina Code (Supp. 2005) because two of

Austin's counterclaims were for more than the $7,500 jurisdictional limit for magistrate's court. The magistrate's court disagreed with Austin's and retained jurisdiction pursuant to Section 22-3-10 (10) of the South Carolina Code (Supp. 2005). Austin's filed a timely motion to reconsider, which was denied by the magistrate's court. Austin's then filed a timely appeal to the circuit court. The circuit court affirmed the magistrate's prior rulings. This appeal follows.

DISCUSSION

Austin's claims the circuit court erred in affirming the magistrate's order retaining jurisdiction pursuant to Section 22-3-10 (10) of the South Carolina Code (Supp. 2005). We agree.

The magistrate's court has concurrent jurisdiction with the circuit court in contract actions for the recovery of money only, if the sum claimed does not exceed $7,500. S.C. Code Ann. § 22-3-10 (1) (Supp. 2005). This jurisdictional limit does not apply to "matters between landlord and tenant and the possession of land as provided in Chapters 33 through 41 of Title 27 . . . ." S.C. Code Ann. § 22-3-10 (10) (Supp. 2005). The magistrate's court will retain jurisdiction in cases involving landlord and tenant and the possession of land even when any counterclaim exceeds $7,500. S.C. Code Ann. § 22-3-10 (12) (Supp. 2005). In cases that do not fall under Section 22-3-10 (12) of the South Carolina Code "[w]hen a counterclaim is filed which if successful would exceed the civil jurisdictional amount as provided in Section 22-3-10, then the initial claim and counterclaim must be transferred to the docket of the common pleas court for that judicial circuit." S.C. Code Ann. § 22-3-30 (Supp. 2005).

Chapters 33 through 41 of title 27 of the South Carolina Code deal with creation, construction and termination of leasehold estates, ejectment of tenants, rent, undertenants of life tenants, and the Residential Landlord Tenant Act (which is not applicable to non residential leaseholds). The common theme of chapters 33 through 41 is possession of the property.

Likewise, possession of the property must be in dispute for the case to fall under Section 22-3-10 (10) of the South Carolina Code. Austin's argues that possession of the property is not an issue in any of the causes of action. In fact, Austin's does not claim possession and Mosseri does not claim that Austin's is in wrongful possession of the property. Austin's moved out of the property when it felt it had been constructively evicted.

While it is true this dispute is between a landlord and a tenant, Section 22-3-10 (10) specifically lists an additional requirement for the magistrate's court to retain jurisdiction: the dispute must involve a "landlord and tenant and the possession of land." (emphasis added). Because the statute's language is clear and unambiguous and conveys a clear and definite meaning, there is no need for statutory interpretation by this Court. See Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001).

In this case, the two counterclaims that exceed the $7,500 jurisdictional limit clearly do not involve the possession of land as provided in chapters 33 through 41 of Title 27. The constructive eviction cause of action merely seeks monetary damages caused by Mosseri's alleged failure to provide the tenant with property which was safe for the purposes for which it was leased. Austin's was not in possession of the property and did not seek possession of the property when this case was filed. The other cause of action, for loss of business revenue, is likewise not related to possession of the property.

Because possession of property was never an issue in the underlying case, nor in the counterclaims, and Austin's counterclaimed for amounts in excess of the magistrate's court's jurisdictional limit as provided in Section 22-3-10 of the South Carolina Code (Supp. 2005), this case should have been transferred to the court of common pleas pursuant to Section 22-3-30 of the South Carolina Code (Supp. 2005).

Accordingly, the circuit court's decision is

REVERSED.[1]

HEARN, C.J., and KITTREDGE, J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina District Council of Assemblies of God, Ginger Bruce, Kathy Switzer and Gerald Rollins, Respondents,

v.

River of Life International Worship Center, Sam J. Schneider, Arabella Gaines, Eugene Morvan, Billy Pondexter, Carman Sanders, Tommy Taylor and Kathy Miller, Appellants.

Appeal From Richland County
James W. Johnson, Jr., Circuit Court Judge

Opinion No. 4216
Heard January 9, 2007 – Filed March 12, 2007

AFFIRMED

Rolf Mouin Baghdady, of Chapin; for Appellant.

William R. Calhoun, Jr., and William O. Sweeny III, of Columbia; for Respondents.

GOOLSBY, J.: This appeal arises from a declaratory judgment action involving a property dispute between the South Carolina District Council of the Assemblies of God and a local congregation that was formerly affiliated with the General Council of the Assemblies of God. In the appealed order, the trial court ruled (1) real and personal property belonging to River of Life International Worship Center before its attempted disaffiliation became the property of the General Council; and (2) in the alternative, the District Council was entitled to the property. Either way, the trial court held the local congregation, River of Life International Worship Center, is not entitled to the property. River of Life, its minister Sam J. Schneider, and several of its members (collectively "Defendants") appeal. We affirm.

FACTS

In 1988, Christian Life Assembly, an Assemblies of God congregation, established a mission church as an outreach to the northeast section of Columbia, South Carolina. The mission church, initially named Gihon Christian Assembly of God, initially met in various locations, including a renovated garage, a daycare center, and the Spring Valley theater. In 1994, the mission church, which in 1991 was renamed Northeast Christian Assembly of God, purchased property on which it later built a worship facility. Sometime later, Schneider, who previously served as the minister of an Assemblies of God congregation in Aiken, became minister of Northeast Christian Assembly.[1]

[1] The brief filed by counsel for the respondents states Schneider became minister of Northeast Christian Assembly "[i]n or around 1999"; however, the record contains a mortgage dated May 7, 1997, that Schneider, in his capacity as minister of the church, executed on behalf of the Assembly.

In 1999, Northeast Christian Assembly of God, having formerly been under the supervision of the District Council, successfully applied for affiliation with the General Council of the Assemblies of God.[2] In 2001, Northeast Christian Assembly of God, with the District Council's approval, changed its name to River of Life International Worship Center.

Although Schneider initially supported district-wide activities sponsored and planned by the District Council, his involvement, as well as that by members of River of Life, in these programs began to decline in 2002. On August 11, 2003, Steve Brown, the District Superintendent, wrote to Schneider expressing his concerns about the decreased participation and suggesting the two meet over breakfast. Schneider answered with a letter in which he made statements that caused Brown to question Schneider's loyalty to the Assemblies of God[3] and prompted Brown to send another letter to Schneider. In Brown's second letter, dated August 18, 2003, Brown reminded Schneider of the commitment Schneider made when he applied to become an Assemblies of God minister and advised that a meeting between the two of them was now "mandatory."

In response to Brown's second attempt to arrange a meeting, Schneider sent an undated letter received by the District Council on September 2, 2003,

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[2] According to the Article XI, section 2(a) of the Constitution of the South Carolina District Council of the Assemblies of God, "[g]roups of Pentecostal believers which are still in the formative stages shall be recognized as District Affiliated Assemblies" and "shall be under the supervision of the District Presbytery which shall serve as trustees thereof." This section further provides that "District Affiliated Assemblies which have matured sufficiently to accept their full share of responsibility for the maintenance of scriptural order, shall be entitled to recognition as autonomous General Council affiliated churches."

[3] In this letter, Schneider stated, "I am a Christian through and through and not Assemblies of God. The Assemblies is simply the fellowship where God has placed me."

in which he stated he renounced his ties to the Assemblies of God.[4] He further advised the District Council that River of Life would hold a business meeting after the morning service on September 21, 2003, to discuss changes in its bylaws, including a vote by the congregation regarding a proposed change in affiliation. With this letter, a copy of which was sent to the General Council of the Assemblies of God, Schneider enclosed his license as an Assemblies of God minister.

Before the District Council received this letter, however, Schneider had already met individually with members of the Management Council of River of Life about his intended change in affiliation, consulted a lawyer about whether the congregation could keep the worship facility if they followed him, and announced to the congregation in an "informal business meeting" after the Sunday service on August 31, 2003, that he was leaving the Assemblies of God to join the International Gospel Outreach, a religious organization headquartered in Alabama. During the August 31st meeting, Schneider also assured the congregation that "this building belongs to us. The district had nothing to do with this." The attendees were also advised of the business meeting on September 21, 2003, when the change in River of Life's affiliation would be put to a formal vote.

Brown received a tape recording of the meeting about the same time he received Schneider's letter of resignation. The District Council did not immediately accept Schneider's resignation because it was considering disciplinary proceedings against him and had to follow certain procedural formalities, including consultation with the General Council. Nevertheless, after reviewing the tape and Schneider's second letter, the District Council no longer considered Schneider to be "a credentialed minister in good standing," a condition necessary for River of Life's continued affiliation with the General Council.

[4] In his second and final letter, Schneider wrote the following: "As a person who entered this fellowship by my own free choice, I also, now leave by that same free choice. . . . As the apostle Paul said, 'I have finished my course.' "

After Schneider's announcement on August 31, 2003, numerous present and former parishioners of River of Life sent letters to the local congregation and to the District Council expressing their dismay about River of Life's proposed departure from the Assemblies of God. In all the letters included in the record on appeal, the writers stated they expected their contributions to River of Life would be used to further the purposes of the Assemblies of God. Several of them were pointedly critical about Schneider and the International Gospel Outreach.[5]

Notwithstanding these complaints, the business meeting took place as scheduled on September 21, 2003. The District Council did not send a representative even though Schneider, on the tape, indicated he anticipated someone from the District Council would be present and a member of the Management Council, with Schneider's approval, telephoned the District Secretary to invite the District Council officers to the meeting.[6] At the meeting, the congregation voted sixty-three to three to leave the Assemblies of God. Subsequently, the District Council initiated formal disciplinary proceedings against Schneider; and the General Council stripped him of his credentials to serve as a minister in the Assemblies of God.

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[5] For example, one writer, the plaintiff Kathy A. Switzer, who stated she made tithes and offerings to the church exceeding $42,000, blames Schneider for the congregation's decision to leave the Assemblies of God.

[6] Brown did meet with the Management Council on September 8, 2003, out of Schneider's presence. According to the handwritten minutes of that meeting, it appears Brown discussed the procedural formalities that had to be observed concerning Schneider's attempt to resign as an Assemblies of God minister. Brown also expressed his concern about River of Life's low level of participation in District Council events and his sense of betrayal about the attempt to align the congregation with the International Gospel Outreach. He further admonished the Management Council members about abiding by their own bylaws.

Since the vote to disaffiliate, the River of Life congregation has continued to occupy and possess the property. On October 15, 2003, the District Council and the three members of the congregation who remained loyal to the Assemblies of God (collectively "Plaintiffs") filed this action in the Richland County Court of Common Pleas for a declaratory judgment regarding the possession and control of River of Life's church property.

The trial court, sitting without a jury, heard the matter on the merits on June 6 and 7, 2005. By order entered August 11, 2005, the trial court granted judgment to Plaintiffs. After Defendants unsuccessfully moved to alter or amend the judgment, they filed this appeal.

LAW/ANALYSIS[7]

The trial court held, as we noted above, the property did not follow River of Life into the International Gospel Outreach denomination. Rather, the trial court held either (1) the General Council of the Assemblies of God, as the "ruling convocation and ecclesiastical head" of an hierarchical organization of which River of Life had been a part before its congregation voted to leave the Assemblies of God, was entitled to the property at issue; or (2) if not the General Council, then under the constitutions and bylaws of both the General Council and the District Council, the District Council assumed ownership of the property upon River of Life's attempt to disaffiliate. We agree with Plaintiffs that these grounds can be viewed as separate and distinct from each other; therefore, our affirmance of either one of them requires our upholding the appealed order[8] because in either case the

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[7] In their brief, Plaintiffs appear to challenge a determination by the trial court early in the litigation that this case was an equitable matter. In our view, the record supports the trial court's findings of fact irrespective of whether we apply a legal or equitable standard of review in this appeal.

[8] See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling that, if the determination of a particular issue is dispositive of an appeal, the appellate court need not review the remaining issues); Weeks v. McMillan, 291 S.C. 287, 292, 353 S.E.2d 289,

possession and ownership of the property belongs to an entity other than the River of Life congregation. We therefore address only the trial court's second holding; and based on our review of the record, we conclude the trial court correctly held the District Council was entitled to the property.[9]

The trial court found that, when Schneider surrendered his minister's credentials and announced he was leaving the Assemblies of God, River of Life no longer met the requirements for affiliation with the General Council as set forth in Article XI, section 1(a)(6) of the General Council constitution. Specifically, the trial court cited the mandate within this section that an affiliated local assembly "[m]ake provision for a pastor who is a credentialed minister in good standing with the General Council and a district council." The court also made the unchallenged determination that Brown's testimony

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292 (Ct. App. 1987) ("Where a decision is based on alternative grounds, either of which independent of the other is sufficient to support it, the decision will not be reversed even if one of the grounds is erroneous.").

[9] Defendants have also argued that the trial court should have applied a neutral principles analysis to this controversy. To the extent this argument applies to the trial court's determination that River of Life's property had reverted to the District Council upon its attempted secession from the Assemblies of God, we note that "under the 'neutral principles of law' doctrine, if the resolution of a church property dispute requires the interpretation of a religious doctrine as stated in . . . a . . . constitution, then a civil court hearing the case must defer to the authoritative ecclesiastical body's interpretation of that doctrine." 66 Am. Jur. 2d Religious Societies, § 44, at 462 (2001). Because the dispute in this case required such an interpretation, the trial court properly deferred to the opinions of the officials of the District Council and the General Council about the changes in the status of River of Life and Schneider's status as a credentialed minister in good standing.

that Schneider was not "a credentialed minister in good standing" was "an ecclesial matter" within the domain of the District Council.[10]

Defendants dispute the finding that River of Life lost its affiliation with the General Council based on River of Life's failure to have a credentialed minister in good standing, but assert only that Schneider remained in "good standing" when the congregation voted to leave the Assemblies of God because the District Council failed to accept Schneider's resignation when he tendered it. This question, however, of whether Schneider was not "a credentialed minister in good standing with the General Council and a district council" is not one for the court to decide.

In any case, it seems to us that the refusal of a governing body of a religious organization to accept a minister's resignation would not preclude a finding by that body that a pastor, particularly one who, like the minister here, left the denomination and joined another, was not "a credentialed minister in good standing" with the denomination. Indeed, we cannot imagine any circumstance under which a pastor who voluntarily departed from one denomination and joined another could remain "a credentialed minister in good standing" with the denomination from which all ties had been severed.[11]

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[10] See Bramlett v. Young, 229 S.C. 519, 537, 93 S.E.2d 873, 882 (1956) (noting "civil courts have no jurisdiction of ecclesiastical questions and controversies").

[11] Defendants contend Plaintiffs are estopped to argue that the local affiliated assembly was without a minister because the District Council never accepted Schneider's resignation. At best, this argument is conclusory in that it consists of only two sentences in their brief, cites no legal authority whatsoever, and says nothing about how the District Council's failure to accept Schneider's resignation caused Defendants to change position to their detriment. See American Sur. Co. v. Hamrick Mills, 191 S.C. 362, 373, 4 S.E.2d 308, 313 (1939) (listing the essential elements of estoppel, among them being that the party invoking the doctrine suffered a prejudicial change of position). We therefore do not address the argument. See First Sav. Bank

Based on its determination that River of Life lost its affiliation with the General Council because it no longer had "a credentialed minister in good standing" with the Assemblies of God, the trial court proceeded to find the status of River of Life became that of a district-affiliated church by operation of Article VI, Section 5 of the General Council's Bylaws, a bylaw that spells out the guidelines for minimal membership for General Council affiliated assemblies. We agree with this holding.

Article VI, Section 5 provides in pertinent part that "[i]f the minimal requirements [for affiliation of a local church with the General Council] have not been attained, the church shall revert to district affiliated status until the minimal requirements for General Council affiliation have been attained." (Emphasis added.) In addition, as the trial court noted, although this section previously required a one-year waiting period before the local assembly would revert to district-affiliated status, the General Council amended the provision in 2003 to allow the reversion to be immediate.[12]

Based on this provision, as amended, and the absence of "a credentialed minister in good standing" with the General Council, we hold the trial court correctly found River of Life had reverted to district-affiliated status and, pursuant to Article VII, section 1(b) of the bylaws of the South Carolina District Council, was thus required to "conduct all its business in accordance

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v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (deeming an issue abandoned because the appellant failed to "provide arguments or supporting authority for his assertion"). In any event, the focus was not whether River of Life had "a minister" but whether its minister was "a credentialed minister in good standing."

[12] Defendants contend in a somewhat conclusory fashion that a reversion did not instantaneously flow from a failure of a church to meet minimal requirements. The plain and unambiguous language of the bylaw, however, undermines that argument. Nowhere does the amended bylaw prescribe an amount of time that must pass before a reversion can occur.

with the Constitution and Bylaws for District Affiliated Assemblies as provided by the South Carolina District Council."[13]

The trial court then determined that, because River of Life had become a district-affiliated church, the District Council was entitled to its assets upon the congregation's decision to leave the Assemblies of God. In support of its finding, the trial court cited Article XI, section 1(b) of the Constitution and Bylaws for District Affiliated Assemblies in Affiliation with the South Carolina District Council of the Assemblies of God,[14] which provides as follows:

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[13] In their brief, Defendants asserted the maxim "equity aids the vigilant" in support of their contention that the District Council's failure to attend the September 21, 2003 meeting and to take other measures to dissuade River of Life's parishioners from voting to leave the Assemblies of God barred Plaintiffs from using the changes in River of Life's status to support the District Council's claim to the church property. This argument lacks merit. Defendants failed to explain how the District Council's alleged inaction inured to their prejudice. Cf. Harvey v. Art Metal, Inc., 247 S.C. 443, 449, 147 S.E.2d 697, 701 (1966) ("[A]n essential element of the defense of equitable estoppel is material prejudice to the party asserting the defense resulting from the act or neglect of the party against whom it is asserted.").

[14] During oral argument and in reply to Plaintiffs' argument, Defendants argued for the first time to this court that Article XI was included only in a draft or proposed document and had never been adopted. The Plaintiffs, on the other hand, in a post-hearing memorandum, designated this document as one of several that does indeed control the result here, thereby suggesting it had been adopted. Although counsel for Defendants stated he objected to the document, we found nothing in the voluminous, often confusing, record presented to this court that corroborates his assertion that an objection was made. Assuming without deciding Defendants raised this issue at trial, the trial court never addressed it in the appealed order, and Defendants failed to raise it in their motion to alter or amend. Also, Defendants do not list the issue as among the Statement of Issues on Appeal. See Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the

> In the event this local assembly should at any time cease to function as an Assemblies of God church under the jurisdiction of the South Carolina District Council of the Assemblies of God, . . . then the tangible property belonging to said church, real or personal, and all the interest of said church, real or equitable, in any and all property shall be and thereupon become the property of the South Carolina District of the Assemblies of God . . . .

We agree with the trial court that the District Council is entitled to the disputed property. Under the above-quoted provisions, when the congregation voted to disaffiliate from the Assemblies of God, River of Life "cease[d] to function as an Assemblies of God church under the jurisdiction of the District Council" and the church property "thereupon [became] the property of the South Carolina District of the Assemblies of God."[15]

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statement of issues on appeal."); Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (holding that, when the trial court does not explicitly rule on an issue at trial and the appellant fails to move to alter or amend the judgment on that ground, the issue is not properly before appellate court and should not be addressed).

[15] We do not overlook the rights provided in Article XI, section 1(c), of the constitution of the General Council of the Assemblies of God, including "the right to acquire and hold title to property, either through trustees or its corporate name as a self-governing unit." This provision, however, does not override other relevant provisions in the constitution of the General Council or those included in other governing documents of the General Council or the District Council. Cf. State v. Prince, 335 S.C. 466, 472, 517 S.E.2d 229, 232 (Ct. App. 1999) ("[T]he court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law.") (citing South Carolina Coastal Council v. South Carolina State Ethics Comm'n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991)). Here, the rights at issue are granted only to "each General

AFFIRMED.

STILWELL and SHORT, JJ., concur.

Council affiliated assembly." (Emphasis added.) When Schneider severed his ties with the Assemblies of God, River of Life was no longer affiliated with the General Council and, consequently, lacked the requisite status to exercise the rights of self-government.