The Supreme Court of South Carolina

RE: Administrative Suspensions for Failure to Comply with Continuing Legal Education Requirements

---

O R D E R

The South Carolina Commission on Continuing Legal Education and Specialization has furnished the attached list of lawyers who have failed to file reports showing compliance with continuing legal education requirements, or who have failed to pay the filing fee or any penalty required for the report of compliance, for the reporting year ending in February 2014. Pursuant to Rule 419(d)(2), SCACR, these lawyers are hereby suspended from the practice of law. They shall surrender their certificates to practice law in this State to the Clerk of this Court by May 23, 2014.

Any petition for reinstatement must be made in the manner specified by Rule 419(e), SCACR. Additionally, if they have not verified their information in the Attorney Information System, they shall do so prior to seeking reinstatement.

These lawyers are warned that any continuation of the practice of law in this State after being suspended by this order is the unauthorized practice of law, and will subject them to disciplinary action under Rule 413, SCACR, and could result in a finding of criminal or civil contempt by this Court. Further, any lawyer who is aware of any violation of this suspension shall report the matter to the Office of Disciplinary Counsel. Rule 8.3, Rules of Professional Conduct for Lawyers, Rule 407, SCACR.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina
April 25, 2014

LAWYERS NON-COMPLIANT
WITH THE MCLE REQUIREMENTS
FOR THE
2013-2014 REPORTING YEAR
AS OF APRIL 16, 2014

George Ross Anderson, III
G. Ross Anderson, III Law Office
407 Ravenal Road
Anderson, SC 29621

John Franklin Baker II
313 Lakewood Drive
Anderson, SC 29621
ADMINISTRATIVE SUSPENSION (3/14/14)

Paul Clarendon Ballou
Law Ofc. Of Paul C. Ballou
PO Box 7702
Columbia, SC 29202
INTERIM SUSPENSION (5/23/13)

Daniel A. Beck
Asbill & Beck
233 Austin Lane
Saluda, NC 28773
INTERIM SUSPENSION (9/2/11)

Christopher C. Booberg
The Joel Bieber Firm
7 East Franklin Street
Richmond, VA 23219
ADMINISTRATIVE SUSPENSION (3/14/14)

Rebecca Preston Burke
2154 Coker Avenue
Charleston, SC 29412

Alton P. Clark
516 Innsbrook Drive
Columbia, SC 29210

Andrew Payne Copenhaver
Joy Law Firm, LLP
5861 Rivers Avenue
PO Box 62888
North Charleston, SC 29406

Jerry P. Davidian
PO Box 1124
Telluride, CO 81435

Graydon Halls Ellis
2140 Royall Drive
Winston-Salem, NC 27106
ADMINISTRATIVE SUSPENSION (3/14/14)

Marvin Gene Frierson
4279 Savannah Drive
East Point, GA 30349
ADMINISTRATIVE SUSPENSION (3/14/14)

Shaun White Garrison
229 Coinbow Circle
Mount Pleasant, SC 29464

Sallie Small Holder
Taylor Foley, LLC
926 Richter Way
Mount Pleasant, SC 29464

Parker Edwards Howle
Howle Law Firm
PO Box 186
Darlington, SC 29540

John A. Jackson
Law Office of John A. Jackson, PC
1405 Remount Road
North Charleston, SC 29406

Shawn Keith Jacque
Daimler Trucks North American, LLC
2477 Deerfield Drive, FM-1XA
Fort Mill, SC 29715

Horace Anderson Jones, Jr.
Law Ofc. Of Horace A. Jones, Jr.
141 Oakland Avenue
Rock Hill, SC 29730
INTERIM SUSPENSION (3/11/13)

Matthew Jeffrey Lester
5925 Carnegie Boulevard, Suite 200
Charlotte, NC 28209
ADMINISTRATIVE SUSPENSION (3/14/14)

Christine Marie Locay
Medac
2865 NE 26th Street
Fort Lauderdale, FL 33305
ADMINISTRATIVE SUSPENSION (3/14/14)

Ernessa Brawley McKie
PO Box 1551
Columbia, MD 21044

Robert Gordon Menna
12000 Market Street, 186
Reston, VA 20190

Beth K. Palin
504 Spruce Street
Bristol, TN 37620

Amy Marie Parker
Amy M. Parker, LLC, Attorney at Law
419 Vardry Street
Greenville, SC 29601
INTERIM SUSPENSION (5/28/13)

Alice Jefferies Perkins
940 Glenn Street, Suite 402
West Columbia, SC 29169
ADMINISTRATIVE SUSPENSION (3/14/14)

Frederick Scott Pfeiffer
Gleaton Wyatt Hewitt, PA
935 South Main Street, Suite 203
Greenville, SC 29601
INTERIM SUSPENSION (6/15/12)

Marshall Usher Rogol
105 Exchange Street
Darlington, SC 29532
INTERIM SUSPENSION (8/28/13)

Gus C. Smith
SC Legal Services
PO Box 1231
Conway, SC 29528
ADMINISTRATIVE SUSPENSION (3/14/14)

Michael Socha
2 Carillon Court
Wilmington, DE 19803

Robert Paul Taylor
Taylor Law Firm, LLC
PO Box 63522
North Charleston, SC 29419
INTERIM SUSPENSION (2/19/14)

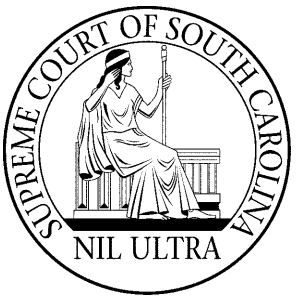
Samuel Oscar Thompson II
208 Olde Springs Road
Columbia, SC 29223
ADMINISTRATIVE SUSPENSION (3/14/14)

Justin John Trapp
875 Adden Street
Orangeburg, SC 29115
ADMINISTRATIVE SUSPENSION (3/14/14)

Brent Andrew Tucker
2048 Mcdowell Street
Augusta, GA 30904
ADMINISTRATIVE SUSPENSION (3/14/14)

William Franklin Warren III
Warren Law Group
128 Millport Circle, #200
Greenville, SC 29607
INTERIM SUSPENSION (12/18/13)

Dan Wyatt
Foltz Martin Hudson & Knapp, LLC
Five Piedmont Center, Suite 750
3525 Piedmont Road, NE
Atlanta, GA 30305
ADMINISTRATIVE SUSPENSION (3/14/14)



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 17
April 30, 2014
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

PETITIONS – UNITED STATES SUPREME COURT

PETITIONS FOR REHEARING

EXTENSION TO FILE PETITION FOR REHEARING

27380 - Sarah Dawkins v. Union County Hospital Granted until May 9, 2014

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

PETITIONS FOR REHEARING

5207-Ted E. Abney v. The State	Pending
5208-Amber Johnson v. Stanley Alexander	Pending
5209-The State v. Tyrone Whatley	Denied 04/25/14
5211-CoastalStates Bank v. Hanover Homes of South Carolina	Pending
5214-The State v. Alton Wesley Gore, Jr.	Pending
5216-State v. Cesar Portillo	Pending
2014-UP-034-State v. Benjamin J. Newman	Pending
2014-UP-074-Tim Wilkes v. Horry County	Pending
2014-UP-076- Robert H. Breakfield v. Mell Woods	Pending
2014-UP-082-W. Peter Buyck, Jr. v. William Jackson	Pending
2014-UP-084-Douglas E. Stiltner v. USAA Casualty Ins. Co.	Pending
2014-UP-088-State v. Derringer Young	Pending
2014-UP-094-Thaddeus Segars v. Fidelity National	Pending
2014-UP-095-Patricia Johnson v. Staffmark	Pending
2014-UP-103-The State v. David Vice	Pending
2014-UP-110-State v. Raymond Franklin	Pending
2014-UP-111-In the matter of the care and treatment of Dusty Cyr	Pending
2014-UP-113-The State v. Jamaal Hinson	Pending
2014-UP-114-Carolyn M. Powell v. Ashlin B. Potterfield	Pending
2014-UP-117-Scott Lemons v. The McNair Law Firm	Denied 04/25/14
2014-UP-121-Raymond Haselden v. New Hope Church	Pending

2014-UP-122-Ayree Henderson v. The State Pending

2014-UP-123-Trumaine Moorer v. Norfolk Southern Railway Pending

2014-UP-126-Claudia Bryant-Perreira v. IMSCO/TFE Logistics Group Pending

2014-UP-128-3 Chisolm Street Homeowners v. Chisolm Street Partners Pending

2014-UP-132-State v. Ricky Bowman Pending

2014-UP-143-State v. Jeffrey Dodd Thomas Pending

2014-UP-156-State v. Andrew James Harrelson Pending

2014-UP-158-Mell Woods v. John D. Hinson (2) Pending

2014-UP-159-City of Columbia v. William K. Wilson Pending

2014-UP-160-State v. Charles M. Harris Pending

2014-UP-161-Horry County v. Aquasino Partners Pending

2014-UP-167-Statea v. David Gerrard Johnson Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

4750-Cullen v. McNeal Pending

4764-Walterboro Hospital v. Meacher Pending

4832-Crystal Pines v. Phillips Pending

4888-Pope v. Heritage Communities Pending

4895-King v. International Knife Pending

4909-North American Rescue v. Richardson Pending

4956-State v. Diamon D. Fripp Pending

4960-Justin O'Toole Lucey et al. v. Amy Meyer Pending

4973-Byrd v. Livingston Pending

4975-Greeneagle Inc. v. SCDHEC	Pending
4979-Major v. City of Hartsville	Pending
4995-Keeter v. Alpine Towers International and Sexton	Pending
4997-Allegro v. Emmett J. Scully	Pending
5008-Willie H. Stephens v. CSX Transportation	Pending
5010-S.C. Dep't of Transportation v. Janell P. Revels et al.	Pending
5013-Geneva Watson v. Xtra Mile Driver Training	Pending
5016-The S.C. Public Interest Foundation v. Greenville Cty. et al.	Pending
5017-State v. Christopher Manning	Pending
5019-John Christopher Johnson v. Reginald C. Lloyd et al.	Pending
5020-Ricky Rhame v. Charleston Cty. School District	Pending
5022-Gregory Collins v. Seko Charlotte and Nationwide Mutual	Pending
5025-State v. Randy Vickery	Pending
5031-State v. Demetrius Price	Pending
5032-LeAndra Lewis v. L.B. Dynasty	Pending
5041-Carolina First Bank v. BADD	Pending
5052-State v. Michael Donahue	Pending
5053-State v. Thomas E. Gilliland	Pending
5055-Hazel Rivera v. Warren Newton	Pending
5059-Kellie N. Burnette v. City of Greenville et al.	Pending
5060-State v. Larry Bradley Brayboy	Pending

5061-William Walde v. Association Ins. Co.	Pending
5062-Duke Energy v. SCDHEC	Pending
5065-Curiel v. Hampton Co. EMS	Pending
5071-State v. Christopher Broadnax	Pending
5072-Michael Cunningham v. Anderson County	Pending
5077-Kirby L. Bishop et al. v. City of Columbia	Pending
5078-Estate of Livingston v. Clyde Livingston	Pending
5081-The Spriggs Group, P.C. v. Gene R. Slivka	Pending
5082-Thomas Brown v. Peoplease Corp.	Pending
5084-State v. Kendrick Taylor	Pending
5087-Willie Simmons v. SC Strong and Hartford	Pending
5090-Independence National v. Buncombe Professional	Pending
5092-Mark Edward Vail v. State	Pending
5093-Diane Bass v. SCDSS	Pending
5095-Town of Arcadia Lakes v. SCDHEC	Pending
5097-State v. Francis Larmand	Pending
5099-Roosevelt Simmons v. Berkeley Electric	Pending
5101-James Judy v. Ronnie Judy	Pending
5110-State v. Roger Bruce	Pending
5111-State v. Alonza Dennis	Pending
5112-Roger Walker v. Catherine Brooks	Pending

5113-Regions Bank v. Williams Owens	Pending
5116-Charles A. Hawkins v. Angela D. Hawkins	Pending
5117-Loida Colonna v. Marlboro Park (2)	Pending
5118-Gregory Smith v. D.R. Horton	Pending
5119-State v. Brian Spears	Pending
5121-State v. Jo Pradubsri	Pending
5125-State v. Anthony Marquese Martin	Pending
5126-A. Chakrabarti v. City of Orangeburg	Pending
5127-Jenean Gibson v. Christopher C. Wright, M.D.	Pending
5130-Brian Pulliam v. Travelers Indemnity	Pending
5131-Lauren Proctor v. Whitlark & Whitlark	Pending
5135-Microclean Tec. Inc. v. Envirofix, Inc.	Pending
5139-H&H Johnson, LLC v. Old Republic National Title	Pending
5140-Bank of America v. Todd Draper	Pending
5144-Emma Hamilton v.Martin Color Fi	Pending
5148-State v. Henry Jermaine Dukes	Pending
5151-Daisy Simpson v. William Simpson	Pending
5152-Effie Turpin v. E. Lowther	Pending
5154-Edward Trimmier v. SCDLLR	Pending
5156-State v. Manuel Marin	Pending
5157-State v. Lexie Dial	Pending

5159-State v. Gregg Henkel	Pending
5160-State v. Ashley Eugene Moore	Pending
5161-State v. Lance Williams	Pending
5164-State v. Darren Scott	Pending
5165-Bonnie L. McKinney v. Frank J. Pedery	Pending
5166-Scott F. Lawing v. Univar USA Inc.	Pending
5171-Carolyn M. Nicholson v. SCDSS and State Accident Fund	Pending
5175-State v. Karl Ryan Lane	Pending
5176-Richard A. Hartzell v. Palmetto Collision, LLC	Pending
5177-State v. Leo Lemire	Pending
5178-State v. Michael J. Hilton	Pending
5181-Henry Frampton v. SCDOT	Pending
5188-Mark Teseniar v. Professional Plastering	Pending
2011-UP-502-Heath Hill v. SCDHEC and SCE&G	Pending
2012-UP-078-Seyed Tahaei v. Sherri Tahaei	Pending
2012-UP-081-Hueble v. Vaughn	Pending
2012-UP-203-State v. Dominic Leggette	Pending
2012-UP-274-Passaloukas v. Bensch	Pending
2012-UP-276-Regions Bank v. Stonebridge Development et al.	Pending
2012-UP-278-State v. Hazard Cameron	Pending
2012-UP-285-State v. Jacob M. Breda	Pending

2012-UP-293-Clegg v. Lambrecht	Pending
2012-UP-295-Larry Edward Hendricks v. SCDC	Pending
2012-UP-302-Maple v. Heritage Healthcare	Pending
2012-UP-312-State v. Edward Twyman	Pending
2012-UP-351-State v. Kevin J. Gilliard	Pending
2012-UP-404-McDonnell and Assoc v. First Citizens Bank	Pending
2012-UP-433-Jeffrey D. Allen v. S.C. Budget and Control Bd. Employee Insurance Plan et al.	Pending
2012-UP-462-J. Tennant v. Board of Zoning Appeals	Pending
2012-UP-479-Elkachbendi v. Elkachbendi	Pending
2012-UP-502-Hurst v. Board of Dentistry	Pending
2012-UP-552-Virginia A. Miles v. Waffle House	Pending
2012-UP-569-Vennie Taylor Hudson v. Caregivers of SC	Pending
2012-UP-573-State v. Kenneth S. Williams	Pending
2012-UP-576-State v. Trevee J. Gethers	Pending
2012-UP-577-State v. Marcus Addison	Pending
2012-UP-579-Andrea Beth Campbell v. Ronnie A. Brockway	Pending
2012-UP-580-State v. Kendrick Dennis	Pending
2012-UP-600-Karen Irby v. Augusta Lawson	Pending
2012-UP-603-Fidelity Bank v. Cox Investment Group et al.	Pending
2012-UP-608-SunTrust Mortgage v. Ostendorff	Pending

2012-UP-616-State v. Jamel Dwayne Good	Pending
2012-UP-623-L. Paul Trask, Jr., v. S.C. Dep't of Public Safety	Pending
2012-UP-654-State v. Marion Stewart	Pending
2012-UP-658-Palmetto Citizens v. Butch Johnson	Pending
2012-UP-663-Carlton Cantrell v. Aiken County	Pending
2013-UP-010-Neshen Mitchell v. Juan Marruffo	Pending
2013-UP-014-Keller v. ING Financial Partners	Pending
2013-UP-015-Travelers Property Casualty Co. v. Senn Freight	Pending
2013-UP-020-State v. Jason Ray Franks	Pending
2013-UP-034-Cark D. Thomas v. Bolus & Bolus	Pending
2013-UP-056-Lippincott v. SCDEW	Pending
2013-UP-058-State v. Bobby J. Barton	Pending
2013-UP-062-State v. Christopher Stephens	Pending
2013-UP-063-State v. Jimmy Lee Sessions	Pending
2013-UP-066-Dudley Carpenter v. Charles Measter	Pending
2013-UP-069-I. Lehr Brisbin v. Aiken Electric Coop.	Pending
2013-UP-070-Loretta Springs v. Clemson University	Pending
2013-UP-071-Maria McGaha v. Honeywell International	Pending
2013-UP-078-Leon P. Butler, Jr. v. William L. Wilson	Pending
2013-UP-081-Ruth Sturkie LeClair v. Palmetto Health	Pending
2013-UP-082-Roosevelt Simmons v. Hattie Bailum	Pending

2013-UP-084-Denise Bowen v. State Farm	Pending
2013-UP-090-JP Morgan Chase Bank v. Vanessa Bradley	Pending
2013-UP-095-Midlands Math v. Richland County School Dt. 1	Pending
2013-UP-110-State v. Demetrius Goodwin	Pending
2013-UP-120-Jerome Wagner v. Robin Wagner	Pending
2013-UP-125-Caroline LeGrande v. SCE&G	Pending
2013-UP-127-Osmanski v. Watkins & Shepard Trucking	Pending
2013-UP-133-James Dator v. State	Pending
2013-UP-147-State v. Anthony Hackshaw	Pending
2013-UP-158-CitiFinancial v. Squire	Pending
2013-UP-162-Martha Lynne Angradi v. Edgar Jack Lail, et al.	Pending
2013-UP-183-R. Russell v. DHEC and State Accident Fund	Pending
2013-UP-188-State v. Jeffrey A. Michaelson	Pending
2013-UP-189-Thomas J. Torrence v. SCDC	Pending
2013-UP-199-Wheeler Tillman v. Samuel Tillman	Pending
2013-UP-232-Theresa Brown v. Janet Butcher	Pending
2013-UP-251-Betty Jo Floyd v. Ken Baker Used Cars	Pending
2013-UP-256-Woods v. Breakfield	Pending
2013-UP-257-Matter of Henson (Woods) v. Breakfield	Pending
2013-UP-267-State v. William Sosebee	Pending
2013-UP-272-James Bowers v. State	Pending

2013-UP-279-MRR Sandhills v, Marlboro County	Pending
2013-UP-286-State v. David Tyre	Pending
2013-UP-288-State v. Brittany Johnson	Pending
2013-UP-290-Mary Ruff v. Samuel Nunez	Pending
2013-UP-294-State v. Jason Thomas Husted	Pending
2013-UP-296-Ralph Wayne Parsons v. John Wieland Homes	Pending
2013-UP-297-Greene Homeowners v. W.G.R.Q.	Pending
2013-UP-304-State v. Johnnie Walker Gaskins	Pending
2013-UP-310-Westside Meshekoff Family v. SCDOT	Pending
2013-UP-317-State v. Antwan McMillan	Pending
2013-UP-322-A.M. Kelly Grove v. SCDHEC	Pending
2013-UP-323-In the interest of Brandon M.	Pending
2013-UP-327-Roper LLC v. Harris Teeter	Pending
2013-UP-340-Randy Griswold v. Kathryn Griswold	Pending
2013-UP-358-Marion L. Driggers v. Daniel Shearouse	Pending
2013-UP-360-State v. David Jakes	Pending
2013-UP-380-Regina Taylor v. William Taylor	Pending
2013-UP-381-L. G. Elrod v. Berkeley County	Pending
2013-UP-389-Harold Mosley v. SCDC	Pending
2013-UP-393-State v. Robert Mondriques Jones	Pending
2013-UP-403-State v. Kerwin Parker	Pending

2013-UP-424-Lyman Russell Rea v. Greenville Cty.	Pending
2013-UP-428-State v. Oran Smith	Pending
2013-UP-435-State v. Christopher Spriggs	Pending
2013-UP-442-Jane AP Doe v. Omar Jaraki	Pending
2013-UP-444-Jane RM Doe v. Omar Jaraki	Pending
2013-UP-459-Shelby King v. Amy Bennett	Pending
2013-UP-461-Ann P. Adams v. Amisub of South Carolina Inc.	Pending
2013-UP-485-Dr. Robert W. Denton v. Denmark Technical College	Pending
2013-UP-489-F.M. Haynie v. Paul Cash	Pending
2014-UP-010-Mell Woods v. John Hinson	Pending
2014-UP-013-Roderick Bradley v. The State	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

South Carolina Libertarian Party, Petitioner,

v.

South Carolina State Election Commission, and Marci Andino, in her official capacity as the Executive Director of the South Carolina Election Commission, Respondents.

Appellate Case No. 2014-000775

Opinion No. 27384
Heard April 24, 2014 – Filed April 24, 2014

Lauren L. Martel, of Hilton Head Island, for Petitioner.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Deputy Attorney General Robert D. Cook, Assistant Deputy Attorney General Clyde H. Jones, Jr., and Assistant Attorney General Johanna Catalina Valenzuela, all of Columbia, for Respondents.

Michael R. Hitchcock, John P. Hazzard, V and Erin Burt Crawford, all of Columbia, for Amicus Curiae, Senator John E. Courson, in his official capacity as President Pro Tempore of the South Carolina Senate and Senator Larry A. Martin, in his official capacity as Chairman of the South Carolina Senate Judiciary Committee.

ORIGINAL JURISDICTION

PER CURIAM: Petitioner asks this Court to issue a declaratory judgment in our original jurisdiction to determine whether the Equal Access to the Ballot Act (the Act)[1] is in effect. If the Court determines the Act is effective, petitioner requests the South Carolina State Election Commission (the Commission) be ordered to conduct a Libertarian Party primary on June 10, 2014, and place a referendum question on the primary ballot for approval of the use of the convention method of nominating candidates by petitioner in 2016. We grant the petition for original jurisdiction and declare the Act is in effect. We deny petitioner's request to require the Commission to conduct a Libertarian Party primary and place a referendum question on the primary ballot.

FACTS

On June 13, 2013, the Governor signed the Act. The Act amended S.C. Code Ann. § 7-11-30 to allow political parties to nominate candidates by convention if:

(1) there is a three-fourths vote of the total membership of the convention to use the convention nomination process; and

(2) a majority of voters in that party's next primary election approve the use of the convention nomination process.

Section 14 of the Act provides that the Act will take effect "upon preclearance by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first."

Petitioner is a certified political party in South Carolina that, in the past, has nominated its candidates by the convention method. In a letter to the Commission, dated January 11, 2014, petitioner requested that the Commission hold a Libertarian Party primary on June 10, 2014, and place a question on the primary ballot to approve the use of a convention nomination process in 2016. The Commission refused petitioner's request.

[1] 2013 S.C. Act No. 61.

QUESTIONS PRESENTED

I. Is the Act currently in effect?

II. If the Act is in effect, is the Commission required to conduct a Libertarian Party primary and place a referendum on the primary ballot to approve the use of the convention method by petitioner in 2016?

ANALYSIS

I. Effective Date of the Act

At the time the Act was approved by the General Assembly, the Voting Rights Act required certain jurisdictions to receive preclearance of any change in their election laws by the United States Department of Justice or by a declaratory judgment by the United States District Court for the District of Columbia to ensure the change was not discriminatory. South Carolina was one of the jurisdictions subject to that mandate. Because of this preclearance requirement, the General Assembly inserted Section 14 in the Act to require preclearance by the Federal Government for the Act to take effect.

This Court has recognized the authority of the General Assembly to place a contingency on the effective date of a statute. *State ex rel. Coleman v. Lewis*, 181 S.C. 10, 29, 186 S.E. 625, 633 (1936) ("Where an act is clothed with all the forms of law, and is complete in and of itself, it is fairly within the scope of the legislative power to prescribe that it shall become operative only on the happening of some specified contingency. Such a statute lies dormant until called into active force by the existence of the conditions on which it is intended to operate.")

In *Shelby County, Alabama v. Holder*, 133 S.Ct. 2612 (2013), the United States Supreme Court held the provision setting forth the coverage formula of the Voting Rights Act was unconstitutional and could no longer be used as a basis for subjecting certain jurisdictions (designated as covered jurisdictions, such as South Carolina) to preclearance by the Federal Government. As a result of the *Shelby County* opinion, the requirement that South Carolina obtain preclearance from the Federal Government was eliminated. Because the General Assembly's intent in making preclearance a contingency for the Act to become effective was to comply with the then-mandatory provisions of the Voting Rights Act, and the *Shelby*

County decision obviated the need for that compliance, the contingency placed on the Act in section 14 has been met. *See Beaufort Cnty. v. S.C. State Election Comm'n*, 395 S.C. 366, 718 S.E.2d 432 (2011) (the primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly). Accordingly, the Act became effective on June 25, 2013, the date the United States Supreme Court issued its opinion in *Shelby County*.

II. Primary and Referendum to Approve Use of the Convention Method

Petitioner has always nominated its candidates by the convention method. Believing the amendment to section 7-11-30 in the Act required it to determine its nominations by the primary method before returning to the convention method, petitioner requested the Commission hold a Libertarian Party primary on June 10, 2014. Petitioner also asked the Commission to place a referendum on the primary ballot to allow petitioner to nominate by convention in 2016. The Commission refused to comply with petitioner's requests. Petitioner now asks the Court to require the Commission to conduct a Libertarian Party primary and place a referendum on that ballot to approve the use of the convention method. We deny this request.

Based on well-established rules of statutory construction, we conclude that the General Assembly intended the new requirement of a primary referendum in section 7-11-30 to apply only to parties seeking to abandon the open primary method of nominating candidates in favor of the closed convention method. *See Greenville Cnty. Republican Party Executive Comm. v. S.C.*, 824 F. Supp. 2d 655 (D.S.C. 2011). Because petitioner has always utilized the convention method of nominating candidates, the Act does not require petitioner to adopt a primary nomination process in order to retain its convention method of nomination. Accordingly, we deny petitioner's request to require the Commission to conduct a Libertarian Party primary on June 10, 2014, and include a referendum on that ballot approving the use of the convention method in 2016.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Interest of Jane Doe,[1] A Vulnerable Adult,
Appellant,

v.

South Carolina Department of Social Services,
Respondent.

Appellate Case No. 2013-000944

Appeal From Richland County
The Honorable Tommy B. Edwards, Family Court Judge

Opinion No. 27385
Heard February 19, 2014 – Filed April 30, 2014

REVERSED AND REMANDED

Manton M. Grier, Jr., of Nexsen Pruet, LLC of Columbia, for Appellant.

Claude Robin Chandler, of Columbia, for Respondent.

JUSTICE BEATTY: In this direct appeal, Jane Doe appeals the family court's order declaring her to be a "vulnerable adult" and in need of protective

[1] We use the name "Jane Doe" to protect the identity of the Appellant.

services pursuant to the South Carolina Omnibus Adult Protection Act ("the Act").[2] Doe contends the South Carolina Department of Social Services ("DSS") failed to prove that she is a vulnerable adult[3] at substantial risk of neglect[4] due solely to her advanced age. Doe seeks reversal of the family court's order so that she may be released from involuntary protective custody and returned to her home. Because we find that Doe did not meet the statutory definition of a vulnerable adult under the Act, we reverse. However, because there may have been significant changes to Doe's physical and mental health and to the condition of Doe's home during the pendency of this appeal, we remand the case in order for the family court to conduct a review hearing to assess the current status of Doe's case.

I. Factual / Procedural History

In 1993, the General Assembly promulgated the Act to establish a system to protect vulnerable adults in South Carolina from abuse, neglect, and exploitation. Act No. 110, § 1, 1993 S.C. Acts 257. The Act is intended to address the continuing needs of vulnerable adults and to provide services in the least restrictive setting possible. S.C. Code Ann. § 43-35-5 (Supp. 2013); *Williams v. Watkins*, 379

---

[2] S.C. Code Ann. §§ 43-35-5 to -595 (Supp. 2013).

[3] The Act defines a "vulnerable adult" as:

> [A] person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes *a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including*, but not limited to, organic brain damage, *advanced age*, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

Id. § 43-35-10(11) (emphasis added).

[4] The Act defines "neglect" to include "the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death." *Id.* § 43-35-10(6).

S.C. 530, 665 S.E.2d 243 (Ct. App. 2008). The Act identifies the appropriate investigative entities[5] and clarifies the roles and responsibilities of the agencies involved in the system. *Id.* §§ 43-35-15 to -20. The Act further provides procedures for reporting, investigating, and adjudicating criminal and noncriminal allegations of adult abuse, neglect, and exploitation. *Id.* §§ 43-35-25 to -85.

On July 31, 2012, pursuant to the Act, deputies with the Richland County Sheriff's Department investigated a report[6] involving Doe, an eighty-six-year-old woman who lives alone, is without family support, and suffers from a heart condition.[7] When they arrived, Doe refused to allow the deputies to enter her home and, in fact, had barricaded the windows and the doors for "security purposes." The deputies, however, were able to observe that the home was "in an unsanitary and deplorable condition." Specifically, the deputies noticed a hole in the roof and that there was a hose running from Doe's home to a neighbor's home, which provided the only source of water. As they peered through the windows of Doe's home, the deputies saw mold on the window curtains and piles of items on the floor giving the appearance that Doe was a "hoarder." Based on their

---

[5] *Id.* § 43-35-10(5) (" 'Investigative entity' means "the Long Term Care Ombudsman Program, the Adult Protective Services Program in the Department of Social Services, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, or the Medicaid Fraud Control Unit of the Office of the Attorney General.").

[6] It is unclear who contacted the Richland County Sheriff's Department; however, such voluntary reporting is permissible as the Act not only provides for mandatory reporting, but also states that "any other person who has reason to believe that a vulnerable adult has been or may be abused, neglected, or exploited may report the incident." *Id.* § 43-35-25(B).

[7] *Id.* § 43-35-55(A) ("A law enforcement officer may take a vulnerable adult in a life-threatening situation into protective custody if: (1) there is probable cause to believe that by reason of abuse, neglect, or exploitation there exists an imminent danger to the vulnerable adult's life or physical safety; (2) the vulnerable adult or caregiver does not consent to protective custody; and (3) there is not time to apply for a court order.").

investigation, the deputies placed Doe in emergency protective custody and transported her to the hospital.[8]

Immediately thereafter, the Richland County Sheriff's Department notified the Adult Protective Services Program of DSS in Richland County regarding its decision to remove Doe from her home.[9] On August 1, 2012, DSS filed a petition in family court[10] seeking a determination that Doe was a vulnerable adult within the meaning of the Act because, as a consequence of the condition of her home, she was in substantial danger of abuse, neglect, or exploitation. Because DSS believed Doe was in need of protective services,[11] it requested the court grant protective custody of Doe to DSS.

---

[8] *Id.* § 43-35-55(B) ("When a law enforcement officer takes protective custody of a vulnerable adult, the officer must transport the vulnerable adult to a place of safety which must not be a facility for the detention of criminal offenders or of persons accused of crimes. The Adult Protective Services Program has custody of the vulnerable adult pending the family court hearing to determine if there is probable cause for protective custody.").

[9] *Id.* § 43-35-55(D) ("When a law enforcement officer takes protective custody of a vulnerable adult under this section, the law enforcement officer must immediately notify the Adult Protective Services Program and the Department of Social Services in the county where the vulnerable adult was situated at the time of being taken into protective custody.").

[10] *Id.* § 43-35-55(E) ("The Department of Social Services is responsible for filing a petition for protective custody within one business day of receiving the notification required by subsection (D).").

[11] *Id.* § 43-35-10(9) (" 'Protective services' means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.").

The same day, the family court held a hearing on the petition. On August 7, 2012, the court issued a 72-Hour-Hearing Order[12] wherein it found there was probable cause for law enforcement to take Doe into emergency protective custody. The court also scheduled a merits hearing for September 6, 2012 and ordered a guardian ad litem (GAL) to be appointed for Doe as well as counsel for both Doe and the GAL. Additionally, the court ordered Doe's social security benefits or her funds to be redirected to pay for her care at Carson's Community Care Home where DSS had placed Doe.[13]

After granting four continuances, the family court held a merits hearing on March 25, 2013.[14] At the hearing, DSS presented the report of Dr. Marc Harari, a licensed counseling psychologist, who evaluated Doe on March 21, 2013. Based on his assessment, Dr. Harari concluded that Doe possessed a "sound mental status" as Doe was logical and coherent in her responses, fully oriented and in contact with reality, exhibited excellent long-term memory skills, and was fully aware of the situational circumstances resulting in the involvement of DSS. He also assessed Doe's cognitive ability to be within the "Low-Average range." Although Doe demonstrated some hearing problems, Dr. Harari found she responded appropriately when the examiner and testing assistant spoke loudly. Dr. Harari, however, reported that Doe underwent open heart surgery in 2003, continues to receive medical treatment to address cardiac functioning, and takes medication for arthritis and eye problems. Dr. Harari did not discern that Doe had

---

[12] *Id.* § 43-35-55(F) ("The family court shall hold a hearing to determine whether there is probable cause for the protective custody within seventy-two hours of the Department of Social Services filing the petition, excluding Saturdays, Sundays, and legal holidays.").

[13] *Id.* § 43-35-45(I) ("If the court determines that the vulnerable adult is financially capable of paying for services ordered pursuant to this section, then payment by or from the financial resources of the vulnerable adult may be ordered.").

[14] Despite the Act's mandate that the family court hold a hearing on the merits within forty days of the petition being filed, more than seven months elapsed in this case due to the continuances granted. *See id.* § 43-35-45(C) (stating that "within forty days of the petition being filed the court shall hold a hearing on the merits"). We note, however, that Doe's counsel either initiated or consented to the issuance of each order.

any obvious mental health issues other than situational anxiety related to her desire to resume living at home.

Ultimately, Dr. Harari concluded that Doe appeared to have "the minimum levels of competency to function independently" as there was no evidence of dementia, severe emotional issues, or obvious physical limitations. Despite this conclusion, Dr. Harari noted his concerns regarding Doe's self-admitted lack of finances needed to repair her home, her limited social support system other than members of her church and a neighbor, and her need for continued medical monitoring due to her medical conditions and advanced age. If the court determined that Doe could return home, Dr. Harari recommended that DSS maintain an open treatment case to ensure Doe's home was repaired and that Doe interacted with peers to alleviate Doe's feelings of isolation.

Although counsel for DSS acknowledged Dr. Harari's conclusion regarding Doe's competency, he emphasized Doe's advanced age, medical issues, and the condition of Doe's home. Specifically, counsel noted that Doe had a minor heart condition and hypertension, but conceded there is "nothing in [the record] to indicate that chronic medical needs are not being addressed." Counsel also admitted there was "very little evidence to establish the threshold [determination] that she's a vulnerable adult." Due to this "scintilla of evidence," counsel stated he had debated whether to ask the court to dismiss the petition filed by DSS.

In response, Doe's counsel disputed the claim that Doe qualifies as a vulnerable adult due solely to her advanced age because Doe had been deemed competent by Dr. Harari. Counsel also described Doe as a "fiercely independent" woman who wanted to return to the home that she had lived in since 1967 and did not want any of the services provided by DSS.

The GAL's counsel indicated that the GAL was reticent to make a recommendation as to whether Doe met the statutory definition of a vulnerable adult given the lack of supporting evidence and limited case law interpreting the Act. However, counsel acknowledged that, pursuant to the Act, Doe would have to be deemed a vulnerable adult in danger of neglect in order for DSS to provide Doe with the necessary services to address her unfavorable living conditions.

When questioned by the court about the current state of her home, Doe replied that the hole in the roof had been patched and there was no longer a leak in

the house. She further explained her water had been turned off due to a dispute with the water company over an outstanding bill. However, Doe stated she had since paid the bill and could now request to have the water turned back on. DSS could not confirm the current state of Doe's home because Doe had refused to let the caseworker enter the home and DSS had not procured an inspection warrant.[15]

On March 28, 2013, the court issued a written order that confirmed the oral ruling delivered at the conclusion of the hearing. The court found Doe met the statutory definition of a vulnerable adult because "due to the infirmities of aging, she cannot fully and completely provide for her own safety." The court noted that the condition of Doe's home "played a major role in her being taken into emergency protective custody." Although the court acknowledged Doe has the "minimum levels of competency to function independently," it relied on Dr. Harari's finding that Doe requires medical monitoring given Doe's medical conditions and advanced age. Additionally, the court concluded Doe was in need of protective services based on Dr. Harari's suggestion of an open treatment case to ensure that the essential repairs were made to Doe's home.

As a result of these findings, the court ordered DSS to provide Doe with the necessary services to make Doe's home habitable. Specifically, the court ordered for: (1) the water supply to be reconnected; (2) the house to be "subjectively clean," which meant "clean within a reasonable degree" not necessarily "perfectly clean"; (3) electrical power to be supplied, if not already, to the house; (4) the heating system to be operational; (5) an air conditioning system, if in place, to be operational; and (6) the house to have adequate food and cleaning supplies. The court instructed that Doe should remain in the custody of DSS until each item had been completed. Upon completion, Doe could return home but DSS was ordered to "monitor the home in compliance with its policy." Finally, the court scheduled a hearing on June 20, 2013, at which time the court would review the progress of the home repairs and determine whether Doe was financially capable of paying for the ordered services.

---

[15] *Id.* § 43-35-45(A) ("In investigating a report if consent cannot be obtained for access to the vulnerable adult or the premises, the investigative entity may seek a warrant from the family court to enter and inspect and photograph the premises and the condition of the vulnerable adult. The court shall issue a warrant upon a showing of probable cause that the vulnerable adult has been abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation.").

After Doe appealed to the Court of Appeals, the appeal was certified to this Court pursuant to Rule 204(b) of the South Carolina Appellate Court Rules. As a result of the notice of appeal being filed, the family court issued an order continuing the review hearing. *See* Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal.").

II. Standard of Review

"The family court is a court of equity." *Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). In appeals from the family court, the appellate court reviews factual and legal issues de novo. *Simmons v. Simmons*, 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011). "*De novo* review permits appellate court fact-finding, notwithstanding the presence of evidence supporting the [family] court's findings." *Lewis*, 392 S.C. at 390, 709 S.E.2d at 654-55. "However, we recognize this broad scope of review does not alter the fact that a family court is better able to make credibility determinations because it has the opportunity to observe the witnesses." *Wilburn v. Wilburn*, 403 S.C. 372, 380, 743 S.E.2d 734, 738 (2013). Additionally, the de novo standard does not relieve the appellant of the burden of identifying error in the family court's findings." *Id.* Accordingly, this Court will affirm the decision of the family court unless the decision is controlled by an error of law or the appellant satisfies the burden of showing the preponderance of the evidence actually supports contrary factual findings by the appellate court. *Id.*; *DiMarco v. DiMarco*, 399 S.C. 295, 299, 731 S.E.2d 617, 619 (Ct. App. 2012).

III. Discussion

A. Arguments

Doe contends the family court erred in classifying her as a vulnerable adult and ordering her continued custody with DSS until the completion of the itemized protective services. In support of this contention, Doe claims DSS failed to prove that she is a vulnerable adult as there is no evidence she has a physical or mental condition that substantially impairs her ability to care for and protect herself. Rather, Doe asserts the sole basis for the family court's decision was her advanced age. Because advanced age alone is not sufficient to warrant the application of the Act, Doe seeks reversal of the family court's order.

Alternatively, Doe argues that even if she is deemed a vulnerable adult, there is no evidence that she was at substantial risk of being neglected. Specifically, Doe asserts DSS did not present any evidence regarding the condition of the home as it failed to procure an inspection warrant to enter the home. She notes the home conditions that precipitated her removal by DSS have been remedied as the leak in the home has been fixed and she is able to have the water supply turned back on. Finally, Doe contends DSS "offered no proof that a supposedly messy home" put her at a substantial risk of neglect.

B. Analysis

1. Three-Part Analysis

In analyzing this appeal, the Court must answer the following three questions: (1) was Doe a "vulnerable adult" under the Act; (2) if so, was she at substantial risk of being neglected due to this status; and, in turn, (3) were protective services necessary to protect Doe from the substantial risk of neglect? S.C. Code Ann. § 43-35-45(E) (Supp. 2013). In answering these questions, we reference the well-established rules of statutory construction.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459. Further, "the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

"If the statute is ambiguous . . . courts must construe the terms of the statute." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (citation omitted). The statutory language must be construed in light of the intended purpose of the statute. *Id.* This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless. *See Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) ("In construing a statute, this Court will reject an interpretation when such

an interpretation leads to an absurd result that could not have been intended by the legislature.").

2. General Definition of a "Vulnerable Adult"

Cognizant of the above-outlined rules, we turn to the text of the Act, which defines a "vulnerable adult" as:

> [A] person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes *a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including,* but not limited to, organic brain damage, *advanced age,* and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

S.C. Code Ann. § 43-35-10(11) (Supp. 2013) (emphasis added). By its clear terms, the infirmities of aging must "substantially impair" the person's ability to adequately provide for his or her own care or protection. Because the Act does not define "impair," we have looked to the ordinary meaning of the word. "Impair" means "to make worse by or as if by diminishing in some material respect." *Merriam-Webster's New Collegiate Dictionary* 569 (8th ed. 1981). In disability law, "severe impairment" is defined as "a physical or mental impairment that greatly restricts a person's ability to perform ordinary, necessary tasks of daily life." *Black's Law Dictionary* 819 (9th ed. 2009). Thus, we hold for a person to be deemed a vulnerable adult under the Act the person's physical or mental condition, including advanced age, must cause a diminished ability to adequately provide for self-care or protection.

Although our research revealed no cases directly on point in South Carolina or other jurisdictions, there are cases in analogous contexts that support this interpretation of a vulnerable adult. Specifically, we have looked for guidance in those cases where the term "vulnerable adult" was analyzed for the appointment of a conservatorship, the basis of a civil suit for the exploitation of a vulnerable adult, and the basis of a criminal charge for the abuse or exploitation of a vulnerable adult.

In cases where family members have petitioned for the imposition of a conservatorship for their elderly relative, the reviewing courts have required more than evidence of advanced age. Rather, the courts have declined to order a conservatorship unless there is evidence that the subject's advanced age directly affected the ability to make decisions regarding the subject's property. *See, e.g.*, *In re the Conservatorship of Townsend*, 809 N.W.2d 424, 429 (Mich. Ct. App. 2011) (reversing probate court's finding that petitioner's mother was a "vulnerable adult" as there was no evidence that mother had a "mental, physical, or advanced-age related impairment" that rendered her unable to say no to her family members regarding decisions involving her property); *In re the Conservatorship of Goodman*, 766 P.2d 1010 (Okla. Ct. App. 1988) (holding conservatorship could not be constitutionally imposed over property of 86-year-old adult due to his advanced age without a finding of mental incompetence); *Endicott v. Saul*, 176 P.3d 560 (Wash. Ct. App. 2008) (affirming sons' petition to establish guardianship over their 80-year-old mother and finding mother was a "vulnerable adult" for purposes of Abuse of Vulnerable Adults Act where there was testimony that the mother could not independently manage her finances or take care of herself).

Similarly, in order to sustain a cause of action under state adult protective services legislation, courts have required the party to present evidence that an elderly victim was unable to protect or care for himself due to a physical or mental condition. *See Davis v. Zlatos*, 123 P.3d 1156, 1163 (Ariz. Ct. App. 2005) (holding, in a civil suit involving a violation of the Arizona Adult Protective Services Act, that elderly victim was a "vulnerable adult" because it was uncontested she was physically impaired and that "[h]er ability to care for herself was plainly lessened due to her age and health problems"); *Farr v. Searles*, 910 A.2d 929, 930 (Vt. 2006) (concluding plaintiff failed to prove she was a "vulnerable adult" for purposes of a civil suit as a "mere listing of physical ailments, which many people suffer, was not sufficient to establish that plaintiff was unable to protect herself from abuse, neglect, or exploitation").

In cases where the government has pursued a charge of abuse or exploitation of a vulnerable adult, courts have required the prosecution to present evidence that the victim was unable to perform daily activities related to self-care or protection as a result of a physical or mental infirmity, including advanced age. *See People v. Cline*, 741 N.W.2d 563 (Mich. Ct. App. 2007) (finding evidence was sufficient to support conviction for first-degree vulnerable adult abuse where victim qualified as a vulnerable adult because she required some level of personal care as a result of

blindness and diabetes and, thus, could not live independently); *Decker v. State*, 66 So. 3d 654, 658 (Miss. 2011) (recognizing that, in a case involving the prosecution for a violation of the Vulnerable Adults Act, the broad definition of "vulnerable adult" included "a person with completely normal mental capacity, but *whose ability to perform the normal activities of daily living is impaired because of a physical limitation*, such as blindness or the inability to walk" (emphasis added)); *State v. Stubbs*, 555 N.W.2d 55, 62 (Neb. Ct. App. 1996) (vacating conviction for exploitation of a vulnerable adult where evidence that victim was physically and mentally aging did not establish that the victim had "substantial functional impairment which left him incapable of caring for himself or living independently"), *aff'd*, 562 N.W.2d 547 (Neb. 1997). *See generally* James L. Buchwalter, Annotation, *Validity, Construction, and Application of State Civil and Criminal Elder Abuse Laws*, 113 A.L.R. 5th 431 (2003 & Supp. 2014) (analyzing state and federal cases involving civil suits and criminal prosecution for elder abuse); William D. Bremer, Annotation, *Vulnerability of Victim as Aggravating Factor under State Sentencing Guidelines*, 73 A.L.R. 5th 383 (1999 & Supp. 2014) (analyzing state cases as to various aspects of vulnerability, such as age, that have been asserted in applying a state sentencing provision based on victim's vulnerability).

3. Determination of Whether Doe was a Vulnerable Adult

Utilizing the foregoing definition, we must next assess whether the family court erred in concluding that Doe was a vulnerable adult. This assessment is problematic as the Act does not set forth the standard of proof necessary for this determination. Because the absence of a standard makes the analysis of this case difficult and also implicates constitutional due process issues, we must determine and enunciate the requisite standard of proof.

Without question, an involuntary removal under the Act deprives a person of his liberty as well as property if the court orders a vulnerable adult to pay for the care received while in the custody of DSS. U.S. Const. amend. XIV, § 1 ("[N]or shall any state deprive any person of life, liberty, or property, without due process of law."); S.C. Const. art. I, § 3 ("[N]or shall any person be deprived of life, liberty, or property without due process of law.").

Accordingly, we conclude that a heightened standard of proof, i.e., clear and convincing evidence, is necessary under these circumstances. *See In re Knight*, 317 P.3d 1068 (Wash. Ct. App. 2014) (holding that standard of proof for a

vulnerable adult protection order opposed by the alleged vulnerable adult is clear, cogent, and convincing evidence because the protection order implicates the vulnerable adult's liberty and autonomy interests). Notably, our General Assembly has explicitly identified the clear and convincing standard of proof for the issuance of an involuntary commitment order involving a person who suffers from mental health issues. *See* S.C. Code Ann. § 44-17-580(A) (Supp. 2013) (requiring, in a proceeding for the involuntary commitment to a mental health facility, the court to find by "*clear and convincing evidence* that the person is mentally ill, needs involuntary treatment," and because of his condition lacks sufficient insight or capacity to make responsible decisions with respect to his treatment or there is a likelihood of serious harm to himself or others (emphasis added)).

Applying a clear and convincing standard of proof, we find DSS failed to prove that Doe was a vulnerable adult. Significantly, counsel for DSS admitted the evidence was "scant" and there was only a "scintilla of evidence" to show that Doe qualified as a vulnerable adult under the terms of the Act. Furthermore, there is no evidence that Doe's advanced age substantially impaired her ability to adequately provide for her own care and protection. Specifically, there is no evidence of physical or mental infirmities that would prohibit Doe from living independently. To the contrary, the evaluating psychologist concluded Doe possessed a level of competency sufficient for her to function independently and she had no obvious physical limitations. Moreover, there is no evidence the unfavorable home condition that precipitated Doe's involuntary removal was causally related to her advanced age. Instead, the problems with Doe's home were dependent on the finances needed to repair the roof and turn on the water supply.[16] Although there is some evidence that Doe's home was in disarray, DSS offered no evidence attributing the lack of cleanliness to a deficiency in Doe's mental or physical condition. Accordingly, we find the family court erred in classifying Doe as a vulnerable adult.

[16] We are cognizant of the fact that poverty or the lack of adequate funds or resources may have a deleterious effect on an individual's ability to adequately provide for her care and protection; however, poverty alone is not sufficient to satisfy the definition of a vulnerable adult under the Act. Rather, there must be evidence of other factors that cause the deleterious effect.

Because DSS failed to prove the threshold determination that Doe was a vulnerable adult, we need not address the remaining prongs of the three-part test. Specifically, we need not determine whether Doe was at substantial risk of being neglected and whether protective services were necessary to protect Doe from the substantial risk of neglect. S.C. Code Ann. § 43-35-45(E) (Supp. 2013).[17]

IV. Conclusion

Although we believe the family court was well intentioned, we find that it erred in classifying Doe as a vulnerable adult under the Act. Specifically, there was no evidence that Doe's advanced age impaired her ability to adequately provide for her own care and protection. Without this threshold determination, the court erred in ordering Doe to remain in protective custody until the identified protective services were completed. However, because there may have been significant changes to Doe's physical and mental health and to the condition of Doe's home during the pendency of this appeal, we remand the case in order for the family court to conduct a review hearing to assess the current status of Doe's case.

Based on the foregoing, we reverse the order of the family court and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

---

[17] In rejecting the majority's ultimate conclusion, the dissent takes issue with the majority's construction of the Act. Specifically, the dissent claims the majority "narrowly" construes the term "vulnerable adult" and, in turn, fails to address whether protective services were necessary to protect Doe from the substantial risk of neglect. The dissent, however, fails to appreciate the logical progression of the Act, which requires the Court to first determine whether DSS has established by clear and convincing evidence that Doe qualifies as a vulnerable adult pursuant to the statutory definition in the Act. In fact, the dissent makes only a cursory reference to the clear and convincing standard of proof necessary to support the involuntary removal of an adult from their home. Because Doe has asked this Court to interpret the Act, we cannot simply ignore the statutory language merely because there is evidence that Doe's living conditions were unfavorable at the time of her removal.

HEARN and Acting Justice James E. Moore, concur.

KITTREDGE, J., dissenting in a separate opinion in which PLEICONES, J., concurs.

JUSTICE KITTREDGE: Because I do not construe the South Carolina Omnibus Adult Protection Act[18] (Act) narrowly, I respectfully dissent. The dispositive question is whether Jane Doe, now eighty-eight years of age, is a "vulnerable adult." By construing the term narrowly and finding Doe is not a vulnerable adult, the majority does "not address . . . whether protective services were necessary to protect Doe from the substantial risk of neglect."

I begin with the definition of a vulnerable adult:

> [A] person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

S.C. Code Ann. § 43-35-10(11) (Supp. 2013). I believe the legislature defined the term broadly, as evidenced by the "including, but not limited to," language and the unmistakable purpose of the Act. I next observe that "neglect" is defined to include "the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical . . . harm." *Id.* § 43-35-10(6) (Supp. 2013). I also believe the circumstances and conditions that led to the taking of emergency protective custody (EPC), which establish neglect, are relevant to the vulnerable adult determination.

On July 31, 2012, law enforcement officers went to the home of Doe, then age 86. Doe, suffering from a heart condition, lived alone. Doe refused entry to the officers. The doors and windows to the home were barricaded. The officers noticed a hose running from a neighbor's home through a hole in the roof of Doe's home. This was Doe's only source of water, for water service had been stopped for nonpayment. The inside of the home was, according to the officers, "in an unsanitary and deplorable condition." There was mold present as well. The officers placed Doe in EPC, and she was transported to the hospital. Doe does not challenge the EPC.

---

[18] S.C. Code Ann. §§ 43-35-5 to -595 (Supp. 2013).

The experienced and excellent family court judge considered the totality of the circumstances, including the facts surrounding EPC, in finding Doe to be a vulnerable adult. The judge also carefully evaluated the entirety of testimony of Dr. Marc Harari. In addition to Dr. Harari's testimony cited by the majority, the judge referenced Dr. Harari in finding "that [Doe] would require medical monitoring . . . [and] [i]n addition, [Dr. Harari] suggested that any open treatment case, on a temporary basis, should contain a provision to ensure the necessary repairs are made to the household so that [Doe] could reside in a suitable living environment." In urging an affirmance of the family court order, the guardian *ad litem* (GAL) makes the common sense observation that "[w]ithout . . . running water, electricity, and adequate food it is hard to argue that any person would not be at risk of 'neglect' within the meaning of S.C. Code Ann. Section 43-35-10(6)." (Br. of GAL at 9).

My view of the case is in line with that of the family court judge, who acknowledged Doe's mental abilities and sought a prompt return of Doe to her home upon the completion of necessary repairs to make her home livable. I believe the vulnerable adult determination is supported by clear and convincing evidence, and I would affirm.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Frankie Lee McGee, Appellant.

Appellate Case No. 2011-197606

Appeal From Richland County
Clifton Newman, Circuit Court Judge

Opinion No. 5227
Heard September 10, 2013 – Filed April 30, 2014

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General J. Anthony Mabry, and Solicitor Daniel Edward Johnson, all of Columbia, for Respondent.

KONDUROS, J.: In this criminal case, Frankie Lee McGee appeals his convictions of murder and burglary, arguing the trial court erred in admitting identification testimony based on a single photo lineup, as it was unduly suggestive and inherently unreliable. He also contends the trial court erred in admitting

evidence of the theft of a vehicle as part of the res gestae of the murder. We affirm.

FACTS

On the night of May 3, 2009, Temika Ashford was visiting Reverend Tryon Eichelberger at his home in Columbia. They heard a noise in another part of the home, and Eichelberger went to investigate. Ashford heard Eichelberger ask, "[H]ow did you get in here?" and then a "commotion" and "hollering." Because Ashford was afraid, she left the home, got in her car, and drove away. She drove around the block, and when she could not reach Eichelberger by phone, she returned to his house. She saw a husky man with a potbelly and receding hairline standing on the porch. He was dressed in a white shirt and jeans, wearing white gloves, and holding a metal pipe. She called 911, left the house, and drove down Farrow Road to wait on the police. While she was waiting, she noticed the man she had seen on the porch walking along the road, no longer carrying the pipe nor wearing the gloves. Once the police arrived at the home, Ashford returned there.

Officer Chauncey Duckett of the Columbia Police Department was dispatched to the scene. On his way there, while traveling on Farrow Road, he saw a light-skinned black man walking, wearing a white or light gray t-shirt and jeans. Once at the scene, he found Eichelberger lying on the floor bleeding heavily. Eichelberger's skull was cracked, he had a brain injury, and he lost a lot of blood. He died three months later as a result of his injuries. The police determined a metal tool had been used to pry open a side door to Eichelberger's home. Officer Duckett found a steel rod across the street from Eichelberger's home, in Larry Harp's yard. Officer Duckett also found a pair of white tube socks next to a light pole about twenty-five to thirty yards from the steel rod in the direction of Farrow Road. The socks and rod had blood on them. DNA analysis initially identified the blood on the items as Eichelberger's. Further testing revealed McGee's DNA inside the socks as well. The rod was consistent with the tool marks found at Eichelberger's home.

On the day of the attack, Harp saw a man he later identified as McGee in Eichelberger's yard at 3:00 p.m., talking on the phone and pacing. He saw him again in the yard at about 5:30 p.m. with a plate, napkin, and cup in his hand and eating, while Eichelberger worked in his garden. Harp testified McGee was wearing an athletic jersey and denim shorts and had a medium heavy build and

light brown skin. Around midnight on the night of the attack, the police woke Harp because they discovered the rod in his yard. Harp informed the police the rod was not his and he did not know how it got there. The police later determined the rod was a winch rod, which is commonly used to tighten straps on a flatbed trailer.

After Ashford gave the police a description of the man she observed on the front porch, the police began looking for the suspect. Police found two men walking together, and one of them matched the description Ashford had given. Ashford said the man looked like the person she saw but he was not wearing the same clothes. However, the man was eliminated as the perpetrator through more police investigation and DNA testing. Later, Ashford was shown a series of photographic line-ups. In them, she saw two pictures she believed looked like the suspect; one of the two pictures was of McGee. She identified McGee's picture as the one that most resembled the man she saw on Eichelberger's porch.

In March 2010, officers visited Michelle Perry, who was a dispatcher with the cab company at which Eichelberger had worked. Eichelberger held church services in a building attached to the cab company's office. Officers showed Perry a picture of McGee and asked if she recognized him. She told them she had seen him two different times about a year before Eichelberger was attacked. The first time she saw him, he came to one of Eichelberger's church services too early one morning and waited about twenty-five minutes outside the office. She saw him again a few days later when he returned for a Bible study.

On May 2, 2009, the day before Eichelberger was attacked, a red Peterbilt tractor-trailer truck was stolen from a business in Camden, where McGee lived. The truck was found the following day about one mile from Eichelberger's home. The theft was recorded by video surveillance, which was later broadcast on local news programs. Officer Sandra Thomas of the Columbia Police Department, McGee's sister, saw the video, recognized McGee, and contacted Crime Stoppers' anonymous tip line. The owner of the truck testified it was used to haul a flatbed trailer and would have contained a winch bar in its tool box.[1] Police learned

[1] An inventory was never performed to determine if the winch rod was missing from the truck.

McGee had a commercial license to operate a tractor trailer that could pull a flatbed trailer, like the one stolen.

On March 17, 2010, officers interrogated McGee while he was incarcerated on an unrelated offense. McGee denied attacking Eichelberger but admitted he had been in that area of Columbia that night. He also said he had gone by Eichelberger's house that day and been on the porch of the house. He told the police that due to an athlete's foot condition, he had taken his socks off while in the area and left them by a dumpster at a store. He then said he left the socks by a light pole. McGee denied stealing the truck from Camden but said he moved a red Mack tractor-trailer truck[2] while in Columbia. McGee told police he did not know what a winch rod was. He also admitted he had told his wife that after a drug dealer pointed a pistol at him, he hit the drug dealer with it on the night of Eichelberger's attack. The police were unable to locate the drug dealer McGee said that he hit.

McGee was indicted for murder and first-degree burglary. Before trial, McGee moved to exclude the evidence regarding the theft of the truck in Camden. The trial court found the evidence was admissible as part of the res gestae of the murder. At trial, McGee moved to suppress the in-court identification by Perry, arguing the identification procedure was unduly suggestive. After conducting a *Neil v. Biggers*[3] hearing, the trial court denied the motion to suppress. The jury convicted him of both charges, and the trial court sentenced him to life imprisonment for murder and thirty years' imprisonment for the burglary. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *Id.* "The admission or exclusion of evidence is a matter within the trial court's sound discretion . . . ." *State v. Dennis*, 402 S.C. 627, 635, 742 S.E.2d 21, 25 (Ct. App. 2013), *cert. pending*. "An abuse of discretion occurs when the conclusions of the

---

[2] Peterbilt and Mack are both makers of trucks that are used to pull tractor trailers.
[3] 409 U.S. 188 (1972).

trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006); *see also State v. Wise*, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."). "The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence." *State v. Wood*, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct. App. 2004).

LAW/ANALYSIS

I. Identification

McGee argues the trial court erred in admitting Perry's identification testimony based on a single photo, as it was unduly suggestive and inherently unreliable. We disagree.

The cases relied on by McGee at trial and on appeal all pertain to identifications by eyewitnesses[4] to crimes. *See, e.g.*, *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972) (holding the court should consider the following factors when determining the likelihood of a misidentification: (1) the witness's opportunity to view the criminal *at the time of the crime*; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the witness's level of certainty at the confrontation; and (5) the time *between the crime and the confrontation*); *State v. Traylor*, 360 S.C. 74, 82, 600 S.E.2d 523, 527 (2004) (providing the same factors); *State v. Moore*, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000) ("[A]n eyewitness identification which is unreliable because of suggestive line-up procedures is constitutionally inadmissible as a matter of law."). However, Perry was not an eyewitness to the crime. Perry's testimony related to seeing McGee a year before the attack and was for the purpose of showing that McGee knew Eichelberger. Therefore, any reliance on cases concerning the admissibility of eyewitness identification is misplaced. Because McGee only challenged the

---

[4] An eyewitness is "[o]ne who personally observes an event." *Black's Law Dictionary* 667 (9th ed. 2009).

admission of Perry's testimony as unduly suggestive and inherently unreliable, there is nothing for us to consider. *See State v. Beekman*, 405 S.C. 225, 235, 746 S.E.2d 483, 488 (Ct. App. 2013) (noting an issue must be raised to and ruled upon by the trial court to be preserved for appellate review), *cert. pending*. Further, Perry's testimony was cumulative because McGee admitted going to the cab company office the year before in his statement to police, which was admitted into evidence at trial. Additionally, McGee admitted knowing Eichelberger. *See State v. Haselden*, 353 S.C. 190, 197, 577 S.E.2d 445, 449 (2003) (holding the admission of improper evidence is harmless when the evidence is merely cumulative to other evidence); *State v. Garris*, 394 S.C. 336, 349, 714 S.E.2d 888, 895 (Ct. App. 2011) ("To warrant reversal based on the admission of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice."). Therefore, we affirm the trial court's admission of Perry's identification.

II. Res Gestae

McGee maintains the trial court erred in admitting evidence of the theft of the truck as part of the res gestae of the murder. We disagree.

"Evidence is relevant and admissible if it tends to establish or make more or less probable the matter in controversy." *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (citing Rules 401 & 402, SCRE). "The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred." *State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999). "The evidence admitted must logically relate to the crime with which the defendant has been charged." *Wiles*, 383 S.C. at 158, 679 S.E.2d at 176.

> One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence furnishes part of the context of the crime or is necessary to a full presentation of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its environment that its proof is appropriate in order to complete the story of the crime on

> trial by proving its immediate context or the res gestae or the uncharged offense is so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other . . . [and is thus] part of the res gestae of the crime charged. And where evidence is admissible to provide this full presentation of the offense, [t]here is no reason to fragmentize the event under inquiry by suppressing parts of the res gestae.

State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-71 (1996) (alterations in original) (internal quotation marks omitted), *overruled on other grounds by State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014). "When evidence is admissible to provide this full presentation of the offense, there is no reason to fragmentize the event under inquiry by suppressing parts of the res gestae." *State v. Preslar*, 364 S.C. 466, 474, 613 S.E.2d 381, 385 (Ct. App. 2005) (internal quotation marks omitted). Under this theory, the temporal proximity of the prior bad act should be closely related to the charged crime. *State v. Owens*, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

"[E]vidence considered for admission under the res gestae theory must satisfy the requirements of Rule 403 of the South Carolina Rules of Evidence." *State v. Dennis*, 402 S.C. 627, 636, 742 S.E.2d 21, 26 (Ct. App. 2013), *cert. pending*. Rule 403 provides that even if evidence is relevant, it "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." "This [c]ourt reviews 403 rulings pursuant to the abuse of discretion standard, and gives great deference to the trial judge's decision." *State v. Myers*, 359 S.C. 40, 48, 596 S.E.2d 488, 492 (2004).

"Unfair prejudice means an undue tendency to suggest decision on an improper basis." *Wiles*, 383 S.C. at 158, 679 S.E.2d at 176. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." *Dennis*, 402 S.C. at 636, 742 S.E.2d at 26 (internal quotation marks omitted). "Evidence is unfairly prejudicial if it has an undue

tendency to suggest a decision on an improper basis, such as an emotional one." *State v. Cheeseboro*, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001). "All evidence is meant to be prejudicial; it is only *unfair* prejudice which must be scrutinized under Rule 403." *State v. Collins*, 398 S.C. 197, 207, 727 S.E.2d 751, 757 (Ct. App. 2012) (brackets and internal quotation marks omitted), *cert. granted* August 8, 2013.

The trial court did not abuse its discretion in allowing the evidence of the theft of the truck as part of the res gestae. The trial court determined there was a sufficient nexus between the theft and the murder. It found the evidence of the truck was circumstantially intimately connected and explanatory of the crime. The trial court further found the evidence of the theft placed the discovery of the winch rod and McGee at the scene of the crime and put it all into context. It also determined the admission of the testimony regarding the theft was necessary for the State to be able to present a complete, unfragmented case. The evidence of the theft was relevant because the truck allowed McGee access to a winch rod like the one used to commit the murder and also placed him in the area around the time of the attack because the truck was found about a mile from Eichelberger's home. The theft occurred the night before the attack. The evidence of the theft of the truck was needed to show the story of the attack on Eichelberger. The unfair prejudice from the admission of evidence of the theft did not substantially outweigh the probative value. Accordingly, the trial court did not abuse its discretion in allowing the evidence of the theft.[5]

---

[5] McGee also argues the trial court failed to analyze the prior bad act under Rule 404(b), SCRE, and that the State failed to establish the theft of the truck was admitted to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Because we find the trial court properly admitted the evidence as part of the res gestae, we need not address this issue. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal); *State v. Wood*, 362 S.C. 520, 529, 608 S.E.2d 435, 440 (Ct. App. 2004) ("Because we dispose of this issue under a res gestae analysis, we do ***NOT*** reach the *Lyle*/Rule 404(b) argument.").

CONCLUSION

Based on the foregoing, the trial court did not abuse its discretion in admitting Perry's testimony or the evidence regarding the theft of the truck. Accordingly, the trial court is

AFFIRMED.

FEW, C.J., and LOCKEMY, J., concur.