The Supreme Court of South Carolina

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N O T I C E

In the Matter of Cynthia E. Collie

Petitioner has filed a petition for reinstatement and that petition has been referred to the Committee on Character and Fitness pursuant to the provisions of Rule 33 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413 of the South Carolina Appellate Court Rules.

The Committee on Character and Fitness has now scheduled a hearing in this regard on June 23, 2021, beginning at 1:30 pm, in the Courtroom of the Supreme Court Building, 1231 Gervais Street, Columbia, South Carolina.[1]

Any individual may appear before the Committee in support of, or in opposition to, the petition.

Kirby D. Shealy, III, Chairman
Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

Columbia, South Carolina

May 24, 2021

[1] The date and time for the hearing are subject to change. Please contact the Office of Bar Admissions Office at the Supreme Court to confirm the scheduled time and date.

The Supreme Court of South Carolina

In the Matter of Robert Charles Ray, Respondent.

Appellate Case No. 2021-000275

ORDER

Respondent has submitted a motion to resign in lieu of discipline pursuant to Rule 35, RLDE, Rule 413, SCACR, following a disciplinary complaint involving his improper removal of funds from his trust account and failure to keep proper financial records. In the affidavit attached to his motion, Respondent acknowledges that Disciplinary Counsel can prove the allegations against him and states he does not desire to contest or defend against those allegations.

We grant Respondent's motion and note no client was harmed as a result of Respondent's misconduct. In accordance with the provisions of Rule 35, RLDE, Respondent's resignation shall be permanent. Respondent will never again be eligible to apply, and will not be considered, for admission or reinstatement to the practice of law or for any limited practice of law in South Carolina.

Within fifteen (15) days from the date of this order, Respondent shall file an affidavit with the Clerk of Court showing Respondent has complied with Rule 30, RLDE, Rule 413, SCACR, and shall also surrender his Certificate of Admission to Practice Law to the Clerk of this Court.

s/ Donald W. Beatty C.J.

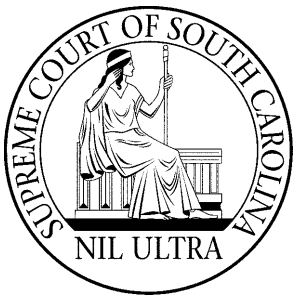
s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
May 28, 2021



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OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 18
June 3, 2021
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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The Supreme Court of South Carolina

Nationwide Mutual Fire Insurance Company,
Respondent,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms,
Defendants,

Of whom Sharmin Christine Walls and Randi Harper are the Petitioners.

Appellate Case No. 2019-001596

ORDER

The petition for rehearing is denied. The attached opinion is substituted for the previous opinion, which is withdrawn.

s/ Donald W. Beatty C.J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

We would grant the petition for rehearing and affirm the court of appeals' decision.

s/ John W. Kittredge J.

s/ George C. James, Jr. J.

Columbia, South Carolina
June 3, 2021

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Nationwide Mutual Fire Insurance Company,
Respondent,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms,
Defendants,

Of whom Sharmin Christine Walls and Randi Harper are the Petitioners.

Appellate Case No. 2019-001596

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 28012
Heard November 19, 2020 – Re-Filed June 3, 2021

REVERSED

Michael F. Mullinax, of Mullinax Law Firm, P.A., of Anderson, for Petitioner Sharmin Christine Walls; John

Kirkman Moorhead, of Moorhead LeFevre, P.A., of Anderson, for Petitioner Randi Harper.

John Robert Murphy and Wesley Brian Sawyer, of Murphy & Grantland, P.A., of Columbia, for Respondent Nationwide Mutual Fire Insurance Company.

Roy T. Willey, IV, and Eric M. Poulin, both of Anastopoulo Law Firm LLC, of Charleston, for Amicus Curiae United Policyholders. Frank L. Eppes, of Eppes & Plumblee, PA, of Greenville, Bert G. Utsey, III, of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., of Charleston and Joe Brewer, of the Law Office of D. Josey Brewer, of Greenville, for Amicus Curiae The South Carolina Association for Justice.

JUSTICE HEARN: In this declaratory judgment action, Nationwide relies on flight-from-law enforcement and felony step-down provisions[1] in an automobile liability insurance policy to limit its coverage to the statutory mandatory minimum. Following a bench trial and after issuance of this Court's opinion in *Williams v. Government Employees Insurance Co. (GEICO)*, 409 S.C. 586, 762 S.E.2d 705 (2014), the circuit court held the step-down provisions were void pursuant to Section 38-77-142(C) of the South Carolina Code (2015). The court of appeals reversed. We now reverse the court of appeals and hold that section 38-77-142(C) renders Nationwide's attempt to limit the contracted-for liability insurance to the mandatory minimum void.

FACTS

Three individuals—Sharmin Walls, Randi Harper, and Christopher Timms—were passengers in a vehicle driven by Korey Mayfield that crashed in Anderson County on July 11, 2008 following a high-speed chase by law enforcement. On the

[1] While Nationwide characterized the provisions as exclusions, they are more appropriately denominated as step-downs since, in the event the provisions are triggered, Nationwide is obligated to pay the mandatory minimum limits rather than the liability limit for which the parties contracted.

day of the accident, the group left from Walls' home in Walls' vehicle, a Chevrolet Lumina, driven by Mayfield. A trooper with the South Carolina Highway Patrol activated his blue lights after observing the Lumina traveling approximately twelve miles over the speed limit and swerving over the center line. Mayfield refused to pull over, and during the chase, the trooper's vehicle reached speeds of 109 miles per hour. All the passengers begged Mayfield to stop the car, but Mayfield refused. Eventually, the trooper received instructions to terminate the pursuit, which he did. Nevertheless, Mayfield continued speeding and lost control of the vehicle. Timms died in the single-car accident, and Walls, Harper, and Mayfield sustained serious injuries. After being charged with reckless homicide, Mayfield entered an *Alford* plea. *North Carolina v. Alford*, 400 U.S. 25 (1970).

At the time of the accident, Walls' automobile was insured through her Nationwide policy, which included bodily injury and property damage liability coverage with limits of $100,000 per person and $300,000 per occurrence. Walls also maintained uninsured motorist (UM) coverage for the same limits, but she did not have underinsured motorist (UIM) coverage. Walls' liability policy contained the following provisions:

> B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:
> …
> 6. Bodily injury or property damage caused by:
>
> a) you;
> b) a relative; or
> c) anyone else while operating your auto;
>
> (1) while committing a felony; or
> (2) while fleeing a law enforcement officer.

In reliance on those provisions, Nationwide paid only $50,000 in total to the injured passengers—the statutory minimum as provided by section 38-77-140—rather than the liability limits stated in the policy. S.C. Code Ann. § 38-77-140(A)(2) (2015). Safe Auto, Mayfield's insurance company, also paid a total of $50,000 to the passengers.

Nationwide brought this declaratory judgment action requesting the court declare that the passengers were not entitled to combined coverage of more than $50,000 for any claims arising from the accident. Walls answered, denying there was any evidence that the flight-from-law enforcement and felony provisions applied.[2]

Following a bench trial, the circuit court held in part that Mayfield was a non-permissive user and that the provisions at issue were unconscionable and void as against public policy. Thus, the circuit court held that Walls, Harper, and Timms' estate were entitled to recover $100,000 per person pursuant to the liability limits in Walls' policy. In the alternative, the court found that due to Mayfield's conduct in attempting to elude the police, the vehicle would be deemed uninsured as to the innocent passengers, and they should be entitled to recover pursuant to the UM provisions of the policy.

Two days after the issuance of the circuit court's order, *Williams v. GEICO*, 409 S.C. 586, 762 S.E.2d 705 (2014) was decided. Nationwide filed a Rule 59(e), SCRCP, motion. At the hearing on that motion, the passengers abandoned their argument with respect to UM coverage. In its post-trial order, the circuit court found that Mayfield was committing a felony and fleeing from the police at the time of the accident. Nevertheless, the circuit court held that the *Williams* decision prohibited step-down provisions pursuant to section 38-77-142(C).

Nationwide appealed, and the court of appeals reversed, holding the provisions did not violate our state's public policy or the statutory schemes of Titles 38 and 56. *Nationwide Mut. Fire Ins. Co. v. Walls*, 427 S.C. 348, 360, 831 S.E.2d 131, 138 (Ct. App. 2019). More specifically, the court of appeals noted that the *Williams* decision interpreted section 38-77-142(C) to prohibit provisions that reduced the contracted-for coverage to the mandatory minimum limit when "the policy's declaration page purport[ed] to provide a higher amount of coverage to a certain class of insureds." *Id.* at 358, 831 S.E.2d at 136-37 (citing *Williams*, 409

[2] In her answer, Walls also asserted counterclaims and defenses, including: breach of contract regarding the liability, UM, and UIM coverage; bad faith refusal by Nationwide to honor the claims; and unconscionability, asserting that Nationwide's use of the provisions were void as against public policy. Mayfield and the passengers eventually entered into a stipulation of dismissal of the bad faith counterclaim; therefore, that issue is not before this Court.

S.C. at 603, 762 S.E.2d at 714). The court of appeals distinguished the family step-down provision at issue in *Williams* from the provisions in this case because Nationwide's provisions were not triggered by a party's relationship to the insured, but rather, by the conduct of the driver. *Walls*, 427 S.C. at 358, 831 S.E.2d at 137. Furthermore, the court of appeals noted that full coverage remained when injury was not the result of "foreseeably dangerous conduct that the insured [could] reasonably avoid." *Id.* at 358-59, 831 S.E.2d at 137. The court of appeals also held that pursuant to section 56-9-20 of the South Carolina Code (2018), insurers were permitted to place reasonable restrictions on coverage above the minimum limits. *Id.* at 359, 831 S.E.2d at 137 (quoting S.C. Code Ann. § 56-9-20(5)(d) (2018)). Therefore, the court of appeals held the provisions were not arbitrary or capricious, and further, the statutory mandatory minimum coverage provided protection to innocent passengers of a vehicle evading law enforcement. *Walls*, 427 S.C. at 359-60, 831 S.E.2d at 137. This appeal—in which only Walls and Harper are involved as appellants—followed.

ISSUE PRESENTED

Do Nationwide's felony and flight-from-law enforcement step-down provisions violate section 38-77-142(C)?[3]

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Felts v. Richland Cty.*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). The determination of whether coverage exists under an insurance policy is an action at law. *S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012) (quoting *Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 46, 717 S.E.2d 589, 592 (2011)). "'In an action at law tried without a jury, the appellate court will not

[3] At oral argument, counsel for Harper and Walls stated he was not pursuing a public policy argument. While we fully recognize the dissent is correct that courts across the country have upheld similar policy exclusions as not being contrary to public policy, we do not consider that issue because it was abandoned by Appellant. Accordingly, we view the dissent's discussion of public policy as unnecessary since it is neither an issue before us nor a basis for our decision. We reiterate that our decision today is grounded only on the language of the statute and our decision in *Williams*.

disturb the trial court's findings of fact unless there is no evidence to reasonably support them.'" *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 576, 757 S.E.2d 399, 404 (2014) (quoting *Crossmann*, 395 S.C. at 46-47, 717 S.E.2d at 592). "However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard." *Kennedy*, 398 S.C. at 610, 730 S.E.2d at 864 (citing *Crossmann*, 395 S.C. at 47, 717 S.E.2d at 592).

DISCUSSION

Harper and Walls argue that section 38-77-142(C), as interpreted by this Court in *Williams*, prohibits any step-down provisions in a liability policy's coverage. Nationwide contends that section 38-77-142 operates as a mere omnibus provision, defining who must be covered in a liability policy, and that subsection (C) requires that policies not treat covered parties differently from one another. We agree with Harper and Walls.

Section 38-77-142(C) states, "Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void." S.C. Code Ann. § 38-77-142(C) (2015). Subsections (A) and (B) specify who must be covered in liability insurance policies, including named insureds and permissive users, as well as what injuries must be covered. S.C. Code Ann. § 38-77-142(A)-(B) (2015). More specifically, subsection (A) states in part:

> No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle or may be issued or delivered by an insurer…unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person.

S.C. Code Ann. § 38-77-142(A) (2015). Subsection (B) similarly provides who and what injuries must be insured and additionally contains a clause regarding notice that

states "mere failure of the insured to turn the motion or complaint over to the insurer" would not void coverage if the insured "otherwise cooperate[d] and in no way prejudice[d] the insurer." S.C. Code Ann. § 38-77-142(B) (2015). *See Neumayer v. Philadelphia Indem. Ins. Co.*, 427 S.C. 261, 272-73, 831 S.E.2d 406, 412 (2019) (In upholding notice clauses within insurance policies, we discussed the import of section 38-77-142(B) as demonstrating "the legislature's recognition of the role notice provisions play in insurance contracts."). Therefore, subsections (A) and (B) provide required provisions for liability insurance policies, and once the insurer places the required provisions in the policy with the agreed-upon limits of coverage, any attempt by the insurer to reduce the coverage afforded by the provisions is void pursuant to subsection (C).

In interpreting the same statutory provision, the *Williams* Court found it significant that section 38-77-142 required insurers to provide liability coverage to insureds "'within the coverage of the policy.'" *Williams*, 409 S.C. at 603, 762 S.E.2d at 714 (quoting S.C. Code Ann. § 38-77-142(A)-(B) (2015)). In that case, a husband and wife—both named insureds—were killed in a car accident when a train struck their vehicle. *Williams*, 409 S.C. at 591, 762 S.E.2d at 708. The couple had a motor vehicle insurance policy with GEICO that included liability limits of $100,000 per person and $300,000 per accident for bodily injury, and $50,000 per accident for property damage. *Id*. Within its policy, GEICO included a step-down provision that reduced coverage to the statutory minimum limits when an insured's relative sustained bodily injury. *Id*. at 592, 762 S.E.2d at 708. Rather than paying the full $100,000 as provided by the couple's policy, GEICO sought to pay the then-statutory minimum of $15,000 pursuant to the family step-down clause. *Id.* The personal representatives of the couple's estates filed a declaratory judgment action to determine the amount of liability proceeds GEICO was required to pay. *Id.* at 592, 762 S.E.2d at 709. The circuit court found in relevant part that the step-down provision was valid and did not violate public policy or section 38-77-142. *Id.* at 593, 762 S.E.2d at 709.

On appeal, this Court held that insurers have the right to "limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory inhibition." *Id.* at 598, 762 S.E.2d at 712 (citing *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535-36, 514 S.E.2d 327, 330 (1999); *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 523, 377 S.E.2d 569, 570 (1989); *Cobb v. Benjamin*, 325 S.C. 573, 580-81, 482 S.E.2d 589, 593 (Ct. App. 1997)). In examining section 38-77-142, the Court stated that the plain language of

subsections of (A) and (B) required a policy to provide coverage for the named insureds and permissive users "against liability for damage incurred 'within the coverage of the policy.'" *Williams*, 409 S.C. at 603, 762 S.E.2d at 714 (citing S.C. Code Ann. § 38-77-142 (A)-(B) (2015)). Further, the Court held that the face amount of coverage was relevant pursuant to section 38-77-142—not the statutory minimum limits of liability. *Williams*, 409 S.C. at 603, 762 S.E.2d at 714 (citing S.C. Code Ann. § 38-77-140 (2015)). In conclusion, the Court stated the family step-down provision violated section 38-77-142's prohibition and public policy. *Id.* at 607, 762 S.E.2d at 717.

Here, like GEICO's family step-down provision in *Williams*, Nationwide's provisions reduce coverage from the contracted-for policy limit of $300,000 per occurrence to the statutory minimum of $50,000 per occurrence for damage caused by an insured while fleeing from law enforcement or engaging in a felony. In light of our interpretation of section 38-77-142(C) in our *Williams* decision, Nationwide's step-down provisions are void. Further, we have previously rejected the argument that section 56-9-20(5)(d) of the South Carolina Code (2018) allows limitations on excess coverage so as to render section 38-77-142(C) inapplicable. *Williams*, 409 S.C. at 607 n.8, 762 S.E.2d at 716 n.8 ("We disagree…that section 56-9-20(d) [sic]…somehow serves to thwart the application of section 38-77-142(C) because the [insureds] purchased coverage over the statutory minimum limits…. [S]ection 56-9-20(d) [sic] has no bearing on the application of *other* motor vehicle laws, such as section 38-77-142…."). Rather, we have held and affirm today that section 38-77-142(C) makes no distinction between mandatory minimum limits and excess coverage. *Id.* at 603, 762 S.E.2d at 714 ("Thus, it is the face amount of the coverage that is relevant under section 38-77-142, not the statutory minimum limits of liability coverage set forth in section 38-77-140…."). Moreover, in reaching this decision, we find it significant that the General Assembly has not amended section 38-77-142 since this Court decided *Williams* in 2014. *See York v. Longlands Plantation*, 429 S.C. 570, 576, 840 S.E.2d 544, 547 (2020) (finding the General Assembly's "silence over the past seven decades" important); *Wigfall v. Tideland Utils, Inc.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003) ("When the Legislature fails over a forty-year period to alter a statute, its inaction is evidence the Legislature agrees with this Court's interpretation.").[4]

[4] We reject the dissent's suggestion that our statutory interpretation is a thinly-disguised attempt to legislate from the bench. Our "judicial sleight of hand" is merely an effort to remain faithful to the language of the statute, as interpreted

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

REVERSED.

BEATTY, C.J., and FEW, J., concur. KITTREDGE, J., dissenting in a separate opinion in which JAMES, J., concurs.

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in *Williams*, which the General Assembly has seen fit not to alter in the nearly seven years since the opinion's issuance. Simply put, our decision is controlled by section 38-77-142, and should the General Assembly disagree with our interpretation, it may, of course, correct our construction by codifying certain exclusions or otherwise altering the statute. *See, e.g.*, Ark. Code Ann. § 23-89-205(1)-(2) (West 2020) (providing that an insurer may include an intentional act exclusion, a felony exclusion, and an evasion-from-law-enforcement exclusion); *see also* Ark. Code Ann. § 23-89-214 (West 2020) (expressly prohibiting step-down provisions that reduce coverage when the insured vehicle is involved in an accident and the driver is someone other than the insured).

JUSTICE KITTREDGE: Today, counter to every other jurisdiction in the country, a majority of this Court holds that a clear provision in an insurance policy—one which reduces coverage to the statutory minimum where an insured causes damage while fleeing a law enforcement officer—is unenforceable. We are told this decision reflects the intent and policy of the South Carolina General Assembly as set forth in section 38-77-142 of the South Carolina Code (2015). Specifically, the majority "hold[s] that section 38-77-142(C) renders Nationwide's attempt to limit the contracted-for liability insurance to the mandatory minimum void." I dissent. I would affirm the court of appeals, which I believe correctly held that the provisions reducing liability coverage to the mandatory minimum limit for "committing a felony" or "while fleeing a law enforcement officer" violate neither the statutory laws of South Carolina nor our state's public policy. *Nationwide Mut. Fire Ins. Co. v. Walls*, 427 S.C. 348, 831 S.E.2d 131 (Ct. App. 2019). I would adopt the excellent opinion of the court of appeals in every respect.

I.

Nationwide Mutual Fire Insurance Company issued a standard automobile liability policy to Sharmin Christine Walls. Subsequently, Walls and several friends decided to drive around Anderson in her Chevrolet Lumina, which was insured by the Nationwide policy. Because Walls had consumed a significant amount of alcohol that day, she allowed one of her friends, Korey Mayfield, to drive her car. The parties agree that Mayfield was a permissive user and, thus, an insured under the policy.[5]

A South Carolina state trooper spotted the Lumina speeding and crossing the yellow center line. The trooper activated his emergency lights and siren and attempted a traffic stop. Mayfield refused to pull over, and a chase ensued, reaching speeds in excess of 100 miles per hour. The trooper eventually abandoned the pursuit for public safety reasons, but his decision made no difference, for despite the lack of pursuit, Mayfield continued to drive dangerously in an effort to evade law enforcement. Shortly thereafter, the Lumina crashed on

[5] I accept this stipulation notwithstanding the finding of the circuit judge that Mayfield was an unauthorized, non-permissive user. Perhaps this finding by the circuit court is a scrivener's error. The majority takes no issue with the circuit court's finding in this regard, and neither will I.

Leatherdale Road in Anderson County. The Lumina was traveling in excess of twice the posted speed limit at the time of the crash. As a result of the crash, one passenger died, and the other three passengers (including Mayfield and Walls) were seriously injured. Mayfield pled guilty to reckless homicide.

Walls's liability policy with Nationwide contained the following:

> B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:
>
> . . . .
>
> 6. Bodily injury or property damage caused by:
>
> a) you;
>
> b) a relative; or
>
> c) anyone else while operating your auto;
>
> (1) while committing a felony; or
>
> (2) while fleeing a law enforcement officer.

Relying on the validity of this provision, Nationwide tendered $50,000, the statutory minimum required by section 38-77-140 of the South Carolina Code (2015). Walls, however, demanded the policy limits. In an effort to resolve the coverage dispute, Nationwide filed the underlying declaratory judgment action. There is no dispute as to the material facts. This case does not concern a motor vehicle accident involving general negligence or gross negligence principles. Mayfield intentionally fled from law enforcement. As the majority notes, "the circuit court found that Mayfield was committing a felony and fleeing from the police at the time of the accident."[6]

[6] Failure to stop for blue light—fleeing a law enforcement officer— is a felony in South Carolina when it results in great bodily injury or death. *See* S.C. Code Ann. § 56-5-750(C) (2018).

II.

I begin with the unassailable premise that South Carolina has long recognized that "[r]easonable exclusionary clauses which do not conflict with the legislative expression of the public policy of the State as revealed in the various motor vehicle insurance statutes are permitted." *Pa. Nat'l Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 551, 320 S.E.2d 458, 461 (Ct. App. 1984). In this case, the court of appeals correctly followed the policy decision of our legislature in allowing contracted-for exclusions to reduce coverage for "fleeing a law enforcement officer"—conduct our legislature has deemed a crime. *See* S.C. Code Ann. § 56-5-750. Even our decision in *Williams v. GEICO*, which the majority claims compels the result today, acknowledged the "general rule [that] insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory inhibition." *Williams v. Gov't Emps. Ins. Co. (GEICO)*, 409 S.C. 586, 598, 762 S.E.2d 705, 712 (2014).

An exclusion for criminal conduct does not preclude a claim in its entirety. The public policy, as determined by our legislature, seeks to provide a measure of protection to injured parties. More precisely, section 38-77-140(A) mandates that an automobile insurance policy issued in South Carolina must "contain[] a provision insuring the persons defined as insured against loss from [] liability" in specified minimum amounts. The reduction from excess coverage to a compulsory minimum is often referred to as a step-down. Here, the relevant subsection is section 38-77-140(A)(2) that provides for "[$50,000 in the event] of bodily injury to two or more persons in any one accident." Section 38-77-140 concludes with the following: "Nothing in this article prevents an insurer from issuing, selling, or delivering a policy providing liability coverage in excess of these requirements." S.C. Code Ann. § 38-77-140(B). In addition, "[w]ith respect to a policy which grants [] excess or additional coverage, the term 'motor vehicle liability policy' shall apply only to that part of the coverage which is *required* by this article." S.C. Code Ann. § 56-9-20(5)(d) (2018) (emphasis added). Walls and Nationwide contracted for liability coverage in excess of the compulsory minimum, and the policy included the "committing a felony" and "fleeing a law enforcement officer" provisions.

Did the South Carolina Legislature intend to render the "committing a felony" and "fleeing a law enforcement officer" provisions void pursuant to section 38-77-142?

I am convinced our legislature intended no such thing.

In relevant part, section 38-77-142 provides:

> (A) No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle that is principally garaged, *docked*, or used in this State unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person. Each policy or contract of liability insurance, or endorsement to the policy or contract, insuring private passenger automobiles principally garaged, *docked*, or used in this State, that has as the named insured an individual or husband and wife who are residents of the same household and that includes, with respect to any liability insurance provided by the policy, contract, or endorsement for use of a nonowner automobile a provision requiring permission or consent of the owner of the automobile for the insurance to apply.
>
> (B) No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of a vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle principally garaged or used in this State without an endorsement or provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the

> policy or contract as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other person. . . .
>
> (C) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void.

(Emphasis added).

Notice the two references in subsection 38-77-142(A) to vehicles that are "docked" in South Carolina. The South Carolina General Assembly patterned this omnibus statute after a corresponding Virginia statute. *See* Va. Code Ann. § 38.2-2204(A) (2020). While South Carolina's statute applies to motor vehicles only, the Virginia statute applies to vehicles *and* watercraft "garaged, docked, or used in" Virginia. The inadvertent inclusion of the word "docked" in the South Carolina omnibus statute makes it abundantly clear that our legislature adopted the Virginia statute.

No decision examining the Virginia law has interpreted the statute so as to prohibit an illegal acts exclusion, as the majority here does today. In fact, I cannot find a single case in any jurisdiction that supports today's decision. Neither the majority nor Petitioner Walls has cited a single reported decision that purports to buttress today's result—that is, except for *Williams v. GEICO*, this Court's most recent foray into judicially legislating public policy as it relates to insurance law in South Carolina.

And so we come to this Court's 2014 decision in *Williams v. GEICO*. Petitioner Walls and the majority rely exclusively on *Williams* to strike down not only the "committing a felony" and "fleeing a law enforcement officer" exclusions in this policy, but *all* so-called step-downs that reduce liability coverage to the statutory minimum when an insured engages in criminal conduct that is clearly addressed in the policy. I dissented in *Williams*. I did not, however, disagree with the Court's policy-making rationale. I dissented because I believed the legislature, not this Court, establishes policy. I did not believe section 38-77-142 mandated the Court's policy decision. I believed (and still believe) the key language in section 38-77-142(C)—any provision that purports "to limit or reduce the coverage afforded by the provisions *required* by this section is void"—addresses the mandatory requirement of minimum coverage. (Emphasis added.) I note the title to section

38-77-142 includes the phrase "required provisions." Beyond the required mandatory coverage, when addressing voluntary coverages and policy provisions, I would not void policy provisions based on a misguided and myopic view of section 38-77-142.

Yet, if a *Williams* situation were presented to this Court again, I would be inclined to follow the *Williams* decision because, despite being given the chance to do so, the legislature has not overruled that decision. However, the issue before us today does not remotely resemble the issue in *Williams*. In *Williams*, husband and wife insureds were killed in an accident when their vehicle was struck by a train. The GEICO policy provided an exclusion (beyond the statutory minimum) for liability coverage when there is "bodily injury to any insured or any relative of an insured residing in his household." Thus, the Court was presented with a family step-down provision that reduced liability coverage when a family member of the at-fault insured was the claimant.

The *Williams* Court reviewed the Motor Vehicle Financial Responsibility Act and noted that the purpose of the Act "is to give greater protection to those injured through the *negligent* operation of automobiles." *Williams*, 409 S.C. at 599, 762 S.E.2d at 712 (emphasis added). While the majority in *Williams* acknowledged "a wide divergence of authority in this area," it gave controlling weight to cases from jurisdictions that disfavored family step-down provisions, most notably the Commonwealth of Kentucky. *Id.* at 604–07, 762 S.E.2d at 715–16 (discussing in detail *Lewis ex rel. Lewis v. West American Insurance Co.*, 927 S.W.2d 829, 833 (Ky. 1996), in which the Supreme Court of Kentucky found, "To uphold the family exclusion would result in perpetuating socially destructive inequities.").

It appears family step-down provisions were designed to address the possibility of collusion among family members. It further appears that the concern with family collusion was often more theoretical than real, and some courts, as in *Lewis*, struck down the perceived anachronistic family step-down provision on policy grounds. The husband and wife insureds in *Williams* were both killed in the accident—to be sure, no collusion existed and thus the purported rationale for the family step-down did not exist. The *Williams* majority agreed with the public policy reasoning of *Lewis* and observed that "it would indeed be an unusual public policy that would condone denying coverage to a child where he or she is catastrophically injured while being driven by a parent to school, but would allow recovery where the parent injures a stranger while on the way to work." *Id.* at 607, 762 S.E.2d at 716.

However, the Court in *Williams* did not stop with merely declaring its preferred policy. That policy preference had to be tied to the South Carolina Legislature. The answer, of course, was found in a forced construction of section 38-77-142. *Williams* concluded that the family step-down provision was in contravention of section 38-77-142 and "to allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary, capricious and injurious to the public good." *Id.* at 607, 762 S.E.2d at 717.

From either a public policy or statutory construction perspective, the policy exclusions here for "committing a felony" and "fleeing a law enforcement officer" bear not the slightest resemblance to the family step-down provision in *Williams*. The suggestion that *Williams* controls the decision here is specious. The focus in *Williams* was on the purpose of the law—to protect those injured by the *negligent* operation of automobiles. In this regard, section 38-77-142 tracks the stated purpose of the Motor Vehicle Financial Responsibility Act by providing in subsection (A) that mandatory coverage is to provide coverage for "liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract *as a result of negligence in the operation or use of the vehicle by the named insured or by any such person*." (Emphasis added). Subsection (B) of section 38-77-142 contains a similar reference to "negligence in the operation" of the vehicle. Here, we are confronted not with negligence but the intentional criminal act of an insured fleeing from law enforcement. Next, *Williams* dealt with *who* was covered. The point in *Williams* was that one insured could not be singled out for disfavored treatment as compared to another insured. Here, the focus is instead on the conduct of the insured in causing the injury; there are not different levels of coverage for injured parties—all are treated the same.

I am confident Nationwide's specific criminal conduct policy exclusions are completely consistent with section 38-77-142, but the majority rules otherwise. In so ruling, the Court is legislating. Make no mistake about it. The Court not only interprets section 38-77-142 to its own liking, the Court majority nullifies the many statutory provisions that allow parties freedom to contract for additional coverage and additional provisions, including section 38-77-140(B) and section 56-9-20(5)(d). Attributing the result today to the South Carolina General Assembly under the guise of statutory interpretation is judicial sleight of hand.

Finally, I address the suggestion that the decision today is in line with the public policy of South Carolina. I reiterate that where the legislature has spoken, the

legislature establishes public policy. This Court may intervene and overrule a public policy determination of the legislature only when that policy contravenes the South Carolina Constitution or United States Constitution. As noted, with respect to automobile insurance policies, every other jurisdiction in the United States that follows a similar statutory scheme permits criminal conduct exclusions that reduce liability coverage to the statutory minimum where the injury is caused by an insured. I believe the universal acceptance of the validity of such exclusions (or step-down provisions) reflects the public policy. *See* 8A *Couch on Insurance* § 121:94 & n.3 (3d ed. Dec. 2020 Update) (collecting cases standing for the proposition that "[a]n exclusion in an automobile policy as to loss while the automobile used is engaged in unlawful flight from the police is not against public policy"). Justifications for such exclusions are obvious and common sense. The "committing a felony" and "fleeing a law enforcement officer" exclusions address conduct that significantly increases the insured risk, and an insured can easily avoid the application of the exclusions by obeying the law. *See, e.g.*, David J. Marchitelli, Annotation, *Automobile Liability Insurance Policy Exclusion as Applied to Loss or Injury Resulting from Insured's Flight from Police*, 41 A.L.R.6th § 527 (2009) ("Efforts to exclude coverage for such behavior are often bolstered by judicial and legislative policies against allowing individuals to insure themselves against the consequences of their own intentional misconduct.").[7] The "committing a felony" and "fleeing a law enforcement officer" exclusions manifestly support public policy. To borrow from *Williams*, the "committing a felony" and "fleeing a law enforcement officer" exclusions in the Nationwide and Walls policy are in no manner "arbitrary, capricious [or] injurious to the public good." *See Williams*, 409 S.C. at 607, 762 S.E.2d at 717.

[7] I fully understand that most every motor vehicle accident is the result of a criminal violation, such as speeding, running a red light, and the list could go on. In the insurance context, those claims are treated as negligence, and properly so. It would be wholly improper for a sneaky insurance company to exclude criminal acts generally, thereby reducing coverage to the mandatory minimum in virtually every case. The policy exclusion for criminal conduct must be precise and transcend the realm of negligence, as the Nationwide and Walls policy here does. Nationwide and Walls excluded liability coverage for "committing a felony" (an understood term of art) and "fleeing a law enforcement officer" (intentional criminal conduct proscribed by a specific statute).

I dissent.

JAMES, J., concurs.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

South Carolina Coastal Conservation League, Appellant,

v.

South Carolina Department of Health and Environmental Control, KDP, II, LLC, and KRA Development, LP, Respondents.

Appellate Case No. 2019-000074

Appeal from the Administrative Law Court
Ralph King Anderson, III, Administrative Law Judge

Opinion No. 28031
Heard March 23, 2021 – Filed June 2, 2021

REVERSED

Amy Elizabeth Armstrong, of S.C. Environmental Law Project, of Pawleys Island, for Appellant South Carolina Coastal Conservation League.

George Trenholm Walker and Thomas P. Gressette, Jr., both of Walker Gressette Freeman & Linton, of Charleston, for Respondents KDP II, LLC and KRA Development, LP, and Bradley David Churdar, of Charleston, for Respondent South Carolina Department of Health and Environmental Control.

JUSTICE HEARN: The preservation of one of only three remaining pristine sandy beaches accessible to the general public—Captain Sam's Spit on Kiawah Island—is before the Court for a third time.[1] Twice before, the administrative law court (ALC), over the initial objection of the South Carolina Department of Health and Environmental Control (DHEC), has granted permits for the construction of an extremely large erosion control device in the critical area.[2] Twice before, this Court has found the ALC erred. *See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control,* 411 S.C. 16, 766 S.E.2d 707 (2014) (*KDP I*); *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 422 S.C. 632, 813 S.E.2d 691 (2018) (*KDP II*).

The current appeal stems from the ALC's third approval of another gargantuan structure—a 2,380-foot steel sheet pile wall—designed to combat the erosive forces carving into the sandy river shoreline, especially along its narrowest point called the "neck," in order to allow a developer to construct a road to facilitate development of fifty houses. DHEC, reversing its prior stance, issued four permits to construct the steel wall, which the ALC upheld. While the Coastal Conservation League (League) raises numerous issues on appeal, we hold the ALC erred in three respects: in accepting DHEC's narrow, formulaic interpretation of whether a permit that indisputably impacts a critical area warrants the more stringent review normally accorded to such structures; in relying on the protection of Beachwalker Park to justify the construction of the entire wall; and, in determining the public will benefit from the wall based on purely economic reasons. Accordingly, we reverse.

FACTS/PROCEDURAL BACKGROUND

Captain Sam's Spit encompasses approximately 170 acres of land above the mean high water mark along the southwestern tip of Kiawah Island and is surrounded by water on three sides. Although the Spit is over a mile long and 1,600 feet at its widest point, the focal point of this appeal concerns the land along the narrowest point—the neck—which is the isthmus of land connecting it to the rest of Kiawah Island. The neck occurs at a deep bend in the Kiawah River where it changes direction before eventually emptying into the Atlantic Ocean via Captain Sam's Inlet.

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[1] While there are other coastal areas with undeveloped beachfronts, according to DHEC, Captain Sam's Spit, Hunting Island State Park, and Huntington Beach State Park are the only three pristine beaches readily accessible to the general public.

[2] At oral argument before the Court, counsel for DHEC stated he did not believe "there has ever been anything like this before" permitted in South Carolina.

The neck has been migrating eastward due to the formidable erosive forces of the Kiawah River, although the depletion of the river bank has historically been outpaced by the accretion of sand on the oceanside. Nevertheless, the "access corridor"—the buildable land between the critical area and the ocean-side setback line—has narrowed significantly in the last decade to less than thirty feet.[3] The width of the neck is particularly relevant as KDP needs enough space to build a road in order to connect to its proposed development, which is planned for further down the Spit.[4] At the base of the neck located along the Kiawah River is Beachwalker Park, operated by the Charleston County Parks and Recreation Commission.

At the time KDP acquired the Spit in 1988, it was seaward of the baseline set by the Office of Coastal Resource Management and was not authorized for development. In 1999, DHEC relocated the baseline along the coast and extended it to include portions of the Spit, making KDP's property landward of the setback line that paralleled the ocean side available for development. In 2005, KDP entered into a development agreement with the Town of Kiawah Island whereby KDP relinquished its right to build a hotel on the island in favor of the right to develop up to fifty residential lots on the Spit. The fifty lots would occupy roughly twenty acres on the Spit, and development would occur in two phases.

In February of 2008, KDP sought a permit to build a 2,783-foot vertical bulkhead and revetment within the critical area along the Kiawah River shoreline. DHEC denied most of the permit, with the exception of a 270-foot segment to protect Beachwalker Park. Both the League and KDP appealed, and the ALC ultimately granted approval for the entire structure. Both parties appealed, and after three oral arguments and two prior opinions on rehearing, we found the ALC erred in: relying on the benefits to the private developer and the Town of Kiawah instead of the public as a whole; declining to consider the extent of the effects to the upland property; and determining the structure would have no adverse impact on public access to the area. *KDP I*, 411 S.C. at 44, 766 S.E.2d at 723. On remand, the ALC again approved the bulkhead but without the revetment except for the first 270 feet, which would utilize both structures. On appeal, we affirmed the approval of the 270-foot portion but

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[3] That distance was about 60 feet in 2010, 39 feet in 2014, and 29.25 feet in 2016.

[4] The record demonstrates the proposed road will be 20 feet wide, but an additional 8.5 feet will be needed to install the guardrail, the steel wall, and sufficient space during construction to avoid the critical area. That leaves less than a foot at the neck's narrowest place based on calculations from 2016.

reversed the remaining segment which would only contain the bulkhead because there was no evidence in the record to support bifurcating the structures. *KDP II*, 422 S.C. at 637, 813 S.E.2d at 694.

Following our remand in *KDP I*, KDP filed a permit application in 2015 taking a new approach to protect its upland private property—the construction of an erosion control device outside of the critical area in order to encompass DHEC's less stringent review policy for non-critical area permits.[5] This structure, the steel sheet pile wall at issue before us, consists of drilling into the ground approximately sixty, forty-foot long steel sheet piles double-coated with coal tar epoxy so that only six and a half feet of the wall is above the mean sea level. Accordingly, the wall is considered an in-ground structure. The sections would be connected with a galvanized channel wall horizontally anchored approximately every six feet. Construction of the steel wall would occur in two phases, beginning with a portion from the neck and down the riverside to the southwest portion of the Spit. The second phase would extend from Beachwalker Park to the neck.

Unlike the revetment and bulkhead, the wall is permitted for the highland side of the critical area, meaning KDP would only build outside the critical area. However, the proposed building area has consistently narrowed, and the expert testimony established it is not a matter of *if* but *when* the critical area will encompass the wall as the critical line continues its march towards the ocean setback line. Despite this uncontroverted fact, DHEC declined to utilize the more stringent analysis applicable to a critical area permit, instead determining the permits complied with the Coastal Zone Management Plan (CMP). After DHEC granted the

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[5] KDP sought three permits and approval through a Coastal Zone Consistency Certification. The certification is not as detailed a review as a critical area component, but is instead part of DHEC's review that the project complies with the Coastal Zone Management Plan, which is mandated by the South Carolina Coastal Zone Management Act. *See* The Coastal Zone Management Act, Title 48, Chapter 39 of the South Carolina Code (2008 & Supp. 2020); The Coastal Zone Management Program, South Carolina Department of Health and Environmental Control, https://scdhec.gov/environment/your-water-coast/ocean-coastal-management/coastal-zone-management/south-carolina. The permits and certification enable KDP to construct a roadway, stormwater management system, utility lines, gravity sewer, manholes, a pump station, a force main, and water lines.

permits and certification, the League requested that the Board conduct a final review, but it declined to do so.

The League then sought a contested case hearing before the ALC, which occurred over the course of seven days in August of 2017. Numerous expert witnesses testified, as well as several lay persons who frequented the Spit. Alan Wood, one of the League's experts, testified he conducted surveys in 2017 which demonstrated the critical line had shifted markedly towards the setback line since KDP filed its permit application two years earlier. As a result, Wood identified six locations where construction of the steel wall would encroach into the critical area. Conversely, KDP's expert, John Byrnes, testified only two of the locations Wood specified were actually in the critical area.

The hearing also contained the testimony of DHEC staff who had denied the majority of the 2008 permit, specifically, Bill Eiser, the project manager at that time, and Curtis Joyner, the Manager of the Coastal Zone Consistency Section. Joyner reviewed the certification of the permits in question. On cross, Joyner admitted the steel wall would prevent shoreline movement and become exposed, both of which would be considered a cumulative impact that changed the character of the area. Joyner also testified that he received letters from the South Carolina Department of Natural Resources and the United States Department of Interior as required during the review process and that both agencies opined the area was too unstable for development. Significantly, the access corridor where the proposed road will be constructed has narrowed by more than half—from sixty to less than thirty feet—since Joyner received those recommendations.

The ALC ultimately upheld DHEC's approval of the permits and certification, determining that because the permits were for development outside of the critical area, it did not have to consider Section 48-39-30(D) of the South Carolina Code (2008) (mandating that "critical areas shall be used" to ensure "the maximum benefit to the people"). The ALC found the proposed project would not violate III.C.3.I(7) of the CMP which required a consideration of the "long range, cumulative effects" in the context of potential development of the property and the "general character of the area." The court acknowledged that authorizing the wall would facilitate development, so the inquiry focused on the character of the area and the resulting long-range, cumulative effects. The ALC accepted DHEC's interpretation that the general character of the area was residential development after comparing the Spit to other portions of Kiawah Island and neighboring Seabrook Island. Concerning the long-range effects of permitting the wall, the ALC stated:

> It is reasonably certain that the Kiawah River's erosive forces will eventually cause the [wall] to be exposed to some degree, resulting in a loss of riverbank where the [wall] is exposed. This is a long-range effect. However, when the loss of riverbank will occur and the percentage of the [wall] that will eventually be exposed is speculative.

The court found the public primarily used the oceanside of the Spit while the riverside was used only occasionally. Despite an existing permit to build a 270-foot bulkhead and revetment adjacent to Beachwalker Park, the court again relied on protecting the park as justification for erecting the entire structure. The court also noted public access to the riverbank would remain because it is speculative as to how much of the wall will be exposed in the future.

Additionally, the court determined the project would not be inconsistent with state policy set forth in section 48-39-30 because the economic, social, and environmental concerns must be balanced when determining whether to grant these permits. In doing so, the court relied on increased tax revenues, creation of jobs, and "[other] contribut[ions] to the economic and social improvement of citizens of this state." Further, the ALC found the Spit will be improved with "due consideration for the environment," and that "[n]o portion of the proposed project falls within the critical area."

Finally, the court determined DHEC's decision to grant the permit was not legally inconsistent with its prior decision denying the full bulkhead and revetment in 2008 or with our prior opinions in *KPD I & II*. In doing so, the court stated that an agency is permitted to change its mind, and while the permit outcome was different, the decision was not made through any arbitrary or capricious exercise of authority. Thereafter, the League filed an appeal, and we certified the case pursuant to Rule 204(b), SCACR.

ISSUES

I. Did the ALC err in upholding DHEC's determination that the more rigorous permitting process under section 48-39-30 did not apply because the steel wall would be constructed outside the critical area?

II. Did the ALC err in its public benefit analysis by considering the protection of Beachwalker Park and in relying on projected tax revenue that the project would produce?

STANDARD OF REVIEW

This Court will affirm a decision by the administrative law court unless the findings or conclusions are:

> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B)(a)-(f) (Supp. 2019). The ALC is the finder of fact in contested case hearings related to DHEC certifications and permits. *See Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 9, 698 S.E.2d 612, 616 (2010) ("The proceeding before the ALJ was a de novo hearing, which included the presentation of evidence and testimony."). In determining whether substantial evidence supports the ALC's decision, the Court must find "looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALJ reached." *Id.* at 9–10, 698 S.E.2d at 617.

DISCUSSION

At the outset, we reiterate that "the basic premise undergirding our analysis must be the public trust doctrine which provides that those lands below the high water line are owned by the State and held in trust for the benefit of the public." *KDP I*, 411 S.C. at 29, 766 S.E.2d at 715. Further, "the public's interest must be the lodestar" of our analysis. This is because the General Assembly has set forth its policy of protecting "the quality of the coastal environment and [promoting] the economic and social improvement of the coastal zone and of all the people of the State." S.C. Code Ann. § 48-39-30(A) (2008). While section 48-39-30 demonstrates that development is not prohibited in sensitive areas, artificially modifying the tidelands remains the "exception." *KDP I*, 411 S.C. at 29, 766 S.E.2d at 715. Accordingly, it is through this lens that we review the ALC's decision.

I. Critical Area and Section 48-39-30

The League asserts the ALC erred as a matter of law by failing to apply section 48-39-30(D), which pertains to critical areas, because the river shoreline is within a critical area notwithstanding the fact that the permit for the wall requires the structure to be built on the upland side. While the League rejects the conclusion that the project actually can be accomplished without intruding into the critical area, it also argues that even if that is initially the case, all the experts agreed the erosion would continue until the river exposed the wall, thus eliminating the sandy shoreline and shifting the critical line further inland beyond the structure. Therefore, the League asserts the ALC should have explicitly addressed the policies specific to critical area permits because it is certain the steel wall will ultimately encroach upon the critical area.

Conversely, KDP and DHEC contend the ALC did not err because the steel wall is required to be constructed outside the critical area. As a result, KDP and DHEC assert the more intensive scrutiny that governs critical area permits—such as those at issue in *KDP I & II*—does not apply here. In other words, the permit was reviewed under DHEC's indirect authority to certify the structure's compliance with the CMP rather than under DHEC's direct authority to ensure the construction adheres to the policies pertaining to critical area permits.

The critical area is defined as "any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280." S.C. Code Ann. § 48-39-10(J)(1)-(4) (2008). The General Assembly has declared the state policy pertaining to critical areas in section 48-39-30(D), which provides,

> Critical areas shall be used to provide the combination of uses which will insure [sic] the maximum benefit to the people, but not necessarily a combination of uses which will generate measurable maximum dollar benefits. As such, the use of a critical area for one or a combination of like uses to the exclusion of some or all other uses shall be consistent with the purposes of this chapter.

At first blush, KDP's and DHEC's position seems plausible. Because the certification requires construction of the steel wall to occur upland of the critical area, it was ostensibly not necessary for KDP to seek a special permit or for its application to undergo rigorous analysis. However, this interpretation is misleading, and is actually similar to the steel wall itself—initially it may be obscured, but once the sand shifts, it will become visible and ultimately replace the sandy beach. All the expert testimony confirmed the erosion would continue until the wall became exposed—otherwise there would be no need for an erosion control device. As Robert Young, an expert for the League, testified,

> Eventually and probably very quickly, the wall is going to become a part of the Kiawah River shoreline and, in fact, if the wall were not going to become a part of the Kiawah River shoreline, you would probably never build it because if the wall was just going to remain buried in the interior of the island forever, there would be not much point in having the wall.

Even DHEC acknowledged in its brief the "admittedly realistic concern" that the critical area will overtake the steel wall.[6] Nevertheless, the agency felt constrained by a formulaic approach even when expert testimony demonstrated a virtual certainty that the critical area would be impacted.

We acknowledge the existence of conflicting opinions as to when and to what extent this proposed structure will impact the critical area; however, all the expert witnesses agreed that the sandy shoreline—indisputably a critical area—will ultimately be subsumed by the steel structure and at least part of it will be eliminated. Therefore, we find there is no evidence to support a finding that the steel wall will not have an *impact* on the critical area. Certainly there may be cases where the expert testimony diverges or where DHEC justifiably believes an upland structure will remain outside the critical area and not impact it, but that is simply not the case here. Therefore, the ALC erred in declining to apply section 48-39-30(D).[7]

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[6] At oral argument, counsel for DHEC candidly agreed with Justice Few's observation that "this structure serves no purpose whatsoever until the critical line hits it . . . . The wall serves no purpose whatsoever until the river pushes up against it and it stops the river from moving into the road or into the development."

[7] Because the inquiry as to whether to apply the more rigorous critical area permitting analysis for a structure designed to be constructed outside the critical area

II. Public Benefit

A. Reliance on Beachwalker Park

The League contends the ALC erred in yet again emphasizing the protection of Beachwalker Park as a sufficient public benefit to justify the entire structure. Specifically, the League asserts the ALC committed an error of law in concluding without evidence that the public trust lands will be enhanced by protecting the park. Conversely, KDP asserts the ALC properly balanced the competing interests, and substantial evidence supports its decision that the steel wall would outweigh the benefit to the public to a greater degree than any harm of the loss of the shoreline.

We agree with the League that the ALC committed an error of law because it focused on the protection of the park to bootstrap its public benefit analysis of the rest of the lengthy steel wall.

Section 48-39-150(A)(5) requires DHEC to consider "[t]he extent to which the development could affect existing public access to tidal and submerged lands, navigable waters and beaches or other recreational coastal resources." S.C. Code Ann. § 48-39-150(A)(5) (2008). Further, III.C3.XII.D. of the CMP mandates that DHEC review permits that affect public open space under the following considerations:

1) Project proposals which would restrict or limit the continued use of a recreational open area or disrupt the character of such a natural area (aesthetically or environmentally) will not be certified where other alternatives exist.
2) Efforts to increase the amounts and distribution of public open space and recreational areas in the coastal zone are supported and encouraged by the Coastal Council.

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depends on the facts of the case, we decline to adopt a bright line rule as to when DHEC must analyze section 48-39-30(D) for a non-critical area permit. However, we trust that in future cases DHEC will exercise its discretion appropriately in a manner consistent with upholding the basic premise that altering the tidelands remains the "exception to the rule." *KDP I*, 411 S.C. at 29, 766 S.E.2d at 715.

The ALC acknowledged "the riverbank is both a recreational and a natural open space area." However, the court determined the League did not raise any alternatives, and the choice of doing nothing failed to protect the public's interest. Therefore, the court weighed the loss of the riverbank against the protection of the park. Ultimately, the court concluded the project would "greatly assist in preserving" an important benefit: the parking lot at Beachwalker Park. The public would further benefit from a conservation easement, and the public's use and enjoyment would not be disrupted to a degree sufficient to deny the permits. While the court recognized that KDP would also benefit, it stated, curiously and with little explication, that the outcome was a "compromise."

We find the ALC's analysis is fatally flawed because the court once again focused on the public benefit of protecting the park as a justification for the entire 2,380-foot steel wall. While the ALC relied on the 270-foot portion that would protect Beachwalker Park for its public benefit analysis—which represents approximately 10% of the entire wall—it did not find *any* public benefit to the remaining 90%. In essence, KDP seeks to hold the protection of the park hostage until it is permitted to construct the entire wall. This is so even though the Charleston County Parks and Recreation Commission originally applied for a permit to build a structure to protect the park *fifteen years ago* and only agreed to withdraw that request at the behest of KDP. The park also remains unprotected despite this Court's approval of a permit to do just that. *See KDP II*, 422 S.C. at 639–40, 813 S.E.2d at 695. Therefore, the ALC relies on a largely illusory benefit to support its public interest analysis.[8]

[8] Indeed, the ALC acknowledged KDP would not protect the park unless it could construct the entire structure, thus effectively conceding the specious nature of justifying construction of the entire wall to benefit Beachwalker Park. At oral argument, counsel for KDP asserted the 270-foot portion could not be constructed because it would ultimately fail as the river eroded around and behind the end of the structure. While we acknowledged in *KDP II* that a bulkhead without a revetment would actually exacerbate erosion because the toe would become exposed, that conclusion was based on "all of the evidence in the record . . . ." 422 S.C. at 637, 813 S.E.2d at 694. Here, the record contains no evidence to support the assertion that an erosion control device protecting only the park would increase erosion. Ultimately, over the course of fifteen years, the Charleston County Parks Commission, DHEC, and this Court have either sought or approved a permit for 270

Further, because the shoreline will erode until the riverbank reaches the steel wall, the public is essentially left in the same situation as we described in *KDP I*—the complete loss of area held in trust for the benefit of the people. Despite this inescapable conclusion, the ALC disregarded that paramount concern for a third time. Accordingly, the ALC erred in relying on the protection of the park as a reason to uphold the entire structure.

B. Balancing of Economic, Social, and Environmental Interests

The League contends the ALC erred in solely relying on the economic benefit of the overall project. Specifically, the League argues the ALC improperly focused on the expected tax revenue and increased jobs as part of its public benefit analysis. Conversely, KDP asserts the ALC properly balanced the economic, social, and environmental interests. We agree with the League.

Section 48-39-150 requires DHEC to base its decision to approve or deny a permit on the "merits of each application, the policies specified in sections 48-39-20 and 48-39-30 and be guided by [ten] general considerations." S.C. Code Ann. § 48-39-150(A). Together, these three provisions require a balancing of competing interests when development is contemplated along our precious coastal resources. While economic interests are relevant, relying on tax revenue or increased employment opportunities is not sufficient justification for eliminating the public's use of protected tidelands. We have previously rejected the certification of a project that sought to dredge a canal through wetlands in order to facilitate waterfront development near the Waccamaw River. *S.C. Wildlife Fed'n v. S.C. Coastal Council*, 296 S.C. 187, 188, 371 S.E.2d 521, 522 (1988). The Court noted,

> To support certification, Litchfield submitted an expert report that projects speculative economic benefit to the public in the form of new jobs and tax revenue if the project is completed. Respondents rely on this evidence to show an overriding public interest. This evidence of purely economic benefit, however, does not support the stated purpose of the Coastal Management Program to protect, restore, or enhance the

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feet, yet now KDP changes its prior position that protection of the park is crucial, claiming for the first time that it would be futile to build a wall on that portion only.

> resources of the State's coastal zone for present and succeeding generations. This public interest must counterbalance the goal of economic improvement. *See* S.C. Code Ann. § 48-39-30(B)(1) and (2) (1987). *We hold evidence of purely economic benefit is insufficient as a matter of law to establish an overriding public interest.*

Id. at 190, 371 S.E.2d at 522–23 (emphasis added). Further, we stated "the record is devoid of any evidence of an overriding public interest in the permanent alteration of these wetlands." *Id.* at 190, 371 S.E.2d at 522.

While the ALC acknowledged this decision, the court ultimately determined that "the proposed project will increase tax revenues in the area, create jobs, and otherwise contribute to the economic and social improvement of citizens of this state." The court noted the development is planned in an otherwise environmentally friendly manner and that no portion of the project is within the critical area. The ALC determined the steel wall will stabilize the neck, thus enabling a road to be constructed through the narrow passage.[9]

Because we find the ALC erred in using protection of the park as a reason for approving the entire wall, the only remaining justification is its conclusion that the economic benefits outweigh the social and environmental interests in keeping the area undeveloped. In other words, once the fallacy of protecting the park as a reason for constructing the remaining 90% of the wall is brought to light, all that remains to justify the entire structure are the purely economic benefits of tax revenue and temporary job creation, which cannot, as a matter of law, supplant the permanent elimination of the critical area. Thus, the ALC erred in upholding the permits and certification. *Id.* at 190, 371 S.E.2d at 523 ("[E]vidence of purely economic benefit is insufficient as a matter of law to establish an overriding public interest.").

CONCLUSION

We conclude the ALC erred in declining to apply section 48-39-30(D)'s more stringent review based on the record before us. We also find the ALC erred as a

[9] The ALC ostensibly discounted the League's expert, Robert Young, who testified building a road along the narrow neck is "kind of like trying to shove a hippo through a mouse hole."

matter of law in relying on protecting Beachwalker Park as a reason to uphold the entire structure and in citing purely economic interests in its public benefit analysis.[10]

REVERSED.

BEATTY, C.J., FEW and JAMES, JJ., concur. KITTREDGE, J., concurring in a separate opinion.

[10] The League also contended the ALC erred in determining: the project physically could be constructed as permitted; the character of the area was residential; collateral estoppel applied; and substantial evidence did not support the ALC's conclusion concerning the minor impact to marine wildlife. We decline to address these issues on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address other arguments after reaching one that is dispositive).

JUSTICE KITTREDGE: The Court reverses the Administrative Law Court in multiple respects. I join only Section II of the majority opinion and concur in result.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of David W. Melnyk, Respondent.

Appellate Case No. 2021-000026

Opinion No. 28032
Submitted May 14, 2021 – Filed June 2, 2021

PUBLIC REPRIMAND

Disciplinary Counsel John S. Nichols and Senior Assistant Disciplinary Counsel C. Tex Davis, Jr., both of Columbia, for the Office of Disciplinary Counsel.

David W. Melnyk, of Irmo, Pro Se.

PER CURIAM: In this attorney disciplinary matter, Respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, Respondent admits misconduct, consents to the imposition of either a confidential admonition or a public reprimand, and agrees to pay costs and attend the Legal Ethics and Practice Program Ethics School within one year. We accept the Agreement and issue a public reprimand. The facts, as set forth in the Agreement, are as follows.

I.

Matter A

Client A retained Respondent on March 14, 2014, to file a Chapter 13 bankruptcy petition. Client A's father paid a retainer fee of $1,200. This was not the full fee but the amount required by Respondent to file the case. Respondent filed the petition with the United States Bankruptcy Court in January 2015. Client A was unhappy with the level of communication by Respondent and delays in the filing of the case. Client A terminated Respondent and new counsel was substituted in the case. Respondent refunded $390 to Client A and forwarded the file to Client A's new counsel. Respondent acknowledges his communication with Client A was lacking and that there were delays in the case. Respondent admits his conduct in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (diligence) and Rule 1.4 (communication).

Matter B

Client B retained Respondent on March 14, 2014, to file a Chapter 7 bankruptcy petition. Client B paid a $200 retainer fee to Respondent to begin working on the case. In November 2014, Client B wrote a letter to Respondent terminating his services due to unnecessary delays and Respondent's failure to return phone calls. After meeting with Respondent, Client B agreed to continue with the representation. Unfortunately, the communication issues persisted, and Client B terminated Respondent's services on January 10, 2015. Respondent returned Client B's file to her. Respondent acknowledges that his communication with Client B could have been better and that these communication issues contributed to delays in the case. Respondent admits his conduct in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (diligence) and Rule 1.4 (communication). We find Respondent's conduct in this matter also violated Rule 3.2, RPC, Rule 407, SCACR (reasonable efforts to expedite litigation).

Matter C

Client C retained Respondent on October 22, 2013, to file a Chapter 7 bankruptcy petition. Client C had recently voluntarily dismissed a Chapter 13 bankruptcy proceeding filed by another attorney. The Chapter 7 case was filed on April 11,

2014. Client C moved out of state and the bankruptcy case was ultimately dismissed. Client C stated that Respondent failed to return his client file. Respondent mistakenly believed Client C already had copies of all relevant file materials. Respondent has now forwarded a complete copy of the client file to Client C. Respondent admits his conduct in this matter violated Rule 1.16(d), RPC, Rule 407, SCACR (surrendering client property and papers upon termination of representation).

Matter D

Client D retained Respondent on March 10, 2014, in a Chapter 7 bankruptcy matter. In addition, Client D advised Respondent that there was a lien on her house she would like removed. Client D believed that Respondent would handle the removal of the lien as part of his representation. The bankruptcy case was concluded on August 13, 2014. Client D maintains that Respondent failed to maintain reasonable communication with her throughout the representation. In August 2015, while preparing to sell her house, Client D discovered that the lien on her house had not been removed. Client D contacted Respondent about why the lien had not already been removed. Respondent advised Client D that the Disclosure of Compensation of Attorney for Debtor form, which she signed on May 12, 2014, stated that his fee did not include the service of removing the lien. However, Respondent agreed to file the appropriate motion to remove the lien without any further charge to Client D. The lien was removed and Client D was able to sell her house. Respondent acknowledges that he could have communicated better with Client D and that better communication could have avoided the misunderstanding regarding the lien. Respondent admits his conduct in this matter violated Rule 1.4, RPC, Rule 407, SCACR (communication).

Matter E

Client E had a financial power of attorney for his adult son (Son). In addition, Son was unable to care for his children. Client E consulted Respondent to assist Son with his financial situation and to help Client E obtain custody of his grandchildren. On November 3, 2016, Client E signed retainer agreements whereby Respondent would file a Chapter 7 Bankruptcy petition for Son and file an action in family court for Client E to obtain custody of the grandchildren. Respondent was able to obtain a discharge in Son's bankruptcy case on October 18, 2017. A final order awarding custody of the grandchildren to Client E was filed on

December 21, 2017. Respondent acknowledges that there were periods of time when he failed to maintain reasonable communication with Client E and that there were unnecessary delays in the case. Respondent admits his conduct in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (diligence) and Rule 1.4 (communication). We find Respondent's conduct in this matter also violated Rule 3.2, RPC, Rule 407, SCACR (reasonable efforts to expedite litigation).

Matter F

Client F retained Respondent on June 30, 2017, to represent him regarding a traffic ticket. Client F paid a $400 retainer fee. On July 5, 2017, Respondent faxed a Letter of Representation, with a request for a jury trial, to the Magistrate Court and received a confirmation that the fax was received. On July 11, 2017, the Court held a hearing on the traffic ticket. Neither Client F nor Respondent were present for the hearing. Subsequently, Client F paid the traffic ticket. Respondent offered to file a motion to reopen the matter. Client F declined to have Respondent file any motion. Respondent refunded the entire $400 retainer fee to Client F. Respondent acknowledges he failed to meet Client F's expectations regarding communication. Respondent admits his conduct in this matter violated Rule 1.4, RPC, Rule 407, SCACR (communication). We find Respondent's conduct in this matter also violated Rule 8.4(e), RPC, Rule 407, SCACR (conduct prejudicial to the administration of justice).

Matter G

Client G retained Respondent on June 4, 2018, to handle a domestic case. Client G paid a retainer fee of $2,000. Over the next several months, Client G became increasingly dissatisfied with the communication from Respondent. Ultimately, in November 2018, Client G terminated Respondent and obtained new counsel. Respondent refunded the entire $2,000 fee to Client G. Respondent acknowledges that he failed to meet Client G's expectations regarding communication. Respondent admits his conduct in this matter violated Rule 1.4, RPC, Rule 407, SCACR (communication).

Matter H

Client H retained Lawyer on August 23, 2018, to represent him for a charge of reckless driving. Client H paid a retainer fee of $500. Client H states that Respondent failed to return his calls and messages. Client H's court date was scheduled for June 4, 2019. Respondent failed to appear at the hearing. Client H was found guilty in his absence and was required to pay a fine of $440 for the traffic offense. Respondent represents that on June 4, 2019, he had court hearings in municipal court and bankruptcy court. Respondent mistakenly believed that Client H's trial had been continued due to his other court hearings. Respondent filed a motion to reopen Client H's case. This motion was denied on August 21, 2019. Respondent refunded the entire retainer fee of $500 to Client H and forwarded payment of $440 to reimburse Client H for the fine he was required to pay. Respondent acknowledges that his failure to appear at Client H's hearing was conduct prejudicial to the administration of justice. Respondent admits his conduct in this matter violated Rule 8.4(e), RPC, Rule 407, SCACR (conduct prejudicial to the administration of justice).

Matter I

Client I retained Respondent in March 2018 to handle a bankruptcy case. Client I paid a retainer fee of $1,700. After numerous missed calls and delays, the case was filed in September 2018. The case was dismissed in October 2018 because Client I was unable to comply with the financial terms of the plan. Client I and Respondent agreed to reassess the options in a few months. This additional time would allow Client I to improve her financial situation. Client I met again with Respondent in May 2019 to discuss filing a new bankruptcy claim. Client I paid an additional fee to Respondent for the second claim. The second bankruptcy case for Client I was dismissed with prejudice in August 2019 because Respondent failed to submit all the required documentation. On December 5, 2019, the bankruptcy court held a hearing to reconsider the dismissal with prejudice and to address the potential disgorgement of attorney's fees. Client I consented for Respondent to represent her at this hearing. Respondent was able to convince the bankruptcy court to amend its dismissal decision removing the prejudice period of one year so that Client I would be permitted to file again. In addition, Respondent voluntarily agreed to refund $2,300 to Client I, which represents all legal fees paid to Respondent. Respondent acknowledges that his conduct in this matter fell short

of what is required in communication and diligence. Respondent admits his conduct in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (diligence) and Rule 1.4 (communication).

II.

Respondent admits that his conduct constitutes grounds for discipline under Rule 7(a)(1), RLDE, Rule 413, SCACR (a violation of the Rules of Professional Conduct is a ground for discipline). Respondent also agrees that within thirty days of the imposition of discipline, he will pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (Commission). As a condition of discipline, Respondent further agrees to complete the Legal Ethics and Practice Program Ethics School within one year of the imposition of discipline.

III.

We find Respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement and publicly reprimand Respondent for his misconduct. Within thirty days of the date of this opinion, Respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission. Within one year of the date of this opinion, Respondent shall complete the Legal Ethics and Practice Program Ethics School.

PUBLIC REPRIMAND.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

The Supreme Court of South Carolina

Michael T. Barnes, Petitioner,

v.

The State of South Carolina, Respondent.

Appellate Case No. 2020-001360

ORDER

This matter is before the Court on Petitioner Michael Barnes's common law petition for a writ of certiorari requesting an order permitting him to file a successive post-conviction relief (PCR) application. Barnes was convicted of murder and attempted armed robbery stemming from a drug deal and sentenced to thirty years' imprisonment. Following his direct appeal, which was dismissed by the court of appeals after an *Anders* review,[1] Barnes attempted to pursue PCR within the requisite one-year limitations period. S.C. Code Ann. § 17-27-45(A) (2014). Despite Barnes mailing an application before the statutory deadline, the Charleston County Clerk of Court rejected it because Barnes purportedly used the wrong form. After Barnes refiled on the proper form, the PCR court dismissed the matter based on the statute of limitations, and we denied certiorari. We now grant Barnes's petition.

On December 1, 2009, the court of appeals issued the remittitur from his direct appeal. Barnes mailed his *pro se* PCR application on November 18, 2010, before the one-year limitations period expired. On November 29, 2010, Barnes received a letter from the Charleston County clerk's office indicating his application was being returned because he used the wrong form. Barnes subsequently filled out the correct form and mailed it, which the clerk's office received on January 7, 2011—thirty-seven days after the expiration of the limitations period. The State filed a return and a motion to dismiss seeking summary dismissal based on the expiration of the statute of limitations. The PCR court issued a conditional order of dismissal on the basis

[1] *Anders v. California*, 386 U.S. 738 (1967).

that the application was untimely and provided Barnes twenty days to respond. Barnes responded within the twenty-day window, explaining he initially attempted to file an application during the beginning of November but his efforts were impeded by a prison lockdown. Once correction officials lifted the lockdown, he tried again, but his application was not sent due to insufficient postage. Finally, he mailed the November 18th application that the clerk's office rejected. While Barnes did not attach the letter from the clerk's office in his response to the conditional order, he asserted he had this supporting documentation "if it's needed to bring truthfulness to these claims." Over four years later, the PCR court issued a final order, granting the State's motion to dismiss based on the statute of limitations and finding Barnes presented "no credible proof" of his allegations. Barnes filed a petition for certiorari, which the Court denied. In August of 2020, Barnes filed a common law petition for a writ of certiorari and requested an order granting him the permission to file a successive PCR application.

We take this opportunity to remind the clerks of court of their ministerial duty to docket filings irrespective of potential procedural flaws that may exist. *Miller v. State*, 377 S.C. 99, 102, 659 S.E.2d 492, 493 (2008) ("[I]t is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely."). This duty is not discretionary. *See* 21 C.J.S. *Courts* § 335 (2021). Unless specifically authorized by statute[2] or a court rule, a clerk of court may not exercise any judicial power reserved for a judge. *Id.* ("The clerk cannot, without express constitutional or statutory authority, exercise any judicial functions."). This includes the prohibition of performing any action contingent on deciding a question of law. *Id.* ("It follows that a clerk of court cannot ordinarily determine questions of law."). Accordingly, a clerk of court does not have the authority to reject a filing based on ostensible or perceived failures, including whether the document is contained on the proper form. Because the clerk's role is ministerial in this respect, the clerk shall not be "concerned with the merit of the papers or with their effect and interpretation . . . ." *Id.* § 337. Stated differently, "[a] clerk of court may not reject a pleading for lack of conformity with requirements of form; only a judge may do that." *Hooker v. Sivley*, 187 F.3d 680, 682 (5th Cir. 1999); *see also Gorod v. Tabachnick*, 696 N.E.2d 547, 548 (Mass. 1998) ("In the absence

[2] For example, in the context of real or personal property, section 30-9-30 authorizes a clerk of court to remove a sham document from the public records upon proper notice if the clerk reasonably believes the document to be fraudulent. S.C. Code Ann. § 30-9-30(B)(2) (2007).

of an order from a judge, [clerks] may not refuse to accept a notice of appeal, even if they believe that no appeal is available or that the notice is untimely or otherwise defective."). Instead, the clerk shall accept the filing, thereby permitting the court to decide any issues the parties may have with it.

In this case, the clerk of court received Petitioner's PCR application sometime before November 29, 2010, within the one-year limitations period. Under South Carolina law, the filing of the application was complete upon the clerk of court's receipt of the application. *See Mose v. State*, 420 S.C. 500, 507, 803 S.E.2d 718, 721 (2017) (holding "the [PCR] application is deemed 'filed' when it is delivered to and received by the Clerk of Court" (citing *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001))). The clerk of court's ministerial duties required the clerk to accept the application for filing, give it the appropriate docket number, and distribute it as required by law. *See* S.C. Code Ann. § 17-27-40 (2014) ("The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the solicitor of the circuit in which the applicant was convicted and a copy to the Attorney General.").

The clerk of court's error in returning the November 2010 application is compounded by the fact that Section 17-27-70(a) of the South Carolina Code (2014) requires, "[i]n considering the application, the court shall take account of substance, regardless of defects of form." While the General Assembly has deferred to the Court in prescribing the contents of the form, *see* S.C. Code Ann. § 17-27-50 (2014), nothing in our statutory provisions confers authority upon the clerk of court to unilaterally reject a PCR application even if the applicant used the wrong form. Instead, that determination is quintessentially a question of law reserved for a judge, who must consider such a question in light of the flexible pleading and amendment provisions of the South Carolina Rules of Civil Procedure. *See Patton v. Miller*, 420 S.C. 471, 489-93, 804 S.E.2d 252, 261-63 (2017) (discussing the flexible pleading provisions of the Rules of Civil Procedure, and in particular the liberal amendment provisions of Rule 15(a), SCRCP); *Love v. State*, 428 S.C. 231, 238-43, 834 S.E.2d 196, 199-202 (2019) (discussing the applicability of Rule 15, SCRCP, to PCR cases).

If the clerk of court had executed its ministerial function properly, the PCR court would have had the opportunity to consider the substance of the allegations and could have exercised flexibility in order to mitigate against a procedural default, especially one involving a *pro se* incarcerated litigant. *See Mangal v. State*, 421 S.C. 85, 99, 805 S.E.2d 568, 575 (2017) ("[T]here are situations where the interests of justice require PCR courts to be flexible with procedural requirements *before* PCR

applicants suffer procedural default on substantial claims."); *see also* Rule 71.1(d), SCRCP (providing counsel "shall amend the application if necessary"); Rule 15(a), SCRCP (providing "leave [to amend a pleading] shall be freely given when justice so requires"). Barnes did not have that opportunity, and thus, he has never had his "one bite at the apple." *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) ("Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'" (quoting *Aice v. State,* 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991))).

Accordingly, we grant the petition, dispense with further briefing, hold Petitioner's application was timely filed in November 2010, direct Petitioner to file his successive application within thirty days of this decision, and instruct the parties and the PCR court to follow the procedures set forth in sections 17-27-70 and -80 of the South Carolina Code (2014).

IT IS SO ORDERED.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
June 3, 2021

The Supreme Court of South Carolina

ADMINISTRATIVE ORDER

We issue this administrative order to enjoin the practice in some circuit courts of referring discovery disputes to so-called special referees for resolution.

The power of the circuit court to appoint a referee is governed by Rule 53 of the South Carolina Rules of Civil Procedure. Subsection (b) of the Rule provides only that "causes of action in a case" may be referred under the circumstances listed in the Rule. A discovery dispute is not a "cause of action." Thus, Rule 53(b) provides no authority for the order of reference in this case.

In matters brought to our attention, the special referee appointed by the circuit court is typically a lawyer. The lawyer assigned to resolve the discovery dispute generally charges his or her customary hourly rate, a fee not contemplated by the parties when they elected to file the action in circuit court. We are mindful of the burden imposed on our circuit judges in resolving discovery disputes. However, while we recognize that discovery disputes can be complicated and time-consuming, it is the duty of the circuit court to address and resolve discovery disputes. We remind the circuit court judges that the seldom-utilized rule for awarding fees and imposing sanctions, SCRCP 37, is available to deter discovery abuses.

The circuit court shall discharge its duty by addressing and resolving discovery disputes. To the extent some circuit courts have utilized the practice of referring discovery disputes to special referees, that practice is enjoined, effectively immediately.

IT IS SO ORDERED.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
June 3, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Stacy Singletary, individually and as personal representative of the Estate of Sheldon Singletary, Respondent,

v.

Kelvin Shuler, Appellant.

Appellate Case No. 2018-001386

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Opinion No. 5823
Heard February 11, 2021 – Filed June 2, 2021

AFFIRMED

Eduardo Kelvin Curry, of The Curry Law Firm LLC, of North Charleston, for Appellant.

Thaddeus James Doughty, of Thad James Doughty, Attorney at Law, of North Charleston, for Respondent.

WILLIAMS, J.: In this civil matter, Kevin Shuler appeals a judgment granted against him in a wrongful death and survival action. Specifically, Shuler appeals the master-in-equity's order (1) finding he was not entitled to self-defense

immunity under the Protection of Persons and Property Act[1] (the Act); (2) finding the respondent presented evidence to support a finding of wrongful death; and (3) finding the respondent presented evidence of conscious pain and suffering to support a survival action. We affirm.

FACTS/PROCEDURAL HISTORY

On April 19, 2012, at approximately 9:30 A.M., Shuler walked to the end of his driveway to check his mail. Sheldon Singletary (Decedent) pulled up in his car, and the two discussed a bachelor party Shuler attended the night before. Decedent then called several people, inviting them to come to Shuler's home. Shuler cooked breakfast for the people that came, and several of the guests consumed alcohol throughout the morning and into the afternoon. After breakfast, the male attendees decided to continue cooking and to have a cookout.

As the day progressed, Shuler and Decedent began consuming alcohol, resulting in a fight in Shuler's kitchen. Sharanika Morris, an eye-witness, testified that Shuler initiated the altercation by placing his hands in Decedent's face and slapping him. Initially, Morris thought the men were playing, but it became serious when a verbal altercation ensued and Shuler continued to touch Decedent. Morris testified that Decedent responded by slapping Shuler in the face, and the two men began to fight. Morris testified that after the fight was broken up, Shuler found a knife on the kitchen counter and threw it at Decedent. Morris asserted that Shuler did not tell the guests to leave, but everyone began to exit Shuler's home. As Morris left through the front door, Decedent was on Shuler's porch, and he asked her to go back into the house to get his jacket with his bail bondsman badge. Morris entered Shuler's home through a side door and saw Shuler exiting the home with a .45 caliber handgun. Morris stated she followed Shuler as he approached the front of his home with the handgun yelling "You see what you did to my face?" and "I should kill you." She stated Shuler walked to the porch and shot Decedent in the abdomen, and Decedent fell from the porch into the yard, landing on his back. She also testified that Decedent exclaimed "help me" several times before his eyes began rolling to the back of his head and he quit moving.

Conversely, Shuler testified that he and Decedent were talking prior to their altercation and that he was unaware of any argument between them. Shuler

[1] S.C. Code Ann. §§ 16-11-410 to -450 (2015).

claimed Decedent initiated the altercation by shoving him, and when Shuler shoved back, Decedent punched him in the right eye, causing it to bleed. Shuler claimed he became delirious and fell to the ground. Shuler said Decedent kicked him several times in the ribs and in the face while he was on the ground, fracturing his right eye orbital, two ribs, and breaking his nose.[2] Shuler claimed he saw a knife in the kitchen, grabbed it, and began yelling for the crowd to leave his home. According to Shuler, no one left, and Decedent told him to put the knife down or else he would beat him further. Shuler stated that Decedent left his home after the altercation ended but he did not know where he went and was nervous Decedent would return to further harm him. Shuler went into his bedroom to retrieve his handgun, and as he was exiting the side door of his house, another guest told him to put the gun away and to calm down.[3] Shuler testified that as he walked towards the front of his house with the guest, he saw someone jump at him from his porch, he raised the gun, and fired.[4] The bullet struck Decedent while he was in the air, and Shuler testified Decedent landed on the ground face down. Shuler stated he "fired out of reflex" and did not know whether he was shooting at a person. He said Decedent did not move, talk, or moan after he shot him. Decedent was shot at approximately 3:52 P.M.

When EMS arrived at the scene, Decedent was unconscious, and they intubated him. Upon arrival at the Medical University of South Carolina (MUSC), Decedent was still unconscious, and he underwent two surgeries to stop his bleeding. Decedent's brother testified that between Decedent's surgeries, doctors told him Decedent could hear him. The brother stated when he asked Decedent to squeeze his hand, Decedent complied. However, Decedent's wife (Wife) testified that although doctors told her the same, Decedent was unresponsive to her voice the entire time she was at the hospital. Doctors were unable to control Decedent's bleeding, and he was pronounced dead at 12:06 A.M. on April 20, 2012.

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[2] Shuler did not introduce any medical records or other evidence proving he sustained any injuries during the fight.

[3] On cross-examination at trial, Shuler admitted that no one followed him into his room to retrieve his gun and none of the guests were threatening him at the time he exited his home from the side door. Shuler admitted he got the gun because he wanted "everybody to leave his yard."

[4] Shuler's home was on his right side, and Shuler admitted that he is not sure how he saw an object moving towards him out of his right eye when his right eye orbital was allegedly fractured.

Wife filed suit against Shuler, individually and as the personal representative of Decedent's estate, for wrongful death, survival, and negligence. At trial, Wife testified about Decedent's medical bills and his annual income from working as a longshoreman and bail bondsman. She stated she received bills from MUSC totaling $203,251.25, and the master admitted the bills into evidence. Wife also claimed "that based on the caseload that he had," Decedent's income was $90,000 at the time of his death and that he received most of his income in cash. Wife stated she knew Decedent's caseload and income because she was often responsible for making cash deposits into his checking account. She also admitted that Decedent did not file tax returns for the year of his death but moved to admit two of his tax returns from 2007 and 2009. The master refused to admit the tax returns for the purpose of proving Decedent's income because they were incomplete and Wife failed to authenticate them. Wife further stated that she was impacted by the loss of Decedent's income because it helped pay the bills.

At trial, Shuler argued he was immune from civil action under the Act because he acted in self-defense. By order dated March 29, 2018, the master found Shuler (1) was not entitled to immunity under the Act because he failed to prove by a preponderance of the evidence that he was acting in self-defense when he shot Decedent, (2) failed to file a pretrial motion to determine immunity, and (3) Wife was entitled to an award under the wrongful death and survival statutes. The master awarded Wife $1,500,000 for the wrongful death claim and $100,000 for her survival action—totaling $1,600,000. This appeal followed.

ISSUES ON APPEAL

I. Did the master err in denying Shuler immunity from civil actions under the Act?

II. Did the master err in finding Decedent's estate was entitled to a wrongful death award under section 15-51-10 of the South Carolina Code (2005)?

III. Did the master err in finding Decedent's estate was entitled to a survival award under section 15-5-90 of the South Carolina Code (2005)?

STANDARD OF REVIEW

"Our scope of review for a case heard by a [m]aster-in-[e]quity who enters a final judgment is the same as that for review of a case heard by a circuit court without a jury." *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989). "In an action at law, 'we will affirm the master's factual findings if there is any evidence in the record which reasonably supports them.'" *Query v. Burgess*, 371 S.C. 407, 410, 639 S.E.2d 455, 456 (Ct. App. 2006) (quoting *Lowcountry Open Land Tr. v. State*, 347 S.C. 96, 101–02, 552 S.E.2d 778, 781 (Ct. App. 2001)). Additionally, in cases tried without a jury, "questions regarding the credibility and the weight of evidence are exclusively for the [master]." *In re Estate of Anderson*, 381 S.C. 568, 573, 674 S.E.2d 176, 179 (Ct. App. 2009) (quoting *Golini v. Bolton*, 326 S.C. 333, 342, 482 S.E.2d 784, 789 (Ct. App. 1997)).

LAW/ANALYSIS

I. Immunity under the Act

Shuler argues the master erred in finding he was required to file a pretrial motion to determine if he was entitled to immunity from civil action under the Act. We disagree.

The Act codifies the common law Castle Doctrine and states the General Assembly finds it "proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers *without fear of . . . civil action . . . .*" § 16-11-420(A), (B) (emphases added). Further, the Act provides immunity from civil action for law-abiding citizens who justifiably acted in self-defense, stating, "A person who uses deadly force as permitted by the provisions of this article . . . is justified in using deadly force and *is immune from . . . civil action* for the use of deadly force . . . ." § 16-11-450(A) (emphases added).

Whether a trial court is required to determine if a party is immune under the Act before a civil trial begins is a novel issue for this court.[5] However, our supreme

[5] "In a case raising a novel question of law, [an appellate court] is free to decide the question with no particular deference to the lower court." *McMaster v. Columbia*

court has ruled that a defendant claiming immunity from criminal prosecution under the Act must establish his entitlement to this relief prior to trial. *See State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). We find the supreme court's ruling in *Duncan* instructive for our determination.

In *Duncan*, the court found the legislature intended to create a true immunity, not merely an affirmative defense, for law-abiding citizens who seek to invoke protection under the Act. *Id.* at 410, 709 S.E.2d at 665. Relying on the legislature's use of the words "immune from criminal prosecution" and "proper for law-abiding citizens to protect themselves[] . . . from intruders and attackers without fear of prosecution or civil action" the court found that immunity under the Act is an absolute bar to criminal prosecution and must be decided prior to trial. *Id.*

The Act's language is clear and unambiguous that it was the legislature's intent to extend immunity under the Act from both criminal prosecution and civil actions to law-abiding citizens who were justified in their use of deadly force. *See* § 16-11-420(B) ("The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers *without fear of* prosecution or *civil action* for acting in defense of themselves and others." (emphases added)); § 16-11-450(A) ("A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and *is immune from* criminal prosecution and *civil action* for the use of deadly force . . . ." (emphases added)). Further, based on our supreme court's interpretation of the Act in criminal proceedings, the only way immunity under the Act can be meaningfully enforced in a civil action is to require individuals seeking immunity to file a pretrial motion. *See Duncan*, 392 S.C. at 410, 709 S.E.2d at 665 ("[W]e find that, by using the words 'immune from criminal prosecution,' the legislature intended to create a true immunity, and not simply an affirmative defense."); *id.* ("We agree . . . that the legislature intended defendants be shielded from trial if they use deadly force as outlined under the Act."). Therefore, we hold the master did not err in finding

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Bd. of Zoning Appeals, 395 S.C. 499, 504, 719 S.E.2d 660, 662 (2011) (per curiam).

Shuler was required to seek a pretrial determination of his immunity under the Act.[6] Accordingly, we affirm the master on this issue.

II. Wrongful Death Claim

Shuler argues the master erred in finding Decedent's estate presented sufficient evidence to support a finding of wrongful death. Specifically, Shuler argues the master erred in awarding damages because Wife failed to present any evidence substantiating Decedent's income. We disagree.

In South Carolina, the personal representative of an individual's estate may file a wrongful death claim when a person's wrongful or negligent act causes the death of a decedent and the wrongful or negligent act, had it not caused death, would have entitled the injured party to maintain an action to recover damages. *See* § 15-51-10; S.C. Code Ann. § 15-51-20 (2005). Wrongful death may be pursued under a theory of negligence. *See Young v. Tide Craft, Inc.*, 270 S.C. 453, 461, 242 S.E.2d 671, 675 (1978). To recover damages under a negligence theory, the plaintiff must prove (1) the tortfeasor owed the decedent a duty of care, (2) the tortfeasor breached his duty to the decedent through a negligent act, and (3) the breach proximately caused damages. *Hurst v. E. Coast Hockey League, Inc.*, 371 S.C. 33, 37, 637 S.E.2d 560, 562 (2006). In determining damages recoverable under the wrongful death statute, "the question is not one of the value of the human life lost, but is rather the damages sustained by the beneficiaries from the death." *Smith v. Wells*, 258 S.C. 316, 319, 188 S.E.2d 470, 471 (1972); *see also Zorn v. Crawford*, 252 S.C. 127, 136–37, 165 S.E.2d 640, 645 (1969) (finding the measure of damages recoverable is the injury to the beneficiaries, not the social or intrinsic value of the life of the decedent). Recoverable damages include pecuniary loss, mental shock and anguish, wounded feelings, grief and sorrow, loss of companionship, and deprivation of the use and comfort of the decedent's society. *Welch v. Epstein*, 342 S.C. 279, 304, 536 S.E.2d 408, 421 (Ct. App. 2000). When the decedent is the spouse of the beneficial plaintiff, in the absence of evidence to the contrary, pecuniary losses may be presumed from the death. *Mishoe v. Atl.*

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[6] Because our finding is dispositive, we decline to address Shuler's contention that the master erred in determining he was not entitled to immunity under the Act. *See 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).

Coast Line R.R. Co., 186 S.C. 402, 418, 197 S.E. 97, 105 (1938). However, "only such future or prospective damages may be recovered as the evidence renders it reasonably certain will of necessity result from the alleged injury." *Smith*, 258 S.C. at 319, 188 S.E.2d at 471.

We find the master did not err in concluding Decedent's estate met its burden in proving its claim for wrongful death. *See Burgess*, 371 S.C. at 410, 639 S.E.2d at 456 ("In an action at law, 'we will affirm the master's factual findings if there is any evidence in the record which reasonably supports them.'" (quoting *Lowcountry*, 347 S.C. at 101–02, 552 S.E.2d at 781)). The record shows that Shuler and Decedent had a physical altercation caused by Shuler slapping Decedent several times. Testimony also revealed that Decedent was attempting to leave Shuler's home when Shuler exited the house, walked towards the front of his house, and fired his handgun at an "image coming towards [him]." Shuler admitted he was unaware of who or what he was shooting, and it is undisputed that Decedent's gunshot wound was the proximate cause of his death.

Further, we find the master did not err in awarding $1,500,000 to Decedent under the theory of wrongful death. "[W]here the amount of the verdict falls within the range of damages testified to, the verdict cannot be disturbed on the ground of excessiveness." *Gastineau v. Murphy*, 323 S.C. 168, 183, 473 S.E.2d 819, 828 (Ct. App. 1996) (alteration in original) (quoting *Buzhardt v. Cromer*, 272 S.C. 159, 163, 249 S.E.2d 898, 900 (1978)), *rev'd on other grounds*, 331 S.C. 565, 503 S.E.2d 712 (1998). Wife testified Decedent earned $90,000 per year as a bail bondsman and longshoreman but acknowledged Decedent was often paid in cash. Wife stated she was personally aware of Decedent's income because she often made cash deposits of Decedent's earnings into his bank account. In addition, she was aware of his caseload at the time of his death. Ultimately, the master awarded Decedent's estate $203,251.25 in medical expenses and found "the decedent would have earned $50,000 per year for the remainder of his work life which would amount to $1,250,000 before reducing to present value." The master's award of $50,000 per year falls within the range of evidence presented by Decedent's estate. *Compare id. and Ravan v. Greenville County*, 315 S.C. 447, 456, 434 S.E.2d 296, 302 (1993) (noting the damages award was within the range of conflicting testimony at trial and affirming the trial court's denial of the motion for a new trial on the basis of excessive damages) *with Sparrow v. Toyota of Florence*, 302 S.C. 418, 422, 396 S.E.2d 645, 647–48 (Ct. App. 1990) (finding a new trial was required when the jury awarded plaintiff damages but plaintiff presented no

evidence relevant to the measure of damages). Accordingly, we affirm the master on this issue. *See Burgess*, 371 S.C. at 410, 639 S.E.2d at 456 ("In an action at law, 'we will affirm the master's factual findings if there is any evidence in the record which reasonably supports them.'" (quoting *Lowcountry*, 347 S.C. at 101–02, 552 S.E.2d at 781)); *see also Anderson*, 381 S.C. at 573, 674 S.E.2d at 179 (stating that credibility and weight of evidence are exclusively for the master).

III. Survival Action

Shuler argues the master erred in finding Decedent's estate presented sufficient evidence to support a survival action under the conscious pain and suffering theory. We disagree.

In South Carolina, a cause of action for injuries to an individual survive that individual's death, and damages are recoverable by the legal representative of the decedent's estate. § 15-5-90. Under the statute, a decedent's personal representative can recover for the decedent's "conscious pain and suffering," but there must be sufficient proof that the decedent was conscious and simultaneously suffering prior to death. *Smalls v. S.C. Dep't of Educ.*, 339 S.C. 208, 216, 528 S.E.2d 682, 686 (Ct. App. 2000).

In *Croft v. Hall*, our supreme court found sufficient evidence existed for a jury to find a decedent consciously suffered prior to death. 208 S.C. 187, 193–95, 37 S.E.2d 537, 539–40 (1946). Despite testimony from doctors and nurses that decedent was unconscious, the court found evidence that the decedent talked, "made terrible noises," moved a hand and leg in her hospital bed, and opened her eyes in response to her mother's voice was sufficient to find conscious pain and suffering. *Id.* Further, in *Smalls*, the decedent's father testified his daughter was unconscious at the accident scene and she never regained consciousness. *Small*, 339 S.C. at 216–17, 528 S.E.2d at 686. However, he also stated his daughter was gasping for air and moaning at the accident scene and he thought she could hear him and respond to his voice before her death. *Id.* at 217, 528 S.E.2d at 686–87. Notwithstanding the father's contradictions, the court ruled that reasonable evidence existed for a jury to find conscious pain and suffering. *Id.* at 217, 528 S.E.2d at 687.

We find sufficient evidence existed for the master to reasonably conclude Decedent consciously suffered pain prior to his death for a short period of time.

See id. at 216, 528 S.E.2d at 686 (noting a scintilla of evidence was sufficient to submit conscious pain and suffering to the factfinder). To support this finding, the master referenced testimony from Morris that immediately following the shooting, she saw Decedent lying on the ground in severe pain yelling "help me" before seeing his eyes roll back into his head. *See id.* at 217, 528 S.E.2d at 686–87 (finding testimony that a decedent was gasping for air, moaning, and could possibly hear her father's voice sufficient evidence to support a jury finding conscious pain and suffering). Because the record contains sufficient evidence to reasonably support the master's finding of conscious pain and suffering, we affirm on this issue. *See Burgess*, 371 S.C. at 410, 639 S.E.2d at 456 ("In an action at law, 'we will affirm the master's factual findings if there is any evidence in the record which reasonably supports them.'" (quoting *Lowcountry*, 347 S.C. at 101–02, 552 S.E.2d at 781)).

CONCLUSION

Based on the foregoing, the master's order is

AFFIRMED.

THOMAS and HILL, JJ., concur.