The Supreme Court of South Carolina

In the Matter of Andrew Scott Brookshire, Petitioner.

Appellate Case No. 2017-000791

ORDER

The records in the office of the Clerk of the Supreme Court show that on February 09, 2016, petitioner was admitted and enrolled as a member of the Bar of this State. Currently, petitioner is administratively suspended from the practice of law under Rule 419 of the South Carolina Appellate Court Rules (SCACR).

Petitioner has now submitted his resignation from the South Carolina Bar pursuant to Rule 409, SCACR. We accept petitioner's resignation.

If petitioner is currently representing any South Carolina clients, petitioner shall immediately notify those clients of the resignation by certified mail, return receipt requested. Further, if petitioner is currently counsel of record before any court of this State, petitioner shall immediately move to be relieved as counsel in that matter.

Within twenty (20) days of the date of this order, petitioner shall:

(1) surrender the certificate of admission to the Clerk of this Court. If petitioner cannot locate this certificate, petitioner shall provide the Clerk with an affidavit indicating this fact and indicating that the certificate will be immediately surrendered if it is subsequently located; and

(2) provide an affidavit to the Clerk of this Court showing that petitioner has fully complied with the requirements of this order.

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 3, 2017

The Supreme Court of South Carolina

In the Matter of Kelly Beth Hapgood, Petitioner.

Appellate Case No. 2017-000788

ORDER

The records in the office of the Clerk of the Supreme Court show that on August 25, 2011, petitioner was admitted and enrolled as a member of the Bar of this State. Currently, petitioner is administratively suspended from the practice of law under Rule 419 of the South Carolina Appellate Court Rules (SCACR).

Petitioner has now submitted her resignation from the South Carolina Bar pursuant to Rule 409, SCACR. We accept petitioner's resignation.

If petitioner is currently representing any South Carolina clients, petitioner shall immediately notify those clients of the resignation by certified mail, return receipt requested. Further, if petitioner is currently counsel of record before any court of this State, petitioner shall immediately move to be relieved as counsel in that matter.

Within twenty (20) days of the date of this order, petitioner shall:

(1) surrender the certificate of admission to the Clerk of this Court. If petitioner cannot locate this certificate, petitioner shall provide the Clerk with an affidavit indicating this fact and indicating that the certificate will be immediately surrendered if it is subsequently located; and

(2) provide an affidavit to the Clerk of this Court showing that petitioner has fully complied with the requirements of this order.

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 3, 2017

The Supreme Court of South Carolina

In the Matter of Marsha Carol Johnson, Petitioner.

Appellate Case No. 2017-000505

ORDER

The records in the office of the Clerk of the Supreme Court show that on June 1, 1990, petitioner was admitted and enrolled as a member of the Bar of this State. Currently, petitioner is administratively suspended from the practice of law under Rule 419 of the South Carolina Appellate Court Rules (SCACR).

Petitioner has now submitted his resignation from the South Carolina Bar pursuant to Rule 409, SCACR. We accept petitioner's resignation.

If petitioner is currently representing any South Carolina clients, petitioner shall immediately notify those clients of the resignation by certified mail, return receipt requested. Further, if petitioner is currently counsel of record before any court of this State, petitioner shall immediately move to be relieved as counsel in that matter.

Within twenty (20) days of the date of this order, petitioner shall:

(1) surrender the certificate of admission to the Clerk of this Court. If petitioner cannot locate this certificate, petitioner shall provide the Clerk with an affidavit indicating this fact and indicating that the certificate will be immediately surrendered if it is subsequently located; and

(2) provide an affidavit to the Clerk of this Court showing that petitioner has fully complied with the requirements of this order.

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 3, 2017

The Supreme Court of South Carolina

In the Matter of Susan Insake Johnson, Petitioner

Appellate Case No. 2017-000597

ORDER

Petitioner is currently admitted to practice law in South Carolina, and has now submitted a resignation under Rule 409 of the South Carolina Appellate Court Rules. The resignation is accepted.

If petitioner is currently representing any South Carolina clients, petitioner shall immediately notify those clients of the resignation by certified mail, return receipt requested. Further, if petitioner is currently counsel of record before any court of this State, petitioner shall immediately move to be relieved as counsel in that matter.

Within twenty (20) days of the date of this order, petitioner shall:

(1) surrender the certificate of admission to the Clerk of this Court. If petitioner cannot locate this certificate, petitioner shall provide the Clerk with an affidavit indicating this fact and indicating that the certificate will be immediately surrendered if it is subsequently located.

(2) provide an affidavit to the Clerk of this Court showing that petitioner has fully complied with the requirements of this order.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

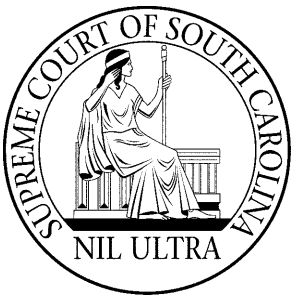
s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina

May 3, 2017



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OF

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AND

COURT OF APPEALS

OF

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ADVANCE SHEET NO. 19
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The Supreme Court of South Carolina

Ex Parte: South Carolina Department of Disabilities and Special Needs, Appellant,

In re: State of South Carolina, Respondent,

v.

Rocky A. Linkhorn, Respondent.

Appellate Case No. 2013-002208

ORDER

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

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ Jean H. Toal A.J.

s/ Costa M. Pleicones A.J.

Columbia, South Carolina

May 11, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Ex Parte: South Carolina Department of Disabilities and Special Needs, Appellant,

In re: State of South Carolina, Respondent,

v.

Rocky A. Linkhorn, Respondent.

Appellate Case No. 2013-002208

Appeal From Lexington County
J. Michael Baxley, Circuit Court Judge

Opinion No. 27684
Heard December 3, 2015 – Refiled May 11, 2017

REVERSED

William H. Davidson, II and Andrew F. Lindemann, both of Davidson & Lindemann, P.A., of Columbia; General Counsel Tana G. Vanderbilt, of South Carolina Department of Disabilities and Special Needs, of Columbia, all for Appellant.

Attorney General Alan M. Wilson, Deputy Solicitor General J. Emory Smith, Jr., Solicitor General Robert D. Cook and Assistant Attorney General T. Parkin Hunter, all

of Columbia; Public Defender Elizabeth C. Fullwood, of Lexington, all for Respondent.

CHIEF JUSTICE BEATTY: Rocky A. Linkhorn was arrested and charged with Criminal Sexual Conduct with a Minor in the First Degree, Lewd Act on a Minor, and Disseminating Obscene Material to a Minor. After finding Linkhorn was incompetent to stand trial and unlikely to become fit in the foreseeable future, the circuit court ordered the solicitor to initiate judicial admission proceedings in the probate court to have Linkhorn involuntarily committed to the South Carolina Department of Disabilities and Special Needs ("DDSN"). Before the probate court determined whether Linkhorn was intellectually disabled, the solicitor filed a motion for a rule to show cause in the circuit court, requesting DDSN be ruled into court "to show just cause for services being denied to [Linkhorn] as previously ordered." The circuit court granted the solicitor's motion and ordered DDSN to, *inter alia*, take custody of Linkhorn and house him in a secure facility until the probate court determines whether Linkhorn is intellectually disabled. Additionally, the court prohibited DDSN from refusing involuntary commitment of individuals similarly situated to Linkhorn. DDSN appealed. We certified the appeal pursuant to Rule 204(b), SCACR. For reasons which will be discussed, we reverse.

I. Discussion

This case concerns the application of the South Carolina Intellectual Disability, Related Disabilities, Head Injuries, and Spinal Cord Injuries Act[1] ("Act") and certain provisions under Title 44, Chapter 23 of the South Carolina Code. The Act and Title 44, Chapter 23 contain competing definitions of the term "intellectual disability." The crux of the issue before the Court is which definition is applicable to Linkhorn.

A long recitation of the facts and the tortured procedural history of this case are unnecessary to determine the resolution of the ultimate issue presented. The uncontroverted evidence shows that Linkhorn suffers from dementia caused by an anoxic brain injury resulting from Linkhorn's attempt to hang himself. Linkhorn has numerous cognitive and intellectual deficits in addition to slow speech and difficulty

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[1] S.C. Code Ann. §§ 44-20-10 to -1170 (Supp. 2015).

performing certain motor activities. It is noteworthy that Linkhorn's disability did not manifest until he was twenty-three years of age.

A. Statutory Overview

Title 44, Chapter 23 outlines, *inter alia*, the procedures for individuals found unfit to stand trial. These provisions apply to both the mentally ill and persons with intellectual disabilities.[2] Under *this* Chapter, "person with intellectual disability" is defined as:

> a person, other than a person with a mental illness primarily in need of mental health services, whose inadequately developed or impaired intelligence and adaptive level of behavior require for the person's benefit, or that of the public, special training, education, supervision, treatment, care, or control in the person's home or community or in a service facility or program under the control and management of the Department of Disabilities and Special Needs.

S.C. Code Ann. § 44-23-10(21) (Supp. 2015). This definition does not have an age limitation. The General Assembly limited the application of this definition to Title 44, Chapters 9, 11, 13, 17, 23, 24, 27, 48, and 52. *Id.* § 44-23-10 (Supp. 2015). Notably absent from this list is Title 44, Chapter 20.

The Act sets forth specific procedures applicable to judicial admission proceedings concerning the involuntary commitment of an individual to DDSN once the individual is found unfit to stand trial. S.C. Code Ann. § 44-20-450 (Supp. 2015). Under section 44-20-450(A)(8) of the Act, if an individual is found unfit to stand trial, the solicitor responsible for the criminal prosecution pursuant to section 44-23-430 is authorized to initiate judicial admission proceedings for the involuntary commitment of the individual to DDSN as long as the individual has an "intellectual disability" or "related disability." "Intellectual disability" is defined *under the Act*

---

[2] Prior to this appeal, the probate court determined Linkhorn was not mentally ill. Neither party disputes this determination. Therefore, while provisions of Title 44, Chapter 23 apply to both the mentally ill and people with intellectual disabilities, we limit our review of this authority to its application to individuals with intellectual disabilities.

as "significantly sub average general intellectual functioning existing concurrently with deficits in adaptive behavior and ***manifested during the developmental period***."[3] *Id*. § 44-20-30(12) (Supp. 2015) (emphasis added). A "related disability" is defined as:

> A severe, chronic condition found to be closely related to intellectual disability or to require treatment similar to that required for persons with intellectual disability and must meet the following conditions:
>
> (a) It is attributable to cerebral palsy, epilepsy, autism, or any other condition other than mental illness found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with intellectual disability and requires treatment or services similar to those required for these persons.
>
> (b) It is ***manifested before twenty-two years of age***.
>
> (c) It is likely to continue indefinitely.

---

[3] In 2011, the General Assembly substituted the term "mental retardation" with "intellectual disability." Act No. 47, 2011 S.C. Acts 172. The definition of the term stayed the same. Act No. 47, 2011 S.C. Acts 172, 176. The General Assembly has not defined the term "developmental period." However, since the term was part of the same definition previously used to define mental retardation, which has generally been accepted as a condition occurring prior to age eighteen, we believe the General Assembly intended for the same age limitation to apply to intellectual disabilities. *See the American Association on Intellectual and Developmental Disabilities*, Definition of Intellectual Disability, http://aaidd.org/intellectual-disability/definition#.V7NoXE32Y5s (last visited on Aug. 16, 2016) (defining "intellectual disability" as "a disability characterized by significant limitations in both intellectual functioning and in adaptive behavior, which covers many everyday social and practical skills. This disability originates before the age of 18"). Our belief is also supported by the expert testimony of psychiatrist Dr. Richard Frierson in this case. During the hearing on the rule to show cause motion, Dr. Frierson opined that a condition which does not manifest prior to the age of eighteen is not "the same intellectual disability that has been [previously] referred to as mental retardation."

> (d) It results in substantial functional limitations in three or more of the following areas of major life activity: self-care, understanding and use of language, learning, mobility, self-direction, and capacity for independent living.

Id. § 44-20-30(15) (Supp. 2015) (emphasis added).

If the court determines the individual has an intellectual disability or related disability, the court shall order the individual "be admitted to the jurisdiction of [DDSN] as soon as necessary services are available." S.C. Code Ann. § 44-20-450(E) (Supp. 2015). If, however, the court determines the individual does not have an "intellectual disability or a related disability to an extent which would require commitment, it shall terminate the proceeding and dismiss the petition." *Id*. § 44-20-450(D) (Supp. 2015).

While the Act also applies to individuals with "head injuries" and "spinal cord injuries," the provisions of the Act concerning the *involuntary* commitment of individuals to DDSN only apply to those with an intellectual disability or a related disability. *Id*. § 44-20-450 (Supp. 2015). Therefore, those individuals with a head injury or spinal cord injury can only be *voluntarily* committed to DDSN.

B. "Intellectual Disability"

DDSN contends the circuit court erred in applying the definition of "person with intellectual disability" under section 44-23-10(21) to the determination of this case. We agree.

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

We find the statutes concerning the involuntary commitment of individuals to DDSN are clear and unambiguous. Under the Act, only individuals who developed an "intellectual disability" during the developmental period or a "related disability" before the age of twenty-two can be involuntarily committed to DDSN.

Our finding is supported by the General Assembly's exclusion of the Act from the list of chapters to which the broad definition of "person with intellectual disability" may apply. *See* S.C. Code Ann. § 44-23-10 (Supp. 2015) (stating that the definitions within Chapter 23 also apply to "Chapter 9, Chapter 11, Chapter 13, Articles 3, 5, 7, and 9 of Chapter 17, Chapter 24, Chapter 27, Chapter 48, and Chapter 52, unless the context clearly indicates a different meaning"). Chapter 20 is not included.

As this Court has acknowledged, "it is not the court's place to change the meaning of a clear and unambiguous statute." *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581. Consequently, we reverse the circuit court's decision, finding it erred in applying the definition of "person with intellectual disability" as defined in section 44-23-10(21) to this case. Instead, we hold the proper definition to apply in involuntary commitment proceedings to DDSN is the definition of "intellectual disability" as defined in section 44-20-30(12) under the Act. We are constrained to recognize that the General Assembly has failed to provide for involuntary commitment to DDSN for any defendant who did not manifest his condition before age twenty-two.

II. Conclusion

In conclusion, we hold the circuit court erred in applying the broad definition of "person with intellectual disability" found in section 44-23-10 to Linkhorn. Because this issue is dispositive of the appeal, we decline to address DDSN's remaining arguments.[4] Accordingly, we reverse the decision of the circuit court.

REVERSED.

KITTREDGE, HEARN, JJ., and Acting Justices Jean H. Toal and Costa M. Pleicones, concur.

---

[4] *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing this Court need not address remaining issues when disposition of prior issue is dispositive of the appeal).

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of William Jeffrey McGurk, Respondent.

Appellate Case Nos. 2017-000508 and 2017-000564

Opinion No. 27717
Submitted April 24, 2017 – Filed May 11, 2017

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and Ericka M. Williams, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

William Jeffrey McGurk, of Spartanburg, *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 and consents to the imposition of an admonition, public reprimand, or definite suspension not to exceed six (6) months. In addition, respondent agrees to pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (the Commission) within thirty (30) days of the imposition of discipline and to complete the Legal Ethics and Practice Program Ethics School within nine (9) months of the imposition of discipline. We accept the Agreement and suspend respondent from the practice of law in this state for six (6) months and impose other conditions as specified in the conclusion of this opinion. The facts, as set forth in the Agreement, are as follows.

Facts

Respondent represented Complainant as post-conviction relief (PCR) counsel at an evidentiary hearing on September 15, 2007. The judge denied PCR but found Complainant was entitled to a belated review of his direct appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). The State consented to the belated appeal. The final order in the PCR action was filed on November 5, 2007. Respondent did not serve and file a Notice of Appeal with the Supreme Court of South Carolina as required by Rule 243, SCACR, and Rule 71.1(g) of the South Carolina Rules of Civil Procedure (SCRCP).

On April 3, 2013, Complainant filed a *pro se* notice of appeal along with a petition for belated appellate review with this Court. On April 17, 2013, this Court sent a letter to respondent advising him that Complainant had filed a *pro se* notice of appeal. This Court reminded respondent that he remained counsel of record for Complainant pursuant to Rule 71.1(g), SCRCP. This Court requested respondent advise this Court of the date on which he received written notice of entry of the final order in the PCR matter and directed that the information be submitted within ten (10) days of the April 17, 2013, letter. Respondent failed to respond to this Court's request.[1]

On June 26, 2013, this Court dismissed the Complainant's notice of appeal due to respondent's failure to establish the timeliness of the service of the notice of appeal. Respondent took no further action on Complainant's case.

Respondent admits he failed to communicate with Complainant about the appeal, claiming that he believed his responsibilities ended with the denial of PCR and that an appellate defender would assume representation of Complainant. Respondent acknowledges that his failure to understand the applicable rules is not a defense to misconduct.

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[1] Further, although not mentioned in the parties' Agreement for Discipline by Consent, by letter dated May 8, 2013, this Court again requested respondent provide the information it had requested in its earlier letter. Respondent also failed to respond to this letter.

Law

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation); Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing client); Rule 1.4 (lawyer shall keep client reasonably informed about status of matter); and Rule 8.4(a) (it is professional misconduct for lawyer to violate Rules of Professional Conduct).

Respondent also admits he has violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct).

Conclusion

We find respondent's misconduct warrants a definite suspension from the practice of law in this state for six (6) months.[2] Within thirty (30) 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 nine (9) months of the date of this opinion, respondent shall complete the Legal Ethics and Practice Program Ethics School. Within fifteen (15) days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30 of Rule 413, SCACR.

Prior to the Commission's submission of this Agreement to the Court, respondent submitted a request for permission to resign as a member of the South Carolina Bar. As required by Rule 409, SCACR, he acknowledges that, if his resignation is accepted, he will have to fully comply with all licensing requirements, including passing the bar examination, in the event he wishes to practice law in this state in the future.

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[2] Respondent's disciplinary history includes a public reprimand in 2001, *In the Matter of McGurk*, 346 S.C. 224, 552 S.E.2d 34 (2001), an admonition in 2009, and letters of caution issued in 2003, 2006 and 2010. *See* Rule 2(r), RLDE; Rule 7(b)(4), RLDE.

Once respondent has filed the affidavit required by this opinion and provided proof that he has paid in full the costs ordered in this opinion, the Court will accept his resignation as a member of the South Carolina Bar.

DEFINITE SUSPENSION.

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love, Plaintiffs,

of whom George M. Lee, III, Mena H. Gardiner, and John Love are Respondents,

v.

University of South Carolina and University of South Carolina Gamecock Club, Petitioners.

Appellate Case No. 2015-002103

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 27718
Heard March 1, 2017 – Filed May 11, 2017

REVERSED

Robert E. Stepp and Bess J. DuRant, both of Sowell Gray Stepp & Laffitte, L.L.C., of Columbia, for Petitioners.

J. Lewis Cromer and Julius W. Babb, IV, both of J. Lewis Cromer & Associates, L.L.C., of Columbia, for Respondents.

JUSTICE KITTREDGE: This case stems from a contract dispute between the University of South Carolina and the university's booster club known as the Gamecock Club (Petitioners) and several Gamecock Club members (Respondents). As part of the bargain Respondents struck with Petitioners, Respondents are entitled to "assigned reserved parking" at home football games. Respondents claim Petitioners violated this contract provision when USC discontinued parking on the "apron" around the football stadium and failed to give Respondents first priority in the selection of new parking spaces. Petitioners assert that the parking provision has no priority requirement and it was satisfied when Respondents were assigned reserved parking spaces in an adjacent lot. As the case comes before this Court on certiorari to the court of appeals, the only issue before us is whether this is an appropriate case for the use of equitable estoppel: the trial court held it was not, but the court of appeals reversed. We agree with the trial court and reverse the court of appeals.

I.

Petitioners USC and the Gamecock Club work together to promote the school's athletic programs. This includes selling tickets to sporting events and offering other privileges that are contingent on the amount of a Gamecock Club member's financial contributions. In the mid-1980s, the Gamecock Club instituted the Lifetime Membership program, which offered[1] Gamecock Club members the opportunity to become Lifetime Members. Lifetime Membership was achieved by making donations at specified levels or purchasing a life insurance policy valued at a minimum of $100,000 and naming USC as the beneficiary. In 1990, Respondents George M. Lee, III and John Love became Lifetime Members. Stuart Hope became a Lifetime Member in 1986, which membership passed to Respondent Mena H. Gardiner, his daughter and named beneficiary, upon his death.[2]

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[1] The Gamecock Club no longer offers these memberships.

[2] One perk of being a Lifetime Member is the ability to designate a beneficiary to

The terms of the Lifetime Membership program were placed in written contracts, signed by Respondents (or their predecessors), which included an attached "Exhibit A" listing the benefits of membership. These benefits included

> Four Season Football Tickets (Best Available)
> Additional Four Season Football Tickets (Total of 8)
> *Assigned Reserved Parking*
> Second Priority on Away and Bowl Game Tickets
> Tickets May Be Assigned to One Designated Heir
> Four Season Basketball Tickets (Best Available)
> Assigned Parking[3] at Coliseum (If Available)
> Second Priority on Away and Tournament Game Tickets
> Second Priority on Any Tickets Involving Any Other South Carolina Athletic Events.

(emphasis added).

For more than twenty years, Respondents were assigned parking spaces for home football games on the apron immediately surrounding Williams-Brice Stadium. Beginning with the 2012 football season, USC eliminated those parking spaces. The Gamecock Club informed Respondents that they would continue to have assigned, reserved parking spaces pursuant to their Lifetime Membership contracts. The parking-selection process imposed by the Gamecock Club resulted in each Respondent receiving two parking spaces[4] in the Farmers Market parking area across the street from the stadium. Miffed at their perceived lack of *priority* parking, Respondents filed this action.

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receive the membership interest upon the member's death.

[3] Exhibit A to Stuart Hope's contract provided for "Assigned *Reserved* Parking at Coliseum (If Available)." (emphasis added).

[4] When Respondents were allowed to park on the apron of Williams-Brice, they were allotted only one parking space each.

Respondents' complaint alleged Petitioners failed to comply with their contractual obligation to give Lifetime Members first priority in the selection of parking spaces. The complaint sought an order "enjoining and restraining [Petitioners] from interfering with the contractual rights of the life members of the Gamecock Club, particularly the rights of such members to have the highest priority for parking within locations at or near Williams Brice Stadium."

The parties filed cross-motions for summary judgment.[5] Respondents contended that Petitioners' failure to give them priority in the selection of parking spaces constituted a breach of their "clear and unambiguous contracts" and, furthermore, that Petitioners were "estopped from asserting any position contrary to the existence of [Respondents'] contract rights . . . due to their compliance with the same over several decades." Respondents argued that their contracts with Petitioners, specifically the provision in Exhibit A referring to "assigned reserved parking," unambiguously granted Respondents priority in the selection of parking spaces.

Alternatively, Respondents argued the contracts were ambiguous and extrinsic evidence should be admitted to prove the contracts' terms. Respondents also claimed Petitioners should be equitably estopped from changing Respondents' parking-selection priority because Petitioners "conveyed to [Respondents] that they were entitled to higher priority in parking than non-lifetime donors" and Respondents "reasonably relied on [Petitioners'] actions and changed their positions accordingly by becoming lifetime donors."[6]

In contrast, Petitioners argued that the Lifetime Membership contracts were unambiguous, did not guarantee Respondents a particular parking space, and did not make any promises as to the priority Respondents would receive in the

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[5] Prior to this, Linda Rodarte resolved her dispute with Petitioners and the parties entered a stipulation of dismissal, with prejudice, as to her claims. *See* Rule 41(a)(1), SCRCP.

[6] However, Respondents did not bring any claims based on fraud or negligent misrepresentations.

selection of parking spaces. Petitioners also argued Respondents could not rely on parol evidence or equitable estoppel to contradict or supplement the terms of their unambiguous contracts.

At the summary judgment hearing, Respondents referenced a March 5, 2008 letter from Chris Wyrick, the executive director of the Gamecock Club, and the depositions of Love and Marion Hope,[7] as evidence that Respondents were assured they would have first priority in the selection of parking spaces. In the 2008 letter, Wyrick informed Lifetime Members that they were "at the top of all Gamecock Club priority." In his deposition, Marion Hope testified that in addition to the benefits contained in Exhibit A to his father's contract, Petitioners gave them "verbal assurances" that they would receive eight basketball tickets—notwithstanding the fact that the contract stated they would receive four tickets—and that they would have "top priority" in the Gamecock Club for everything listed in Exhibit A. Similarly, in his deposition, Love testified that he interpreted "assigned reserved parking" to mean the "best parking spot available around the stadium."

In response, Petitioners argued that evidence was inadmissible under the parol evidence rule, which prohibits courts from considering extrinsic evidence of prior or contemporaneous agreements when the parties have a written contract. Petitioners also pointed out that Respondents could not possibly have relied on the Wyrick letter from 2008 when entering into the Lifetime Membership agreements decades earlier.

The trial court granted Petitioners' motion for summary judgment. In its order, the trial court held that "assigned reserved parking" was unambiguous and parol evidence of its meaning was therefore inadmissible, the Lifetime Membership contracts did not provide Respondents with a right to any particular parking space or selection priority, and Respondents' claim for equitable estoppel failed as a matter of law.

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[7] Marion Hope is Stuart Hope's son; his deposition was taken because he participated in the discussions that led to his father entering into the Lifetime Membership agreement with Petitioners.

The court of appeals affirmed in part and reversed in part.[8] *Rodarte v. Univ. of S.C.*, Op. No. 2015-UP-357 (S.C. Ct. App. filed July 15, 2015). The court of appeals affirmed the trial court's ruling that the Lifetime Membership contracts were unambiguous and extrinsic evidence was therefore inadmissible to prove their meaning.[9] However, the court of appeals reversed the trial court's ruling as to equitable estoppel. The court of appeals found that Respondents' "affidavits and depositions, which indicate [Respondents] relied on USC's assurances of first and second priority 'always' in exchange for the increased donations made to USC" were "sufficient to create an issue of material fact as to whether [Respondents] suffered a detrimental change in reliance on the representations." *Id.* We granted Petitioners a writ of certiorari to review the court of appeals' decision.

II.

Petitioners argue there is no evidence to support Respondents' claim for equitable estoppel and, therefore, the trial court properly granted Petitioners' motion for summary judgment. According to Petitioners, the court of appeals erred because (1) equitable estoppel cannot be used to alter the terms of an unambiguous contract; (2) Respondents are attempting to use equitable estoppel offensively, when it can only be used defensively; and (3) equitable estoppel is unavailing against Petitioners because they are government entities. We agree the court of appeals erred by holding that equitable estoppel can be used to alter the terms of an unambiguous, written contract, and we reverse.[10]

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[8] By this point J. Perry Kimball had dismissed his claims against Petitioners and he is therefore no longer a party to this action.

[9] We denied Respondents' petition for a writ of certiorari to review that decision, and it is now the law of the case and cannot be challenged by Respondents. *See, e.g.*, *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.").

[10] Because we reverse the court of appeals on this ground we need not consider Petitioners' other arguments. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting that when resolution of one issue is dispositive, there is no need to consider other issues).

Because this case requires us to answer a question of law—whether equitable estoppel may be used to prevent the enforcement of an unambiguous contract—we apply a different standard of review than in the typical fact-based challenge to summary judgment.[11] *Cf. Eagle Container Co. v. County of Newberry*, 379 S.C. 564, 567–68, 666 S.E.2d 892, 894 (2008) (noting that interpretation of an unambiguous ordinance is a question of law and the Court has a broader scope of review in those instances than when it reviews questions of fact (footnote omitted)). Accordingly, we review this issue de novo. *See, e.g.*, *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) ("[T]his Court reviews questions of law de novo.").

"In its broadest sense, equitable estoppel is a means of preventing a party from asserting a legal claim or defense that is contrary or inconsistent with his or her prior action or conduct." 28 Am. Jur. 2d *Estoppel and Waiver* § 27 (2011); *see, e.g.*, *Parker v. Parker*, 313 S.C. 482, 488, 443 S.E.2d 388, 391 (1994) (holding that equitable estoppel was a valid defense to a paternity challenge brought by the children of an intestate decedent against a putative heir because the children had "lulled her into a position where she could no longer defend her parentage"). "The essence of equitable estoppel is that the party entitled to invoke the principle was misled to his injury." *S.C. Pub. Serv. Auth. v. Ocean Forest, Inc.*, 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981). "The essential elements of equitable estoppel are divided between the estopped party and the party claiming estoppel." *Strickland v. Strickland*, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007).

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[11] In those situations we "review[] the granting of summary judgment under the same standard applied by the trial court," which "may grant a motion for summary judgment 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Quail Hill, L.L.C. v. County of Richland*, 387 S.C. 223, 234–35, 692 S.E.2d 499, 505 (2010) (quoting Rule 56(c), SCRCP). We are also required to view "'the evidence and all inferences which can reasonably be drawn therefrom . . . in the light most favorable to the nonmoving party.'" *Id.* at 235, 692 S.E.2d at 505 (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)).

> The elements of equitable estoppel as related to the party being estopped are: (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. The party asserting estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped;[12] and (3) a prejudicial change of position in reliance on the conduct of the party being estopped.

Id. at 84–85, 650 S.E.2d at 470.

In reversing the trial court, the court of appeals relied on this Court's opinion in *Springob v. Univ. of S.C.*, 407 S.C. 490, 757 S.E.2d 384 (2014). The plaintiffs in *Springob* were individuals that had entered into agreements with the Gamecock Club to receive access to premium seating at basketball games and other benefits in exchange for cash contributions. 407 S.C. at 493–94, 757 S.E.2d at 385–86. The brochure promoting this program offered Gamecock Club members "the opportunity to purchase these tickets over a 'five year term.' Members were to pay $5,000 per seat in the first year and $1,500 per seat each year in years two through five." *Id.* at 494, 757 S.E.2d at 386.

At the end of the five-year period, the Gamecock Club contended that the plaintiffs had to continue making annual payments of $1,500 per seat. *Id.* Believing no further payments were required under the terms of their agreements, the plaintiffs brought a breach of contract claim against USC and the Gamecock Club. *Id.* The plaintiffs submitted affidavits stating they were promised that after year five "they would only have to maintain their Gamecock Club membership and pay the face value of season tickets to retain the[ir] premium seats." *Id.* The parties filed cross-motions for summary judgment; the trial court granted the defendants' motion,

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[12] Obviously, Respondents could not have been induced into becoming Lifetime Members by statements made years after signing the Lifetime Membership agreements. Therefore, subsequent representations, such as those found in the 2008 Wyrick letter, lend no support to Respondents' claim for equitable estoppel.

"finding that due to the absence of a written contract the statute of frauds barred [the plaintiffs'] claims." *Id.*

We affirmed the trial court's ruling that there was no valid contract between the parties—the agreements, which were not capable of being performed in one year, were not in writing as required by the statute of frauds. *Id.* at 495–97, 757 S.E.2d at 387 (citations omitted). However, we reversed the trial court's decision as to the plaintiffs' equitable estoppel claim because "there [wa]s proof of an oral contract between the parties" that was "sufficient to create an issue of material fact as to whether [the plaintiffs] suffered a definite, substantial, and detrimental change in reliance on th[o]se purported oral representations." *Id.* at 498, 757 S.E.2d at 388.

The facts of this case are easily distinguishable from those of *Springob*. In *Springob*, there was no written contract between the parties, and the plaintiffs raised equitable estoppel to counter USC and the Gamecock Club's statute of frauds defense. *See id.* at 495, 497, 757 S.E.2d at 386–87. In contrast, here Respondents seek to use equitable estoppel to alter the terms of unambiguous, written contracts. The court of appeals' expansive interpretation of *Springob* effectively sanctioned an end-run around the parol evidence rule and was erroneous. *Cf. Spoone v. Newsome Chevrolet-Buick*, 309 S.C. 432, 434, 424 S.E.2d 489, 490 (1992) (noting that "equitable estoppel could not be invoked to nullify a mandatory statutory restriction" and "equity will not prevail over a positive enactment of the legislature" (citations omitted)). *See generally* 30A C.J.S. *Equity* § 128 (2007 & Supp. 2016) (discussing the equitable maxim "equity follows the law").

"The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument." *Gilliland v. Elmwood Props.*, 301 S.C. 295, 302, 391 S.E.2d 577, 581 (1990) (citing *Iseman v. Hobbs*, 290 S.C. 482, 483, 351 S.E.2d 351, 352 (Ct. App. 1986)). "'Where an agreement is clear on its face and unambiguous, the court's only function is to interpret its lawful meaning and the intent of the parties *as found within the agreement*.'"[13] *Stevens & Wilkinson of*

[13] Indeed, Lee has previously benefited from this Court's refusal to allow USC to add to the terms of the Lifetime Membership agreement. *See Lee v. Univ. of S.C.*, 407 S.C. 512, 518–19, 757 S.E.2d 394, 398 (2014) (holding that the Lifetime

S.C., Inc. v. City of Columbia, 409 S.C. 568, 577, 762 S.E.2d 696, 700 (2014) (emphasis added) (quoting *Miles v. Miles*, 393 S.C. 111, 117, 711 S.E.2d 880, 883 (2011)). "'Interpretation of a contract is governed by *the objective manifestation of the parties' assent at the time the contract was made*, rather than the subjective, after-the-fact meaning one party assigns to it.'" *N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 378, 769 S.E.2d 237, 241 (2015) (emphasis added) (quoting *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 334, 676 S.E.2d 139, 143–44 (Ct. App. 2009)).

Nonetheless, Respondents seek to use equitable estoppel to introduce evidence of "the promises and assurances given by employees of Petitioners to Respondents." This is the very type of evidence the parol evidence rule excludes. *See, e.g.*, *Sanders v. Allis Chalmers Mfg. Co.*, 237 S.C. 133, 138, 115 S.E.2d 793, 795 (1960) ("Where parties reduce an agreement to writing, it is to be presumed that the sole agreement of the parties and the extent of the undertaking was included therein, and parol evidence cannot be introduced to contradict it." (citations omitted)); *see also Welch v. Edisto Realty Co.*, 170 S.C. 31, 40, 169 S.E. 667, 671 (1933) ("If plaintiffs desired that the parol agreement, for which they now contend, be incorporated in the written instrument, they should have taken legal steps to reform that paper."). Allowing Respondents' equitable estoppel claim to go forward—with the introduction of parol evidence that would entail—would be tantamount to permitting a party to convert an unambiguous contract into an ambiguous one based on little more than "the subjective, after-the-fact meaning one party assigns to it." *N. Am. Rescue Prods., Inc.*, 411 S.C. at 378, 769 S.E.2d at 241 (citation omitted); *see, e.g.*, *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 157, 161 S.E.2d 179, 181 (1968) (recognizing that parol evidence is admissible to prove the meaning of an ambiguous, written contract). A party cannot avoid the parol evidence rule simply by claiming he thought the contract he signed meant something other than what it said. We agree with the Supreme Court of Rhode Island that "quasi-contractual remedies such as equitable estoppel are inapplicable when the parties are bound by an express contract." *Zarrella v. Minn. Mut. Life Ins. Co.*, 824 A.2d 1249, 1260 (R.I. 2003). Simply put, Respondents

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Membership agreement, which guaranteed Lee "the opportunity to purchase tickets," precluded USC and the Gamecock Club "from imposing additional fees that Lee must pay before being allowed" that opportunity). As the old saying goes, what's good for the goose is good for the gander.

cannot use equitable estoppel to let in through the back door what the parol evidence rule prevents from coming in the front door.

Indeed, an unambiguous, written contract is inherently incompatible with the doctrine of equitable estoppel. To succeed on a claim for equitable estoppel, a party must prove "lack of knowledge, and the means of knowledge, of the truth as to the facts in question." *Strickland*, 375 S.C. at 84, 650 S.E.2d at 470. However, an unambiguous contract is by definition capable of only one reasonable interpretation. *See Carolina Ceramics, Inc.*, 251 S.C. at 155–56, 161 S.E.2d at 181 (stating that a contract is *ambiguous* if it is "capable of being understood in more senses than one"). Therefore, a party to an unambiguous contract cannot prove lack of knowledge or the means of acquiring knowledge of the contract's meaning, which bars an equitable estoppel claim in the first instance.

III.

We reiterate that this is a breach of contract case involving unambiguous, written contracts. Respondents have made no claims of fraud or negligent misrepresentations by Petitioners; therefore, the general rule that written contracts must be respected, and effect must be given to their plain terms, prevails. *Cf. Slack v. James*, 364 S.C. 609, 616, 614 S.E.2d 636, 640 (2005) (stating that the parol evidence rule will not "prevent[] one from proceeding on tort theories of negligent misrepresentation and fraud"); *Shumpert v. Serv. Life & Health Ins. Co.*, 220 S.C. 401, 411, 68 S.E.2d 340, 344 (1951) (noting the tension between "recognition of the rule of sanctity of written contracts and the rule of relief from fraudulent representations which induced the making of a contract"). We reverse the court of appeals and reinstate the entry of summary judgment for Petitioners.

REVERSED.

BEATTY, C.J., HEARN, FEW, JJ., and Acting Justice J. Cordell Maddox, Jr., concur.

The Supreme Court of South Carolina

Re: Expansion of Electronic Filing Pilot Program - Court of Common Pleas

Appellate Case No. 2015-002439

ORDER

Pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution,

IT IS ORDERED that the Pilot Program for the Electronic Filing (E-Filing) of documents in the Court of Common Pleas, which was established by Order dated December 1, 2015, is expanded to include Barnwell County and Bamberg County. Effective May 9, 2017, all filings in all common pleas cases commenced or pending in Barnwell County and Bamberg County must be E-Filed if the party is represented by an attorney, unless the type of case or the type of filing is excluded from the Pilot Program. The counties currently designated for mandatory E-Filing are as follows:

Allendale	Anderson	Beaufort	Cherokee
Clarendon	Colleton	Greenville	Hampton
Jasper	Lee	Oconee	Pickens
Spartanburg	Sumter	Williamsburg	
Horry	Georgetown	Aiken	

Barnwell and Bamberg—May 9, 2017

Attorneys should refer to the South Carolina Electronic Filing Policies and Guidelines, which were adopted by the Supreme Court on October 28, 2015, and the training materials available at http://www.sccourts.org/efiling/ to determine whether any specific filings are exempted from the requirement that they be E-Filed. Attorneys who have cases pending in Pilot Counties are strongly encouraged to review, and to instruct their staff to review, the training materials available on the E-Filing Portal.

s/Donald W. Beatty
Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
May 3, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Courtney Shante Thompson

AND

The State, Respondent,

v.

Robert Antonio Guinyard, Appellants.

Appellate Case No. 2014-001198

Appeal from Richland County
Robert E. Hood, Circuit Court Judge

Opinion No. 5485
Heard March 8, 2017 – Filed May 11, 2017

AFFIRMED

Mitzi Campbell Williams, of Lexington; and Chief Appellate Defender Robert Michael Dudek, of Columbia, for Appellant Courtney Shante Thompson.

Matthew G. Gerrald, of Barnes, Alford, Stork & Johnson, LLP; and Chief Appellate Defender Robert Michael

Dudek, both of Columbia, for Appellant Robert Antonio Guinyard.

Attorney General Alan McCrory Wilson, Special Assistant Attorney General Amie L. Clifford; and Solicitor Daniel E. Johnson, all of Columbia, for Respondent.

GEATHERS, J.: Appellants, Courtney Shante Thompson (Mother) and Robert Antonio Guinyard (Father), were tried jointly and convicted of homicide by child abuse (HCA) and unlawful conduct toward a child. They now seek review of their convictions, arguing the trial court erred in denying their respective motions for a directed verdict on each charge because the State failed to present substantial circumstantial evidence of guilt. Appellants also challenge the admission of photographs of their son (Victim) pursuant to Rule 403, SCRE, arguing any probative value the photographs may have had was substantially outweighed by the danger of unfair prejudice.[1] We affirm.

FACTS/PROCEDURAL HISTORY

At approximately 6:15 p.m. on July 1, 2013, Richland County Emergency Medical Services received a call to respond to a cardiac arrest at Appellants' home. When first responders arrived at the home, they found Victim, a four-year-old boy, lying on the floor in the living room. He was wearing jeans, but no shirt. Victim was not moving or breathing, he had no pulse, and he was cold to the touch. A paramedic checked Victim's heart for electrical activity, but tragically, she found none. Subsequently, investigators from the Richland County Sheriff's Department found Victim's blood on the walls of the living room, hallway, and rear bedroom as well as on a white metal pipe that also had Father's blood on it.[2]

Mother gave her first statement to police at 9:45 p.m. on July 1, 2013. In her statement, she indicated that she went to Richland Memorial Hospital on June 29, 2013 to give birth to another child and was discharged from the hospital on July 1, 2013 in the early afternoon. She further indicated that after she arrived home, she discovered Victim had wet the floor in the play room. She alleged Victim was autistic and would soil and wet his surroundings. She also alleged she got in the

[1] We consolidate Mother's and Father's appeals pursuant to Rule 214, SCACR.

[2] It could not be determined when the blood was transferred to the walls or the pipe.

shower and started washing off when she "heard a loud noise like a tumbling fall." She stated she got out of the shower and found Victim on the floor in the play room with his feet toward the dresser. She further stated,

> He was crunched up and his body was stiff. His butt was up in the air[,] and he was [kind of] on his head. . . . He was biting his lip hard. . . . When I popped his lip out from his teeth to keep him from biting it off[,] he went flat on me. He just dropped. . . . He was not responding. . . . I picked [Victim] up like he was a baby and took him to the front room (living room). Blood was coming from his lip. I had blood on my hand and went to my room to get my phone off the floor. I called 911. They told me how to do CPR. I did what he told me. . . . When [the ambulance] got there[,] they put something on his chest[,] and they did not do nothing. They just said that he was gone.

Father also gave a statement to police on July 1, 2013. He alleged he was cooking dinner earlier that evening when he heard a "boom." Mother allegedly came down the hallway with Victim in her arms and Victim "was in and out." Father further alleged that after Mother called 911, he hid in a closet with the new baby because he was afraid the baby would be taken away.

On July 2, 2013, Dr. Amy Durso, a forensic pathologist, performed Victim's autopsy and reported the cause of death as "[e]xtensive soft tissue hemorrhage and bleeding . . . due to multiple acute and healing blunt force injuries due to non-accidental trauma." Later that day, police investigators went over the autopsy results with Mother, who then gave a second statement, explaining to investigators that her first statement "was not the truth." Mother alleged that when she came home from the hospital, she found Victim naked, lying in a puddle of urine, and "very weak." Victim allegedly was drinking water "like he had not had water in days. . . . His feet, legs, knee, butt, and arms were swollen and kind of blue. [Victim] was just out of it." Mother further alleged that after she went to take a shower, she heard Victim

> crying like he was in pain and getting hit. I jumped out of the shower. [Victim] was stretched out on the floor in my room. I stood [Victim] up and he dropped to his knees. [Victim] was breathing funny. [Victim] fell to the floor. . . . [Victim] was walking down the hall[,] and he collapsed after taking about three steps. [Victim] balled

> up[,] and it looked like he was having a seizure. . . . I talked [to Victim] that morning at around 11 [a.m.] and my son told me that he was beaten with a pole. . . . When I got home[,] I saw blood flecks on the walls in the play room[,] [o]n the walls in the [hallway,] and on my room door. There was blood on the closet door in my room[,] and the door had a hole in the middle. There was blood in the carpet.

Later that evening, Appellants were arrested and charged with HCA and unlawful conduct toward a child.

On July 5, 2013, Victim's paternal grandmother, Patricia Guinyard, asked police to accompany her to Appellants' home to collect some clothes for Father and Appellants' newborn child. According to the police investigators accompanying Mrs. Guinyard, she was going through a large pile of clothing in Appellants' master bedroom closet when she found a child's size 5 shirt, still wet with blood, buried in the pile. DNA testing indicated the blood on the child's shirt was Victim's blood.

Appellants were tried together on May 19–28, 2014. At trial, the State presented the testimony of Dr. Olga Rosa, a forensic pediatrician who was qualified as an expert in child abuse pediatrics. Dr. Rosa reviewed Victim's medical records from his birth on April 18, 2009 through September 11, 2012, his last known doctor visit. Dr. Rosa also reviewed Victim's developmental records and genetic counseling records, photographs relating to Victim's death, and Dr. Durso's autopsy report. Dr. Rosa testified that the Department of Social Services (DSS) placed Victim in foster care on June 19, 2009, when he was only two months old, and DSS returned Victim to Appellants' care on April 6, 2012. According to Mother, DSS placed Victim in foster care because of an incident in which Victim almost fell out of the vehicle she was driving.

With the exception of some initial instability, Victim thrived during his time in foster care. Dr. Rosa stated that Victim was not autistic. She explained that Victim failed an autism screening test at his eighteen-month well-child checkup merely because he was having speech difficulties at the time, which is common for children in foster care. Dr. Rosa also stated that by March 2012, Victim was "growing well." Dr. Rosa reported,

> His growth parameters [were] great. . . . He [was] toilet trained, and he [was] speaking . . . in two to three word

> sentences, complete sentences. He [was] interacting. He [was] socialized . . . he [had] what we call social [adaptive] skills, so he [could] interact with same age peers, with adults, with his teachers at the level of almost a three-year-old.

However, soon after DSS returned Victim to Appellants in April 2012, he began regressing. Denise Jones, Victim's last foster mother, testified she spoke to Mother over the telephone a couple of days after DSS returned Victim to Appellants. Mother told Jones that Victim would not use the bathroom. Jones told Mother that Victim was using the bathroom when he was living with her and asked Mother to let her know if she needed any help. However, Jones never heard from Mother again. Similarly, Dr. Monica McCutcheon, who saw Victim for his three-year-old well-child checkup in September 2012, testified Mother reported Victim "was having some issues with wetting and soiling himself" and complained that his speech "was not as good as his two-year-old sibling."

Family members gave several eyewitness accounts of Appellants' abuse of Victim. Two of Mother's sisters, Natalie and Maria, testified and indicated that except for "a couple of weeks" when Victim lived with Natalie,[3] Victim lived with Appellants from April 2012 until his death. Natalie explained that she took Victim into her own home for a while because Mother was frustrated with Victim soiling and wetting the floors in the house. Natalie and Maria also witnessed Mother beating Victim. Natalie took photographs of the resulting bruises to show to DSS.

Natalie also testified that Mother told her she wanted Victim "to go back to DSS so they could give him a beating and a killing and a raping." Natalie stated she had seen Father hit Victim, but "in the way [] a father should, he smacked him in the back of the head, but not to hurt him." However, she admitted she told police that Father "would beat [Victim]." Natalie also stated Appellants would hit Victim because he had problems with wetting and soiling himself and his surroundings.

[3] The testimony indicates this time period did not line up with the period set forth in the HCA indictments ("on or between June 15, 2013 and July 1, 2013"), which would have been the last two weeks of Victim's life—Natalie testified, "Shortly after we got him, took him to get the stuff he needed, they wanted him back." Similarly, Maria testified that after Victim stayed with Natalie for a couple of weeks, Mother took him back.

Additionally, Natalie recounted stories of Appellants depriving Victim of food and Victim having to be careful not to get caught eating anything.

Angela Metze, the grandmother of Victim's half-sister, testified she observed Victim shortly after DSS returned him to Appellants in April 2012, and he appeared to be a happy, healthy, well-nourished child. However, she noticed that over the course of the following year, Victim lost a significant amount of weight and became withdrawn. In February 2013, Metze received photographs showing bruises and scars on Victim's back. She contacted DSS several times, and she shared the photographs with a pediatrician, who also contacted DSS.

Mother's other sister, Crystal, lived with Appellants from April 2012 to October 2012. According to Crystal, during this period, Mother once asked her to hold Victim's legs so Mother could "whoop him" for soiling his surroundings and "playing in it." Crystal refused to do so and left. Additionally, Crystal witnessed Father punch Victim and make Victim sit on the toilet for three hours. Crystal also recounted an occasion when Mother stated that she did not care "if the retarded bastard died" and if DSS did not take Victim, "she was going to kill him and bury him so DSS would not take her other baby."

Crystal spoke to Mother over the telephone on the afternoon of July 1, 2013 after Mother returned from the hospital with her newborn, and Mother told her she was going to take a shower. According to data retrieved from Mother's cell phone, this call occurred at 5:05 p.m., a little over an hour before Mother made the 911 call. After Mother and Crystal ended their call, Mother's cell phone inadvertently dialed Crystal's phone number, and Crystal overheard Victim "getting beat" and crying out "Lord, help me," along with Mother telling Victim, "Hush." Crystal then heard Mother and Father talking to each other. Crystal subsequently ended the call.

Dr. Durso testified that during Victim's autopsy, her external examination revealed several scars over Victim's head; orbital contusions (a/k/a black eyes); lacerations to his lips; deep injuries on the inside of his lower lip; several scars on his arms; several abrasions on his torso, buttocks, and lower legs; a healing bite mark on his back, which, based on the size of the mark, was inflicted by a teen or adult; and a swollen knee. Dr. Durso's internal examination revealed a pale thyroid gland, which indicated heavy blood loss; two rib fractures, one occurring between ten days and six weeks prior to Victim's death and the other occurring within twenty-four hours prior to death; and a healing fracture to his upper left arm, one to two weeks old, overladen with an acute hemorrhage, indicating a site of repeated injury.

Additional injuries revealed in the internal examination were multiple bruises to Victim's head, an indicator of abuse;[4] a subdural hemorrhage,[5] indicating a significant blunt force impact and dating from five to seven days prior to death; and profuse "bleeding and hemorrhage" in the soft tissues of Victim's lower back, his buttocks, the backs of his legs, and the backs of his arms, which confirmed suspected multiple bruises Dr. Durso noticed in these areas during the external examination. The soft tissue injuries with bright red or dark red hemorrhaging were "probably less than eighteen to twenty-four hours old" and the injuries with yellow hemorrhaging were older and could not be dated. Dr. Durso explained that the combined new and old soft tissue hemorrhaging "contributed to the blood loss of [Victim] so . . . he [was] no longer able to circulate enough blood to give [whatever oxygen] he need[ed] to his brain to maintain his vital functions in his body."

Dr. Durso stated that in the one to two weeks prior to his death, Victim would not have been able to use his left arm due to it being fractured and he would have been guarding that arm because it would have been extremely painful.[6] Dr. Durso also stated any caregiver would have noticed that (1) Victim was not using that arm, (2) he was in pain, and (3) he was not acting "like a normal four-year-old." Additionally, the subdural hemorrhage that occurred five to seven days before Victim's death would have placed enough pressure on Victim's brain to cause lethargy, possible vomiting, and possible temporary unconsciousness "after the blow." According to Dr. Durso, a parent would notice these symptoms and recognize that his or her child "was not acting right."

Dr. Durso concluded that Victim's injuries had been intentionally inflicted; Victim had been chronically abused; anyone coming in contact with Victim would have noticed the excruciating pain Victim experienced as a result of the multiple soft tissue injuries; and if he had received medical attention before his final beating, his life could have been saved. She further explained, "You have a limit on how much blood you can lose. When you go over that limit and your brain is no longer getting that blood supply, that's when he would have died, that last bit of blood that came out into his soft tissues after that beating."

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[4] Dr. Durso explained that her internal examination confirmed suspected multiple bruises she noticed during the external examination.

[5] The dura is a layer surrounding the brain.

[6] This two-week period lines up with the period set forth in the HCA indictments ("on or between June 15, 2013 and July 1, 2013").

Dr. Rosa largely corroborated Dr. Durso's findings. Dr. Rosa stated that from seventy-two hours to a week before Victim's death, he would have shown symptoms of the subdural hemorrhage and a subarachnoid hemorrhage,[7] including nausea, vomiting, lethargy, drowsiness, headaches, possible seizures, and abnormal limb movements. Dr. Rosa also stated Victim would have vocalized his pain from his two rib fractures, one of which was ten days to six weeks old and the other occurring within twenty-four hours before his death. Further, Victim's arm fracture would have prevented him from appropriately using his arm.

Dr. Rosa opined that the physical abuse inflicted on Victim during the last two months of his life caused his death. She also explained that in the days leading up to his death, it would have been obvious to anyone that something was wrong with Victim and he needed medical treatment, even if his bruising and scars were not easily visible. If Victim had been taken to a doctor during the several days before his death, ultimately, Dr. Rosa would have been consulted and Victim could have been saved.

At the conclusion of the State's case-in-chief, Appellants made their respective directed verdict motions, and they renewed these motions at the appropriate times. However, the trial court denied the motions, and the jury ultimately returned guilty verdicts against Appellants on the charged offenses. Both were sentenced to life imprisonment without parole for HCA and ten years for unlawful conduct toward a child. The trial court ordered Mother's ten-year sentence to run consecutively to her life sentence and Father's ten-year sentence to run concurrently to his life sentence. These appeals followed.

ISSUES ON APPEAL

1. Was there substantial circumstantial evidence of Mother's guilt to justify the trial court's denial of her directed verdict motion?

2. Was there substantial circumstantial evidence of Father's guilt to justify the trial court's denial of his directed verdict motion?

3. Did the admission of photographs of Victim's body taken at the crime scene and during his autopsy violate Rule 403, SCRE, due to their probative value being substantially outweighed by the danger of unfair prejudice?

[7] "Arachnoid" refers to another layer surrounding the brain.

STANDARD OF REVIEW

Directed Verdict

"On appeal from the denial of a directed verdict, this [c]ourt views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Pearson*, 415 S.C. 463, 470, 783 S.E.2d 802, 806 (2016) (quoting *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). "If the [S]tate has presented 'any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,' this [c]ourt must affirm the trial court's decision to submit the case to the jury." *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013) (quoting *State v. Cherry*, 361 S.C. 588, 593–94, 606 S.E.2d 475, 478 (2004)).

Admission of Evidence

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

> A trial [court's] decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. [This court] review[s] a trial court's decision regarding Rule 403[, SCRE,] pursuant to the abuse of discretion standard and [is] obligated to give great deference to the trial court's judgment.

State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) (citation omitted) (quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003)).

LAW/ANALYSIS

I. Directed Verdict Motions

Appellants argue the trial court erred in denying their respective motions for a directed verdict on each charge because the State failed to present substantial circumstantial evidence of guilt. We disagree.

When considering circumstantial evidence in evaluating a directed verdict motion, the trial court "must submit the case to the jury if there is 'any substantial evidence [that] reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" *Pearson*, 415 S.C. at 473, 783 S.E.2d at 807 (quoting *State v. Bennett*, 415 S.C. 232, 236–37, 781 S.E.2d 352, 354 (2016)). "[W]hen the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *Id.* at 469, 783 S.E.2d at 805 (alteration in original) (quoting *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011)). "The trial [court] 'should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty.'" *Id.* (quoting *Cherry*, 361 S.C. at 594, 606 S.E.2d at 478). "'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *Id.* at 469–70, 783 S.E.2d at 805 (quoting *Cherry*, 361 S.C. at 594, 606 S.E.2d at 478).

Nonetheless, "when the State relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the trial [court] is concerned with the existence or non-existence of evidence, not with its weight." *Id.* at 469, 783 S.E.2d at 805. "[A] trial [court] is not required to find that the evidence infers guilt to the exclusion of *any other reasonable hypothesis*." *Id.* at 470, 783 S.E.2d at 805 (quoting *State v. Ballenger*, 322 S.C. 196, 199, 470 S.E.2d 851, 853 (1996)).

> [A]lthough the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective test is founded upon reasonableness. Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is *sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt*.

Id. at 473, 783 S.E.2d at 807 (alteration in original) (third emphasis added) (quoting *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354).

A. Homicide by Child Abuse

Section 16-3-85(A)(1) of the South Carolina Code (2015) provides, "A person is guilty of [HCA] if the person causes the death of a child under the age of eleven

while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life . . . ." "Child abuse or neglect" is defined in section 16-3-85 as "an act *or omission* by any person which causes harm to the child's physical health or welfare." S.C. Code Ann. § 16-3-85(B)(1) (2015) (emphasis added). Further,

> "harm" to a child's health or welfare occurs when a person:
>
> (a) inflicts *or allows to be inflicted* upon the child physical injury, including injuries sustained as a result of excessive corporal punishment;
>
> (b) fails to supply the child with adequate food, clothing, shelter, or *health care*, and *the failure to do so causes a physical injury or condition resulting in death*; or
>
> (c) abandons the child resulting in the child's death.

S.C. Code Ann. § 16-3-85(B)(2) (2015) (emphases added). Moreover, "[f]or purposes of the HCA statute, 'extreme indifference' has been defined as 'a mental state akin to intent characterized by a deliberate act culminating in death.'" *McKnight v. State*, 378 S.C. 33, 48, 661 S.E.2d 354, 361 (2008) (quoting *State v. Jarrell*, 350 S.C. 90, 98, 564 S.E.2d 362, 367 (Ct. App. 2002)).

Here, the evidence and all reasonable inferences, viewed in the light most favorable to the State, show (1) Appellants' custody of Victim and their failure to seek medical treatment for him during the last two weeks of his life, when it was obvious he needed treatment, caused Victim's death and (2) his death occurred under "circumstances manifesting [Appellants'] extreme indifference to human life." *See* § 16-3-85(A)(1) ("A person is guilty of [HCA] if the person causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life . . . ."); § 16-3-85(B)(1) (defining "child abuse or neglect" as "an act *or omission* by any person which causes harm to the child's physical health or welfare" (emphasis added)); *Pearson*, 415 S.C. at 470, 783 S.E.2d at 806 ("On appeal from the denial of a directed verdict, this [c]ourt views the evidence and all reasonable inferences in the light most favorable to the State." (quoting *Butler*, 407 S.C. at 381, 755 S.E.2d at 460)).

Specifically, the testimony of Dr. Durso and Dr. Rosa established that one to two weeks prior to Victim's death, he was exhibiting pain and other obvious symptoms of repeated physical abuse and he could have been saved had he received medical treatment. Further, given the severity of Victim's symptoms and the history of Appellants' animosity toward Victim, a juror could reasonably infer that Appellants' failure to seek medical treatment for Victim was more than mere neglect but rather a deliberate choice, i.e., "a deliberate act." *McKnight*, 378 S.C. at 48, 661 S.E.2d at 361 ("For purposes of the HCA statute, 'extreme indifference' has been defined as 'a mental state akin to intent characterized by a deliberate act culminating in death.'" (quoting *Jarrell*, 350 S.C. at 98, 564 S.E.2d at 367)); *cf. Jarrell*, 350 S.C. at 99, 564 S.E.2d at 367 (stating a parent has a duty to serve his or her child's best interests); *Hill v. State*, 415 S.C. 421, 435, 782 S.E.2d 414, 421 (Ct. App. 2016) ("Generally, motive is not an element of a crime that the prosecution must prove to establish the crime charged, but frequently motive is circumstantial evidence . . . of the intent to commit the crime . . . ." (quoting *State v. Sweat*, 362 S.C. 117, 124, 606 S.E.2d 508, 512 (Ct. App. 2004))). Moreover, Mother's stay at the hospital during this two-week period was merely two and one-half days, from June 29 through the early afternoon of July 1, 2013. Therefore, Mother had enough time at home with Victim to be aware of his symptoms.

The record also includes evidence of Appellants inflicting, or allowing the infliction of, physical harm on Victim resulting in his death as well as additional evidence of Appellants' extreme indifference. Dr. Rosa stated that the cause of Victim's death was the cumulative effect of the chronic physical abuse inflicted on Victim during the last two months of his life. In the light most favorable to the State, Appellants' custody of Victim during these two months and the previous history of Appellants' abuse of Victim implicate both Mother and Father; a juror could reasonably infer that either parent inflicted the fatal abuse while the other parent was aware of the abuse and acquiesced in it. *See* § 16-3-85(B)(1) & (2)(a) (defining "child abuse or neglect" as "an act *or omission* by any person which causes harm to the child's physical health or welfare" and "'harm' to a child's health or welfare" as "inflict[ing] *or allow[ing] to be inflicted* upon the child physical injury, including injuries sustained as a result of excessive corporal punishment" (emphases added)).

Even more compelling was the evidence concerning Victim's last beating. First, the records from Mother's cell phone and Crystal's testimony regarding Mother's inadvertent call, or "pocket dial," show both parents were present when Victim was beaten for the last time, near the time of his death. Crystal overheard Victim "getting beat" and "scream[ing] for help," along with Mother telling Victim, "Hush." Crystal then heard Mother and Father talking to each other before Crystal

ended the call. A juror could reasonably infer that either parent beat Victim while the other parent was present and acquiesced in the abuse. Further, when first responders arrived at Appellants' home in response to Mother's 911 call, they noticed Victim was wearing jeans but no shirt. Four days later, Victim's paternal grandmother found a child's size 5 shirt, still wet with blood, buried in a large pile of clothing in the master bedroom closet. DNA testing indicated the blood on the child's shirt was Victim's blood.

Because the shirt was still wet with Victim's blood four days after his death, a reasonable juror could infer Victim was wearing it during his final beating, when both parents were present, and the appearance of blood made both parents aware of the grave trauma being inflicted on Victim. Perhaps when a disinterested bystander fails to help a victim of brutal violence, it can be characterized as mere neglect; but when a parent fails to save his or her own son from such brutality, it is "a deliberate act." *McKnight*, 378 S.C. at 48, 661 S.E.2d at 361 ("For purposes of the HCA statute, 'extreme indifference' has been defined as 'a mental state akin to intent characterized by a deliberate act culminating in death.'" (quoting *Jarrell*, 350 S.C. at 98, 564 S.E.2d at 367)); *cf. Jarrell*, 350 S.C. at 99, 564 S.E.2d at 367 ("A parent has a specific and [non]delegable duty to serve the best interests of her child and should make every effort not to knowingly place her child in harm's way."); *id.* ("[The appellant] could have prevented the murder of her son merely by choosing to stay home. Her failure to protect her child is concrete evidence of her indifference towards his life.").

We note Appellants rely heavily on the circumstantial evidence analysis in *Hepburn*, in which our supreme court reviewed a mother's HCA conviction and held there was insufficient evidence that she, rather than her boyfriend, inflicted the abuse resulting in her child's death. 406 S.C. at 438–40, 753 S.E.2d at 414–15. The appellant and her boyfriend were at home with the child when she sustained her fatal injuries,[8] and they were tried jointly. *Id.* at 418, 753 S.E.2d at 403. The court recognized the incongruity in the State's attempt to defend the denial of the appellant's directed verdict motion by relying on the testimony given by her codefendant, Brandon Lewis, during his own defense:

> [T]he State contends it presented substantial circumstantial evidence warranting the trial court's denial of the Appellant's directed verdict motion, focusing on

[8] The maternal grandmother and her boyfriend were also in the home, but they were asleep on the opposite side of the house. *Id.* at 418, 419 n.2, 753 S.E.2d at 403, 403 n.2.

> Appellant's circumstances at the time of the victim's death, namely scant evidence that she was frustrated by her failure to secure employment, living situation, and parental responsibilities; the medical testimony concerning the severity of the victim's injuries; but most predominantly *Lewis's testimony* that he heard Appellant shake the victim prior to finding her unresponsive in her crib.

Id. at 440, 753 S.E.2d at 414–15.

The court refused to consider the codefendant's testimony in assessing the sufficiency of the evidence, recognizing an exception to the "waiver rule" when a codefendant testifies and implicates the appellant in the charged crime.[9] *Id.* at 436, 753 S.E.2d at 412. The court also refused to consider the appellant's testimony presented in her defense because her testimony did not serve to fill gaps in the State's evidence but "merely rebutted [her codefendant's] testimony." *Id.* at 436–38, 753 S.E.2d at 412–13. Without the benefit of the codefendant's testimony, the State was unable to convince the court that the directed verdict motion was properly denied. *Id.* at 438–42, 753 S.E.2d at 413–16. The court explained,

> Barring Lewis's testimony, . . . we find the State did not present substantial evidence that Appellant killed the victim. Every State witness placed Appellant asleep at the time the victim sustained the fatal injuries. While undoubtedly present at the scene, the only inference that can be drawn from the State's case is that one of the two [codefendants] inflicted the victim's injuries, but not that *Appellant* harmed the victim.

Id. at 440, 753 S.E.2d at 415.

Unlike the State's predominant focus on the codefendant's testimony in *Hepburn*, the State's predominant focus in the present appeal has been on the medical

[9] When a defendant presents evidence in his behalf following the denial of his directed verdict motion, the waiver rule "requires the reviewing court to examine *all* the evidence rather than to restrict its examination to the evidence presented in the Government's case-in-chief." *Id.* at 430 n.15, 753 S.E.2d at 409 n.15 (emphasis added) (quoting *United States v. White*, 611 F.2d 531, 536 (5th Cir. 1980)).

testimony and the testimony of family members who witnessed Appellants' abuse of Victim. The State presented this testimony during its case-in-chief.

Further, in *Hepburn*, the evidence indicated the victim's fatal injuries occurred within mere hours before she was taken to a hospital and diagnosed with a subdural hematoma and retinal hemorrhaging, and "[e]very State witness placed Appellant asleep at the time the victim sustained the fatal injuries." *Id.* at 419–21, 440, 753 S.E.2d at 403–04, 415.[10] In stark contrast, the medical testimony in the present case indicates Victim's death resulted from the cumulative effect of repeated physical abuse over the last two months of his life. Both Dr. Durso and Dr. Rosa clearly explained that no one isolated incident, by itself, killed Victim.

Moreover, the *Hepburn* court stressed, "the victim appeared to be acting normally until after Appellant put the victim to sleep and went to sleep herself" and there was "no evidence that Appellant herself was aware of the victim's injuries." 406 S.C. at 442, 753 S.E.2d at 415–16. But here, the evidence indicates Victim's deteriorating condition should have been obvious to both Mother and Father during the last two weeks of his life. In sum, we conclude Appellants' reliance on *Hepburn* is misplaced.

Based on the foregoing, we find the State's evidence "sufficient to allow a reasonable juror to find [Appellants] guilty [of HCA] beyond a reasonable doubt." *Pearson*, 415 S.C. at 473, 783 S.E.2d at 807 (quoting *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354). Therefore, we affirm the denial of Appellants' respective directed verdict motions on the HCA charge.

B. Unlawful Conduct

The respective unlawful conduct indictments allege, "on or between April 18, 2009 to July 1, 2013," Appellants placed Victim "at unreasonable risk of harm affecting [Victim's] life, physical or mental health, or safety; or did unlawfully or maliciously cause or cause to be done bodily harm to [Victim] so that the life or health of [Victim] was endangered or was likely to be endangered." In other words, the State charged Appellants with neglecting or abusing Victim on at least one occasion during the entire span of his short life.

Section 63-5-70(A) of the South Carolina Code (2010) defines unlawful conduct toward a child in the following manner:

[10] The victim died a few days later. 406 S.C. at 418, 753 S.E.2d at 403.

> It is unlawful for a person who has charge or custody of a child, or who is the parent or guardian of a child, or who is responsible for the welfare of a child as defined in Section 63-7-20 to:
>
> (1) *place the child at unreasonable risk of harm* affecting the child's life, physical or mental health, or safety;
>
> (2) do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered; or
>
> (3) wil[l]fully abandon the child.

(emphasis added).

The evidence supporting the HCA indictments also supports the indictments for unlawful conduct. Appellants' complicity in Victim's beatings during the last two months of his life and their failure to seek medical treatment for him during the last two weeks of his life placed him "at unreasonable risk of harm" affecting not only his physical and mental health but also his life. § 63-5-70(A)(1).

Additionally, the State presented abundant evidence showing Appellants' neglect and abuse of Victim prior to the last two months of his life. The testimony of Dr. Rosa and Dr. McCutcheon indicated that Appellants failed to follow up with medical professionals' recommendations for Victim's care while he was in their custody. Further, Mother's sisters recounted numerous instances of Appellants' abuse of Victim. While Crystal lived with Appellants from April 2012 to October 2012, she witnessed several occasions of Mother or Father hitting Victim. Around Easter 2013, Maria heard Mother beating Victim and Victim crying. Maria later saw Victim limping. Natalie also witnessed Mother beating Victim, and on some of these occasions, Father was present. Natalie took photographs of the resulting bruises to show to DSS. Moreover, Natalie witnessed both parents depriving Victim of food, which was consistent with Angela Metze's observation that Victim had lost a significant amount of weight from the spring of 2012 to the spring of 2013. The food and liquid deprivation continued through at least the end of May 2013.

These eyewitness accounts constitute compelling direct evidence of Appellants' neglect and abuse of Victim. The DNA evidence found in Appellants' home was also compelling. Victim's blood was found on the walls of the living room, hallway, and rear bedroom as well as on a white metal pipe that also had Father's blood on it.

We find the foregoing evidence more than sufficient to show Appellants neglected Victim's needs, placing him "at unreasonable risk of harm" affecting his health, and maliciously inflicted "bodily harm" on Victim so that his health and life were "endangered." § 63-5-70(A)(1) & (2). Therefore, we affirm the denial of Appellants' directed verdict motions on the unlawful conduct charges.

II. Photographs

Appellants argue that certain photographs of Victim should have been excluded from evidence pursuant to Rule 403, SCRE, because any probative value the photographs may have had was substantially outweighed by the danger of unfair prejudice. We disagree.

Rule 403 states, in pertinent part, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ." "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Unfair prejudice means an undue tendency to suggest a decision on an improper basis." *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008) (quoting *State v. Gilchrist*, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct. App. 1998)). "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence . . . ." *State v. Gray*, 408 S.C. 601, 616, 759 S.E.2d 160, 168 (Ct. App. 2014) (quoting *Gilchrist*, 329 S.C. at 630, 496 S.E.2d at 429).

"When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case." *Lyles*, 379 S.C. at 338, 665 S.E.2d at 206.

> A trial [court's] decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. [This court] review[s] a trial court's decision regarding Rule

> 403[, SCRE,] pursuant to the abuse of discretion standard and [is] obligated to give great deference to the trial court's judgment.

Collins, 409 S.C. at 534, 763 S.E.2d at 28 (citation omitted) (quoting *Adams*, 354 S.C. at 378, 580 S.E.2d at 794).

In *Collins*, our supreme court held that this court "should not have invaded the trial court's discretion in admitting" pre-autopsy photographs of a dog-mauling victim "based on its emotional reaction to the subject matter presented." *Id.* at 528, 535, 763 S.E.2d at 24, 28. The court noted this evidence was "highly probative" and "material in establishing the elements of the offenses charged." *Id.* at 535, 763 S.E.2d at 28. The court explained,

> Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder. As one court has astutely observed, it is the duty of courts and juries to examine the evidence in even the most unpleasant of circumstances:
>
> > Courts and juries cannot be too squeamish about looking at unpleasant things, objects, or circumstances in proceedings to enforce the law and especially if truth is on trial. *The mere fact that an item of evidence is gruesome or revolting, if it sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, should not exclude it*.

Id. (emphasis added) (quoting *Nichols v. State*, 100 So.2d 750, 756 (Ala. 1958)).

In the present case, the challenged photographs show Victim (1) as he was found at the crime scene on the day of his death and (2) during Dr. Durso's autopsy. However, the truly shocking autopsy photographs challenged by Appellants were recognized as such by the trial court and excluded from evidence. Most of these photographs were cited by Mother as "depicting [Victim's] body sliced into parts"

and cited by Father as "depict[ing] Victim's body being cut into pieces."[11] Again, these photographs were excluded from evidence.

Those autopsy photographs admitted into evidence over the objections of defense counsel showed deep lacerations on the inside of Victim's lower lip and bruising on Victim's shoulder, torso, back, buttocks, and legs.[12] These photographs, while graphic, were necessary to help the jury fully understand Dr. Durso's testimony regarding the nature of Victim's injuries resulting in his death. *See Gray*, 408 S.C. at 610, 759 S.E.2d at 165 ("The evaluation of probative value cannot be made in the abstract, but should be made in the practical context of the issues at stake in the trial of each case."); *cf. State v. Holder*, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) ("We find the photographs clearly demonstrate the extent and nature of the injuries in a way that would not be as easily understood based on the testimony alone.").[13] Further, Dr. Durso explained during her proffered testimony that State's Exhibit 230 was necessary to illustrate the soft tissue swelling in one of Victim's knees when contrasted with his other knee. Likewise, the photographs of Victim as he was found at the crime scene helped the jury to understand the nature and extent of Victim's injuries as well as his condition near death. Moreover, the photographs were highly probative of Appellants' awareness of Victim's injuries.

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[11] Neither Mother's nor Father's characterization of these photographs is accurate. The photographs actually show several long incisions made by Dr. Durso down Victim's back and the backs of his legs to allow her to determine the extent of soft tissue hemorrhaging. The exposed hemorrhaging is what makes these photographs shocking.

[12] Mother complains about two photographs in which Victim's genitals were exposed. However, one of these photographs, State's Exhibit 226, was not admitted into evidence—during Dr. Durso's proffered testimony, she confirmed the trial court's recollection that there was another photograph of the same injuries, without a view of Victim's genitals, already in evidence. The other photograph, State's Exhibit 230, was cropped so that the copy presented to the jury did not show Victim's genitals.

[13] *See also Holder*, 382 S.C. at 291, 676 S.E.2d at 697 ("Although the photographs were graphic, the facts in this case were graphic, and there is no suggestion that their admission had an undue tendency to suggest a decision on an improper basis."); *Jarrell*, 350 S.C. at 106–07, 564 S.E.2d at 371 ("[W]hile some of 'the photograph[s] are graphic, the facts of the case are very graphic' and the photos helped the jury understand the pathologist's testimony." (second alteration in original)).

In sum, the probative value of the admitted photographs was high. Further, the photographs did not tend "to suggest a decision on an improper basis." *Lyles*, 379 S.C. at 338, 665 S.E.2d at 206. Therefore, the photographs cannot be characterized as unfairly prejudicial for purposes of Rule 403. *See Gray*, 408 S.C. at 616, 759 S.E.2d at 168 ("Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence . . . ." (quoting *Gilchrist*, 329 S.C. at 630, 496 S.E.2d at 429)).[14]

Based on the foregoing, we affirm the trial court's admission of the challenged photographs pursuant to Rule 403. *See Collins*, 409 S.C. at 534, 763 S.E.2d at 28 ("A trial [court's] decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. [This court] review[s] a trial court's decision regarding Rule 403[, SCRE,] pursuant to the abuse of discretion standard and [is] obligated to give great deference to the trial court's judgment." (citation omitted) (quoting *Adams*, 354 S.C. at 378, 580 S.E.2d at 794)).

CONCLUSION

Accordingly, we affirm Appellants' respective convictions for HCA and unlawful conduct toward a child.

AFFIRMED.

MCDONALD and HILL, JJ., concur.

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[14] For these same reasons, the photographs do not violate the prohibition set forth in *State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986), which Mother cites in her brief. In *Middleton*, our supreme court held, "[P]hotographs calculated to arouse the sympathies and prejudices of the jury are to be excluded *if they are irrelevant or unnecessary* to the issues at trial." *Id.* (emphasis added); *see also Gray*, 408 S.C. at 610, 759 S.E.2d at 165 ("[P]hotographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are . . . not *necessary* to substantiate *material* facts or conditions." (quoting *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010))). Here, the photographs were relevant and necessary.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina Public Interest Foundation and William B. Depass, Jr., individually, and on behalf of all others similarly situated, Appellants,

v.

Senator John E. Courson, Senator Darrell Jackson, Senator Joel Lourie, Senator John L. Scott, Jr., and The State of South Carolina, Respondents.

Appellate Case No. 2014-001412

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 5486
Heard October 13, 2016 – Filed May 11, 2017

AFFIRMED

James G. Carpenter, of Carpenter Law Firm, PC, of Greenville, for Appellants.

Deputy Solicitor General J. Emory Smith, Jr., of Columbia, for Respondent The State of South Carolina; Edward Houseal Bender and Kenneth M. Moffitt, both of Columbia, for Respondents John E. Courson, Darrell Jackson, Joel Lourie, and John L. Scott, Jr.

HUFF, J.: The South Carolina Public Interest Foundation (SC Public Interest) appeals the circuit court's order denying SC Public Interest's motion for attorney's fees and costs, arguing the state action statute, section 15-77-300 of the South Carolina Code (Supp. 2016), applies to Senators John E. Courson, Darrell Jackson, Joel Lourie, and John L. Scott, Jr. (the Senators). We affirm.

FACTS/PROCEDURAL HISTORY

On March 15, 2011, the Senators introduced legislation in the South Carolina Senate to consolidate the Richland County Board of Voter Registration and the Richland County Election Commission. The legislation also changed the appointment process for board members and established criteria for board members of the newly-created board. Upon its passage, the legislation became Act 17 of 2011.

In 2012, SC Public Interest filed this action in the circuit court in Richland County seeking a declaratory judgment that Act 17 was unconstitutional and requesting costs and attorney's fees pursuant to the state action statute, section 15-77-300 of the South Carolina Code. SC Public Interest brought the action against the Senators and the state of South Carolina arguing Act 17 was unconstitutional as local legislation that violated the South Carolina Constitution Article III, Section 34, and as a law for a specific county in violation of South Carolina Constitution Article VIII, Section 7. SC Public Interest and the Senators filed cross motions for summary judgment. On August 26, 2013, the circuit court granted SC Public Interest's motion for summary judgment and found Act 17 unconstitutional. The circuit court withheld ruling on SC Public Interest's request for costs and attorney's fees until SC Public Interest filed a motion supported by affidavit of counsel. The Senators moved to alter or amend the judgment and the circuit court denied the motion. SC Public Interest moved for attorney's fees and filed an affidavit in support of the motion. On March 19, 2014, the circuit court issued an order denying SC Public Interest's motion for costs and attorney's fees. The circuit court stated individual members of the General Assembly were immune from a recovery of costs and attorney's fees under the state statute, Section 15-77-300, as well as the general civil action costs provision of Section 15-37-10 of the South Carolina Code (2005). The circuit court found the state action statute did not apply to members of the General Assembly because it only applied to executive branch

agencies. SC Public Interest filed a motion to alter or amend the circuit court's order denying the motion for attorney's fees, which the circuit court denied. This appeal followed.

STANDARD OF REVIEW

"The decision to award or deny attorneys' fees under the state action statute will not be disturbed on appeal absent an abuse of discretion by the trial court in considering the applicable factors set forth by the statute." *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008). "An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." *Id.*

In this case, the issue of whether the statute applies depends on the court's interpretation of the term "appropriate agency" pursuant to the state action statute. "The interpretation of a statute is a question of law, which this [c]ourt reviews de novo." *Id.*

LAW/ANALYSIS

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." *Grimsley v. S.C. Law Enf't Div.*, 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012). The best evidence of legislative intent is the plain language of the statute. *Perry v. Bullock*, 409 S.C. 137, 140, 761 S.E.2d 251, 253 (2014). "When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation." *Grimsley*, 396 S.C. at 281, 721 S.E.2d at 426. If the term at issue is not defined in the statute, the court must "look to its usual and customary meaning." *Perry*, 409 S.C. at 140-41, 761 S.E.2d at 253.

The relevant portion of the state action statute provides:

> (A) In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs *against the appropriate agency* if:

> 1) the court finds that *the agency* acted without substantial justification in pressing its claim against the party;
>
> and
>
> (2) the court finds that there are no special circumstances that would make the award of attorney's fees unjust.
>
> The *agency* is presumed to be substantially justified in pressing its claim against the party if the *agency* follows a statutory or constitutional mandate that has not been invalidated by a court of competent jurisdiction.

S.C. Code Ann. § 15-77-300 (Supp. 2016) (emphasis added).

Because "agency" is not defined in article 5 of Chapter 77 of the South Carolina Code, the court must look to the usual and customary meaning of agency to ascertain the legislature's intent.[1] Black's Law Dictionary defines agency as "an official body, esp. within the government, with authority to implement and administer particular legislation." *Agency*, BLACK'S LAW DICTIONARY (10th ed. 2014). A state agency is an "executive or regulatory body of a state." *State Agency*, BLACK'S LAW DICTIONARY (10th ed. 2014). Under either of these definitions, the Senate is not a state agency based on the customary meaning of agency. Senators are responsible for performing legislative duties such as writing legislation, approving appointments by the Governor, and representing their constituents. Senators are generally not responsible for implementing or administering legislation after its enactment; rather, that responsibility generally

[1] The supreme court previously refused to look to other parts of the South Carolina Code to define "agency" for the purposes of the state action statute. *See Willis Constr. Co. v. Sumter Airport Comm'n*, 308 S.C. 505, 510, 419 S.E.2d 240, 242 (Ct. App. 1992) (noting agency is not defined in Article 5 of Chapter 77 and rejecting party's argument that agency under the state action statute should be defined using the South Carolina Tort Claims Act's definition found in Chapter 78 of Title 15).

lies with executive agencies. While the Senate is a body of the state government, it exists in an entirely separate, but co-equal, branch of government than executive agencies. Accordingly, because the Senate's duties are entirely different from those of executive agencies, defining "appropriate agency" under the state action statute to include the Senate would be a forced construction of the term based on the customary meaning of agency. Therefore, agency under the state action statute must be limited to executive branch agencies.

Furthermore, South Carolina recognizes the longstanding doctrine of legislative immunity for legislators carrying on their legislative duties. *See Richardson v. McGill*, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979) (holding a legislator was absolutely immune from liability for comments made during the performance of his legislative duties). Legislative immunity "has long been recognized in Anglo-American law," being rooted in the "'Parliamentary struggles of the Sixteenth and Seventeenth Centuries' and [] 'taken as a matter of course by those who severed the Colonies from the Crown and founded our Nation.'" *Bogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998) (quoting *Tenney v. Brandhove*, 341 U.S. 367, 372 (1951)). Legislative immunity protects legislators from "deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence, but for the public good." *Tenney*, at 377. The public good is undermined by any restriction placed on a legislator's ability to exercise legislative discretion, including the fear of personal liability. *See Bogan*, at 52-53. Although few South Carolina cases discuss legislative immunity, this court has addressed similar public policy considerations for immunity for other types of public officials carrying out their official duties. *See Williams v. Condon*, 347 S.C. 227, 242-43, 553 S.E.2d 496, 505 (Ct. App. 2001) (noting qualifying a prosecutor's immunity would "prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system" (quoting *Imbler v. Pachtman*, 424 U.S. 409, 427-28 (1976))); *O'Laughlin v. Windham*, 330 S.C. 379, 384, 498 S.E.2d 689, 692 (Ct. App. 1998) ("[J]udicial immunity is vital for the continuation of an independent judiciary and for the preservation of judicial integrity."); *id.* at 385, 498 S.E.2d at 692 (holding the adoption of the Tort Claims Act did not modify common law judicial immunity in part because of the "presumption of legislative intent to preserve common law principles"). Therefore, because nothing in the plain language of the statute indicates the General Assembly intended to waive legislative immunity, legislative immunity prevents the state action statute from applying to Senators.

CONCLUSION

We hold the circuit court properly denied SC Public Interest's motion for attorney's fees because the state action statute is not applicable to the Senators.

AFFIRMED.

LOCKEMY, C.J., and MCDONALD, J., concur.