The Supreme Court of South Carolina

In the Matter of
Paul W. Nevill, Deceased.

ORDER

Paul W. Nevill, Esquire, passed away on May 12, 2008. By order dated June 4, 2008, the Court appointed Dale Ernest Akins, Esquire, attorney to protect the interests of Mr. Nevill's clients pursuant to Rule 31, RLDE, Rule 413, SCACR. Mr. Akins requests the Court relieve him of his appointment.

IT IS ORDERED that Dale Ernest Akins, Esquire, is hereby relieved of his appointment under Rule 31, RLDE.

IT IS FURTHER ORDERED that Cary S. Griffin, Esquire, is hereby appointed to assume responsibility for Mr. Nevill's client files, trust account(s), escrow account(s), operating account(s), and any

other law office account(s) Mr. Nevill maintained.[1] Mr. Griffin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of Mr. Nevill's clients. Mr. Griffin may make disbursements from Mr. Nevill's trust account(s), escrow account(s), operating account(s), and any other law office account(s) Mr. Nevill maintained that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of Mr. Nevill, shall serve as notice to the bank or other financial institution that Cary S. Griffin, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Cary S. Griffin, Esquire, has been duly appointed by this Court and has the authority to receive Mr. Nevill's mail and the authority to direct that Mr. Nevill's mail be delivered to Mr. Griffin's office.

[1] Mr. Akins shall immediately deliver all of Mr. Nevill's client files, bank account records, and any other property or records in his possession to Mr. Griffin.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

August 19, 2008

The Supreme Court of South Carolina

In the Matter of
Ralph L. Kelly, Deceased.

ORDER

The Office of Disciplinary Counsel has filed a petition advising the Court that Mr. Kelly passed away on July 15, 2008, and requesting appointment of an attorney to protect Mr. Kelly's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR. The petition is granted.

IT IS ORDERED that Harry R. Easterling, Jr., Esquire, is hereby appointed to assume responsibility for Mr. Kelly's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) Mr. Kelly maintained. Mr. Easterling shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of Mr. Kelly's clients. Mr. Easterling may make disbursements from Mr. Kelly's trust account(s), escrow account(s),

operating account(s), and any other law office account(s) Mr. Kelly maintained that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of Mr. Kelly, shall serve as notice to the bank or other financial institution that Harry R. Easterling, Jr., Esquire, has been duly appointed by this Court.

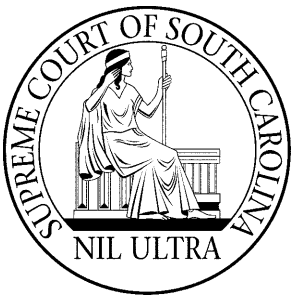
Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Harry R. Easterling, Jr., Esquire, has been duly appointed by this Court and has the authority to receive Mr. Kelly's mail and the authority to direct that Mr. Kelly's mail be delivered to Mr. Easterling's office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

August 19, 2008



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 33
August 25, 2008
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Sharon B. Koon, Respondent,

v.

Soraya Farid Fares and Dr. Marie A. Faltas, Appellants.

Appeal from Richland County
James R. Barber III, Circuit Court Judge

Opinion No. 26532
Submitted June 26, 2008 – Filed August 18, 2008

AFFIRMED

Marie A. Faltas, M.D. and Soraya Farid Fares, both of Columbia, *pro se*.

Charles E. Carpenter, Jr. and Carmen V. Ganjehsani, both of Carpenter Appeals and Trial Support, of Columbia, and J. Thomas Falls, Jr., of West Columbia, for Respondent.

CHIEF JUSTICE TOAL: In this case, the magistrates court granted summary judgment to Respondent landlord ("Landlord") in an eviction action, finding that Landlord had given Appellants, who are tenants

("Tenants"), proper notice of the termination of their tenancy. The circuit court affirmed and Tenants appeal. We affirm.

FACTUAL/PROCEDURAL BACKGROUND

In August 2002, Landlord and Tenants entered into a residential lease agreement for a house owned by Landlord. The agreement included the following provision:

> This Lease Agreement shall be effective for a term of 12 months, beginning on the 7th day of August, 2002, and ending on the 6th day of August, 2003 after which tenants may continue month to month. Tenant shall provide a 30 day written notice prior to moving. (emphasis in original).

When the term of the original lease expired in August 2003, Tenants continued to rent the residence at the $795 per month rate specified in the original term of the lease. In November 2004, Landlord indicated her intent to increase Tenants' monthly rent by $100 beginning in 2005. Tenants expressed to Landlord that they would not pay the increased rate. Subsequently, in early February 2005, Landlord notified Tenants in writing that she was raising the rent to $895 effective February 15, and that if Tenants did not wish to rent the property at that rate, then the writing served as their thirty-day notice to vacate the premises by March 15. After further communications, the parties agreed that Tenants could remain at Landlord's rental property until August 9, 2005 at a rate of $795 per month.

At some point after the March agreement, the relationship between the parties apparently took a turn for the worse and in July 2005, Tenants confirmed in a written notice that they would not be leaving the premises in August, and further, that until they gave Landlord a new thirty-day notice of termination, Tenants would be reducing their rental payments to reflect what they believed to be the fair market value of the rent "abated by the diminution of the quiet enjoyment caused by [Landlord's] actions and failures."

On January 5, 2006, Landlord sent a letter to Tenants requesting past due rent totaling $300 over a period of three months and explaining that Landlord was "still patiently waiting for you to move." Landlord noted that the lease had expired, Tenants had been asked to move, and Tenants had given a letter of intent to move. Landlord concluded that "it is still our wish for you to move from our property as you promised that you would in your letter of March 15, 2005." After no response from Tenants, Landlord filed an application for ejectment based on (1) Tenants' failure to pay rent when due, (2) expiration of the term of the lease, and (3) Tenants' violation of the terms of the lease. *See* S.C. Code Ann. § 27-37-10(a) (2007). The magistrates court served a rule to vacate or show cause on Tenants on February 16, 2006.

At a hearing requested by Tenants, Tenants asserted a counterclaim that Landlord was unfairly charging Tenants rent above the fair market value in violation of S.C. Code Ann. § 27-40-310(b) (2007), and requested a jury trial. Prior to trial, however, the magistrate granted Landlord's motion for summary judgment and ordered the eviction of Tenants, finding that the term of the original lease had expired and that Landlord had given Tenants the statutory 30-day notice to leave. *See* S.C. Code Ann. § 27-40-770(b) (2007). The magistrate further held that this resolution of Landlord's claim precluded consideration of Tenants' issue related to rent inflation.

Tenants appealed and the circuit court affirmed the magistrate's grant of summary judgment to the Landlord. Tenants appealed the circuit court's order to the court of appeals, and Landlord moved to certify the case to this Court pursuant to Rule 204(b), SCACR. This Court granted Landlord's motion, and Tenants raise the following issues for review:

I. Did the circuit court err in affirming the magistrate's grant of summary judgment to Landlord based on a finding that Landlord provided the proper notice for terminating the tenancy established by the lease agreement?

II. Did the circuit judge err in failing to recuse himself in this matter?

III. Should eviction proceedings require a court to find at least "clear and convincing proof" of a tenant's breach of a lease agreement?

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005).

LAW/ANALYSIS

I. Summary judgment in Landlord's eviction action

Tenants argue that the circuit court erred in affirming the magistrate's grant of summary judgment to Landlord because the lease agreement signed by the parties only provides for the termination of the lease by Tenants, and therefore, Landlord did not have grounds for eviction. We disagree.

The purpose of the rules of contract construction is to ascertain the intention of the parties as gathered from the contents of the entire document and not from any particular provision within the contract. *Litchfield Co. of S.C., Inc. v. Kiriakides*, 290 S.C. 220, 223, 349 S.E.2d 344, 346 (Ct. App. 1986). Where one interpretation of a contract makes it unusual or extraordinary and another interpretation, equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction prevails. *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 434 (1975). An interpretation which establishes the more reasonable and probable agreement of the parties should be adopted while an interpretation leading to an absurd result should be avoided. *Id.*

Under Tenants' interpretation, Tenants leasehold estate essentially trumps Landlord's fee simple interest in the residence and gives Tenants a perpetual tenancy in the rental property. We find that this is an absurd result that could not have possibly been intended by Landlord when she agreed to rent the residence. Rather, under the terms of the agreement, Landlord and Tenants created a month-to-month tenancy when the term of the original year lease expired in August 2003. *See also* S.C. Code Ann. § 27-35-30 (2007) (providing that tenancies of real estate other than agricultural lands shall be deemed from month to month unless there otherwise agreed). A landlord or tenant may terminate a month-to-month tenancy by a written notice at least thirty days before the termination date specified in the notice. S.C. Code Ann. § 27-40-770(b).

To this end, Tenants argue that they did not receive proper notice of termination from Landlord. We disagree. The Residential Landlord and Tenant Act which governs the lease agreement provides that a person gives notice to another "by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it." S.C. Code Ann. § 27-40-240(b) (2007). A person has notice of a fact if "from all the facts and circumstances known to him at the time in question he has reason to know that it exists." S.C. Code Ann. § 27-40-240(a)(3) (2007).

The record reveals that Landlord instituted multiple notices to Tenants, beginning at least with the February 2005 letter, expressing Landlord's desire to terminate the rental arrangement. Despite Landlord's desire to stop leasing the premises to Tenants, Landlord agreed the following month to permit Tenants to continue renting the premises until a specific date that Tenants stated was convenient for them to move. It was only after Tenants revealed their intentions to take advantage of Landlord's generosity by refusing to leave the premises on the specified date and establishing their own terms of rental that Landlord sent a final written notice of termination in January 2006 and brought the present action one month later.

For these reasons, we find that the parties' lease agreement established a month-to-month tenancy for which Landlord provided proper notice of termination to Tenants and that Tenants' further occupancy after August 9,

2005, constituted proper grounds for eviction. Accordingly, we hold that the circuit court properly affirmed the grant of summary judgment to Landlord.

II. Recusal

Tenants argue that the circuit court judge erred in declining to recuse himself in this matter. We disagree.

A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including instances where he has a personal bias or prejudice against a party. *Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004) (citing Rule 501, SCACR, Canon 3(E)(1)(a)). It is not sufficient for a party seeking disqualification to simply allege bias; rather, the party must show some evidence of bias or prejudice. *Id.* If there is no evidence of judicial bias or prejudice, a judge's failure to disqualify himself will not be reversed on appeal. *Id.*

Tenants' dramatic recitation in their brief alleging that Judge Barber's order "stems from his subconscious and irremediable bias" against Tenant Faltas is completely unfounded. Tenants moved for the judge's recusal based solely on a perceived bias from the fact that Judge Barber had ruled against Tenant Faltas in a previous matter. We find nothing disingenuous in Judge Barber's explanation that he routinely heard cases involving parties who had previously appeared in front of him and that this did not affect his ability to remain neutral. Furthermore, Tenants fail to point this Court to any evidence in the record showing actual bias or prejudice on the part of the judge. Instead, the record displays a trial court order that accurately cites the applicable law and reaches a sound conclusion based on application of the law to the facts on the record in this case. *See id.* (acknowledging that a judge's impartiality might reasonably be questioned when the record does not support the judge's factual findings). Accordingly, we hold that the circuit court judge properly denied Tenants' motion for recusal.

As to Tenants' allegations of Judge Barber's ex parte communications with Landlord's counsel as a basis for recusal, we find that in the first instance, these matters are not preserved for review because they were not

raised to or ruled upon either at trial or in Tenant Faltas's Rule 59(e) motion. *See I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (holding that an issue not raised to and ruled upon by the lower court is not preserved for appellate review).

Turning to the merits, we uphold the validity of Judge Barber's order and find nothing to suggest that the alleged ex parte communication prejudiced Tenants in any way. *See Burgess v. Stern*, 311 S.C. 326, 331, 428 S.E.2d 880, 884 (1993) (adopting a subjective approach to reviewing orders potentially infected by ex parte communications). In his order denying rehearing, Judge Barber provided a detailed description of the circumstances underlying the alleged ex parte communication which, in our view, amounts to Landlord's counsel's failure to observe Rule 5(b)(3), SCRCP (requiring counsel to serve copies of proposed orders on all counsel of record) and no impropriety on Judge Barber's part. Judge Barber explained that the trial court's order was already being drafted when the order drafted by Landlord's counsel was received and that counsel's draft order did not influence the trial court's final decision. Further considering that the trial court's order exhibits sound legal reasoning based on applying the law to the facts on the record, we simply can find no basis for invalidating Judge Barber's order.

For these reasons, we uphold the validity of the circuit court's order and we affirm the circuit court judge's refusal to recuse himself.

III. Burden of proof in eviction proceedings

Tenants argue that because of the constitutional implications of seizing a person's "home," eviction proceedings require a court to find at least "clear and convincing proof" of a tenant's breach of a lease agreement. We find that this issue is not preserved for review because it was not raised to or ruled upon at trial or in Tenant Faltas's Rule 59(e) motion.[1] *See I'On*, 338 S.C. at 422, 526 S.E.2d at 724.

[1] To the extent that Tenants' argument on the standard of proof for eviction proceedings segues into an argument that they were entitled to a jury trial on their counterclaims alleging Landlord charged a rental rate above fair market

CONCLUSION

For the foregoing reasons, we affirm the grant of summary judgment to Landlord in this matter.

MOORE, WALLER, PLEICONES and BEATTY, JJ., concur.

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value, we disagree. Tenants' claim of an excessive rental rate is based on S.C. Code Ann. § 27-40-310 which provides that "[i]n the absence of an agreement, the tenant shall pay as rent the fair-market rental value for . . . the dwelling unit." Because the magistrate found that an agreement existed between the parties which established a month-to-month tenancy at $795 per month, this statutory provision is inapplicable and therefore, a jury's factual determination of the fair-market rental value is irrelevant.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Thomas Francis O'Brien, Jr., Petitioner,

v.

South Carolina ORBIT (a/k/a the South Carolina Other Retirement Benefits Investment Trust); Joleen Deames, Steffanie C. Dorn, Belinda Harper, Charlie Potts, Phillp Robey, David Vehaun, and David N. Williams, in their capacities as individual trustees; the City of Charleston; and the Municipal Association of South Carolina, Respondents.

ORIGINAL JURISDICTION

Appeal From Charleston County

Opinion No. 26533
Heard February 5, 2008 – Filed August 18, 2008

JUDGMENT FOR PETITIONER

Nancy Bloodgood, Stephen L. Brown, and Russell G. Hines, of Charleston, for Petitioner.

R. David Profitt, of Haynsworth, Sinkler, Boyd; and Belton Townsend Zeigler, of Pope Zeigler, both of Columbia, for Respondents.

JUSTICE BEATTY: In this declaratory judgment action filed in this Court's original jurisdiction, Thomas O'Brien asks the Court to declare whether the City of Charleston's ("the City") decision to place funds for employee retirement benefits in a trust that invests in equity securities violates the South Carolina Constitution.[1] The City's actions are laudable and well intended. However, the City's well-intended actions do not obviate the requirement to comply with constitutional mandates. Article X, § 11 of the South Carolina Constitution specifically limits how government funds may be invested. The use of a trust to circumvent the constitutional mandate is unavailing. Accordingly, we grant O'Brien's request for a declaratory judgment and hold the City may not invest in the ORBIT trust.

FACTUAL/PROCEDURAL BACKGROUND

The City provides its employees with retirement pay and other post-employment benefits (OPEBs) such as medical insurance, dental insurance, vision insurance, life insurance, disability insurance, long-term care insurance, and prescription drug benefits. The City provided the OPEBs on a pay-as-you-go basis by budgeting the cost of the OPEBs for retirees each fiscal year. Because OPEBs were paid each year as necessary, accounting statements reflected only actual payments made and did not indicate how much the future liability would be to fund OPEBs for all current and future retirees.

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[1] O'Brien also asks the Court to determine whether the City's actions constituted an *ultra vires* act or violated public policy. Because we find the City's actions were unconstitutional, we need not reach these issues.

In 2004, the Governmental Accounting Standards Board issued Statement 45 (GASB 45), establishing new rules for how liabilities for OPEBs should be reported.[2] Pursuant to GASB 45, government employers would have to note on their accounting statements how much it would cost to fully fund current and future OPEBs costs. This cost could be noted as "unfunded liabilities" for the future costs, but the cost could only be amortized over a thirty-year time period. Thus, governmental entities were also required by GASB 45 to make annual required contributions of an amount equal to the present value of future OPEBs expenses related to the employees' services in the current fiscal year and an amount sufficient to amortize the unfunded actuarial accrued liability over a period up to thirty years. Actuaries have computed the City's unfunded OPEBs liability to be $32 million as of fiscal year 2007, with an annual required contribution for 2007 of $3.4 million.[3]

GASB 45 allows a governmental entity to pay its annual required contribution into an irrevocable trust established to earn a return sufficient to meet all current and future OPEBs obligations. However, GASB 45 does not establish what kind of investments in which the trust must invest. In connection with this case, John Garrett, a member of the American Academy of Actuaries, reviewed types of trusts to determine the rate of return. Garrett opined that a trust investing only in governmental debt funds would yield a 4.5 percentage annual rate of return, while a trust investing in equity securities would yield 7.5 percentage annual rate of return. Thus, investing in equity securities would require a smaller annual contribution to fully fund the OPEBs.

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[2] GASB 45 must be implemented on a rolling three-year schedule based on the size of the governmental entity's revenues. Governments, such as the City, with revenues in excess of $100 million must implement GASB 45 by the end of their fiscal year beginning after December 2006.

[3] The funding required to comply with GASB 45 is enormous. Respondents allege the combined OPEBs liability for the State and school district employees on June 30, 2006, was estimated to be $9.2 billion.

The Municipal Association of South Carolina established the South Carolina Other Retirement Benefits Investment Trust (referred to as "ORBIT" or the "trust"), to receive funds from municipalities, to invest those funds in a way seeking the highest rate of return, and to disburse those funds in order to defray the future expenses of OPEBs. It is undisputed that the primary purpose of the trust is to provide the municipalities with a vehicle to facilitate investing in the stock market. The parties have stipulated that ORBIT is a creature of South Carolina trust law and is not organized as a corporation, limited liability company, or partnership. The parties also stipulate that ORBIT was not organized under the statutes governing the creation or operation of a political subdivision.

Participating employers contribute funds to the trust, and the Board of Trustees of the trust, made up of seven elected or appointed members from the various participating municipalities, holds legal title to the trust assets. ORBIT is an irrevocable trust, protected from creditors of participating employers, and the Board of Trustees has the authority to invest the funds in a variety of investments, including **publicly traded stocks and securities**, stock and bond mutual funds, derivative funds, government and corporate bonds, United States Treasury notes and bonds, and certificates of deposit. Participating employers may not recover any assets paid into the trust, and the funds paid in are maintained for OPEBs even if the employer decides to no longer participate in the trust, unless the employer decides to no longer provide OPEBs.

In order to comply with GASB 45 and to fully fund its OPEBs liability, the City passed a resolution deciding to be the first municipality to invest in ORBIT in June 2007. Although GASB 45 does not require that investment trusts contain equity securities, the City indicated to ORBIT that it would invest in the trust only on the condition that the investment portfolio include equity securities. The City expected to make payments to the trust from public funds, and the City set its millage rates and other taxes and fees for 2007 at levels expected to be sufficient to fund these payments into the trust. On August 14, 2007, Thomas O'Brien, a twenty-nine-year City employee and future recipient of offered OPEBs, filed the declaratory judgment action

against ORBIT, its Board members, the City, and the Municipal Association (collectively, Respondents) in this Court's original jurisdiction, seeking a declaration that the City's participation in ORBIT was unconstitutional, violated statutory law, was an *ultra vires* act, and violated public policy. The Court granted O'Brien's request for review pursuant to its original jurisdiction.

DISCUSSION

O'Brien argues that the City's actions violate Article X, § 11 of the State Constitution. We agree.

Article X, § 11 of the South Carolina Constitution provides:

> The credit of neither the State nor any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or other private education institution except as permitted by Section 3, Article XI of this Constitution [providing for the establishment of free public schools]. Neither the State nor any of its political subdivisions shall become joint owner of or stockholder in any company, association, or corporation.

S.C. Const. art. X, § 11. The section specifically provides for investment in equity securities in only two instances. First, it provides that "endowment funds donated specifically to state-supported institutions of higher learning and held by the State Treasurer may be invested and reinvested in equity securities." Id. The section goes on to allow municipalities, counties, or special purpose districts that provide firefighting services to invest and reinvest firefighter pension funds in equity securities. Id. Nothing in this section provides the authority for municipalities to invest funds intended for OPEBs in equity securities. A recent amendment allows "the funds of the various state-operated retirement systems" to be invested and reinvested in equity securities. S.C. Const. art. X, § 16. The amendment does not indicate

it also applied to the investment of funds from municipality-operated retirement systems in equity securities.

A clear reading of Article X holds that a municipality cannot invest in equity securities. The main section generally bars investments in securities with the exception of higher education and firefighter pensions. A constitutional amendment was required to allow the State to invest state retirement system funds in equity securities. If merely contributing the funds to a trust that then invested in equity securities would have allowed the State to avoid the prohibitions of Article X, the constitutional amendment would have been unnecessary. Further, allowing the City to invest in equity securities through a trust violates the intent of Article X: to protect public funds from risky investments.[4]

It is troubling that the City attempted to avoid the constitutional prohibition on investing in equity securities, thereby using government funds to jointly own a company with other investors, by merely setting up a trust.[5] Although ORBIT is set up as a trust, it functions as an investment manager for the City and, as such, is no different than any other investment house (Merrill Lynch, Oppenheimer, etc.). The veneer of a trust does not change that. More importantly, the status of ORBIT as a trust is irrelevant. Article X, § 11 concerns the investing of government funds. The investment takes place when the City transfers money to the trust to be used for the expressed purchase of equity securities. It is abundantly clear from the record that the City's investment in ORBIT is for the expressed purpose of circumventing

[4] As pointed out by Respondents, constitutional provisions such as Article X were adopted by many states in the late 1800s in response to the loss of public funds invested in risky railroads. A modern comparison would be the current debacle with sub-prime lending. Thus, the intent of the section is to protect public funds from fraudulent and speculative investments.

[5] The City argues that it is merely a settlor of the trust and has no ownership interest in it. This argument is unpersuasive. Interestingly, the trust agreement requires that any benefits payable pursuant to the trust are made to the member, i.e. the City, unless the member directs otherwise.

the constitution. The City's investments violated the constitutional prohibition.

The investment power of the City, and other members of ORBIT, is limited by statute as well. Specifically, S.C. Code Ann. § 5-7-30 (2004) ("Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State . . . ."); S.C. Code Ann. § 6-5-10 (Supp. 2007) (providing that political subdivisions are authorized to invest money subject to their control in: (1) obligations of the United States; (2) obligations issued by the Federal Financing Bank; (3) general obligations of the State of South Carolina or any of its political subdivisions; (4) insured savings and loan associations; (5) collaterally secured certificates of deposit; (6) repurchase agreements when collateralized by securities; (7) no load open-end or closed-end management type investment companies or investment trusts if the portfolio is limited to obligations of the United States, Federal Financing Bank, State of South Carolina, or repurchase agreements; and (8) no more than forty percent of funds generated by hospitals in notes, bonds, guaranteed investment contracts, debentures, or other contracts issued by a bank where a political subdivision receives Medicaid funds appropriated by the General Assembly); S.C. Code Ann. § 6-6-30 (2004) (providing that the Treasurer may sell to all political subdivisions participation units in the South Carolina Pooled Investment Fund); S.C. Code Ann. § 11-1-60 (1986) (providing the State or political subdivisions may invest funds in its custody in shares of federal savings and loan associations when the shares are insured by the federal Savings and Loan Insurance Corporation, and also in bonds or debentures issued by any federal home loan bank); S.C. Code Ann. § 11-1-70 (1986 & Supp. 2007) (noting that public agencies may invest pension funds in obligations issued or unconditionally guaranteed by the International Bank and the obligations shall be eligible as deposits of collateral, as security for the deposit of public funds, and for all other types of deposits made with any public agency).

While the specific mention of particular powers should not be construed as limiting the general powers of a municipality, the specific

statutes regarding authorized investments by political subdivisions expresses a clear legislative intent to create an exhaustive list of authorized investments. Section 6-5-10(a)(7) is particularly enlightening. It provides that a political subdivision may place public funds in "no load open-end or closed-end . . . investment trusts . . . if the portfolio of the trust" is limited to obligations of the United States, obligations of the Federal Financing Bank, obligations of the State of South Carolina, or purchase agreements collateralized by securities. S.C. Code Ann. § 6-5-10(a)(7) (Supp. 2007). Thus, in addition to outlining the types of investments political subdivisions may make, the Legislature limited the portfolio of certain trusts to the same types of investments. The Legislature's limitation on authorized investments does not provide for investing in equity securities or in trusts that then invest in equity securities.

Respondents, however, urge a different interpretation of the statutes and argue the cited statutes place limitations only on the investment of municipal money "subject to the control and jurisdiction" and "under the custody" of the political subdivision. Thus, respondents argue, the statutory restrictions, on their face, do not apply to private trusts and do not apply to the investment in equity securities by ORBIT because those funds are no longer under the custody of or subject to the control of the City. Respondents correctly cite the statutory requirements that the money be subject to the political subdivision's control and that the specific statutes do not apply to private trusts. This argument is unavailing, however, because the statutes do not specify that a municipality may invest in a private investment trust in the first place where the trust includes equity securities in its portfolio.

Further, it is our view that the particular trust the City has invested in is an illegal trust. To constitute a valid trust, the trust must seek a valid, legal purpose. 90 C.J.S. Trusts § 22 (2008) ("A trust may be created for any purpose that is not illegal. In the absence of a statute to the contrary, a settlor may create a trust for any lawful purpose . . ."). S.C. Code Ann. § 62-7-404 states that a trust must be created only to the extent its purposes are lawful and possible to achieve. Because the obvious purpose of ORBIT is to invest in equity securities and attempt to circumvent the constitutional prohibition on investing in equity securities, it had an illegal purpose. Absent the status

of a trust, ORBIT is merely an association of government officials and or employees who invest government funds. As such Article X, § 11 clearly applies to them. Thus, we find ORBIT should be dissolved with the money paid into the trust returned to the members.

CONCLUSION

While investing in a private, irrevocable investment trust is permitted to satisfy GASB 45 and would be a way for governmental entities to use public funds to earn a good rate of return, the requirements of GASB 45 cannot override the requirements of our constitution. Because it is unconstitutional for the City to invest in equity securities, it is likewise unconstitutional for the City to invest in a trust that then invests in equity securities. Accordingly, we declare the City's investment in ORBIT unconstitutional, order ORBIT dissolved, and require the return of funds invested to the members.

DECLARED UNCONSTITUTIONAL.

TOAL, C.J., MOORE and WALLER, JJ., concur. PLEICONES, J., dissenting in a separate opinion.

JUSTICE PLEICONES: I agree that municipalities may not invest in the ORBIT trust, but write separately because I base my decision upon the absence of any statutory authority permitting a political subdivision to invest funds in such a trust. See S.C. Code Ann. § 6-5-10 (Supp. 2007) ("Authorized investments by political subdivisions"); see also §§ 6-6-30, 11-1-60, and 11-1-70. I disagree with the majority's characterization of ORBIT's status as a trust as a "veneer," its characterization of a trust settlor as an owner, and its suggestion that the trust "is no different than any other investment house. . . ." Moreover, I do not agree that we should order that the trust be dissolved as in my view there is no flaw inherent in the trust itself, rather the problem lies in the inability of municipalities to participate in it. In a similar vein, the funds in the trust should be distributed as provided in the trust instruments, not returned to "the members."

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Edward D. Sloan, Jr.,
individually and on behalf of all
others similarly situated, Appellant,

v.

The Department of
Transportation, an agency of
the State of South Carolina and
the Commission of the
Department of Transportation,
Tee Hooper, Jr., Robert W.
Harrell, John N. Hardee,
Marion P. Carnell, William C.
Turner, Bobby T. Jones, and
J.M. Truluck, in their official
capacities as Commissioners
thereof, Respondents.

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

Opinion No. 26534
Heard April 15, 2008 – Filed August 25, 2008

REVERSED AND REMANDED

James G. Carpenter and Jennifer J. Miller, of The Carpenter Law Firm, of Greenville, for Appellant.

Charles E. Carpenter, Jr., and Carmen V. Ganjehsani, of Carpenter Appeals and Trial Support, of Columbia, for Respondents.

JUSTICE WALLER: Appellant, Edward D. Sloan, Jr., filed a declaratory judgment action challenging respondents'[1] decision to authorize an emergency procurement on a construction project in Charleston County. This is a direct appeal from the trial court's grant of summary judgment in favor of the DOT.[2] We reverse and remand.

FACTS

In 2000, the DOT procured construction on Ladson Road in Charleston County from Eagle Construction Company (Eagle). The Ladson Road Project involved the widening of the road from two lanes to five lanes.

The DOT's director of construction, Dan Shealy, testified at deposition that Eagle consistently got behind on the project and the department granted Eagle time extensions. On February 19, 2004, there was a public meeting held between the DOT, Eagle, and the community.[3] Several milestones were set for Eagle at this meeting; however, these milestones were never met.

On August 31, 2004, Shealy wrote a letter to Eagle which noted that the completion date on the contract was August 16, 2004, but as of that date, only

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[1] Respondents include the South Carolina Department of Transportation and the individual Department commissioners. We will refer to respondents collectively as the DOT.

[2] This case was certified for review from the Court of Appeals pursuant to Rule 204(b), SCACR.

[3] The people in the community (i.e., those in both residences and businesses along Ladson Road) were "upset" by the construction project. A sign publicizing the community meeting read: "Bring a rope."

73% of the project was complete. The letter also stated the following: "Based on Eagle's repeated failure to provide sufficient labor and equipment to perform the work with the project schedule…, Eagle Construction is hereby declared to be in default on this contract." The letter further advised that Eagle had 15 days to cure the default, otherwise the contract would be terminated.

On September 2, 2004, however, the DOT rescinded the default letter and terminated the contract with Eagle based on "convenience." Shealy explained that if Eagle had been placed in default, the contract would have been turned over to the bonding company. The bonding company would then have been responsible for the process of bringing in another contractor to complete the project for the originally-contracted price. Shealy estimated this process would have taken the bonding company six months. If the DOT had itself performed a competitive bidding process for a replacement contractor, Shealy estimated this would have taken four months.

Instead, approximately two weeks after the DOT terminated Eagle from the project, Sanders Brothers Construction Company (Sanders) – an existing subcontractor on the Ladson Road Project – began working on the project.[4] Although approximately five to six million dollars remained unpaid on the Eagle contract, the DOT directly negotiated a contract with Sanders for just under eight million dollars.[5] In other words, the DOT did not solicit for bids to complete the project.

On September 27, 2004, Shealy wrote a memorandum to the DOT's Executive Director, Elizabeth Mabry, which included the following language:

> **Due to the significant delays on this project and enormous inconvenience to the public because of these delays**, I am

[4] Shealy testified that a maintenance force from Dorchester County took care of the five-mile construction area for the interim two weeks. The record reflects that Sanders began acting as the replacement contractor in mid-September 2004.

[5] The contract was signed on October 21, 2004. Shealy testified that in addition to the work left undone by Eagle, there was also work that had been done which had to be corrected.

> requesting that we be allowed to procure a replacement contractor through the emergency procurement provisions provided by S.C. Code Ann. § 57-7-5-1620….
>
> **An emergency procurement is justified in this case based on public safety and convenience**.… A large number of residences and commercial businesses have been and are continuing to be adversely impacted by the construction. Traffic control devices are in place throughout the majority of the project and at many high volume intersections. These conditions are **an ongoing safety concern** and also cause significant inconvenience for residences and business owners. Procurement of a replacement contract through the standard bidding procedures would cause an unacceptable delay and increase frustration among the already frustrated public that live and conduct business in the area. In order to minimize safety concerns and disruption to the public and to prevent further delays to the completion of the project, I recommend that we procure a replacement contractor utilizing a negotiated contract method as allowed under our emergency provisions.

(Emphasis added). The Executive Director approved this request. Thereafter, the DOT Commission approved the emergency procurement at its November 18, 2004, meeting.

At his deposition, Shealy explained that the emergency conditions were "[j]ust the safety of the individuals getting in and out of their driveways; the businesses; the entrance and exits for the business; and just a general traveling through that work zone was a hazard." Yet, he conceded there is "always a hazard in a work zone, from beginning to end."

When asked what other circumstances had prompted the DOT to authorize emergency procurements, Shealy noted that Hurricane Hugo and Hurricane Floyd had both necessitated emergency procurements, for debris removal and flood prevention, respectively.

Prior to Sanders signing the contract with the DOT, Sloan had read in the newspaper about a negotiated contract between the DOT and Sanders. In a conversation with Sloan, Sanders' vice president denied any intention to sign a negotiated contract.

On October 28, 2004, Sloan sent a letter to the chairman of the DOT Commission requesting the following materials pursuant to the South Carolina Freedom of Information Act (FOIA): (1) the document terminating Eagle's contract; (2) the contract between the DOT and Sanders; and (3) the minutes of the Commission meetings during which these actions were authorized. The DOT responded to the FOIA request on November 30, 2004. Sloan filed a follow-up FOIA request on December 1, 2004, which the DOT responded to on December 16, 2004.

On January 6, 2005, Sloan filed this declaratory judgment action against the DOT. He alleged that no emergency existed to justify the DOT's procurement without a published invitation for bids. Sloan sought an injunction prohibiting respondents from paying for the construction and a declaratory judgment that the procurement was illegal, invalid, and *ultra vires*.

Sanders completed the construction work by the March 31, 2005, deadline set in the contract.

The parties filed cross-motions for summary judgment in 2006. In an order filed May 22, 2006, the trial court granted summary judgment in favor of the DOT. The trial court found that Sloan did not have standing, the action was moot, and, on the merits, the DOT complied with the emergency procurement provisions. This appeal follows.

ISSUES

1. Does an exception to the mootness doctrine apply to permit appellate review?

2. Does Sloan have standing to maintain this action?

3. Was the DOT's use of an emergency procurement proper?

4. Does the doctrine of laches bar Sloan's claim?

DISCUSSION

This Court reviews the grant of a summary judgment motion under the same standard as the trial court pursuant to Rule 56(c), SCRCP: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. E.g., Burriss v. Anderson County Bd. of Educ., 369 S.C. 443, 451, 633 S.E.2d 482, 486 (2006).

In this case, the parties agree there are no material factual disputes. Thus, the matter turns only on legal issues.

1. Mootness

The DOT argues that because the construction project has been completed, the trial court correctly found that the instant case is moot. We disagree.

This Court "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." E.g., Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001); accord Sloan v. Greenville County, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003) (Greenville County I) ("cases or issues which have become moot or academic in nature are not a proper subject of review").

There are, however, three exceptions to the mootness doctrine. Curtis v. State, 345 S.C. at 568, 549 S.E.2d at 596. First, if the issue raised is capable of repetition but generally will evade review, the appellate court can take jurisdiction. E.g., id.; Sloan v. Department of Transp., 365 S.C. 299, 303, 618 S.E.2d 876, 878 (2005); Byrd v. Irmo High Sch., 321 S.C. 426, 468

S.E.2d 861 (1996). "Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." Curtis v. State, 345 S.C. at 568, 549 S.E.2d at 596. Third, "if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." Id.; accord Sloan v. Department of Transp., 365 S.C. at 303, 618 S.E.2d at 878.

We find the issue of whether the DOT properly authorized the emergency procurement is one that is capable of repetition, yet will usually evade review.[6] For example, here an emergency procurement came four years into the construction project, which was then completed within about six months. The project was completed only a few months after Sloan filed suit and well before the parties filed motions for summary judgment. Therefore, the "capable of repetition but evading review" exception to mootness applies here. See Greenville County I, 356 S.C. at 555, 590 S.E.2d at 351 (where the Court of Appeals found that Sloan's case, which presented an issue related to the procurement code's design-build exception, was one that was likely to recur but evade review because "design-build source selection accelerates the process of awarding public works contracts and the ultimate completion of the projects themselves").

Moreover, a decision on the merits of this case certainly will affect future events, *to wit*, how the DOT decides to authorize emergency procurements in the future.

In addition, respondents contend that Sloan has failed to show that the case involves a question of "imperative and manifest urgency."

[6] Although the DOT maintains this case is not capable of repetition because of its unique facts, we do not agree that this situation – a construction project which experiences substantial delays and then requires a replacement contractor – is particularly unique.

This Court has noted "the limited nature of the exception for questions of 'imperative and manifest urgency.'" Sloan v. Greenville County, 361 S.C. 568, 571, 606 S.E.2d 464, 466 (2004) (Greenville County II). In Greenville County II, we held that where judicial guidance exists on the legal issue presented, there is no imperative and manifest urgency for an advisory opinion.

In the instant case, however, there is no case law specifically addressing the DOT's authorization of an emergency procurement. Because this is a matter of public importance which could occur at any time (given the inherent unpredictability of emergencies), we find there is an urgent nature to this issue.

Accordingly, even though the Ladson Road Project was completed in 2005, we will address the other issues raised in the case.

2. Standing

Sloan argues his status as a taxpayer grants him standing to bring this case. Additionally, Sloan contends that the issue in this case is one of great public importance which justifies standing. We agree.

Generally, "a private individual may not invoke the judicial power to determine the validity of an executive or legislative act unless the private individual can show that, as a result of that action, a direct injury has been sustained, or that there is immediate danger a direct injury will be sustained." Sloan v. Wilkins, 362 S.C. 430, 436, 608 S.E.2d 579, 582-83 (2005). Nonetheless, "[a] taxpayer's standing to challenge unauthorized or illegal governmental acts has been repeatedly recognized in South Carolina," Sloan v. School Dist. of Greenville County, 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct. App. 2000), and indeed has been repeatedly recognized as to Sloan himself. See, e.g., id.; Sloan v. Department of Transp., 365 S.C. at 304, 618 S.E.2d at 878-79; Greenville County I, 356 S.C. at 548, 590 S.E.2d at 347.[7] Furthermore, "[s]tanding may be conferred upon a party 'when an issue is of

[7] In Sloan v. Department of Transp., Sloan v. School Dist. of Greenville County, and Greenville County I, Sloan raised issues related to construction procurements.

such public importance as to require its resolution for future guidance.'" Sloan v. Wilkins, 362 S.C. at 436-37, 608 S.E.2d at 583 (quoting Baird v. Charleston County, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999)).

The Court of Appeals has stated that "[t]he expenditure of public funds pursuant to a competitive bidding statute is of immense public importance." Sloan v. School Dist. of Greenville County, 342 S.C. at 524, 537 S.E.2d at 303. Numerous other jurisdictions which have addressed taxpayer standing when the issue involves competitive bidding requirements have specifically found that competitive bidding laws are for the benefit of taxpayers. See id. at 521-22, 537 S.E.2d at 302-03 (and cases cited therein). Indeed, the requirement that contracts "only be awarded through the process of competitive sealed bidding demonstrates the lengths to which our government believes it should go to maintain the public's trust and confidence in governmental management of public funds." Id. at 524, 537 S.E.2d at 303.

We find Sloan v. School Dist. of Greenville County is particularly instructive on this issue. In that case, the School District procured construction contracts in February 1998 for three middle schools pursuant to its own procurement code's emergency exception to the competitive sealed bid procedure. The District justified the need for the emergency procurement because it wanted the construction of the schools completed before school started in August 1999. The Court of Appeals found Sloan had standing, stating as follows: "the public interest involved is the prevention of the unlawful expenditure of money raised by taxation. Public policy demands a system of checks and balances whereby taxpayers can hold public officials accountable for their acts. Taxpayers must have some mechanism of enforcing the law." Id. at 523, 537 S.E.2d at 303 (citation, quotation marks, and alteration omitted).

Likewise, in this case, Sloan has standing because he has alleged a misuse of the statutory emergency procurement provision and therefore an unlawful expenditure by public officials.

3. Use of Emergency Procurement

Sloan argues there was no sudden emergency which justified the DOT's use of a negotiated contract. We agree.

Contracts for the construction, maintenance, and repair of highways and roads are specifically exempted from the South Carolina Consolidated Procurement Code (Procurement Code). See S.C. Code Ann. § 11-35-710 (Supp. 2007). The procurement of construction contracts for the state highway system is governed by the following statute:

> Awards by the department of construction contracts for ten thousand dollars and more shall be made only after the work to be awarded has been advertised for at least two weeks in one or more daily newspapers in this State, but where circumstances warrant, the department may advertise for longer periods of time and in other publication media. Awards of contracts, if made, shall be made in each case to the lowest qualified bidder whose bid shall have been formally submitted in accordance with the requirements of the department. **However, in cases of emergencies, as may be determined by the Secretary of the Department of Transportation, the department, without formalities of advertising, may employ contractors and others to perform construction or repair work or furnish materials and supplies for such construction and repair work, but all such cases of this kind shall be reported in detail and made public at the next succeeding meeting of the commission.**

S.C. Code Ann. § 57-5-1620 (Supp. 2007) (emphasis added). Thus, pursuant to section 57-5-1620, the general rule regarding contracts for $10,000 or more is that the work must be advertised for at least two weeks, and then the "lowest qualified bidder" must be chosen. The only exception is "in cases of

emergencies, as … determined by the Secretary[8] of the Department of Transportation."

The DOT contends the emergency procurement was proper because the statute requires only that the DOT Director determine that an emergency exists and the contract be made public at the next DOT Commission meeting. Because those requirements were met in this case, the DOT argues it properly complied with section 57-5-1620. Furthermore, the DOT asserts that because section 57-5-1620 does not limit what can constitute an emergency, the Director's determination is discretionary. Because the alternative to using the emergency procurement provision would have been to leave the construction project unfinished – and therefore a dangerous work zone – for four to six months, the DOT argues the facts of this case properly support its decision.

Sloan, on the other hand, argues that under the plain meaning of "emergency," there was no emergency in this case because the delays and safety hazards were present throughout the first four years of the project. Sloan also suggests the following definitions under the Procurement Code and its regulations are instructive, and that the instant case would not meet either definition.

The Procurement Code includes the following section on emergency procurements:

> Notwithstanding any other provision of this code, the chief procurement officer, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurements **only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations promulgated by the board**; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written

[8] We note that section 57-5-1620 was amended in 2007, but the only change made was substituting the word "Secretary" of the DOT for the previously used term of "Director."

> determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

S.C. Code Ann. § 11-35-1570 (Supp. 2007) (emphasis added).

In addition, the Procurement Code's regulations provide the following definition of emergency:

> An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by either the Chief Procurement Officer or the head of a purchasing agency or a designee of either office. The existence of such conditions must create an immediate and serious need for supplies, services, information technology, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:
>
> (1) the functioning of State government;
> (2) the preservation or protection of property; or
> (3) the health or safety of any person.

S.C. Code Ann. Regs. § 19-445.2110 (Supp. 2007).

We agree that these definitions provide useful guidance, in a procurement setting, as to what constitutes an emergency. Moreover, we find that the plain meaning of "emergency" also provides a guideline for interpreting section 57-5-1620. See e.g., Key Corp. Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007) (where a statute's language is plain, unambiguous, and conveys a clear meaning, the court has no right to impose another meaning); Sloan v. Hardee, 371 S.C. 495, 498-99, 640 S.E.2d 457, 459 (2007) ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.").

An emergency is, by its very nature, a sudden, unexpected onset of a serious condition. See *The American Heritage Dictionary* 448 (2nd College ed. 1982) (emergency defined as "[a]n unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action"); *Black's Law Dictionary* 361 (6th ed. 1991) (defining emergency as "[a] sudden unexpected happening; an unforeseen occurrence or condition; … a sudden or unexpected occasion for action").

Here, there was a five-mile construction zone which, according to the DOT, had "safety concerns." These hazards, however, had existed throughout the course of the construction project and likely would have been present to some degree in any major construction project of this type. Put simply, these safety concerns did not appear unexpectedly in September 2004 thereby suddenly creating a public safety risk. Furthermore, the record reflects that any urgency felt by the DOT was, in large part, due to the delays on the project and the resultant frustration by the affected community. These factual circumstances, however, do not constitute an emergency under section 57-5-1620, as that plain and ordinary term was likely intended by the Legislature. See e.g., Key Corp. Capital, Inc., supra; Sloan v. Hardee, supra.[9]

[9] See also Marshall v. Pasadena Unified Sch. Dist., 15 Cal.Rptr.3d 344 (Cal. Ct. App. 2004). In Marshall, the court found that after a construction contract had been terminated for convenience, the avoidance of competitive bidding through an emergency resolution was improper. There, the definition of emergency was "a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services." Id. at 348. The court stated that "[t]he purported emergency stemmed from the District's decision to terminate its contract with [the original contractor] for the District's own 'convenience.' That event was not a 'sudden, unexpected occurrence' posing a clear and imminent danger requiring prompt action to protect life, health, property, or essential public services." Id. at 358. The instant case is similar in that the need for a replacement contractor came about because of the DOT's termination of the contract with Eagle **for the DOT's convenience**. Given the history of the contract with Eagle, the termination of the contract cannot reasonably be viewed as a sudden, unexpected occurrence.

We hold there was no emergency that existed in September 2004 to substantiate the emergency procurement authorized by the DOT. Accordingly, we find the trial court erred in finding that the DOT complied with the emergency procurement provision found in section 57-5-1620.

4. Laches

As an additional sustaining ground, the DOT argues the doctrine of laches bars Sloan's claims. We disagree.

"Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." Chambers of S.C., Inc. v. County Council for Lee County, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993).

Here, the DOT signed a contract with Sanders in October 2004. Thereafter, Sloan sought documents through a FOIA request, and then filed suit in January 2005. There was no delay, and thus, laches does not apply.

CONCLUSION

For the above-stated reasons, we find the DOT's procurement was invalid under section 57-5-1620. Therefore, the decision of the circuit court is reversed and remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED

TOAL, C.J., MOORE and BEATTY, JJ., concur. PLEICONES, J., dissenting in a separate opinion.

JUSTICE PLEICONES: I respectfully dissent and adhere to the position I set forth in Sloan v. Dept. of Transp., 365 S.C. 299, 618 S.E.2d 876 (2005). In my opinion, Sloan lacks standing to bring this action because he cannot allege a particular harm. Other potential plaintiffs in this case, the construction companies who did not have the opportunity to bid on the completion of the project, have interests greater than Sloan in seeing the bidding process followed as required by law. Accordingly, because there are potential parties capable of alleging direct and distinct harm in this case, I would hold that Sloan does not have standing.

The Supreme Court of South Carolina

In the Matter of James T. Feldman, Respondent.

ORDER

Respondent was suspended on July 14, 2008, for a period of thirty (30) days. He has now filed an affidavit requesting reinstatement pursuant to Rule 32, of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR.

The request is granted and he is hereby reinstated to the practice of law in this state.

JEAN H. TOAL, CHIEF JUSTICE

s/ Daniel E. Shearouse
Clerk

Columbia, South Carolina

August 25, 2008

The Supreme Court of South Carolina

In the Matter of R. Ryan Breckenridge, Respondent.

ORDER

Respondent was suspended on July 14, 2008, for a period of thirty (30) days. He has now filed an affidavit requesting reinstatement pursuant to Rule 32, of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR.

The request is granted and he is hereby reinstated to the practice of law in this state.

JEAN H. TOAL, CHIEF JUSTICE

s/ Daniel E. Shearouse
Clerk

Columbia, South Carolina

August 25, 2008

The Supreme Court of South Carolina

In the Matter of James Michael Brown, Respondent.

ORDER

The Office of Disciplinary Counsel has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR, and seeking the appointment of an attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR. Respondent consents to the interim suspension.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of the Court.

IT IS FURTHER ORDERED that John Lucius McCants, Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Mr. McCants shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. McCants may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and

any other law office account(s) respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that John Lucius McCants, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that John Lucius McCants, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. McCants' office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

August 19, 2008

The Supreme Court of South Carolina

In re: Amendments to the Regulations for the Standards and Procedures for Certification, Recertification, and Decertification in Specialty Fields

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O R D E R

The Commission on Continuing Legal Education and Specialization has proposed amending Appendix E to Part IV, South Carolina Appellate Court Rules. The Commission seeks amendments to the portion of regulations in Appendix E which govern the standards and procedures for certification, recertification, and decertification of specialists in three fields: (1) Employment and Labor Law; (2) Estate Planning and Probate Law; and (3) Taxation Law.

Pursuant to Article V, § 4, of the South Carolina Constitution, we hereby amend Appendix E to Part IV, South Carolina Appellate Court Rules, in accordance with the Commission's request, as reflected in the attachment to this Order. The amendments: (1) allow an applicant seeking to become a specialist in Employment and Labor Law to submit as references the names of hearing officers, arbitrators, and mediators, in addition to federal judges, federal magistrates, and federal administrative law judges; (2) increase the

portion of practice an Employment and Labor Law specialist must devote to employment and labor law issues; and (3) increase the number of specialty continuing legal education hours specialists in Employment and Labor Law, Estate Planning and Probate Law, and Taxation Law must complete during each annual reporting period to apply for certification and/or recertification. The Court has made several formatting changes to the Commission's proposal. Additionally, the Court has changed the word "year" to "annual reporting period," where relevant, in order to be consistent with the current reporting period for continuing legal education hours, which runs from March 1 through the last day in February.

The amendments are effective immediately.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

Columbia, South Carolina
August 22, 2008

APPENDIX E
REGULATIONS FOR SPECIALTY FIELDS

. . .

EMPLOYMENT AND LABOR LAW SPECIALIZATION ADVISORY BOARD

STANDARDS AND PROCEDURES FOR CERTIFICATION, RECERTIFICATION, AND DECERTIFICATION

. . .

I. GENERAL REQUIREMENTS AND DEFINITIONS

. . .

K. Applicants shall submit the names and addresses of two (2) or more federal judges or federal administrative law judges, hearing officers, arbitrators, or mediators before whom they have appeared or practiced. At least one (1) reference from a federal judge or U.S. District Court magistrate judge is preferred; however, the other references listed will be acceptable. Additionally, applicants must submit the names and addresses of five (5) lawyers engaged in the "practice of law," as defined in § II A, who are familiar with the applicant's practice and who are not partners, associates, or members of this Board or the Commission, to be contacted as references to attest to the applicant's experience, involvement, and competency in the practice of employment and labor law. At least one (1) of the five (5) lawyers must be an employment and labor law specialist currently certified by the Supreme Court of South Carolina. The Board may, in its discretion and without notice to an applicant, secure information concerning an applicant's practice, involvement, experience, and competency in the specialty area from lawyers and judges other than those whose names are submitted by an applicant.

. . .

II. MINIMUM STANDARDS FOR CERTIFICATION

. . .

B. Substantial Involvement

Applicants must show substantial involvement and special competency in employment and labor law practice during the five (5) years immediately preceding application by providing such information as may be required by the Board. During each of the five (5) years immediately preceding application, applicants must show:

1. that their time devoted to the practice of employment and labor law as defined herein (see § I G) was not less than 40% of a normal full-time practice of law, and

. . .

III. REQUIREMENTS FOLLOWING CERTIFICATION

A. During each annual reporting period, all certified specialists in employment and labor law shall complete not less than twelve (12) hours of approved specialty continuing legal education. "Approved specialty continuing legal education" means educational activities accredited by the Board for the specialty (see § IV C which requires seventy-five (75) hours of approved CLE for recertification). Provided, however, that for reporting period 2008-2009, a minimum of fifteen (15) hours of approved specialty credit shall be required and at least nine (9) hours of specialty credit must be completed without regard to carry forward credit from the prior reporting period.

. . . .

APPENDIX E
REGULATIONS FOR SPECIALTY FIELDS

. . .

ESTATE PLANNING AND PROBATE LAW SPECIALIZATION ADVISORY BOARD

STANDARDS AND PROCEDURES FOR CERTIFICATION, RECERTIFICATION, AND DECERTIFICATION

. . .

III. REQUIREMENTS FOLLOWING CERTIFICATION

A. During each annual reporting period all certified specialists in estate planning and probate law shall complete not less than fifteen (15) hours of approved specialty continuing legal education. "Approved specialty continuing legal education" means educational activities accredited by the Board for the specialty (see § IV C which requires one hundred (100) hours of CLE credit for recertification). Provided, however, that for reporting period 2008-2009, a minimum of twelve (12) hours of approved specialty continuing legal education shall be required.

. . .

IV. RECERTIFICATION

. . .

C. To qualify for recertification, applicants must demonstrate the completion of a minimum of one hundred (100) hours of approved specialty continuing legal education in the five (5) years since their original or latest certification. Provided, however, that for applications for recertification received prior to January 1, 2011, only ninety (90) hours of approved specialty continuing legal education shall be required.

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APPENDIX E
REGULATIONS FOR SPECIALTY FIELDS

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TAXATION LAW SPECIALIZATION ADVISORY BOARD

STANDARDS AND PROCEDURES FOR CERTIFICATION, RECERTIFICATION, AND DECERTIFICATION

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II. MINIMUM STANDARDS FOR CERTIFICATION

. . .

C. Continuing Legal Education – Minimum Requirements

During each of the five (5) annual reporting periods preceding application for initial certification (or appropriate lesser period if any of the practice or substantial involvement requirements of § II A & B are waived), applicants must have completed not less than fifteen (15) hours of continuing legal education in approved courses or programs dealing with taxation law. For this purpose "approved courses or programs" shall mean courses/programs accredited by the Board for the taxation law specialty or courses/programs that would qualify for such accreditation. Provided, however, that for applications for initial certification received prior to January 1, 2010, in the five (5) years preceding application, applicants must have completed at least seventy-five (75) hours of continuing legal education in approved courses or programs dealing with taxation law.

. . . .

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ricky Hatcher, Respondent,

v.

Edward D. Jones & Co., L.P.
and David C. Freeman, Appellants.

Appeal From Anderson County
J. C. Buddy Nicholson, Jr., Circuit Court Judge

Opinion No. 4431
Heard May 8, 2008 – Filed August 14, 2008

AFFIRMED IN PART, REVERSED IN PART, and REMANDED

E. Linwood Gunn, IV, of Canton and Sylvia Germaine Eaves, of Marietta, for Appellants.

Michael F. Mullinax, of Anderson, for Respondent.

HEARN, C.J.: The issue presented here is whether a broadly-worded arbitration clause contained in an agreement for investment services should

be applied to a lawsuit alleging the client's funds were transferred electronically to a third party without his authorization or consent. We hold the claims relating to breach of the underlying agreement should be arbitrated but the claims for negligence and a violation of the South Carolina Unfair Trade Practices Act (SCUTPA) are not subject to arbitration. Accordingly, we affirm in part and reverse in part.

FACTS

Ricky Hatcher opened a Roth Individual Retirement Account with Edward D. Jones & Co., L.P. (Edward Jones) in May of 2004. This account was managed by David Freeman, an agent for Edward Jones. At the beginning of his relationship with Edward Jones, Hatcher signed an authorized adoption agreement which contained an arbitration clause stating: "any controversy arising out of or relating to any of my accounts or transactions with you, your officers, directors, agents, and/or employees for me, to this agreement, or to the breach thereof . . . from the inception of such account shall be settled by arbitration."

According to Hatcher's complaint, he deposited $113,584.68 with Edward Jones and Freeman (collectively Appellants) on or about May 1, 2004. Subsequently, the majority of those funds were withdrawn without his permission and deposited in an account of Hatcher's, and thereafter were withdrawn by a third person, who is now incarcerated as a result of her actions.

Hatcher brought this action against Appellants alleging the following causes of action: breach of contract, breach of contract accompanied by a fraudulent act, negligence, breach of fiduciary duty, and violation of SCUTPA. Hatcher alleged Appellants allowed his money to be withdrawn and wired to bank accounts without his knowledge.

Appellants answered Hatcher's complaint asserting numerous defenses, including that Hatcher's claims were subject to a binding arbitration provision. Thereafter, Appellants filed a motion to compel arbitration and a hearing was held. The circuit court denied the motion to compel arbitration,

finding the "theft and conversion" of Hatcher's money was completely independent of the contract and could be maintained without reference to the contract. Moreover, the circuit court found the removal of Hatcher's money arose out of the unauthorized transfer of funds from his account, and that Hatcher did not sign a contract authorizing electronic funds transfer. This appeal followed.

STANDARD OF REVIEW

"The determination of whether a claim is subject to arbitration is subject to de novo review." Wellman, Inc. v. Square D Co., 366 S.C. 61, 67, 620 S.E.2d 86, 89 (Ct. App. 2005). However, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings. Thornton v. Trident Med. Ctr., L.L.C., 357 S.C. 91, 94, 592 S.E.2d 50, 51 (Ct. App. 2003).

LAW/ANAYLSIS

Appellants contend the circuit court erred in denying their motion to compel arbitration because the arbitration agreement signed by Hatcher required that any controversy arising out of and/or relating to any account or transaction be submitted to arbitration. We agree with Appellants that the circuit court erred in failing to find Hatcher's claims for breach of contract, breach of contract accompanied by a fraudulent act, and breach of fiduciary duty are subject to arbitration. However, we find the circuit court correctly held Hatcher's claims for negligence and violation of SCUTPA are not subject to arbitration.

Both state and federal policy favor the arbitration of disputes. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001); see also Chassereau v. Global Sun Pools, Inc., 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007). Unless a court can say with positive assurance that the arbitration clause is not susceptible to any interpretation that covers the dispute, arbitration should ordinarily be ordered. Zabinski, 346 S.C. at 597, 553 S.E.2d at 118-19. However, arbitration is a matter of contract, and a party cannot be required to arbitrate any dispute that he has not agreed to

arbitrate. Id. at 596, 553 S.E.2d at 118. Accordingly, courts generally hold broadly-worded arbitration agreements apply to disputes in which a "significant relationship" exists between the asserted claims and the contract containing the agreement to arbitrate. Id. at 598, 553 S.E.2d at 119 (citing Long v. Silver, 248 F.3d 309 (4th Cir. 2001)).

Appellants argue all of the claims asserted by Hatcher relate to the investment account that he set up with Edwards Jones, and, therefore, arbitration is warranted. We agree as to some of the claims filed by Hatcher but disagree as to others.

In Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 644 S.E.2d 705 (2007), our supreme court refused to apply a broadly-worded arbitration clause to the theft of Aiken's personal information by World Finance employees. In holding there was not such a significant relationship between Aiken's contracts with World Finance and the tortious acts of its employees, the court specifically rejected World Finance's argument, similar to the one asserted by Appellants here, that without the underlying agreement, there could have been no theft giving rise to Aiken's claims. The supreme court stated:

> Applying what amounts to be a "but-for" causation standard essentially includes every dispute imaginable between the parties, which greatly oversimplifies the parties' agreement to arbitrate claims between them. Such a result is illogical and unconscionable. . . . "The mere fact that the dispute would not have arisen but for the existence of the contract and consequent relationship between the parties is insufficient by itself to transform a dispute into one 'arising out of or relating to' the underlying agreement."

Id. at 150, 644 S.E.2d at 708 (quoting Seifert v. U.S. Home Corp., 750 So. 2d 633, 638 (Fla. 1999)).

The supreme court held the theft of Aiken's personal information by World Finance was outrageous conduct that could not possibly have been foreseen when Aiken agreed to do business with World Finance. Consequently, the court held Aiken's claims for outrage and emotional distress, negligence, negligent hiring/supervision, and unfair trade practices were not subject to arbitration.

However, the Aiken court instructed that its opinion should not be interpreted as excluding all intentional torts from the scope of arbitration. For example, a claim which essentially alleges a breach of the underlying contract such as breach of fiduciary duty or misappropriation of trade secrets would be within the contemplation of the parties in agreeing to arbitrate. Id. at 152, 644 S.E.2d at 709.

Applying the court's analysis in Aiken to the claims advanced by Hatcher in this case, we hold the claims for breach of contract, breach of contract accompanied by a fraudulent act, and breach of fiduciary duty allege a breach of the underlying contract, and are therefore subject to the parties' agreement to arbitrate. However, Hatcher also sued for negligence and violation of SCUTPA. As in Aiken, although these claims are factually related to the performance of the contract, each action is legally distinct from the contractual relationship between the parties, and therefore, was not within the contemplation of the parties' agreement to arbitrate.[1] Just as the supreme court held in Aiken, we find that to interpret the arbitration provision contained in Hatcher's contract with Edward Jones to apply to alleged action

[1] We recognize our court recently held a SCUTPA claim was subject to arbitration when the underlying agreement between the parties was for the sale of a vehicle, and plaintiff alleged he received a vehicle different from the one he thought he was purchasing. Partain v. Upstate Auto. Group, Op. No. 4373 (S.C. Ct. App. Filed April 23, 2008) (Shearouse Adv. Sh. No. 16 at 69). The significant relationship we found existed between Partain's claim and the underlying agreement is not extant here, where the underlying agreement is for the investment of Hatcher's monies, and the SCUTPA claim is based on the wrongful electronic transfer of Hatcher's funds at the direction of a third party and without Hatcher's prior consent.

completely outside the expectations of the parties at the time the contract was entered would be inconsistent with the goal favoring arbitration as an effective means for resolving disputes.

Accordingly, the circuit court's order is

AFFIRMED IN PART, REVERSED IN PART, and REMANDED.

SHORT, J., and KONDUROS, J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Albertha Sanders, Employee, Respondent,

v.

Wal-Mart Stores, Inc., Employer, and American Home Assurance, Carrier, Appellants.

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

Opinion No. 4432
Submitted January 2, 2008 – Filed August 19, 2008

REVERSED

Johnnie W. Baxley, III, of Mt. Pleasant; for Appellants.

Margie Bright Matthews, of Walterboro; for Respondent.

HUFF, J. : In this workers' compensation action, Wal-Mart Stores, Inc. appeals from an order of the circuit court reversing the Appellate

Panel of the South Carolina Workers' Compensation Commission's finding that Albertha Sanders' knee injuries were not work-related. We reverse.[1]

FACTS

On June 14, 2000, Albertha Sanders suffered an injury to her knee descending from a ladder while working at Wal-Mart. Wal-Mart acknowledged the injuries arising from this accident were compensable and provided medical treatment.

After receiving treatment for her injuries by several physicians, Sanders was diagnosed with chondromalacia patella, the softening and degeneration of the tissue underneath the kneecap. Sanders was released from treatment on February 15, 2001. At the time of her release, Sanders had returned to work without restrictions, other than to avoid stooping, kneeling, and squatting whenever possible.

In September of 2002, Sanders fell down stairs in her home and suffered an injury to her knee as a result. Following this incident, Sanders received medical care for her knee from Dr. Jeffrey Holman. Sanders filed this claim seeking workers' compensation benefits. Wal-Mart contested liability for this injury, asserting Sanders' September of 2002 fall in the home was an intervening act unrelated to her previous work-related injury and was not compensable.

The single commissioner found Sanders' knee injuries were causally related to the original injury in June of 2000 and awarded Sanders temporary total disability benefits and payment of her medical expenses.

Wal-Mart appealed the findings of the single commissioner to the Appellate Panel. The Appellate Panel found the injuries in question were not causally related to her work-related incident and reversed the order of the single commissioner.

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

Following the Appellate Panel's decision, Sanders appealed to the circuit court. The circuit court reversed and remanded the case to the Appellate Panel for reinstatement of the single commissioner's order. This appeal followed.

STANDARD OF REVIEW

The Administrative Procedures Act establishes our standard of review of decisions by the South Carolina Workers' Compensation Commission. Accordingly, this court can reverse or modify the Appellate Panel's decision only if the appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Shealy v. Aiken County, 341 S.C. 448, 454, 535 S.E.2d 438, 442 (2000); S.C. Code Ann. § 1-23-380(A)(5) (Supp. 2007). "Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the [Appellate Panel] reached." Shealy, 341 S.C. at 455, 535 S.E.2d at 442. The possibility of drawing two inconsistent conclusions does not prevent the Appellate Panel's conclusions from being supported by substantial evidence. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 338, 513 S.E.2d 843, 845 (1999).

The Appellate Panel is the ultimate fact finder and is not bound by the single commissioner's findings of fact. Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. Id.

LAW/ANALYSIS

I. Independent Intervening Cause

Wal-Mart argues the circuit court erred in reversing the order of the Appellate Panel. Specifically, Wal-Mart argues there was substantial evidence supporting the Appellate Panel's finding that Sanders' injuries from

her September of 2002 fall were not causally related to her work-related accident. We agree.

It is not disputed that Sanders' injuries from the initial fall at work are compensable. Indeed, Wal-Mart paid workers' compensation benefits and medical expenses related to this incident. The sole issue before the Appellate Panel was whether Sanders' injuries arising out of her September of 2002 fall are compensable. As the Appellate Panel correctly noted, every natural consequence which flows from a compensable injury, unless the result of an independent intervening cause sufficient to break the chain of causation, is compensable. Whitfield v. Daniel Constr. Co., 226 S.C. 37, 40-41, 83 S.E.2d 460, 462 (1954). The key issue for the Appellate Panel's determination was whether the September of 2002 fall was an "independent intervening cause."

In reversing the Appellate Panel, the circuit court held there was not sufficient evidence to support the Panel's conclusion because "there is no finding of fact by the [Appellate Panel] that the Claimant's subsequent fall was an independent cause." Wal-Mart, however, argues the Appellate Panel did find Sanders' September of 2002 fall was independent of her work-related injury.

Under the substantial evidence standard, an appellate court looks for all evidence which "would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (emphasis added). However, "if a material fact is contested, the [Appellate Panel] must make a specific, express finding on it." Aristizabal v. I. J. Woodside-Division of Dan River, Inc., 268 S.C. 366, 370-71, 234 S.E.2d 21, 23 (1977). The findings of fact of the Appellate Panel must be sufficiently detailed to enable the reviewing court to determine (1) whether the law has been properly applied to those findings and (2) whether the findings are supported by the evidence. Brayboy v. Clark Heating Co., Inc., 306 S.C. 56, 58-59, 409 S.E.2d 767, 768 (1991).

In the present case, we must determine whether the Appellate Panel properly applied the standard articulated in Whitfield. The sole issue before the Appellate Panel was whether Sanders' September of 2002 fall was

causally related to the initial work-related accident. The Appellate Panel recognized the appropriate standard to be applied by citing and relying upon the holding of Whitfield, stating, "Every natural consequence which flows from a compensable injury, unless the result of an independent intervening cause sufficient to break the chain of causation, is compensable." The Appellate Panel found: "Claimant sustained an intervening accident in September 2002." It noted there was no evidence that Sanders' knee condition caused her to fall at home. In addition, it found "All of her injuries from the initial injury of June 14, 2000 had resolved, [Sanders] had returned to work with no restrictions, and she was not given a permanency rating. She did not seek additional medical treatment for twenty (20) months."

Looking at the language of the Appellate Panel's Order, we hold the findings sufficiently indicate the Appellate Panel found the September of 2002 fall was an "independent intervening cause sufficient to break the chain of causation" and thus the findings support the Appellate Panel's determination to deny Sanders' claims for benefits. Therefore, the circuit court erred in reversing the Appellate Panel's order for lack of such findings.

Having established the Appellate Panel found Sanders' September of 2002 fall was an independent intervening cause, we now turn to whether this finding is supported by substantial evidence.

At the December 16, 2004 hearing, Sanders testified she was released from care for the injuries immediately following her initial fall on February 15, 2001, and from that time she did not seek care for her knee until after she fell in her home in September of 2002. Furthermore, in her November 7, 2002 deposition she testified she was injured a week before she saw Dr. Holman when her knee "gave out" while she was coming down her steps at home, and prior to this occasion, her knee had never given out before. Sanders' testimony shows a definite gap in time from the initial work-related injuries and the September of 2002 fall where she did not need medical treatment for her knee and could work full duty without restrictions. Therefore, her testimony supports the finding the September of 2002 fall was an independent intervening cause.

In addition to Sanders' testimony, the expert testimony of Sanders' treating physician, Dr. Holman, supports the conclusion the September of 2002 fall was an independent intervening cause. Dr. Holman testified Sanders was referred to him by her family physician, and his first visit with her occurred on October 7, 2002. Dr. Holman stated Sanders did not inform him of her subsequent fall in the home, which occurred approximately one week before this visit, or that following her initial work-related fall she returned to work full duty for approximately twenty months. Upon hearing Sanders' testimony regarding these facts in her deposition, Dr. Holman testified the knee problems he was treating her for were related to the September of 2002 fall rather than her initial fall at work. He explained the two similar incidents might suggest that the mechanism of the two falls was the same, so "either she had a knee problem before she fell at Wal-Mart or that she just slipped and fell on two occasions." Because of these two similar incidents, Dr. Holman testified he could not state "with a degree of medical certainty that her chondromalacia was responsible for the missed step a week prior to my visit."

Based on this evidence from the record, we hold there was substantial evidence to support the Appellate Panel's finding the September of 2002 fall was an independent intervening cause and thus Sanders' injuries arising from the fall were not compensable. Accordingly, we find the circuit court erred in reversing the Appellate Panel's decision.

II. Scrivener's Error

Wal-Mart argues the circuit court erred in holding the Appellate Panel's citation of South Carolina Code Section 42-9-60 constituted reversible error. We agree.

Section 42-9-60 provides: "No compensation shall be payable if the injury or death was occasioned by the intoxication of the employee or by the wilful intention of the employee to injure or kill himself or another." S.C. Code Ann. § 42-9-60 (Supp. 2007). As the circuit court correctly noted, there was no evidence showing Sanders was under the influence of intoxication or possessed the intent to injure herself and the Appellate Panel made no findings concerning such evidence.

Wal-Mart argues the Appellate Panel's citation of Section 42-9-60 was merely a scrivener's error, and instead the Panel intended to cite South Carolina Code Section 42-15-60 (Supp. 2007), which discusses medical benefits. Indeed, the Appellate Panel cited to Section 42-9-60 when concluding Wal-Mart was only responsible for the medical care Sanders received between June 14, 2000 and February 15, 2001.

We agree with Wal-Mart and hold the Appellate Panel's use of Section 42-9-60 was a scrivener's error. "An error not shown to be prejudicial does not constitute grounds for reversal." JKT Co. v. Hardwick, 274 S.C. 413, 419, 265 S.E.2d 510, 513 (1980). In the present case, the Appellate Panel's error in citing Section 42-9-60 is not prejudicial. Therefore, the circuit court erred in reversing the Appellate Panel on these grounds.

III. Inappropriate Relief

In its last argument, Wal-Mart asserts the circuit court erred in granting relief that exceeds its authority. As we have reversed the circuit court's order for the above-stated reasons, we need not address this issue.

CONCLUSION

For the foregoing reasons, the order of the circuit court is

REVERSED.

PIEPER, J., and CURETON, A.J., concur.