OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 34
August 23, 2010
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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The Supreme Court of South Carolina

Carolyn Chester, as Personal Representative of the Estate of Sherman E. Boutte, Jr., Appellant,

v.

South Carolina Department of Public Safety, South Carolina Department of Transportation, South Carolina Forestry Commission, Gary Thomas LaSalle, COBRA Transport a/k/a Cobra Automobile Transporting, Alternative Transport Services, Florida Auto Transport, Vic Mullins as the Personal Representative of the Estate of Jacob Trey Hall, Robin H. Miller, as the Personal Representative of the Estate of Rory Miller, Jeremy Crye, Ryder Truck Rental, Inc., Darren Mosley, RSC Transportation, Inc., Randel Brigman, Ernestine Hare Arnette, Mayflower Movers a/k/a Mayflower Transit, LLC and American Way Moving and Storage, Inc., Defendants,

of whom the South Carolina Department of Public Safety, South Carolina Department of Transportation and South Carolina Forestry Commission are the Respondents.

ORDER

Respondents' petition for rehearing is granted and the following opinion substituted for the original opinion. The only change is found in the first sentence of the FACTS, where the phrase "controlled burn being conducted by respondent Forestry Commission" is stricken and replaced by the word "fire."

IT IS SO ORDERED.

s/ Jean H. Toal C. J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ James E. Moore A.J.

Columbia, South Carolina
August 23, 2010

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Carolyn Chester, as Personal Representative of the Estate of Sherman E. Boutte, Jr., Appellant,

v.

South Carolina Department of Public Safety, South Carolina Department of Transportation, South Carolina Forestry Commission, Gary Thomas LaSalle, COBRA Transport a/k/a Cobra Automobile Transporting, Alternative Transport Services, Florida Auto Transport, Vic Mullins as the Personal Representative of the Estate of Jacob Trey Hall, Robin H. Miller, as the Personal Representative of the Estate of Rory Miller, Jeremy Crye, Ryder Truck Rental, Inc., Darren Mosley, RSC Transportation, Inc., Randel Brigman, Ernestine Hare Arnette, Mayflower Movers a/k/a Mayflower Transit, LLC and American Way Moving and Storage, Inc., Defendants,

of whom the South Carolina Department of Public Safety, South Carolina Department of Transportation, and South Carolina Foresty Commission are the Respondents.

Appeal from Dorchester County
James C. Williams, Jr., Circuit Court Judge

Opinion No. 26833
Heard June 8, 2010 – Re-filed August 23, 2010

REVERSED

Mark B. Tinsley, of Gooding and Gooding, of Allendale, and Robert Norris Hill, of Newberry, for Appellant.

Lisa A. Reynolds, of Anderson &Sequi, of Charleston; R. Morrison M. Payne and Christy Scott, both of Scott & Payne, of Walterboro; and Roy Pearce Maybank, of Charleston, for Respondents.

PER CURIAM: Appellant contends the trial judge erred in ordering her, the plaintiff in this Tort Claims Act (TCA) suit brought against three state agencies (respondents), to join other alleged joint tortfeasors as defendants at respondents' request, in order to effectuate the respondents' right to a proportionate verdict under S.C. Code Ann. § 15-78-100(c) (2005). The trial judge agreed with respondents that he could require appellant to add party defendants, but ultimately dismissed the action because these co-tortfeasors

could not be joined since the appellant had already settled with them. See Rule 19, SCRCP. We agree with appellant that the trial judge lacks the authority to require her to sue additional alleged co-tortfeasors, and reverse.

FACTS

Appellant's decedent was killed in a multiple vehicle accident caused when heavy smoke from a fire allegedly obstructed visibility on Interstate 95. As a result of the number of vehicles involved and the alleged negligence of three different state agencies, there are numerous potential defendants. A number of passengers in these vehicles or their estates brought actions in Hampton County naming appellant as a defendant. Appellant then brought this suit against the three TCA defendants in Dorchester County, and subsequently received settlements from a number of other defendants in the original Hampton suits. The Dorchester TCA defendants contended, and the trial judge agreed, that they were entitled to have the judge order appellant to join other alleged tortfeasors (including many with whom appellant had already settled in Hampton County) as defendants under Rule 19, SCRCP. The statute upon which the respondents and the trial judge relied provides:

> In all actions brought pursuant to this chapter when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined.
>
> §15-78-100(c).

ISSUE

Can a TCA defendant require the plaintiff to sue other alleged tortfeasors?

ANALYSIS

It is well-settled that a plaintiff has the sole right to determine which co-tortfeasor(s) she will sue. E.g., Doctor v. Robert Lee, Inc., 215 S.C. 332, 55 S.E.2d 68 (1949); South Carolina Dep't of Health and Envior. Control v. Fed. Serv. Indus., Inc., 294 S.C. 33, 362 S.E.2d 311 (Ct. App. 1987). A ruling that a TCA defendant can compel a plaintiff to join other alleged tortfeasors as defendants in that suit would overturn this firmly entrenched common law principle. Moreover, a concomitant ruling that where these defendants cannot be joined because they have already settled with the plaintiff, the action must be dismissed, would thwart our strong public policy favoring the settlement of disputes. E.g., Poston v. Barnes, 294 S.C. 261, 363 S.E.2d 888 (1987). We are not persuaded that the General Assembly, in enacting § 15-78-100(c), giving a TCA defendant the right to a proportionate verdict "when an alleged tortfeasor is named a party defendant," intended to abrogate the tort plaintiff's right to choose her defendant, nor to effectively force the plaintiff to choose between settling with some parties and thereby forego her right to sue a TCA defendant, or going to trial against all co-tortfeasors. Compare Wade v. Berkeley County, 348 S.C. 224, 559 S.E.2d 586 (2002).

Where, as here, the plaintiff has settled with some co-tortfeasors the TCA defendants are not without a remedy. First, if the jury returns a verdict finding more than one respondent liable, then it will be required to apportion liability among these respondents. § 15-78-100(c). Moreover, under the procedure outlined in Smalls v. South Carolina Dep't of Educ., 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000), any respondent found liable will be entitled to an equitable set-off against the settlements appellant has already received.

CONCLUSION

The trial judge erred in holding that under Rule 19, SCRCP, he could require appellant to join other co-tortfeasors in order to afford the

respondents their potential right to proportionate liability under § 15-78-100(c).

REVERSED.

TOAL, C.J., BEATTY, KITTREDGE, HEARN, JJ., and Acting Justice James E. Moore, concur.

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Frank E. Thomson,

Respondent.

Opinion No. 26872
Submitted July 26, 2010 – Filed August 23, 2010

PUBLIC REPRIMAND

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

Frank E. Thomson, of Charleston, pro se.

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

FACTS

Matter I

On April 30, 2009, Client A retained respondent to make changes to an operating agreement for Client A's company. Client A paid respondent a $1,000.00 retainer. Respondent failed to keep Client A reasonably informed regarding the status of the matter and also failed to promptly comply with Client A's reasonable requests for information.

On August 6, 2009, Client A terminated respondent's representation and requested a refund of her retainer fee. Respondent failed to timely refund that portion of Client A's fee which had not yet been earned.

By letter dated August 26, 2009, ODC informed respondent of Client A's complaint and requested he file a response within fifteen days. Respondent failed to respond or otherwise communicate with ODC in response to the August 26, 2009, letter.

On September 15, 2009, ODC sent respondent a letter pursuant to In the Matter of Treacy, 277 S.C. 514, 290 S.E.2d 240 (1982), again requesting a response. Respondent failed to respond or otherwise communicate with ODC following the mailing of the Treacy letter.

Respondent was served with a Notice of Full Investigation which required a response within thirty days. Respondent failed to respond to the Notice of Full Investigation. Respondent did make an appearance before ODC pursuant to Rule 19(c)(3), RLDE.

Matter II

The South Carolina Bar Resolution of Fee Disputes Board (the Board) ordered respondent to pay Client B $500.00. Respondent

failed to pay the ordered amount to the client. As a result, the Board issued a Certificate of Non-Compliance on November 19, 2009.

On February 17, 2010, ODC mailed respondent a Notice of Investigation requesting a response within fifteen days. After no response was received, ODC sent respondent a letter dated March 12, 2010, pursuant to In the Matter of Treacy, id., requesting a response within thirty days. Respondent failed to make an appearance pursuant to Rule 19(c)(3), RLDE.

On or about May 5, 2010, respondent contacted ODC. He issued a written response dated May 20, 2010, which was received by ODC on May 28, 2010. Respondent represents he failed to pay the ordered fee to Client B due to personal economic hardship.

Respondent has no prior disciplinary history.

LAW

Respondent acknowledges that his misconduct constitutes grounds for discipline under the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, specifically Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct) and Rule 7(a)(10) (it shall be ground for discipline for lawyer to willfully fail to comply with a final decision of the Resolution of Fee Disputes Board). Further, respondent admits his misconduct violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR, particularly Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing client); Rule 1.4 (lawyer shall keep client reasonably informed about status of matter); Rule 1.16 (upon termination of representation, lawyer shall take steps to extent reasonably practicable to protect client's interests such as refunding any advance payment of fee or expense that has not been earned or incurred); Rule 8.1 (lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority); Rule 8.4(a) (it is professional misconduct for a lawyer to violate the Rules of Professional Conduct); and Rule 8.4(e) (it is professional misconduct

for lawyer to engage in conduct that is prejudicial to the administration of justice).

CONCLUSION

We find that respondent's misconduct warrants a public reprimand. Further, within thirty (30) days of the date of this order, respondent shall enter into a restitution plan with the Commission on Lawyer Conduct in which he shall agree to pay $1,000.00 to Client A and $500.00 to Client B. Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his misconduct.

PUBLIC REPRIMAND.

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

C. Wayne Hill, Respondent,

v.

South Carolina Department of Health and Environmental Control, Bureau of Ocean and Coastal Resource Management, Appellant,

and

Marlon Weaver and South Carolina Coastal Conservation League, Intervenors,

Of whom South Carolina Coastal Conservation League is Appellant.

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

Opinion No. 26873
Heard June 25, 2010 – Filed August 23, 2010

REVERSED

Amy E. Armstrong and James S. Chandler, Jr., both of Pawleys Island, for Appellant South Carolina Coastal Conservation League.

General Counsel Carlisle Roberts, Jr., of Columbia, and Staff Attorney Davis A. Whitfield-Cargile, of North Charleston, for Appellant South Carolina Department of Health and Environmental Control, Bureau of Ocean and Coastal Resource Management.

Kenneth R. Moss, of The McGougan Law Firm, of Little River, for Respondent.

JUSTICE BEATTY: C. Wayne Hill ("Hill") was issued a notice of violation by the South Carolina Department of Health and Environmental Control, Bureau of Ocean and Coastal Resource Management ("DHEC") for constructing a bulkhead that was not in compliance with a Critical Area Permit issued by the agency. DHEC and an intervenor, the South Carolina Coastal Conservation League ("League"), now appeal from a circuit court order that reversed an administrative law judge's ("ALJ") determination that Hill had violated the terms of the permit. We reverse.

I. FACTS

Hill owns Lot 1, Block S2, on 55th Avenue in the Heritage Shores Subdivision of Cherry Grove in North Myrtle Beach, South Carolina. Hill's lot is a narrow parcel that is bounded to the south and to the west by a man-made canal that runs through the residential subdivision. In July 2002, Hill filed a Permit Application with DHEC for the construction of a 110' bulkhead[1] for erosion control and 4' x 12' walkway (with handrails) leading to a 3' x 15' ramp and a 10' x 12' floating private residential dock.

[1] A bulkhead is "a retaining wall designed to retain fill material but not to withstand wave forces on an exposed shoreline." S.C. Code Ann. § 48-39-270(1)(b) (2008).

On September 19, 2002, DHEC issued a Critical Area Permit to Hill for the construction of the bulkhead, walkway, ramp, and dock as requested by Hill (OCRM-02-668). The permit listed ten Special Conditions, including Special Condition 1, "that the proposed bulkhead is located within 1.5' from [the] escarpment."

Work on the bulkhead began on or about July 15, 2003. DHEC inspected the site in July 2003 and asked Hill to cease all work after finding the bulkhead was not being constructed in accordance with Special Condition 1 of the issued permit. Hill stopped for approximately one week and then resumed construction, completing the bulkhead by August 4, 2003. Hill admittedly also "proceeded to backfill the area behind the newly constructed bulkhead."

DHEC sent Hill a Notice of Violation, which stated the bulkhead as constructed was not in compliance with the permit issued for the tidelands critical area and was in "potential violation of the South Carolina Coastal Zone Management Act [CZMA], S.C. Code Ann. §§ 48-39-10 et seq. (Supp. 2000)." Hill denied the violation, but offered to restore an area to offset any loss of wetlands that might have occurred during the construction of the bulkhead. DHEC thereafter sent Hill an Admissions Letter, along with Proposed Findings of Fact. Hill responded by denying any violation and asserting the bulkhead was constructed in accordance with the permit and applicable law.

DHEC issued an Administrative Enforcement Order in 2003, finding Hill had constructed a bulkhead in the tidelands critical area too far channelward and out of compliance with the issued permit. DHEC ordered Hill (1) to pay an administrative fine of $1,000; (2) to submit a work plan to DHEC within 30 days of the date of the order for the removal and re-installation of the bulkhead in accordance with Special Condition 1 of the issued permit; and (3) to complete re-installation of the bulkhead in accordance with the permit within 90 days from the date of the order. It was further provided that if Hill did not either appeal the order or comply with it

"within 30 days of receipt hereof," DHEC would file an action in the circuit court to enforce the order.

Shortly thereafter, Hill filed a notice with DHEC seeking to challenge the Administrative Enforcement Order, and the matter was submitted for a hearing before an ALJ. The ALJ granted Marlon Weaver and the League permission to intervene.[2] The ALJ sustained the Administrative Enforcement Order, requiring Hill to relocate the bulkhead to comply with the terms of the permit and to pay an administrative fine of $1,000. The ALJ found that, "because the tidal marshland between the high ground of [Hill's] lot and the adjoining canals is a critical area within the coastal zone of the state, [Hill] was required to obtain—and did obtain—a permit from OCRM [DHEC] before constructing a bulkhead in that marshland." The ALJ stated Hill's permit allowed him to construct a bulkhead 110' in length that would be within 1.5' of the escarpment on Hill's property. However, the bulkhead Hill constructed was actually 145' in length and was erected at distances ranging from 6.5' to 31' from the existing escarpment, which was "significantly out of compliance with the permit he was issued by [DHEC]" and in violation of the CZMA.

The ALJ further found that Hill's actions had "resulted in the improper filling of over 1000 square feet of marshland" and that "[t]his filling is considered a major violation of the" CZMA. The ALJ found Hill had "used the bulkhead and the accompanying backfill to significantly increase the size of his residential lot, far exceeding the amount necessary for erosion control." The ALJ concluded DHEC's decision to assess a $1,000 fine and to require Hill to reconstruct the bulkhead so as to be in compliance with his issued permit and the CZMA "is an appropriate remedy for those violations."

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[2] Marlon Weaver, who owned Lot 3 adjoining Hill's property, contended Hill had improperly filled in wetlands area in order to make his lot a buildable lot and that this had an adverse impact upon his (Weaver's) property. He has since withdrawn from participation in this case. The League asserted Hill had improperly filled in a portion of tidelands critical area and that his actions had an adverse effect upon the environment to the detriment of its members who used the area for recreational and other purposes.

Hill filed a petition for review of the ALJ's order with the South Carolina Coastal Zone Management Appellate Panel ("Appellate Panel"). The Appellate Panel issued a written Final Administrative Order affirming the order of the ALJ and adopting the Findings of Facts and Conclusions of Law contained therein.

Hill next sought review from the circuit court. The circuit court reversed the order of the ALJ and simultaneously quashed DHEC's Administrative Enforcement Order. As an initial matter, the circuit court ruled the ALJ lacked subject matter jurisdiction to hear Hill's appeal of DHEC's Administrative Enforcement Order.

The circuit court further ruled the ALJ erred in (1) failing or refusing to address the issue of the impact of a quit-claim deed executed in favor of Hill's predecessor-in-title, which granted certain rights to dredge and deposit spoil material above an agreed high water mark; (2) using an incorrect Critical Area Line and in finding Hill had constructed the bulkhead too far into the critical area; and (3) failing or refusing to address Hill's argument that DHEC's Administrative Enforcement Order violated Hill's equal protection rights based on the allegation DHEC took no steps to remove the docks of neighboring property owners who would likewise be in violation if Hill's bulkhead was deemed in violation.

DHEC and the League now appeal from the circuit court's order. "DHEC" will be used hereinafter to refer to both the agency individually and collectively to the agency and its co-appellant, the League, where appropriate.

II. STANDARD OF REVIEW

This case involved multiple levels of review. Under the APA, the ALJ presides as the fact-finder in contested cases. Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 560 S.E.2d 410 (2002). The proceeding before the ALJ was a de novo hearing, which included the presentation of evidence and testimony. Id.

Under the review procedure then in effect,[3] the Appellate Panel could not make its own findings of fact and was authorized to reverse the ALJ only if the ALJ's findings were not supported by substantial evidence or were controlled by an error of law. Dorman v. S.C. Dep't of Health & Envtl. Control, 350 S.C. 159, 565 S.E.2d 119 (Ct. App. 2002).

The circuit court's review, as well as this Court's, is limited to determining whether the findings were supported by substantial evidence or were controlled by an error of law. Responsible Econ. Dev. v. S.C. Dep't of Health & Envtl. Control, 371 S.C. 547, 641 S.E.2d 425 (2007); Jones v. S.C. Dep't of Health & Envtl. Control, 384 S.C. 295, 682 S.E.2d 282 (Ct. App. 2009).

In determining whether the ALJ's decision was supported by substantial evidence, this Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALJ reached. Jones, 384 S.C. at 304, 682 S.E.2d at 287. "The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence." Id. (quoting DuRant v. S.C. Dep't of Health & Envtl. Control, 361 S.C. 416, 420, 604 S.E.2d 704, 707 (Ct. App. 2004)).

III. LAW/ANALYSIS

On appeal, DHEC raises four issues concerning the circuit court's decision. In addition, Hill raises two points that warrant separate consideration.

[3] The review procedure under the APA was changed by 2006 South Carolina Laws Act No. 387, which eliminated the review of the ALJ's decision by the Appellate Panel. Chem-Nuclear Sys. v. S.C. Bd. of Health & Envtl. Control, 374 S.C. 201, 648 S.E.2d 601 (2007). However, this appeal continues under the prior procedure.

A. Findings of the ALJ

DHEC first contends the circuit court erred in improperly making new findings of fact and in overturning the ALJ's findings of fact in violation of the applicable standard of review.

Specifically, DHEC contends the circuit court erred in "overturn[ing] the ALJ's findings that the area between Hill's property and adjoining canals is tidal marsh; that OCRM accurately measured the alleged violations; that Hill improperly filled in excess of 1,000 square feet of critical area marsh; that Hill erected his bulkhead too far channelward of the escarpment; and that Hill's actions resulted in a permanent loss of productivity from the estuary." DHEC asserts each of the ALJ's findings was fully supported by substantial evidence and these findings support the ALJ's conclusion that Hill violated the CZMA and the terms of his permit.

The circuit court found "[t]he ALJ's conclusions and findings were in error because, as a prerequisite to any of the findings or conclusions, the record must reflect that [DHEC] proved the existence and location of a lawfully established Critical Area Line. [DHEC] did not. Without first establishing a valid Critical Area Line, [DHEC] cannot demonstrate that it had any regulatory jurisdiction over [Hill's] property."

The circuit court, citing section 48-39-210 of the South Carolina Code, stated critical lines expire after three years and in this case DHEC had relied upon a critical line that was over three years old. The circuit court further stated that even if DHEC has jurisdiction over Hill's property, DHEC's failure to establish a valid critical area is dispositive of whether it met its burden of proof in establishing Hill's alleged violations. The circuit court additionally found even with a valid critical line, DHEC's environmental manager could not interpret the drawings that were attached to the permit, and the permit provided the bulkhead was to be constructed in conformity with the drawings.

We hold the circuit court erred in overturning the findings of the ALJ and in determining any issues regarding the location of the critical line would preclude establishing a violation in this case.

The ALJ considered the import of the critical line as well as the alleged ambiguity of the drawings. As to the critical line, the ALJ found Hill's "concern with [DHEC's] current inability to pinpoint the location of the critical area line and escarpment as they existed on [Hill's] property prior to the completion of his bulkhead is misplaced." The ALJ stated Hill's violation is based on the measurements of the distance between the bulkhead and the escarpment, as set forth in the permit, and these measurements were documented by a DHEC employee during construction.[4]

As to the permit drawings, the ALJ found Hill's "permit was not ambiguous with regard to the size and location of his bulkhead." The ALJ observed, "While the drawings showing the bulkhead's location are not clean, precise documents, nothing in those drawings contradicts the clear, precise, and specific language in the permit limiting the bulkhead to 110' in length and requiring the bulkhead to be no more than 1.5' from the existing escarpment."

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[4] The ALJ stated:

> The regulatory and permitting violation committed by [Hill] involved the distance between his bulkhead and the escarpment on his property, not the critical line, and, while that escarpment cannot now be located, it was readily apparent at the time Ms. Fitzgerald took her measurements of the distance between the bulkhead and the escarpment and determined that the bulkhead was being constructed too far from the escarpment. See Finding of Fact #3(A). Further, while the term "escarpment" is not defined in the regulations, its meaning is not obscure and the term provides sufficient guidance to permittees for the proper placement of an erosion-controlled bulkhead. See Merriam-Webster's Collegiate Dictionary 395 (10th ed. 1993) (defining an escarpment as a "steep slope separating two comparatively level or more gently sloping surfaces and resulting from erosion or faulting").

DHEC notes Hill's own expert witness, Dr. Wayne Beam, testified that the critical area line did not expire until November 6, 2003 due to an extension agreement, and this date was after the date construction of the bulkhead was completed. DHEC asserts section 48-39-210(B) of the South Carolina Code provides that an expired critical area plat does not affect DHEC's critical area jurisdiction.[5]

In addition, DHEC asserts there is no indication that the location of the critical area line makes any difference that is favorable to Hill because the substantial evidence showed that, if the critical line has changed, the movement would be landward due to continuing erosion.

Steve Brooks, DHEC's Chief of Enforcement and Compliance, testified that when he observed the bulkhead Hill was constructing, it was obviously "significantly higher in elevation than the surrounding marsh area." Brooks stated the bulkhead was "significantly . . . channelward of the location indicated on the critical area line shown on the plat" and he "confirm[ed] that the bulkhead was constructed in excess of the 1.5' channelward of the, in this case, the critical line or the bluff line, assuming the two are the same."

Cindy Fitzgerald, an environmental manager with DHEC, testified she was the staff member who issued the Critical Area Permit to Hill. Fitzgerald conducted an inspection of Hill's bulkhead on July 24, 2003 during construction in response to an anonymous complaint and determined it was being built too far into the critical area. Fitzgerald documented the alleged violation with photographs showing that *Spartina alterniflora*, grass which is indicative of a critical area, had been cut down and destroyed landward of the bulkhead. She also took measurements every five feet to document that the bulkhead had exceeded the length and location requirements specified in the permit.

[5] Section 48-39-210(B) (Supp. 2003) provided in part as follows: "Critical areas by their nature are dynamic and subject to change over time. By generally delineating the permit authority of the Coastal Council [the predecessor to DHEC's OCRM], the Coastal Council in no way waives its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not."

We hold the ALJ's findings were supported by substantial evidence, and the fact that the circuit court might have disagreed with these findings does not prevent them from being supported by substantial evidence. The circuit court was not sitting as the fact-finder and under its limited scope of review, it erred in overturning the ALJ's findings that Hill's bulkhead did not comply with the terms of the permit that he had been issued.

B. Exclusion of Evidence

DHEC next argues the circuit court erred in ruling the ALJ should have admitted a quit-claim deed into evidence and should have heard arguments on whether DHEC has regulatory authority over Hill's property in light of the existence of the deed. DHEC states, "The quit-claim deed is related to a settlement between C.D. Nixon [Hill's predecessor-in-title] and the State of South Carolina in which Nixon quit-claimed lands that are or become below the mean high water mark to the State and the State quit-claimed all lands above the mean high water mark to Nixon."

The circuit court found the quit-claim deed granted certain rights and privileges to dredge and deposit spoil material above an agreed high water mark and noted Hill had asserted during the ALJ hearing that the quit-claim deed "may have usurped [DHEC's] regulatory authority." (Emphasis added.) The circuit court concluded the ALJ "erred by failing and refusing to address this issue."

DHEC asserts the ruling is flawed for two reasons. First, DHEC's authority over the critical area adjoining Hill's property is expressly granted by the CZMA, which requires a permit to utilize critical areas in the coastal zone.[6] DHEC asserts Hill did not dispute the ALJ's factual finding that the area filled in by Hill was tidal marshland containing *Spartina alterniflora*, the primary productivity plant in estuarine ecosystems, which is subject to the state's regulatory authority under the CZMA. DHEC argues the deed is not

[6] See S.C. Code Ann. § 48-39-130(A) (Supp. 2003) (stating "no person shall utilize a critical area . . . unless he has first obtained a permit from the department").

relevant to its authority, which derives from statute, and a deed executed prior to passage of the CZMA cannot usurp the state's regulatory authority. Second, the deed itself recognizes DHEC's authority over the critical area, as it recites that a permit from the State must be obtained before any dredging occurs.

"The admission or exclusion of evidence is a matter within the sound discretion of the trial court and absent clear abuse, will not be disturbed on appeal." Gamble v. Int'l Paper Realty Corp. of S.C., 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996). Even a finding of an abuse of discretion does not end the analysis, however, "because to warrant reversal based on the admission or exclusion of evidence, the appealing party must show both the error of the ruling and prejudice." Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 557, 658 S.E.2d 80, 86 (2008). Prejudice is a reasonable probability that the fact-finder's determination was influenced by the challenged evidence or the lack thereof. Id.

At the hearing before the ALJ, Cindy Fitzgerald, DHEC's environmental manager, testified during cross-examination that the property seaward of Hill's bulkhead was public trust property as evidenced by the fact that it contained salt marsh vegetation—*Spartina alterniflora* that grows only in critical areas with salt content.

In response, Hill's attorney sought to introduce the quit-claim deed to rebut the testimony that this was public trust property. However, in offering the deed, counsel acknowledged that he could not tell from the deed whether it was public trust property or not. The ALJ agreed to accept the deed as an "offer of proof," but declined to admit it into evidence, stating it was incumbent upon Hill's attorney to set forth evidence. The ALJ explained that he would be looking to "see if in fact the bulkhead is within 1.5 feet of the escarpment/critical area" as required by the permit.

We hold the circuit court erred in finding the ALJ abused his discretion in this regard. Hill's attorney expressly conceded at the hearing that he did not know whether the property was public trust property or not and that he

could not tell from the proffered deed. Counsel stated he was, nevertheless, offering the deed "for what it's worth." Thus, the deed did not establish the point in question and Hill's counsel conceded as much.

Moreover, Hill has not shown any resulting prejudice from exclusion of the deed, and both error and resulting prejudice must be shown by the party complaining of the exclusion of evidence. See, e.g., Fields, 376 S.C. at 557, 658 S.E.2d at 86 (stating both error and prejudice are necessary for reversal of a decision to exclude evidence). Therefore, the circuit court incorrectly found the ALJ committed error in this regard.

C. Subject Matter Jurisdiction

DHEC next contends the circuit court erred in finding the ALJ did not have subject matter jurisdiction to consider an appeal of agency enforcement proceedings, i.e., Hill's challenge of the Administrative Enforcement Order issued by DHEC.

Under the procedures then in effect,[7] South Carolina law provided no person could use a critical area without first obtaining a permit from DHEC. S.C. Code Ann. § 48-39-130(A) (Supp. 2003).

Anyone having a permit denied or who was adversely affected by the granting of a permit could directly appeal a decision of the ALJ to the Appellate Panel. Id. § 48-39-150(D). Although it is not specified in this particular statute, the matter would first come before the ALJ as a contested case hearing. The APA defines a "contested case" as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." Id. § 1-23-310(3) (emphasis added). The contested case hearing would allow the parties to dispute a permit denial and determine the rights of the parties.

[7] Citations are to the provisions in effect at the time of this action, but many of these provisions still exist in the same or slightly modified form.

Under section 1-23-600(B), the ALJ presides over all contested case hearings. See id. § 1-23-600(B) ("An administrative law judge . . . shall preside over all hearings of contested cases as defined in Section 1-23-310 involving the departments of the executive branch of government in which a single hearing officer is authorized or permitted by law or regulation to hear and decide such cases . . . ."); Marlboro Park Hosp. v. S.C. Dep't of Health & Envtl. Control, 358 S.C. 573, 577, 595 S.E.2d 851, 853 (Ct. App. 2004) ("The ALJ presides over all hearings of contested DHEC permitting cases.").

Section 48-39-180 provided that any applicant whose permit application had been finally denied, revoked, suspended, or approved subject to conditions of DHEC by the Appellate Panel, or any person adversely affected by the permit, could seek review in the circuit court. S.C. Code Ann. § 48-39-180 (Supp. 2003).

The foregoing provisions concern a landowner's challenge to DHEC's decision to deny a permit in the first instance, as well as to challenges by others who might be adversely affected by the granting of a permit application, such as neighboring landowners.

Once a permit has already been issued and there has been an alleged violation of the permit, section 48-39-170(C) provided that upon the finding of a permit violation, DHEC could (1) issue an administrative order requiring compliance and impose a civil penalty of up to $1,000 per day of violation, (2) bring a civil enforcement action under this section, or (3) seek injunctive relief under section 48-39-160. Id. § 48-39-170(C).

Section 48-39-160, governing injunctive relief, allowed DHEC or any person adversely affected to obtain an injunction from the circuit court to restrain violations and to recover the cost of any restoration to the affected area. Id. § 48-39-160.

After reviewing all of the pertinent provisions, the circuit court concluded "the ALJ lacked the requisite subject matter jurisdiction to hear and decide [Hill's] appeal." The circuit court essentially found that section

48-39-170(C) provides DHEC may bring a civil enforcement action or seek injunctive relief in the circuit court; therefore, the action should have been heard in the circuit court.

We hold the circuit court erred in concluding this administrative enforcement matter should have been brought in the circuit court and that the ALJ did not have jurisdiction to conduct a contested case hearing to review the propriety of the Administrative Enforcement Order.

The CZMA envisions two avenues for addressing violations. Under section 48-39-170(C), whenever DHEC determines there has been a violation of any permit, regulation, or statutory requirement, DHEC may bring a civil enforcement action and seek injunctive relief. S.C. Code Ann. § 48-39-170(C). The circuit court has jurisdiction to hear DHEC's civil enforcement action and has the authority to restrain any violations. Id. § 48-39-160. Matters under this avenue of review follow judicial procedures.

In addition, section 48-39-170(C) provides DHEC may issue Administrative Enforcement Orders requiring compliance with its issued permits and may additionally impose a civil fine upon the violator up to a maximum of $1,000 per day. Id. § 48-39-170(C). Matters brought under this procedure are administrative in nature and are, therefore, governed by the procedures of the APA.

Section 1-23-600(B) provided that persons aggrieved by an agency order were entitled to seek review of the agency's enforcement order by the ALJ by means of a contested case hearing. In addition, such review was provided by DHEC regulations.[8]

Moreover, review of the agency's enforcement order and its imposition of a civil fine is an administrative matter that falls squarely within the ambit

[8] 23A S.C. Code Ann. Regs. 30-8(F)(4) (Supp. 2003) ("Once the Enforcement Order is issued the responsible party has 15 days to appeal the Order to the Administrative Law Judge Division pursuant to R.30-6. Failure to act within 15 days will result in the Department seeking enforcement of the order in Circuit Court.").

of a contested case as defined in the APA. It is a proceeding in which the rights, duties, and privileges of a party are required to be determined by an agency after the opportunity for a hearing. S.C. Code Ann. § 1-23-310(3).

In the current case, Hill sought to challenge DHEC's Administrative Enforcement Order that imposed a civil fine and required relocation of the bulkhead before DHEC sought to enforce it by means of a civil suit in the circuit court. Thus, this was an administrative proceeding in which Hill sought to have the parties' rights, duties, and privileges determined in a contested case hearing by the ALJ as provided by S.C. Code Ann. § 1-23-600(B). Accordingly, the ALJ had jurisdiction to hear this matter and the circuit court's ruling to the contrary is in error.

D. Equal Protection

DHEC next argues the circuit erred in ruling Hill's equal protection rights had been violated. DHEC asserts Hill failed to present any evidence of disparate treatment to justify this finding.

At the end of a lengthy hearing, Hill's attorney summarily brought up the issue of equal protection, stating that there had been testimony that no other enforcement orders had been issued in this subdivision, but other landowners "have fill material added and [have built] further seaward than one and a half feet from the escarpment line." The ALJ's order did not specifically mention the issue of equal protection, but it did contain the following catch-all provision: "Pursuant to ALC Rule 29(C), any issues raised in these proceedings, but not addressed in this Order, are deemed denied."

In the circuit court, Hill argued the ALJ erred in failing to consider his argument that the Administrative Enforcement Order violated his equal protection rights. The circuit court agreed and found "that the ALJ erred by failing and refusing [to] rule upon [Hill's] constitutional objections to [DHEC's] administrative enforcement order."

The circuit court then went on to find Hill's equal protection rights had been violated, citing Weaver v. South Carolina Coastal Council, 309 S.C. 368, 423 S.E.2d 340 (1992). In that case, Weaver was denied a permit for a boat dock after the Coastal Council (DHEC's predecessor) had granted several other permits in error but had not yet taken any enforcement action. This Court concluded the Coastal Council violated the equal protection and due process rights of Weaver by treating her differently from the other permit applicants, thereby denying her a benefit granted to others similarly situated. Id. at 375, 423 S.E.2d at 343-44.

On appeal, DHEC argues Hill's assertion of an equal protection violation and the circuit court's ruling "both suffer from a distinct lack of proof," citing Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). In Grant, we observed, "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." Id. at 354, 461 S.E.2d at 391.

DHEC acknowledges that the aerial photograph it introduced into evidence "appears to show that other nearby property owners may have filled critical areas as part of bulkhead construction"; however, DHEC's cartographer, Fritz Aichele, and enforcement manager, Steve Brooks, had testified that the photograph had just been prepared the day before the hearing, and Brooks further testified that he is currently conducting compliance investigations and that the agency intends to pursue enforcement actions where violations are found to have occurred as soon as that information is compiled and synthesized.

We hold the circuit court's finding of an equal protection violation is reversible for several reasons. First, the circuit court found the ALJ erred in failing to rule on the equal protection allegation. However, it was incumbent upon Hill to show that he had clearly raised the issue to the ALJ and asked for a specific ruling in that regard in order to preserve the issue for review by the circuit court. See Home Med. Sys. v. S.C. Dep't of Revenue, 382 S.C. 556, 562-63, 677 S.E.2d 582, 586 (2009) (observing issue preservation is required in administrative appeals and a circuit court sitting in an appellate

capacity may not consider issues not raised to and ruled upon by the ALC; the Court held that "Rule 59(e), SCRCP, motions are permitted in ALC proceedings").

Second, even if the circuit court was correct in determining the ALJ erred in failing to rule on this issue, a remand would have been the appropriate remedy because the circuit court's limited scope of review does not authorize it to make its own factual findings. The ALJ's order did contain a statement that all claims not expressly covered were denied. However, such an indirect ruling would not effectively give a reviewing court anything to evaluate.[9] See Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 560 S.E.2d 410 (2002) (holding where the ALJ's order was silent on an issue and thus gave no finding to effectively review, the Board lacked the authority to make its own findings of fact and should have remanded the matter to the ALJ for an order clarifying this point rather than ruling on the issue in the first instance); S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control, 363 S.C. 67, 610 S.E.2d 482 (2005) (stating a reviewing court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, but may remand the matter to the agency for a determination of the issue).

Finally, DHEC properly notes that Hill had the burden of proof in this regard and he did not set forth anything to support his allegation other than noting the testimony of a DHEC witness that as of the time of the hearing, no other enforcement orders had been issued. This mere fact, standing alone, is insufficient as a matter of law to establish an equal protection violation. Hill did not provide any evidence as to the identity of the neighboring landowners

[9] Although we find the order in this case is sufficient since the burden was on Hill in the first instance to specifically raise any alleged error, provide supporting proof, and seek a ruling on the issue thus raised, we take this opportunity to remind the bench of the need to make specific findings. Implicit findings, as well as general statements and conclusions, do not provide sufficient detail for appellate review. See Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986) ("The findings of fact of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings.").

and their alleged transgressions, so he did not show that he was similarly situated. See Denene, Inc. v. City of Charleston, 359 S.C. 85, 96, 596 S.E.2d 917, 922 (2004) (stating even if a governmental entity does not enforce a provision equally, "the fact that there is some unequal treatment does not necessarily rise to the level of a constitutional equal protection violation"). Since Hill offered no evidence that his situation is indistinguishable from others and no evidence of bias or discrimination, the circuit court erred in ruling Hill had established a violation of his equal protection rights.

E. Timeliness of Appeal

Hill has enumerated seven arguments in the "Statement of the Issues on Appeal" of his Respondent's Brief, most of which respond to the merits of DHEC's appellate issues. However, Hill does set forth two arguments that warrant separate consideration, the first of which concerns the alleged untimeliness of this appeal.

Hill initially states the circuit court order "dated June 28, 2007 was served on the Appellant[10] and OCRM on July 23, 2007. The Appellant gave notice of appeal on August 22, 2007." Hill asserts the appeal is untimely, however, because a party must file a motion to alter or amend when an issue has been raised, but not ruled upon, in order to preserve it for review, and none of the four issues raised by DHEC were asserted in a post-trial motion. Hill states, "Neither OCRM nor the Appellant filed a Motion for Amendment under Rule 52(b), SCRCP or a Motion for Reconsideration under Rule 59(e), SCRP with the Circuit Court before giving notice of appeal." Hill maintains the appeal is, therefore, untimely as it was not "perfected," and this "is fatal to the jurisdiction of this [Court] to hear the matter."

Hill's assertion is without merit. Hill appears to have overlapped the concepts of issue preservation and timely service of a notice of appeal. Under the South Carolina Appellate Court Rules, a notice of appeal from an

[10] Hill refers to the League as the only appellant. However, the Notice of Appeal and other materials before this Court clearly indicate that both DHEC and the League are appealing the circuit court's order.

order or judgment of the circuit court must be served within thirty days after receipt of written notice of entry of the order or judgment. Rule 203(b)(1), SCACR. The service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this Court. Camp v. Camp, 386 S.C. 571, 689 S.E.2d 634 (2010).

In contrast, to preserve an issue for appellate review, a matter may not be raised for the first time on appeal, but must have been both raised to and ruled upon by the trial court. Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). The failure to preserve an issue for appeal does not deprive an appellate court of jurisdiction to hear the appeal.

In this case, the circuit court's order was signed on June 28, 2007 and is stamped to indicate that it was actually filed with the Horry County Clerk of Court on July 24, 2007. The Notice of Appeal was served on August 22, 2007, and it states the order was received "no earlier than July 26, 2007." Therefore, the appeal was properly noticed within thirty days and was timely so as to confer jurisdiction on this Court. There is no fatal defect or lack of jurisdiction to hear this appeal.[11]

F. Standing To Appeal

Hill next asserts "[t]he League is the Appellant in this case" and that it lacks standing to pursue the appeal.

"Generally, a party must be a real party in interest to the litigation to have standing." Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006). "A real party in interest is a party with a real, material, or substantial interest in the outcome of the litigation." Id. "When an organization is involved, the organization has standing on behalf of its

[11] DHEC asserts Rule 59 is not applicable because the circuit court was sitting in an appellate capacity, not as a trial court. However, the circuit court has the authority to hear motions to alter or amend when it sits in an appellate capacity and such motions are required to preserve issues for appeal where the circuit court fails to rule on an issue. City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007).

members if one or more of its members will suffer an individual injury by virtue of the contested act." Sea Pines Ass'n for the Protection of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 600-01, 550 S.E.2d 287, 291 (2001). "South Carolina case law has specifically recognized an injury to one's aesthetic and recreational interests in enjoying and observing wildlife is a judicially cognizable injury in fact." Id. at 601-02, 550 S.E.2d at 291-92.

Hill states the League was not an original party to the enforcement action commenced by DHEC, and it has not asserted a separate cause of action. Rather, the League was allowed to appear as an intervenor, as was Marlon Weaver, a neighboring property owner. Hill maintains he "did not consent to the intervention of either the League or Mr. Weaver." Hill asserts the ALJ's order granting the motions of the League and Weaver to intervene "contains no mention of the basis for allowing the intervention by the League," and at the hearing before the ALJ, the League "presented no evidence concerning its standing, called no witnesses, and submitted no testimony or evidence of any kind concerning the issue in dispute."

Citing Rule 24(a), SCRCP (governing intervention), as well as Beaufort Realty Co. v. Beaufort County, 346 S.C. 298, 551 S.E.2d 588 (Ct. App. 2001)[12] and Rule 201(b), SCACR,[13] Hill argues the interests of the League in the permitting process or in environmental issues are "coincident with those of the general public, which OCRM [DHEC] represented." Hill states there is nothing that "gave [the] League a right to intervene," and it has shown no individualized injury to itself or its members.

Although Hill states that he "did not consent" to the League's intervention, he does not state that he ever objected at the time the League's

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[12] "An organization has standing only if it alleges that it or its members will suffer an individualized injury; a mere interest in a problem is not enough." Beaufort Realty Co. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001) (citation omitted).

[13] Rule 201(b), SCACR (stating only a party aggrieved by an order, judgment, sentence, or decision may appeal).

motion to intervene was granted by the ALJ. In fact, the ALJ's order specifically states that "no objection to the proposed interventions has been received" and the intervenors had satisfied all of the necessary requirements. Consequently, Hill should not be allowed to belatedly and indirectly pursue what is, in essence, an attack upon the ruling allowing the League to intervene under the guise of challenging the League's "standing" to maintain an appeal after it was allowed to intervene without objection. See Sea Cove Dev., L.L.C. v. Harbourside Cmty. Bank, 387 S.C. 95, 691 S.E.2d 158 (2010) (stating a contemporaneous objection is required to preserve an issue for appellate review); Gissel v. Hart, 382 S.C. 235, 676 S.E.2d 320 (2009) (holding the defendants would not be allowed to complain on appeal of an alleged error where they never disputed the issue below).

At the hearing before the ALJ, Hill's attorney did move for intervenor Weaver to be dismissed from the action for lack of standing. After some discussion, the ALJ denied the motion. However, Hill did not contemporaneously argue the League did not have standing and in fact contended Weaver's interests could be represented by "the other intervenors [sic] in the suit" (i.e., the League) and by DHEC. Thus, he is precluded from raising this issue now.

Moreover, as noted above, the League is not the only appellant in this matter; rather, DHEC, the agency, is a co-appellant along with the League, as is clearly stated in the parties' Notice of Appeal. It is undisputed that DHEC has a real, material, and substantial interest in upholding the Administrative Enforcement Order it issued to remedy permit violations that occurred in the critical area it oversees. Therefore, the appeal is not subject to dismissal for lack of a viable appellant.

IV. CONCLUSION

We conclude the ALJ correctly found Hill had violated the terms of his permit by building a bulkhead more than 1.5' from the escarpment and that the ALJ had subject matter jurisdiction to hear this case. Accordingly, the circuit court's order is

REVERSED.

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Tommy Logan, Appellant,

v.

Cherokee Landscaping and Grading Co. and The Gaffney Board of Public Works, Defendants,

of whom The Gaffney Board of Public Works is the Respondent.

Appeal From Cherokee County
J. Derham Cole, Circuit Court Judge

Opinion No. 4727
Submitted May 3, 2010 – Filed August 18, 2010

AFFIRMED

Cynthia B. Patterson, of Columbia, Emmette J. Saleeby, of Spartanburg and Donald R. Moorhead, of Greenville, for Appellant.

William B. Darwin, Jr., of Spartanburg, for Respondent.

SHORT, J.: Tommy Logan appeals from the trial court's order granting the Gaffney Board of Public Works' (the Board) motion to dismiss Logan's negligence action based on the statute of limitations. Logan argues the trial court erred by granting the Board's motion because discovery was not complete, and the Board's denial of any involvement caused Logan to sue only Cherokee Landscaping. We affirm.[1]

FACTS

On January 23, 2003, Logan was removing snow from Spring Street in Gaffney, South Carolina, when the blade of his front-end loader struck a manhole cover, and as a result, he was thrown into the windshield of his vehicle and seriously injured.[2] Prior to the accident, in October 2002, Cherokee Landscaping and Grading Company (Cherokee) resurfaced Spring Street by paving it with asphalt. On October 29, 2004, Logan sent a Freedom of Information Act (FOIA) request to the Board for "any and all information regarding road work done on Spring Street and/or Turner Street in Gaffney, South Carolina." In response, on November 30, 2004, the Board's attorney stated the Board "reviewed [its] files and [had] no design documents, work orders, specific or general, dates of paving, dates of sewer work or any other information pertaining to any work performed on Spring and/or Turner Streets."

On December 9, 2005, Logan filed a negligence action against Cherokee, alleging it had a duty to the public and Logan to pave or resurface the street in a reasonable manner to minimize the risk of injury to the users of the street. In its answer, dated March 20, 2006, Cherokee stated as a defense that the Board was "responsible for placing the manhole cover and/or ring on the roadway in question, such that any defect and/or problem with the manhole cover and/or ring would be the responsibility of the [Board]." Therefore, Cherokee asserted the Board was liable for any injuries suffered

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

[2] During the accident, Logan suffered ruptured disks at C3-4 and C4-5, which resulted in a two-level fusion, spinal cord damage, and partial paralysis of his right hand, arm, and leg.

by Logan. Cherokee also alleged that Logan failed to bring the action against it within the applicable statute of limitations, and thus, the action should be dismissed.[3]

On August 22, 2007, Logan filed an amended complaint, adding the Board as a party and alleging the Board should have known the manhole's condition created an unreasonable risk of personal injury to the users of Spring Street. The Board moved for dismissal under Rule 12(b)(6), SCRCP, on September 21, 2007, asserting Logan failed to bring the action against the Board within the two-year statute of limitations set forth in the South Carolina Tort Claims Act. In response, Logan asserted the statute of limitations had not run because the supervisors and employees of the Board "intentionally or negligently provided incomplete and/or inaccurate information to [Logan] in an attempt to prevent [Logan] from filing a lawsuit against the Board"; therefore, Logan argued the Board should be equitably estopped from asserting the defense of the statute of limitations. The court heard Cherokee's motion for summary judgment and the Board's motion to dismiss on December 17, 2007. During the hearing, the court denied Cherokee's motion for summary judgment. Thereafter, on March 6, 2008, the court granted the Board's motion to dismiss, finding Logan had failed to (1) commence suit against the Board within the two-year statute of limitations, and (2) offer any evidence that would estop the Board from asserting the two-year deadline for bringing the action. This appeal followed.

STANDARD OF REVIEW

When reviewing a dismissal of a claim for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court. Sloan Constr. Co. v. Southco Grassing, Inc., 377 S.C. 108, 112, 659 S.E.2d 158, 161 (2008). "The question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief." Id. at 112-

[3] At some point, Cherokee filed a motion for summary judgment; however, the motion was not included in the record on appeal.

113, 659 S.E.2d at 161. The court will not sustain the motion if the "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995).[4]

LAW/ANALYSIS

Logan argues the trial court erred in granting the Board's motion to dismiss because the Board's denial of any involvement caused Logan to sue only Cherokee Landscaping. Specifically, Logan asserts the Board should have been estopped from asserting the statute of limitations defense because it misled Logan by denying any involvement with the manhole cover that resulted in Logan's injury. We disagree.

This action is governed by the South Carolina Tort Claims Act's two-year statute of limitations period for tort claims brought against a

[4] On appeal, Logan argues the Rule 12(b)(6) motion was converted into a motion for summary judgment because the trial court considered matters outside of the amended complaint by undertaking to determine when the statute of limitations began. Therefore, Logan asserts this case must be reviewed as a grant of a motion for summary judgment, and not as grant of a motion to dismiss. Summary judgment should only be granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Hedgepath v. Am. Tel. & Tel. Co., 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." Id. at 355, 559 S.E.2d at 335. "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Id. at 355, 559 S.E.2d at 336. We agree with Logan that the trial court considered more than just the face of the complaint in determining when the statute of limitations began; however, under either standard of review, we still reach the same result.

governmental entity.[5] S.C. Code Ann. § 15-78-100(a) (2005). The courts of South Carolina apply the "discovery rule" to determine when a cause of action accrues under the Tort Claims Act. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run from the date the injury resulting from the wrongful conduct either is discovered or may have been discovered by the exercise of reasonable diligence. Id. "The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." Id. If there is conflicting evidence as to whether a claimant knew or should have known he or she had a cause of action, the question is one for the jury. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 338-39, 354 S.E.2d 672, 681-82 (2000). "One purpose of a statute of limitations is 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting McKinney v. CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." Moates, 322 S.C. at 176, 470 S.E.2d at 404.

However, "[i]n South Carolina, a defendant may be estopped from claiming the statute of limitations as a defense if some conduct or representation by the defendant has induced the plaintiff to delay in filing suit." Hedgepath v. Am. Tel. & Tel. Co., 348 S.C. 340, 360, 559 S.E.2d 327, 338 (Ct. App. 2001). "An inducement for delay may consist of either an express representation that the claim will be settled without litigation or other conduct that suggests a lawsuit is not necessary." Id. An intentional misrepresentation is not required for the application of equitable estoppel. Id. at 361, 559 S.E.2d at 339. "It is sufficient if the plaintiff reasonably relied upon the words or conduct of the defendant in allowing the limitations period

[5] The South Carolina Tort Claims Act further provides the limitations period is extended an additional year, for a total of three years, when the claimant files a verified claim within one year of the loss or injury. S.C. Code Ann. §§ 15-78-80, -100(a) (2005). Logan did not present any evidence that he filed a verified claim; therefore, the applicable statute of limitations is two years.

to expire." Id. Whether the defendant's actions lulled the plaintiff into a false sense of security is usually a question of fact; however, summary judgment is proper if there is no evidence of conduct on the defendant's part warranting estoppel. Id. at 361, 559 S.E.2d at 339.

The "elements of equitable estoppel as to the party estopped are: (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts." Zabinski v. Bright Acres Assocs., 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001). Estoppel may apply against a government agency, but "the party asserting estoppel against the government must prove: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) justifiable reliance upon the government's conduct; and (3) a prejudicial change in position." Am. Legion Post 15 v. Horry County, 381 S.C. 576, 584, 674 S.E.2d 181, 185 (Ct. App. 2009).

Logan asserts the Board should have been estopped from asserting the statute of limitations as a defense because it misled him by denying it had any involvement with the manhole cover that resulted in his injury. Logan claims he filed suit against only Cherokee based on the Board's representations that (1) the paving company was responsible for placing the risers on the manholes and paving to the height of the manholes; and (2) the Board would have created a work order if any work had been done to the Spring Street manholes and no work order could be found. Therefore, he maintains the Board's actions created a genuine issue of material fact, and summary judgment was inappropriate.

Some time prior to the hearing on the Board's motion to dismiss, Logan took the depositions of six of the Board's employees, and the owner of Cherokee Landscaping. Kimberly Fortner, the Assistant Manager and Operations Engineer at the Board, stated in her deposition that she could not find any record of a repair, installation, modification, change, or any kind of work done on a manhole cover, manhole cover ring, or the sewer system on Spring Street at any time after October 2002. She also said anything to do

with manholes, manhole covers, and the sewer system falls solely within the province and responsibility of the Board.

In his deposition, Donnie Hardin, the Board's general manager, stated the Board is the only entity in the city responsible for the sewer system. Hardin asserted they had searched their records and did not find any records pertaining to sewer work on Spring Street. He added it was the Board's standard procedure to make a record of any sewer work completed; however, he could not positively say the procedure had been followed in this instance. He stated the Board is not responsible for paving streets. Hardin explained the city notifies the Board when it paves a road, and before the paving begins, the Board verifies the manholes correspond with what is intended to be the final level of the road.

Tommy Couch, who was the water and sewer superintendant in 2002, testified during his deposition that he would know if any maintenance had been done on the manholes in the area, and he was not aware of any work having being done on Spring Street. However, Couch stated the Board did not actually install the manhole risers. He said the Board delivered the risers to the paving company, and the pavers installed the risers as they paved the street.

Bob Green, an employee in the sewer and water division, also stated in his deposition that the Board's procedure in 2002 was to deliver the manhole risers to the paving company to install. However, in his affidavit, Green stated he had received a call from Couch that a resident had complained about a manhole on Spring Street after the street had been paved. When Green inspected the manhole, he discovered it was "dished-down" and needed to be fixed by chipping out around the manhole, installing a new riser ring, and patching around the manhole. Green did not have the appropriate equipment with him to make the repairs, so he told Couch what repairs were needed, and Couch told him he sent someone to make the repairs.

Matt Sellers, who was hired in 2005 as the water and sewer superintendant, said in his deposition it was the Board's procedure to deliver the manhole risers to the subcontractor for it to install.

Wade Hampton, the Board's coordinator of construction, stated during his deposition that there was a one-inch deep hole in the road when Cherokee was finished paving the street. He said he heard Couch call Green to fix the hole, but he did not know if it was repaired. However, he also made the following statement:

> We went out there and cut a little circle around chipping the asphalt out around the manhole and set a two-inch riser on it, and we didn't go back to asphalt around it like we're supposed to . . . because it wasn't the right riser, but it was sticking up about an inch high, which it's not supposed to be.

James Brown, the owner of Cherokee Landscaping, stated during his deposition that he contacts the Board when they pave a road, and the Board delivers the rings for the manholes. He said Green came to Spring Street while they were paving, but he did not have a riser to fit the manhole. Brown stated when Cherokee does not have a riser for a manhole, it dishes the road around the manhole, and someone returns later to cut the pavement and install the correct ring. He said it is not his responsibility to return to cut around the manhole if the Board does not have a ring to fit the manhole while they are paving. In this case, Brown said the road dipped around the manhole when he left the job.

The exercise of reasonable diligence means an injured party must act with some promptness where the facts and circumstances of the injury would put a person of common knowledge and experience on notice that a claim against another party might exist. Hedgepath, 348 S.C. at 355, 559 S.E.2d at 336. Logan's complaint stated his injury occurred on January 23, 2003, when his front-end loader struck a manhole. In his memorandum in opposition to the Board's motion to dismiss, Logan's attorney stated he spoke with Hardin,

the Board's general manager, on October 14, 2004. During their conversation, Hardin told Logan's counsel that "the Board was responsible for all sewer work done in Gaffney, but the Board did not pave roads, although they may have raised the manhole cover prior to paving but only to the height that the paving contractor specified." Therefore, the statute of limitations most likely began to run on January 23, 2003, the date of Logan's injury, and at the latest, the statute of limitations began to run on October 14, 2004, when Logan discovered the Board was responsible for all sewer work and may have worked on the manhole that caused his injuries. Furthermore, in its answer, dated March 20, 2006, Cherokee asserted the Board was liable for any injuries suffered by Logan. Considering all of this, Logan did not file his amended complaint against the Board until August 22, 2007, a little more than four and a half years after the accident.

We sympathize with Logan because he has suffered a terrible injury; however, it appears the Board did not do anything to intentionally mislead Logan into believing it did not have any involvement with the manhole cover that resulted in Logan's injury. Hardin told Logan's attorney the Board was responsible for all manholes in Gaffney; Logan did not present any evidence the Board's FOIA request response was false or misleading; and although there was conflicting testimony, none of the depositions taken by Logan contradict Hardin's statements to his attorney or the Board's FOIA response. Therefore, we find Logan is not entitled to the application of equitable estoppel in this case, and because Logan did not timely bring this action against the Board, we affirm the trial court's order dismissing Logan's claims against the Board.

Logan also argues the trial court erred in granting the Board's motion to dismiss because discovery was not complete. We find this issue is not preserved for our review.

At the December 2007 hearing, Logan made the incomplete discovery argument to the trial court in response to Cherokee's motion for summary judgment. Logan's attorney argued Cherokee's motion was premature because he had just discovered additional information and he needed "to talk

to some additional workers and we need to get some response to our discovery from the [B]oard." However, when the court asked Logan's attorney about the witness he thought was relevant, he replied, "we don't know yet if we have a witness because we haven't got any response from the [B]oard to our discovery." The court then denied Cherokee's motion for summary judgment after asking Logan's attorney if he was "making a reasonable representation that there [was] some other witness out there that [he thought was] relevant," and Logan's attorney replied in the affirmative.

At the same hearing, after the judge had ruled on Cherokee's motion, the Board argued its motion to dismiss. In Logan's memorandum in opposition to the Board's motion to dismiss and during the hearing, Logan argued the Board should be estopped from asserting the statute of limitations. Logan did not again mention that discovery was incomplete. After the hearing, the court granted the Board's motion to dismiss, finding Logan had failed to commence suit against the Board within the two-year statute of limitations, and failed to offer any evidence that would estop the Board from asserting the two-year deadline for bringing the action. Logan did not file a Rule 59(e), SCRCP, motion to reconsider. Therefore, because Logan did not argue the Board's motion to dismiss should be denied because discovery was incomplete, we find this issue is not preserved for our review. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (holding a party may not argue one set of grounds below and alternate grounds on appeal).

CONCLUSION

Accordingly, the trial court's order is

AFFIRMED.

HUFF and WILLIAMS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Reginald R. Latimore, Appellant.

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

Opinion No. 4728
Heard June 8, 2010 – Filed August 18, 2010

AFFIRMED

Appellate Defender LaNelle C. DuRant, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General William M. Blitch, Jr., Office of the Attorney General, of Columbia; and

Solicitor Robert Mills Ariail, of Greenville, for Respondent.

WILLIAMS, J.: On appeal, Reginald Latimore (Latimore) claims the circuit court committed reversible error at his trial for failing to register as a sex offender when the circuit court (1) failed to grant a mistrial after it instructed the jury that Latimore was convicted of committing a lewd act on a child, despite a pre-trial stipulation not to disclose Latimore's specific conviction to the jury; (2) failed to grant a directed verdict, despite the State's failure to prove Latimore received notice of a new reporting requirement for sex offender registration; and (3) excluded a probation agent's testimony. We affirm.

FACTS

In 2004, Latimore pled guilty to committing a lewd act upon a child. Upon his release from the Department of Corrections in 2005, he was required under the Sex Offender Registry Act[1] to register as a sex offender with the Greenville County's Sheriff's Office. As a result, Latimore registered on August 3, 2005. Latimore acknowledged that he was required to register each year for life within thirty days after the anniversary date of his last registration. Moreover, Latimore signed a notice form at that time, which stated Latimore "MUST send written notice of a change in address to the county Sheriff's Office within ten days of establishing [his] new residence . . . ." (emphasis in original). Latimore signed an annual registration requirement form, which required his annual registration for 2006 to be completed no later than September 3, 2006.

In July 2006, the Legislature amended section 23-3-460 of the South Carolina Code[2] to require offenders to register twice a year--in their birth

[1] S.C. Code sections 23-3-400 to -550 (2007 & Supp. 2009).

[2] Section 23-3-460(A) (Supp. 2009) states, in pertinent part,

month as well as six months after their birth month. Pursuant to the amended statute, Latimore was not required to register until January 1, 2007. When Latimore failed to register with the Sheriff's Office in September 2006, a warrant was issued for his arrest. Latimore was subsequently stopped for a traffic violation in January 2007, and the police arrested him for failing to register as a sex offender.

Prior to the commencement of Latimore's trial for failing to register as a sex offender, the State stipulated not to mention Latimore's conviction for commission of a lewd act upon a child. Despite this stipulation, the circuit court mentioned Latimore's conviction when it read the indictment to the jury and during the jury charge.

During trial, Latimore contended he called Beverly Pettit, the Greenville County sex offender registry coordinator, in February 2006 to obtain approval to move into a new home. Latimore testified Ms. Pettit informed him she had all the required information from him, and his phone call to her satisfied his registration requirements for 2006. Ms. Pettit stated she did not remember Latimore calling her, but she acknowledged his file had been pulled in February 2006 and a new address was inserted in place of the address on file from Latimore's initial registration in August 2005. Latimore stated he was under the belief his phone call to Ms. Pettit in February 2006 prior to his required registration date on September 3, 2006, was sufficient for registration purposes.

After Latimore testified, he sought to introduce the testimony of probation agent, R.J. Gilbert. The circuit court found Gilbert's testimony was

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> A person required to register pursuant to this article is required to register bi-annually for life. For purposes of this article, "bi-annually" means each year during the month of his birthday and again during the sixth month following his birth month. The person required to register shall register and must re-register at the sheriff's department in each county where he resides . . . .

irrelevant and would not be considered by the jury, but the court permitted Latimore to proffer Gilbert's testimony outside the jury's presence. Gilbert stated he did not typically tell offenders when they should report because it was not his duty. Furthermore, while he was not Latimore's probation agent, nothing in Latimore's file indicated he was ever informed of the new law and the change in reporting requirements. After the court heard Gilbert's proffered testimony and denied Latimore's directed verdict motion, it charged the jury on the law. In its jury charge, the circuit court stated:

> Now, ladies and gentlemen, as you know, this defendant in this case is charged with . . . failing to register for the sex offender registry. This is a statutory offense, and Section 23-3-430 of our Code of Laws provides, among other things, that any person residing in South Carolina who has been convicted of or pled guilty to the offense of, among other things, committing a lewd act on a child must register on the sex offender registry.

After the jury exited for jury deliberations, Latimore objected to the circuit court specifying Latimore's conviction in its jury charge in light of the parties' stipulation not to mention it and requested a mistrial. The circuit court denied his motion and sentenced Latimore to ninety days of house arrest. This appeal followed.

ISSUES ON APPEAL

On appeal, Latimore presents three claims of error.

(1) The circuit court erred in denying his motion for a mistrial after it instructed the jury that Latimore was convicted of committing a lewd act on a child, despite a pre-trial stipulation not to disclose Latimore's conviction to the jury.

(2) The circuit court erred in denying his motion for a directed verdict, despite the State's failure to prove Latimore received notice of a new reporting requirement for sex offender registration.

(3) The circuit court erred in excluding the probation agent's testimony.

LAW/ANALYSIS

I. Mistrial Motion

Latimore contends the circuit court erred in denying his motion for a mistrial. We disagree.

The decision to grant or deny a mistrial is within the sound discretion of the circuit court. State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009). The circuit court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law. Id. The power of the circuit court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the circuit court. State v. Stanley, 365 S.C. 24, 34, 615 S.E.2d 455, 460 (Ct. App. 2005). A mistrial should only be granted when absolutely necessary, and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial. Id.

Prior to the commencement of trial, the State stipulated not to mention Latimore's conviction for commission of a lewd act upon a child during trial. When the jury entered the courtroom at the commencement of the trial, the circuit court read the indictment, which stated, "[O]n or about January 1st, 2007, [Latimore] . . . failed to register for the sexual offender registry after notice of this requirement and after having been convicted of committing a lewd act on a child." Latimore did not object. Later, during the circuit court's charge to the jury, it again stated, "[A]ny person residing in South Carolina who has been convicted of or pled guilty to the offense of, among

other things, committing a lewd act upon a child must register on the sex offender registry." After the jury exited for deliberations, Latimore made a mistrial motion, arguing the circuit court's statement about the lewd act tainted the jury's impression of Latimore and was therefore prejudicial to him. The circuit court denied Latimore's motion.

We do not believe the circuit court's denial of Latimore's mistrial motion was in error. While it was unnecessary to mention Latimore's conviction for commission of a lewd act upon a child during the reading of the indictment or the jury charge in light of the parties' stipulation, we conclude Latimore was not prejudiced. See State v. Carrigan, 284 S.C. 610, 614, 328 S.E.2d 119, 121 (Ct. App. 1985) (finding the defendant was not prejudiced at trial for driving under suspension and driving in violation of the Habitual Traffic Offender Act, where circuit court unnecessarily read section of the Act defining terms "habitual offender" and "conviction" after defendant had stipulated to his prior adjudication as a habitual offender). Moreover, his prior conviction as a sexual offender had no bearing on the jury's determination of whether he violated his reporting requirements because his conviction was not a fact in dispute. Thus, any error in commenting on this prior conviction was not prejudicial to Latimore. See Stanley, 365 S.C. at 34, 615 S.E.2d at 460 (holding a defendant must show both error and resulting prejudice in order to be entitled to a mistrial).

II. Directed Verdict Motion

Latimore claims the circuit court improperly denied his directed verdict motion. We disagree.

If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the court must find the case was properly submitted to the jury. State v. Weston, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006). When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. Id. at 292, 625 S.E.2d at 648. The circuit court should grant a directed verdict when the evidence merely raises

a suspicion that the accused is guilty. State v. Hernandez, 382 S.C. 620, 625-26, 677 S.E.2d 603, 605-06 (2009).

Latimore was charged with violating section 23-3-470[3] of the South Carolina Code when he failed to register with the Greenville County Sheriff's Office by January 1, 2007. Latimore first contends he was not notified of the new bi-annual registration requirements when the statute was amended in July 2006, which violated his due process rights. We disagree.

Latimore relies on Lambert v. California, 355 U.S. 225 (1957), for the proposition that the State must prove he received actual notice of his duty to register in order to satisfy due process. In Lambert, a provision in a municipal ordinance of the City of Los Angeles, California required all persons convicted of a felony, whether that conviction occurred in California or another state and was punishable as a felony in California, who remained in Los Angeles more than five days to register as a felon with the Chief of Police. Id. at 226. The police discovered when Lambert was arrested that she had been residing in Los Angeles for more than seven years, and while she had been convicted of a felony, she failed to register with the Chief of Police. Id. After being convicted for failing to register, Lambert appealed to the California Superior Court, which affirmed her conviction. She then appealed to the United States Supreme Court, arguing that the municipal ordinance, as applied, denied her due process of law. Id. at 227.

On appeal, the United States Supreme Court held that Lambert's conviction violated due process because her conduct in failing to register was "wholly passive" and "[a]t most the ordinance is but a law enforcement technique designed for the convenience of law enforcement agencies . . . ." Id. at 228-29. However, the Supreme Court emphasized that in Lambert, "circumstances which might move one to inquire as to the necessity of registration [were] completely lacking." Id. at 229.

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[3] S.C. Code section 23-3-470 states, "It is the duty of the offender to contact the sheriff in order to register[] [or] provide notification of change of address . . . . If an offender fails to register[] . . . he must be punished as provided in subsection (B)." § 23-3-470(A) (2007).

We find the registration ordinance in Lambert to be readily distinguishable from the sex offender registration statute at issue in the case at hand. In Lambert, the registration requirement was a general municipal ordinance, whereas our Sex Offender Registry Act is a statewide registration program. Unlike the registration requirement in Lambert, the sex offender registration requirement is directed at a narrow class of defendants, convicted sex offenders, rather than all felons. See State v. Bryant, 614 S.E.2d 479, 487 (N.C. 2005) (distinguishing the Supreme Court's holding in Lambert and finding North Carolina's and all other states' sex offender registration statutes are statewide registration programs specifically directed at sex offenders with the ultimate purpose of protecting the public). And, perhaps most importantly, instead of serving as a general law enforcement device, as the United States Supreme Court found the City of Los Angeles' felon registration ordinance, our statute was specifically enacted as a public safety measure based on the Legislature's determination that convicted sex offenders pose an unacceptable risk to the general public once released from incarceration. See S.C. Code § 23-3-400 (2007) (stating because "[s]tatistics show that sex offenders often pose a high risk of re-offending[,]" the Sex Offender Registry Act serves to "promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens. . . ."); Williams v. State, 378 S.C. 511, 515, 662 S.E.2d 615, 617-18 (Ct. App. 2008) (internal citation and quotation omitted) ("[T]he purpose of requiring registration is to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes.").

Moreover, the statute does not require a knowing or intentional violation of the registration requirement to be subject to punishment. Per the statute's plain language, a person is deemed to have actual knowledge of the duty to register once he or she is arrested for failing to register.[4] See S.C. Code § 23-3-480(A) (2007) ("An arrest on charges of failure to register, service of an information or complaint for failure to register, or arraignment on charges of failure to register constitutes actual notice of the duty to

[4] This identical statutory language was in effect at the time Latimore was arrested in January 2007. See § 23-3-480(A) (Supp. 2006).

register."). As a result, once Latimore was arrested in January 2007, he was deemed to be on notice of his duty to register, regardless of whether he intended to comply with the registration requirements. See Bryant, 614 S.E.2d at 484 (finding the North Carolina legislature's deletion of the original *mens rea* requirement from its sex offender registration statute was a clear expression of its intent to make failure to register as a sex offender a strict liability offense under North Carolina law so that no showing of knowledge or intent was necessary to establish a violation of its registration requirements).

Additionally, we note the Legislature clearly contemplated the necessity of notifying sexual offenders of the requirement to *initially* register in section 23-3-440 when it stated, "The Department of Corrections, the Department of Juvenile Justice, the Juvenile Parole Board, and the Department of Probation, Parole and Pardon Services *shall provide verbal and written notification* to the offender that he must register with the sheriff of the county in which he intends to reside within one business day of his release." S.C. Code § 23-3-440(1) (Supp. 2005 & 2007) (emphasis added). Had the Legislature intended for the State to notify Latimore of the need to register bi-annually, it could have included such language in section 23-3-460. See generally Theisen v. Theisen, 382 S.C. 213, 219, 676 S.E.2d 133, 137 (2009) (finding if the Legislature intended a statute of limitations period to apply only to wills which were informally probated in this state, it could have included such language in the statute); see also State v. Hackett, 363 S.C. 177, 181, 609 S.E.2d 553, 555 (Ct. App. 2005) ("In construing a statute, its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.") (internal citation and quotation omitted). Because no such language was included in section 23-3-460, we find it would be improper to construe the statute otherwise.

Latimore also claims his phone call to Ms. Pettit of the Greenville County sex offender registry in February 2006 in an effort to update his address should be deemed sufficient to comply with the statute. We disagree.

We find the plain language of the statute controls the resolution of this issue. Section 23-3-460 requires an offender to initially register and re-register "each year during the month of his birthday and again during the sixth month following his birth month . . . at the sheriff's department in each county where he resides." § 23-3-460(A) (Supp. 2009). Latimore's phone call was insufficient to satisfy the clear mandates of section 23-3-460(A), and even if we presume Latimore was not notified of the changes to the statutory scheme, ignorance of the law is no excuse. See Cheek v. United States, 498 U.S. 192, 199 (1991) ("The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system."); South Carolina Wildlife & Marine Res. Dept. v. Kunkle, 287 S.C. 177, 178, 336 S.E.2d 468, 469 (1985) ("[I]t is a well-settled maxim that ignorance of the law is no excuse.").

Accordingly, we find the State presented sufficient evidence to submit the issue of whether Latimore failed to comply with the registration requirements to the jury. See Hernandez, 382 S.C. at 625-26, 677 S.E.2d at 605-06 (holding the circuit court should grant a directed verdict only when the evidence merely raises a suspicion that the accused is guilty). Thus, we conclude the circuit court did not err in denying Latimore's motion for a directed verdict.

III. Exclusion of Probation Agent's Testimony

Finally, Latimore argues the circuit court erred when it excluded the testimony of a probation agent because this testimony would establish Latimore was never informed of the new registration requirements. We disagree.

The admission of evidence is within the discretion of the circuit court and will not be reversed absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002).

The circuit court refused to permit R.J. Gilbert, a probation agent for Greenville County, to testify at Latimore's trial. In doing so, the court found

Gilbert's testimony was irrelevant because the probation department is not required by law to inform offenders of changes in the sex offender registration requirements. The circuit court, however, permitted Latimore to proffer Gilbert's testimony, and during Gilbert's proffer, he stated he was not Latimore's probation agent, and it was not Gilbert's duty to inform offenders of any changes in the law. Gilbert said there was nothing in Latimore's file to indicate he had ever been informed of the changes in reporting requirements.

We agree with the circuit court's conclusion that Gilbert's testimony was irrelevant as to whether Latimore had notice of the new registration requirements. Gilbert was not Latimore's probation agent at the time his registration was in issue, nor was Gilbert responsible for ensuring offenders fulfilled their registration requirements. Even if the circuit court erred in excluding Gilbert's testimony, we fail to see how Gilbert's testimony would have satisfactorily corroborated Latimore's claim that he was unaware of proper registration procedures. See State v. Taylor, 333 S.C. 159, 168-69, 508 S.E.2d 870, 875 (1998) (finding exclusion of certain evidence was proper, and moreover, any error in refusing to admit proffered testimony was harmless when proffered testimony added little favorable evidence for defendant). As a result, Latimore was not prejudiced by the exclusion of Gilbert's testimony.

IV. Conclusion

Based on the foregoing, the circuit court's decision is

AFFIRMED.

HUFF and SHORT, JJ., concur.