The Supreme Court of South Carolina

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N O T I C E

IN THE MATTER OF ROBERT J. CANTRELL, PETITIONER

On August 29, 2005, Petitioner was definitely suspended from the practice of law for two years. In the Matter of Cantrell, 365 S.C. 600, 619 S.E.2d 434 (2005). He has now filed a petition to be reinstated.

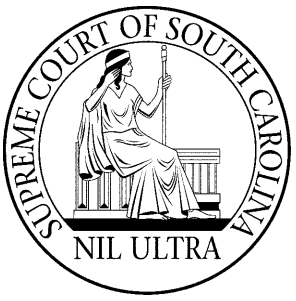
Pursuant to Rule 33(e)(2) of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR, notice is hereby given that members of the bar and the public may file a notice of their opposition to or concurrence with the Petition for Reinstatement. Comments should be mailed to:

Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

These comments should be received no later than November 16, 2007.

Columbia, South Carolina

September 17, 2007



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 35

September 24, 2007
Daniel E. Shearouse, Clerk
Columbia, South Carolina
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

SCDSS Child Support Enforcement/Cindy Ruff, Plaintiffs,

of whom SCDSS Child Support Enforcement is Petitioner,

v.

Ralph Mangle, Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Greenville County
Stephen S. Bartlett, Family Court Judge

Opinion No. 26382
Submitted September 18, 2007 – Filed September 24, 2007

DISMISSED AS IMPROVIDENTLY GRANTED

Stacey L. Kaufman, of South Carolina Department of Social Services Child Support Enforcement Division, of Greenville, for petitioner.

Mr. Ralph Mangle, of Simpsonville, *pro se*.

PER CURIAM: We granted this petition for a writ of certiorari to review the Court of Appeals' opinion in SCDSS Child Support Enforcement/Cindy Ruff v. Mangle, 370 S.C. 226, 633 S.E.2d 903 (Ct. App. 2006). After careful consideration, we now dismiss certiorari as improvidently granted.

DISMISSED.

TOAL, C.J., MOORE, WALLER, PLEICONES and BEATTY, concur.

The Supreme Court of South Carolina

In the Matter of Charles Wade Cleveland, Respondent.

ORDER

The Office of Disciplinary Counsel asks this Court to place respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR.

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

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

Columbia, South Carolina
September 10, 2007

The Supreme Court of South Carolina

In the Matter of Sean J. Prendergast, Respondent.

ORDER

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

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

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

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

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

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

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

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

Columbia, South Carolina

September 21, 2007

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina Electric & Gas Company, Respondent,

v.

Linda A. Hartough, A/K/A Linda Hartough Floyd, Appellant.

Appeal From Jasper County
Luke N. Brown, Special Referee

Opinion No. 4292
Submitted May 1, 2007 – Filed September 18, 2007

AFFIRMED

R. Thayer Rivers, Jr., of Ridgeland, for Appellant.

Gary C. Pennington and Jessica Clancy Crowson, both of Columbia, for Respondent.

BEATTY, J.: In this declaratory judgment action, Linda Hartough appeals the special referee's order finding South Carolina Electric and Gas (SCE&G) has a valid and enforceable option. She also appeals the special referee's award of attorney's fees to SCE&G. We affirm.[1]

FACTS

On March 8, 2001, SCE&G entered into a contract with Hartough and Firelight Farm LTD, an entity wholly owned by Hartough, for an option to purchase 213.6 acres of real property (Farm Tract) located in Jasper County. The contract also granted SCE&G an option to purchase whatever interest Hartough had in an adjacent fifty-eight acre tract (Norton Tract). Paragraph 12 of the contract provided:

> [T]he signing of this Option shall constitute consideration for an exclusive Option for Purchase to acquire any and all fee interest which Linda A. Hartough . . . owns in the adjacent fifty-eight (58) acres . . . with said consideration to be based on the value of $5,000 per acre and $2,500 per acre for high lands and wetlands, respectively.

The option provided that the final purchase price would be determined after an accurate field survey was performed to determine the amount of acreage in the lowlands and highlands and after determining Hartough's percentage of ownership in the Norton Tract. SCE&G paid Hartough $25,000 for the option to purchase the Farm and Norton Tracts. Section two of the contract provided the option would be valid until July 6, 2001. The parties later agreed to extend the deadline for the closing on the Farm Tract until September 14, 2001.

[1] Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

When the parties signed the option contract in March of 2001, Hartough did not possess any interest in the Norton Tract. It was not until April 12, 2001, when Hartough paid Wanda Johnson $50,000 that she acquired any interest. Johnson was a descendent of John Norton, the original owner of the Norton Tract. At the time of the purchase, the extent of Johnson's interest in the Norton Tract was uncertain and Hartough's purchase was known as an "heir's share." Hartough's interest in the Norton Tract could have been anywhere from as little as forty percent to as much as one hundred percent. A month later, Hartough instituted a quiet title and partition action against a plethora of people, mostly heirs of John Norton, who all claimed to have an interest in the property. Her stated reason for filing the action was to determine the extent of her interest in order to sell the property to SCE&G.

On September 14, 2001, SCE&G purchased the Farm Tract from Hartough for $1,275,000. During the signing of the contract for sale, Catherine Badgett, the attorney representing SCE&G at the closing, became concerned about the option to purchase the Norton Tract and wanted assurances that it would not be extinguished after the purchase of the Farm Tract was completed. Thayer Rivers, Hartough's attorney, assured Badgett the Norton Tract option still existed. Towards that end, Rivers drafted a letter dated September 19, 2001, confirming the existence of the option to purchase the Norton Tract. The letter provided: "This letter is to confirm our agreement that the Norton heir option to the power company is still in existence. As soon as this matter can be heard and the interest of my client determined, we will then set up a closing on that."

In March 2003, SCE&G became concerned regarding the lack of progress in the quiet title action, and it contacted Rivers by letter requesting he reaffirm the Norton Tract option. It appeared none of the parties to the quiet title action had any intention of moving the action forward. The Norton heirs did not want the action to progress because they believed if Hartough was found to have an interest in the property they would all be forced to sell. Hartough did not want to move the action forward because she believed the land in the Norton Tract was worth more per acre than the price originally provided for by the contract. Rivers responded to SCE&G by letter dated

March 21, 2003, stating that either the option to the Norton Tract had expired at the time of the expiration of the Farm Tract option, or the Norton Tract option contract had no expiration date, and thus, would not be valid under South Carolina law.

On May 15, 2003, SCE&G filed the present action seeking a declaratory judgment that the option to the Norton Tract was valid and enforceable. Additionally, SCE&G sought attorney's fees. Hartough answered, generally denying the option was valid.

Following a hearing on May 5, 2005, the special referee found the option was valid despite having no date of expiration. The special referee reasoned that under South Carolina law, an option must be exercised in a reasonable time if no time is specified. Therefore, no specified closing date was required. Further, the special referee concluded a reasonable time for the closing of the option would be after the quiet title action determined the extent of Hartough's interest. In addition, the special referee awarded SCE&G attorney's fees and costs. Hartough's motion for reconsideration was denied. This appeal followed.

STANDARD OF REVIEW

Declaratory judgment actions are neither legal nor equitable; thus, the standard of review depends on the nature of the underlying issues. Campbell v. Marion County Hosp. Dist., 354 S.C. 274, 279, 580 S.E.2d 163, 165 (Ct. App. 2003). Because this action involves the interpretation of a contract, it is an action at law. Barnacle Broad., Inc., v. Baker Broad., Inc., 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000). In an action at law tried without a jury, "our scope of review extends merely to the corrections of errors of law." Id. Therefore, this court will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

LAW/ANALYSIS

I. Validity of Option Contract

Hartough alleges the special referee erred in finding the option to the Norton Tract was valid and enforceable. Specifically, Hartough argues the option is unenforceable because the option agreement fails to set a definitive date by which the option must be exercised. We disagree.[2]

Generally, option contracts have three main characteristics:

> (1) they are unilateral contracts where the optionor, for a valuable consideration, grants the optionee a right to make a contract of purchase but does not bind the optionee to do so; (2) they are continuing offers to sell, irrevocable during the option period; and (3) the transition of an option into a contract of purchase and sale can only be effected by an unqualified and unconditional acceptance of the offer in accordance with the terms and within the time specified in the option contract.

Ingram v. Kasey's Assoc., 340 S.C. 98, 108, 531 S.E.2d 287, 292 (2000). If the option agreement "requires performance in a certain manner, time is of the essence and exact compliance with the terms of the option [is] required." Id. However, if the parties to an option agreement fail to "specify a time for performance, a reasonable time will be implied." King v. Oxford, 282 S.C. 307, 316, 318 S.E.2d 125, 130 (Ct. App. 1984) (citing Lindler v. Adcock, 250 S.C. 383, 158 S.E.2d 192 (1967)); see also 17a Am. Jur. 2nd Contracts § 79 (2004) ("[I]f an option provision fails to impose a time limitation, courts will

[2] We note the parties signed the option contract for the Norton Tract prior to Hartough acquiring an interest in the property. However, Hartough only argued before the special referee that the option failed for not stating an expiration date.

construe the provision to require that it be exercised within a reasonable time.").

Whether the length of time to exercise an option contract is "reasonable" depends on the particular facts and circumstances of a given case. See Wall v. Huguenin, 305 S.C. 100, 103, 406 S.E.2d 347, 349 (1991) (holding that a delay of thirteen years in exercising an option to repurchase family land was not unreasonable, considering the fact that the land was subject to two lawsuits and the option indicated it could be exercised when "convenient" for the optionee); Carroll v. Page, 264 S.C. 345, 351, 215 S.E.2d 203, 206 (1975) (noting that where the option for lessee to purchase the property if the lessor decided to sell it fixed no time for lessee's acceptance of the offer to sell, the delay of one year after lessee indicated he only wanted "a few days" to consider the option did not constitute the exercise of the option within a reasonable time); Lindler, 250 S.C. at 388, 158 S.E.2d at 195 (finding the delay of more than nine years after the option ripened was an unreasonable time to exercise the option and stating that "[w]hether there is unreasonable delay in accepting an option or an offer, and whether such delay is explained to the exclusion of negligence depends on all of the surrounding circumstances"); see also Ridglea Interests, Inc. v. Gen. Lumber Co., 343 S.W.2d 490, 493 (Tex. Civ. App. 1961) (noting that a reasonable time is such time as is necessary conveniently to do what the contract requires to be done as soon as circumstances will permit and that what is a reasonable time depends on the nature and character of the thing to be done, the circumstances of the particular case, and the difficulties surrounding its accomplishment).

In the instant case, the original contract does not specify a term for the expiration of the option. This does not render this option unenforceable, however, because we can imply that the option may be exercised within a reasonable time. As noted in the letter ratifying the option, a reasonable time to exercise the option would be after Hartough's interest in the Norton Tract was finally determined. Therefore, because the letter ratifying the contract clearly provides a method to determine the date by which the option was to be exercised, we find the special referee properly determined the option does

not fail for failure to specify an expiration term because it can be exercised in a "reasonable time."

Hartough also alleges the special referee erred by determining a reasonable time for the option to be exercised was following the litigation of the quiet title action. Relying on Lindler v. Adcock, 250 S.C. 383, 158 S.E.2d 192 (1967), she contends the quiet title action cannot be concluded within a reasonable time because it had already been stalled for five years and there was no evidence that it would go forward.

In Lindler, three physicians executed a written option on downtown property they owned as tenants in common. The 1949 option provided that survivors could buy the interest of any deceased party, or the interest of any party wishing to sell, at the original cost of the property. One physician sold his interest in the property to the remaining two a few years later. In 1955, one of the remaining two physicians died intestate. The final physician did not seek to exercise the option to purchase the deceased's interest in the property at the original cost until 1964. The Lindler court found the nine-and-a-half year delay in exercising the option after it ripened was unreasonable. Lindler, 250 S.C. at 388-89, 158 S.E.2d at 194-95.

Hartough's reliance on Lindler is misplaced. The physician in Lindler failed to exercise his option until nearly ten years after it had ripened. Hartough points out that she was interested in the Norton Tract for nearly ten years prior to obtaining an interest in the property and that the quiet title action had stalled for nearly five years prior to the hearing before the special referee. Thus, she argues, the long time period in which to exercise the option was unreasonable like the time period in Lindler. As noted in the option itself, SCE&G in the present case cannot exercise the Norton Tract option until Hartough's percentage ownership in the property has been determined, a survey performed, and a final price calculated based on her percentage of ownership. Thus, the option will not be ripe until the quiet title action is completed.

Further, we are cognizant of the fact that some quiet title actions can take years; however, in the present case, the action has failed to progress

because of Hartough's own inaction. During her deposition, her response when asked if she had any intention of moving the quiet title action forward was, "No, I don't have any intentions at all right now." In light of the fact Hartough has failed to take any steps which would resolve the underlying action, we agree with the special referee that under the facts and circumstances of this case, a "reasonable time" for the option to be exercised would be after the quiet title action has been adjudicated.

II. Attorney's Fees

Hartough argues the special referee erred in awarding attorney's fees. She contends SCE&G is barred from recovering attorney's fees because SCE&G did not specifically plead it was seeking attorney's fees pursuant to the option contract but merely stated it sought attorney's fees for bringing the action. We disagree.

Generally, a party may not recover attorney's fees absent a contract or statute. Blumberg v. Nealco, Inc., 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). When an award of attorney's fees is based upon a contract between the parties, the determination of the fees is left to the discretion of the trial court and will not be disturbed absent an abuse of discretion. Seabrook Island Prop. Owners' Ass'n v. Berger, 365 S.C. 234, 240, 616 S.E.2d 431, 434 (Ct. App. 2005) (citing Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989)). Further, a trial court may award costs in declaratory judgment actions as "may seem equitable and just." S.C. Code Ann. § 15-53-100 (2005).

The contract provided, "In the event litigation is commenced to enforce any rights under this Agreement or to pursue any other remedy available to either party, all reasonable legal expenses and other direct costs of litigation of the prevailing party shall be paid by the other party." Although SCE&G made a request in the complaint for "an award of attorney's fees and costs for the maintenance of this action which has been occasioned by [Hartough's] actions and conduct," SCE&G did not specifically plead the contract between the parties as the basis for its claim. The special referee awarded SCE&G

attorney's fees and costs for maintaining the action but reserved determining the amount of attorney's fees until this action has been fully resolved.[3]

We note the issue of whether a party must specifically plead the basis for seeking attorney's fees was not ruled upon by the special referee. Although Hartough argued in her Rule 59(e), SCRCP, motion that attorney's fees are not permitted pursuant to the Declaratory Judgment Act, she did not argue SCE&G failed to specifically plead a contractual basis for the award of fees. Therefore, the argument is not preserved for our review. Staubes, 339 S.C. at 412, 529 S.E.2d at 546 (holding that issues not raised to and ruled upon by the trial court are not preserved for appellate review).

Moreover, even if SCE&G did not specifically plead attorney's fees pursuant to the contract, we find the special referee properly awarded attorney's fees. SCE&G commenced the action in order to determine the validity of the option pursuant to the contract. The contract permitted any prevailing party to seek attorney's fees in an action to enforce any right under the contract. In addition, the pleadings requested attorney's fees. Therefore, Hartough was apprised SCE&G would be seeking a recovery of fees if successful. Accordingly, the special referee did not err in awarding fees.

CONCLUSION

For the foregoing reasons, we find the special referee did not err in concluding a valid and enforceable option existed. Moreover, the special referee properly awarded SCE&G attorney's fees and costs. Accordingly, the order of the special referee is

AFFIRMED.

[3] The record on this point is somewhat unclear because it does not contain a signed order continuing the issue of the amount of attorney's fees. However, both parties seem to agree the amount of attorney's fees is to be settled at a later date.

ANDERSON, and HUFF, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Penny Creek Associates, LLC, Appellant,

v.

Fenwick Tarragon Apartments, LLC and Trademark Properties, Inc., Respondents.

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

Opinion No. 4293
Submitted May 9, 2007 – Filed September 18, 2007

AFFIRMED

George Hamlin O'Kelley, III, of Mt. Pleasant, for Appellant.

Steven P. Groves, Sr., Neil C. Robinson; and Jeffrey S. Tibbals, all of Charleston, for Respondents.

BEATTY, J.: In this declaratory judgment action to determine the parties' rights under a declaration of covenants and restrictions, Penny Creek Associates appeals the master-in-equity's order granting summary judgment

to Fenwick Tarragon Apartments and Trademark Properties (collectively, "Fenwick Tarragon"). Penny Creek argues the master erred in determining Fenwick Tarragon's conversion of apartments into condominiums did not require Penny Creek's prior approval pursuant to the covenants and restrictions. We affirm.[1]

FACTS

The underlying facts are not disputed. Penny Creek owned and developed property for residential use in Charleston County known as Fenwick Hall Plantation. On December 11, 2001, Fenwick Tarragon purchased 15.63 acres within Fenwick Hall Plantation for the purpose of constructing an apartment complex, known as the Vintage at Fenwick Plantation. The property was subject to the declaration of covenants and restrictions, which provided that the property was to be used exclusively for: single-family residential purposes; townhomes; apartment homes; commercial activities; and such other activities as may be approved by Penny Creek. Another section of the covenants and restrictions provided as follows:

> Section 3.02 Subdivision, Re-Platting, and Lot Specifications
>
> (a) No Lot or Parcel shall be subdivided or its boundary lines changed, nor shall application for same be made to the City of Charleston, except with [Penny Creek's] prior, written consent, which such consent may be granted or withheld in the sole discretion of [Penny Creek], its successors and assigns. However, [Penny Creek] hereby expressly reserves for itself, its successors and assigns, the right to replat any of the Property if [Penny Creek] determines, in its sole discretion, that the reconfiguration, alteration, or

[1] Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

> other adjustment of Property lines and boundaries would improve or enhance the value and/or aesthetic appearance of Fenwick Hall Plantation or any part thereof. Provided, however, that upon the execution of a contract of sale between [Penny Creek] and a proposed purchaser of any Lot or Parcel, [Penny Creek] shall no longer have the right to replat or otherwise alter the property lines of such Lot or Parcel under contract, unless such proposed purchaser defaults under the terms of the contract.
>
> (b) Any Lot or Parcel may, with [Penny Creek's] written approval, be combined to create a larger Lot or Parcel, and in such instance, [Penny Creek] may alter, without limitation, the specifications and guidelines affecting the Lot or Parcel.

In 2005, Fenwick Tarragon decided to convert the apartments into condominiums, and it took steps towards upgrading, financing, and marketing the project. Penny Creek learned of the project and demanded that Fenwick Tarragon first obtain Penny Creek's written consent for the conversion pursuant to the covenants and restrictions.[2] Fenwick Tarragon believed that it did not need permission, and it proceeded with the project.

On July 14, 2005, Penny Creek brought a declaratory judgment action against Fenwick Tarragon requesting the circuit court declare that the conversion of the apartments into condominiums amounted to a subdivision of the property without Penny Creek's permission and was in violation of the

[2] Fenwick Tarragon alleges in its brief that it actually sought permission from Penny Creek, despite the belief that no permission was necessary, but Penny Creek demanded $1,300,000 before it would grant permission. Although an affidavit in the record indicates that Penny Creek requested "substantial sums" before consenting to the conversion, nothing in the record indicates the actual amount of the demand.

covenants and restrictions. Penny Creek also sought both a temporary and permanent injunction on any further violations of the covenants and restrictions. Fenwick Tarragon also filed a declaratory judgment action, seeking a declaration that it had not violated the covenants and restrictions, which was later dismissed by consent of the parties. On July 21, 2005, Penny Creek filed another motion for an injunction, specifically requesting that the court prohibit Fenwick Tarragon from continuing with the condominium project. Fenwick Tarragon filed its answer and counterclaim, denying that it had violated the covenants and restrictions, asserting that the conversion from apartments to condominiums did not amount to the subdivision or the alteration of the boundary lines, and requesting a declaration to that effect. Penny Creek's motion for a temporary injunction was denied.

Fenwick Tarragon filed a motion for summary judgment, which was denied by the circuit court. Fenwick Tarragon moved to expedite the hearing of the matter, and the parties consented to the case being transferred to the master. Both parties made new motions for summary judgment, and the case was heard before the master on June 22, 2006. After the hearing, the master granted summary judgment to Fenwick Tarragon, finding its actions did not violate the covenants and restrictions and did not amount to a subdivision of the property. This appeal followed.

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. However, summary judgment is not appropriate where there is no dispute as to the facts but the parties dispute the inferences to be drawn from those facts. Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." Osborne ex rel. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

LAW/ANALYSIS

Penny Creek argues the master erred in determining the conversion of the apartments into condominiums did not require Penny Creek's prior consent. Penny Creek asserts: the stipulated language of the covenants required prior consent in order to subdivide the property; the creation of a condominium is a subdivision of the property; and the master erred in finding otherwise. We disagree.

Restrictive covenants are contractual in nature, and thus, the language used in the restrictive covenant is to be construed according to its plain and ordinary meaning. Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). However, restrictions on the use of property are historically disfavored. Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 893 (1987). "Thus, to enforce a restrictive covenant, a party must show that the restriction applies to the property either by the covenant's express language or by a plain unmistakable implication." Rhodes v. Palmetto Pathway Homes, Inc., 303 S.C. 308, 311, 400 S.E.2d 484, 485 (1991). "Restrictions on the use of property will be strictly construed with all doubts resolved in favor of free use of the property, although the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants." Hardy, 369 S.C. at 166, 631 S.E.2d at 542.

The master in the present case found that the relevant language of the covenants and restrictions was clear and unambiguous. Reviewing the language of the covenants and restrictions, the master found that the restriction on subdividing the property without obtaining the prior written consent of Penny Creek applied only to the subdivision of the land and did not apply to the division of the landowners' ownership interest in the property. The master further found that the covenants and restrictions did not specifically bar the use of a parcel for condominiums and changing apartments to condominiums did not amount to a change in use. Noting that Penny Creek did not specify in the restrictions that property could not be used for condominiums, the master found Fenwick Terragon did not need to seek

permission prior to converting the apartments and ordered that the conversion could proceed.

We agree with the master. The plain language of section 3.02 of the covenants and restrictions indicates a clear intention to prevent any change of the size or boundary of the property or land itself when it required prior permission for the subdivision or alteration of the boundary lines of a lot or parcel. Within the same subsection that requires prior written permission before property lines can be altered, Penny Creek reserved for itself the right to replat property or change the boundary lines in a manner to improve the value and aesthetic appearance of Fenwick Hall Plantation. Section 3.02(a). Further, the next subsection also deals with altering boundary lines of property by providing that written permission is also required when attempting to combine lots or parcels to create one larger one. Section 3.02(b). This conclusion is further bolstered by the definitions of "lot" and "parcel" contained within the covenants and restrictions.[3] Thus, a clear reading of the controlling section of the covenants and restrictions indicates that Penny Creek wished to control only a subdivision of land which would alter boundary lines in such a manner as would change the size of a building lot or parcel. Nothing in the section indicates Penny Creek was retaining the power to prevent conversion of an approved apartment complex into a condominium complex.[4]

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[3] "Lot" is defined in the covenants and restrictions as "any lot, whether improved or unimproved, which may be independently owned and conveyed, which is shown on a recorded plat of the Property and designated for use as a building area or site for the construction of a single-family dwelling." "Parcel" is defined as "any property, whether improved or unimproved, which may be independently owned and conveyed, and which is shown on a recorded plat of the Property and designated for use as a building area site for the construction of apartment homes, townhomes, or commercial buildings."

[4] Although the question of whether the conversion amounts to a change in the approved "use" is not before this court, the master noted that section 3.01 of the covenants and restrictions provided that property could be used for, among other uses, apartments. The master found that: there had been no

However, Penny Creek argues that prior caselaw provides that the conversion of an apartment into a condominium amounts to a subdivision of property such that the restriction in the current case would prevent the conversion without prior written permission. Penny Creek first cites Harrington v. Blackston, 319 S.C. 1, 459 S.E.2d 309 (Ct. App. 1995), vacated by 322 S.C. 470, 473 S.E.2d 47 (1996), for the proposition that converting a property to a condominium-style of ownership subdivides the property horizontally and vertically. In Harrington, this court noted that an owner of a fee or leasehold interest in property could declare it to be subject to a condominium form of ownership by following the requirements set out in the Horizontal Property Regime Act. This court noted that "[u]pon the proper recordation of these documents, the declarant's interest in the property subject to the declaration is subdivided both horizontally and vertically." Harrington, 319 S.C. at 5, 459 S.E.2d at 311 (citing 15A Am.Jur.2d Condominiums § 14 (1976)).

Ignoring the fact that this opinion has been vacated,[5] we agree with the master that this case holds that conversion to a condominium divides an *ownership interest* in the property but does not subdivide the land itself. In other words, while an owner of an apartment complex grants sole ownership of individual units to purchasers after converting the building to a condominium, the property and common areas remain intact and the owner

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change in use in the present case; and the words "apartment" and "condominium" were used interchangeably in the Horizontal Property Regime Act. See Baker v. Town of Sullivan's Island, 279 S.C. 581, 584, 310 S.E.2d 433, 435-36 (Ct. App. 1983) (holding that town erred in denying approval of conversion of apartment building to condominium pursuant to a zoning ordinance because "the conversion from an apartment building to condominiums constitute[ed] a change of ownership, rather than a change in use"); S.C. Code Ann. § 27-31-20(c) (2007) (referring to condominiums as apartments).

[5] Penny Creek seems to argue that the Harrington opinion is good law because it was vacated due to a settlement between the parties and not reversed by the supreme court.

merely grants a share of his ownership interest in these areas to purchasers. Thus, the owners of individual units share ownership of the property/common areas as tenants in common. The property itself is not subdivided or replatted, nor does the "footprint" of the property change. Accordingly, we find Harrington is completely consistent with prior caselaw that converting apartments into condominiums divides the ownership interest in the underlying property and does not amount to a subdivision of the underlying parcel or lot. See Baker, 279 S.C. at 584, 310 S.E.2d at 435 (finding "untenable" the argument that converting an apartment complex into a condominium would create twenty separate lots and noting that the "Horizontal Property Act provides that the ownership of the land upon which is built a condominium is held as co-tenants by the owners, but not subject to partition").

Penny Creek next argues that this court has previously found that conversion to a condominium amounted to a subdivision of property in Houck v. Rivers, 316 S.C. 414, 450 S.E.2d 106 (Ct. App. 1994). In Houck, three separate buildings on one property -- a large house, a kitchen house, and a carriage house -- were converted into individual condominiums. In describing the conversion, this court stated: "In order to subdivide the property, the owners designated it a condominium regime, although each unit is entirely separate." Houck, 316 S.C. at 415, 450 S.E.2d at 108. However, the issue before the Houck court was whether an owner of one of the units was violating the covenants and restrictions by operating a bed and breakfast out of her home. Id. at 417, 450 S.E.2d at 109. It is clear to this court that the quoted language, while appearing to support Penny Creek's position, is only a recitation of the facts of the case and has no precedential value whatsoever.

Finally, Penny Creek cites to Hoffman v. Cohen, 262 S.C. 71, 202 S.E.2d 363 (1974), to support its argument that a condominium conversion is a subdivision of property. In Hoffman, a landowner proposed to build a sixty-two unit high-rise condominium building on his property within a residential subdivision at the beach. The subdivision's covenants and restrictions provided that: residences could not extend beyond the boundary lines; the property could be used for residential uses only; and the lot could

not be subdivided, or its boundary lines changed, without prior written consent of the grantor. Id. at 74, 202 S.E.2d at 365. The circuit court found that building a condominium complex would be a permissible use within the subdivision. The Hoffman court reversed, finding the covenants ambiguous and construing the overall scheme of the neighborhood as permitting only single-family residences. Id. at 77-78, 202 S.E.2d at 366. The court noted that it was not deciding whether an apartment building would be permitted under the restrictions, and it further noted that a condominium complex would essentially be "a commercial-type operation, inconsistent, we think, with the whole tenor of restrictions." Id. at 76, 202 S.E.2d at 366.

We find Penny Creek's reliance upon Hoffman is misplaced. Although the covenants and restrictions in Hoffman were similar to the ones in the present case, the court did not rule on the question of subdividing property, the Hoffman restrictions did not specify that multi-family residences could be built, and the Hoffman court had to look outside the language of the ambiguous restrictions to determine that the overall scheme of the neighborhood was for single-family residences. The present case is distinguishable in that the parties stipulate the language of the restrictions is not ambiguous, the covenants and restrictions specify that a multi-family apartment complex may be built, and thus, the overall "tenor" of the restrictions does not bar a multi-family residence, be it an apartment complex or a condominium complex.[6]

In conclusion, we find the conversion of an apartment building to condominiums amounts to the division of the *ownership interest* in the underlying property/common areas; it does not amount to the subdivision of the underlying land, parcel, or lot. Reading the covenants and restrictions as a whole in the present case, we find the requirement for permission prior to subdividing a "lot or parcel" applied only to the land and did not apply to

[6] We find untenable Penny Creek's argument that the condominium complex would violate the "whole tenor of restrictions" and be out of character for the neighborhood in light of the fact that Penny Creek approved the original apartment building plans and later approved the building of a separate condominium complex within the same subdivision.

conversion of an apartment complex into condominiums. Our caselaw does not hold that condominium conversion amounts to subdividing the underlying property. Because the conversion did not amount to a subdivision under the covenants and restrictions or under our caselaw, we find Fenwick Tarragon did not need to seek permission from Penny Creek prior to conversion.

Accordingly, the master-in-equity's order granting summary judgment is

AFFIRMED.

ANDERSON and HUFF, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina Department of
Social Services, Respondent,

v.

Mother,
In the Interest of Minor Child:
Daughter,[1] DOB 06/14/01
Appellant.

Appeal From Sumter County
George M. McFaddin, Jr., Family Court Judge

Opinion No. 4294
Submitted September 1, 2007 – Filed September 18, 2007

AFFIRMED

David C. Holler, of Sumter, for Appellant.

Deborah Truett Nielsen, of Sumter, for Respondent.

[1] The names of the minor children and the respective defendants have been changed to protect the minors' identities.

WILLIAMS, J.: Mother appeals the family court's termination of her parental rights (TPR) to her daughter (Daughter). Mother suffers from mild mental retardation and argues TPR is inappropriate because the Department of Social Services (DSS) failed to offer specialized services due to Mother's condition. We disagree.

FACTS

On August 29, 2000, the family court issued an ex parte order, granting emergency protective custody of Mother's son (Son) to DSS. Prior to DSS obtaining custody of Son, Mother took Son to the hospital where a medical examination revealed multiple bruises, abrasions, and fractures to his right lower leg. Upon further investigation, it was discovered that both of Son's ankles were broken. Mother explained Son's injuries occurred because he allegedly fell from his stroller. After a finding of neglect against Mother, the family court awarded legal and physical custody of Son to Son's paternal grandmother and his father.

Following DSS taking custody of Son, Robert Noelker, Ph.D., a licensed clinical psychologist, evaluated Mother. DSS received a report from Dr. Noelker, which stated that Mother was functionally illiterate and borderline intellectually deficient with an IQ of 73. Dr. Noelker stated a variety of rehabilitative measures needed to be taken, and without substantial progress by Mother, TPR should be considered.

Mother subsequently gave birth to Daughter on June 14, 2001. By July 10, 2001, an anonymous reporter alerted DSS of Daughter's birth. DSS removed Daughter from Mother's custody partially due to Son's abuse and Mother's failure to explain Son's injuries. Following Daughter's removal, Mother identified Antoine Graham, Daughter's father, as Son's abuser.

On July 23, 2001, DSS made an ex parte emergency protective custody request, seeking emergency custody of Daughter until the probable cause hearing. The family court assented to Daughter remaining in the custody of DSS. Further, the family court held Mother could apply to the Sumter

County Family Court for the appointment of a lawyer if she desired a lawyer but could not afford one.

On July 26, 2001, the family court held a probable cause hearing. The court then issued an order on August 14, 2001, finding probable cause existed to place Daughter in the care of DSS pending the merits hearing. The family court ordered that Daughter should remain in the custody of DSS, that Mother must cooperate with DSS, and that Mother could have supervised visitation with Daughter.

On August 20, 2001, Douglas Ritz, Ph.D., a licensed clinical psychologist, re-evaluated Mother. Dr. Ritz determined Mother's intellectual skills were in the mentally deficient range. Dr. Ritz recommended an intervention program to teach Mother how to prevent further abusive situations for her children.

Prior to the merits hearing on August 27, 2001, the family court asked Mother if she had retained an attorney. Mother responded that she did not have an attorney, but she wanted to be represented by counsel. DSS objected to delaying the hearing because Mother had the opportunity to obtain counsel and DSS had an out of town witness. The family court reminded Mother she was advised at the probable cause hearing how to obtain counsel and denied her request for a continuance. Subsequently, the parties reached an agreement, which was approved by the family court, granting custody of Daughter to DSS and visitation to Mother.

The case was reviewed six months after the August 2001 order. At the February 2002 hearing, the family court approved an agreement that continued custody with DSS and allowed Mother to have extended visitation with Daughter.

At the second review hearing on August 15, 2002, the family court stated Mother's visits with Daughter were sporadic, and Mother's apartment was not suitable for Daughter. Further, Daughter's Guardian ad Litem recommended terminating Mother's parental rights. The family court

ordered DSS to initiate an action for TPR within ninety days and reduced Mother's visitation to once a month.

On April 10, 2003, the family court approved DSS's permanent plan for TPR and adoption. Since DSS had not filed for TPR within ninety days as ordered in August 2002, the case was set to be reviewed six months later in December 2003. In the December 2003 order, the family court required DSS to file for TPR by January 1, 2004. The court also noted that Mother missed two of her last six visits with Daughter.

On October 2, 2004, the family court terminated Father's parental rights to Daughter based on his failure to visit or support Daughter and his failure to attend parenting and anger management classes. The court declined to terminate Mother's parental rights, but it ordered DSS to provide specialized services consistent with Mother's disabilities and need for housing. At Father's TPR hearing, Mother was represented by counsel and a Guardian ad Litem.

On April 18, 2006, the family court held a final hearing and determined Mother's rights to Daughter should be terminated. At the hearing, Dr. Patrick Goldsmith testified regarding his psychological evaluation of Mother from March 2006. Based on his evaluation, Dr. Goldsmith believed Mother was mildly mentally retarded and stated that Mother "does not believe she has a problem sufficient enough to go to therapy."

The family court terminated Mother's parental rights based on (1) a finding of harm to Daughter under South Carolina Code section 20-7-490 (Supp. 2006); (2) neglect under South Carolina Code section 20-7-1572(1) (Supp. 2006); (3) failure to remedy conditions leading to Daughter's removal under section 20-7-1572(2); (4) Mother's diagnosable condition under section 20-7-1572(6); and (5) Daughter's custody with DSS for fifteen of the last twenty-two months under section 20-7-1572(8). This appeal follows.

STANDARD OF REVIEW

In a TPR case, the best interest of the child is paramount. Doe v. Baby Boy Roe, 353 S.C. 576, 579, 578 S.E.2d 733, 735 (Ct. App. 2003). Before terminating parental rights, the alleged grounds for termination must be proven by clear and convincing evidence. Richberg v. Dawson, 278 S.C. 356, 357, 296 S.E.2d 338, 339 (1982); SCDSS v. Parker, 336 S.C. 248, 254, 519 S.E.2d 351, 354 (Ct. App. 1999). On appeal, this Court may review the record and make its own determination of whether the termination grounds are supported by clear and convincing evidence. SCDSS v. Cummings, 345 S.C. 288, 293, 547 S.E.2d 506, 509 (Ct. App. 2001). Despite the broad scope of review, this Court should not wholly disregard the family court's findings because the family court is in a better position to evaluate the credibility of the witnesses and assign weight to their testimony. Dorchester County Dep't of Soc. Servs. v. Miller, 324 S.C. 445, 452, 477 S.E.2d 476, 480 (Ct. App. 1996).

LAW/ANALYSIS

I. Due Process

Mother argues DSS denied her due process and equal protection by seeking removal of Daughter when Mother is functionally illiterate, has borderline intellectual skills, and has not been provided a Guardian ad Litem or an attorney. We disagree.

Initially, we note this issue is abandoned because Mother makes a conclusory argument without citation of any authority to support her claim. See First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994); R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App. 2000).

Additionally, our Supreme Court has declined to address an alleged violation of due process when the family court terminates parental rights pursuant to section 20-7-1572. SCDSS v. Seegars, 367 S.C. 623, 633-34, 627

S.E.2d 718, 723-24 (2006); see also SCDSS v. Headden, 354 S.C. 602, 613, 582 S.E.2d 419, 425 (2003). We affirm the family court's termination of Mother's parental rights pursuant to South Carolina Code sections 20-7-1572(1), (2), (6), and (8) as well as a finding that termination was in the best interest of Daughter, and therefore, we need not address this argument.

Further, section 20-7-1570(A) of the South Carolina Code (Supp. 2006) requires appointment of counsel for a parent involved in a TPR case if the parent cannot afford representation. In the case at hand, the family court instructed Mother in 2001 to apply to the Sumter County Family Court for the appointment of counsel. Mother failed to do this as noted by a subsequent order in September 2001. Despite family court orders, DSS failed to file for TPR until January 2004. However, the family court noted Mother's disabilities and declined to terminate Mother's rights at the TPR hearing in October 2004. At both TPR hearings, Mother was represented by counsel and a Guardian ad Litem. Therefore, DSS did not violate her due process rights.

II. Specialized Services

Mother argues DSS failed to offer specialized services to Mother as ordered by the family court in 2004. We disagree.

Again, Mother fails to cite any authority to support this argument. Therefore, this issue is deemed abandoned. See McLean, 314 S.C. at 363, 444 S.E.2d at 514.

Even if Mother properly preserved this issue, we find DSS properly provided specialized services to Mother. At Father's TPR hearing in October 2004, the family court ordered DSS "to provide specialized services to [Mother] consistent with her disabilities and need for housing." DSS referred Mother to Sumter Housing Authority in October 2004, to vocational rehabilitation in October 2004, to the Department of Disabilities and Special Needs in 2004, and to Healthy Minds in September 2005. We hold that these referrals comply with the family court's order.

III. Expert Advice

Mother argues DSS's reasons for TPR are disingenuous because DSS experts advised treatment for Mother's diagnosable condition, which DSS purportedly did not follow. We disagree.

Mother fails to cite any authority to support this conclusory argument. Therefore, this issue is deemed abandoned. Id.

Even if Mother properly preserved this issue, we find DSS's actions were consistent with its experts' advice. Mother appears to argue that DSS's reasons for TPR are in fact the fault of DSS's failure to follow its experts' advice in compliance with the October 2004 family court order.

In April 2006, the family court terminated Mother's parental rights upon finding (1) Daughter or another child in the home suffered harm or neglect, making it unlikely that the home would be made safe within twelve months; (2) Daughter was in DSS's custody over six months, and Mother had not remedied the conditions causing the removal; (3) Mother had a diagnosable condition preventing her from providing minimally acceptable care to Daughter, and the condition was unlikely to change in a reasonable time period; and (4) Daughter had been in DSS custody for fifteen of the last twenty-two months. Additionally, the family court determined termination of Mother's parental rights was in Daughter's best interest.

The reasons for TPR are interconnected, stemming from Mother's dependency problems and mild mental retardation. In 2000, 2001, and 2006, Mother was independently diagnosed with borderline intellectual functioning, mild mental retardation, depressed mood, and dependent personality traits. The dependent personality traits paired with mild mental retardation are likely the reason Mother neglected Son and failed to recognize the seriousness of his abuse. Mother's failure to comprehend Son's abuse was part of the reason the family court initially removed Daughter in 2001.

Mother has failed to address these mental disorders despite the availability of counseling through DSS, including a counselor who provided

therapy at Mother's intellectual level. The record indicates Mother failed to make appointments for treatment in 2005. Also, in 2005, a doctor suggested Mother take medication for her conditions, but Mother failed to do so. At trial, Dr. Goldsmith, a psychologist who evaluated Mother in March 2006, testified he did not believe Mother's diagnosable condition would change until "she believes that this is a problem and that she believes that she needs to go to therapy." Therefore, the satisfaction of the TPR statutory elements does not arise from DSS's alleged failure to listen to its experts.

IV. Accessible Services for the Disabled

Mother argues DSS had a duty to offer accessible services to Mother under the Americans with Disabilities Act (ADA) because DSS knew of Mother's disabilities. We disagree.

The ADA states in part, "Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C.A. § 12132 (Supp. 2006). The ADA defines a public entity as "any department, agency, special purpose district, or other instrumentality of a State or States or local government." § 12131(1)(B). Further, a qualified individual with a disability is "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." § 12131(2).

Previously, this Court addressed an argument that the Rehabilitation Act of 1973 (the Act), 29 U.S.C.A. section 701, et seq. (Supp. 1976), required DSS to provide social and rehabilitative services for mentally deficient parents. SCDSS v. Humphreys, 297 S.C. 118, 122, 374 S.E.2d 922, 925 (Ct. App. 1988). In Humphreys, the mother's IQ was 66, which was in the mildly mentally deficient range of intelligence. Id. at 119, 374 S.E.2d at

923. This Court rejected the mother's argument that TPR should not occur because DSS failed to provide parenting services tailored to the mother's needs. Id. at 122, 374 S.E.2d at 925. We found the purpose of the Act was "to insure that benefits are not denied based upon a handicap," rather than "[to] provide parental training for mentally deficient parents." Id. Consequently, when a parent clearly suffers from a diagnosable condition that prevents the parent from providing minimally acceptable care for the child, the Act is not a defense to granting TPR. Id. at 122, 374 S.E.2d at 924-25. Our resolution of DSS's duty to provide parental services under the Act is instructive in determining DSS's responsibility to mentally disabled parents under the ADA.[2]

While we have yet to uncover any South Carolina case law on whether the ADA requires DSS to make reasonable accommodations and provide services to a parent with mental deficiencies, North Carolina has recently addressed this issue in In the Matter of C.M.S., 646 S.E.2d 592 (N.C. App. 2007). In C.M.S., the family court removed the child because the mother's boyfriend sexually abused the child, and the mother failed to prevent this abuse. 646 S.E.2d at 594. The family court subsequently terminated mother's parental rights, finding the mother willfully left the child in foster care for more than twelve months without reasonable progress in correcting the conditions that led to the child's initial removal. Id. at 595-96. These conditions included the mother's mental and emotional instability, her inability to locate safe, appropriate housing and maintain a stable source of income, and her failure to prevent contact between the child and the abusive boyfriend. Id. at 594.

[2] See Diane L. Kimberlin & Linda Ottinger Headley, *ADA Overview and Update: What Has the Supreme Court Done to Disability Law?*, 19 Rev. Litig. 579, 580-81 (Summer 2000) ("In many respects, the ADA is patterned after the Rehabilitation Act. Because federal courts have developed a considerable body of law interpreting and applying the Rehabilitation Act, cases decided under that law are typically given substantial weight by federal courts when interpreting similar provisions of the ADA.").

On appeal, the mother claimed the ADA required "the state to make reasonable accommodations and provide services to assist a person with mental retardation to exercise their constitutionally protected rights." Id. at 595. Citing to In re Terry, 610 N.W.2d 563, 569 (2000), the court noted that while "'mental retardation is a 'disability' within the meaning of the ADA . . . [s]everal courts have concluded that termination proceedings are not 'services, programs or activities' under the ADA, and the ADA does not apply in termination proceedings as a defense to the termination of parental rights.'" Id. The C.M.S. court agreed with Terry, finding that if the state has made "reasonable efforts" to correct the conditions that initiated the state's involvement, the state properly satisfies the ADA's requirement for reasonably accommodating disabilities. Id.

Similar to North Carolina, our legislature requires the family court to issue a finding of whether DSS has made reasonable efforts to prevent removal of the child from his or her home and whether the child's continuation in the home would be contrary to the child's welfare. S.C. Code Ann. § 20-7-736(I) (Supp. 2006).

In the case at hand, the family court made such a finding. First, DSS's numerous attempts to rehabilitate Mother, by way of counseling and therapy, indicate it made reasonable efforts to prevent Daughter's removal. Further, the counseling services provided to Mother were adapted to Mother's mental abilities. Mother's failure to schedule appointments, even though Mother demonstrated the capacity to schedule appointments in the past, was not a failure on the part of DSS.

As in Humphreys and C.M.S., TPR was granted for several reasons, including Mother's diagnosable condition. Mother has an IQ of 73, and her intellectual skills are within mentally deficient and borderline limits. In addition to Mother's mental limitations, Mother has a dependent personality disorder, which is unlikely to change.

Thus, DSS provided reasonable services to Mother; however, Mother's diagnosable conditions subsisted, at least in part due to her own actions. If a parent suffers from a diagnosable condition, the family court may pursue

TPR. Although these conditions may in fact be disabilities, the existence of the ADA does not prevent TPR when it is in the child's best interest and DSS makes reasonable efforts to remedy any conditions leading to the child's removal. See § 20-7-1572(6); Baby Boy Roe, 353 S.C. at 579, 578 S.E.2d at 735.

V. Local Limitations of Services

Mother argues Sumter County's limitation of available services is not an excuse for DSS's failure to provide specialized services for Mother. We disagree.

As previously stated, Mother was referred to other organizations for their services, Mother received counseling adjusted to her mental level, and Mother received parenting classes in an attempt to help Mother provide acceptable care to her children. Therefore, DSS met its duty to provide specialized services to Mother.

CONCLUSION

Accordingly, the family court's decision is

AFFIRMED.[3]

STILWELL and SHORT, JJ., concur.

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