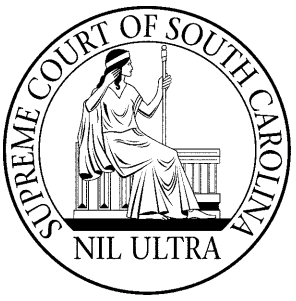

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 46
November 15, 2010
Daniel E. Shearouse, Clerk
Columbia, South Carolina
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

South Carolina Coastal Conservation League, Respondent/Petitioner,

v.

South Carolina Department of Health and Environmental Control and South Carolina State Ports Authority, Respondents,

of whom South Carolina Department of Health and Environmental Control is Petitioner/Respondent.

and

South Carolina Coastal Conservation League, Respondent/Petitioner,

v.

South Carolina Department of Health and Environmental Control, South Carolina Department of Transportation and South Carolina State Ports Authority, Respondents,

of whom South Carolina Department of Health and Environmental Control, is Petitioner/Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Administrative Law Court
John D. Geathers, Administrative Law Court Judge

Opinion No. 26892
Heard June 23, 2010 – Filed November 15, 2010

REVERSED

J. Blanding Holman, IV, of Southern Environmental Law Center, and W. Jefferson Leath, of Leath, Bouch & Crawford, both of Charleston, for Respondent/Petitioner.

Davis Arjuna Whitfield-Cargile, of SCDHEC, of Charleston, and Carlisle Roberts, Jr., of SCDHEC, of Columbia, for Petitioner/Respondent.

Beacham O. Brooker, Jr., of Columbia, for Respondent, SCDOT.

Mitchell Willoughby and Randolph R. Lowell, both of Willoughby & Hoefer, PA of Columbia, and Philip L. Lawrence, of Charleston, for Respondent SC State Ports Authority.

Derk Van Raalte, IV, of Law Offices of J. Brady Hair, of Charleston, for Amicus Curiae City of North Charleston. James B. Richardson, Jr., of Columbia, for Amicus Curiae Charleston Metro Chamber of Commerce. James S. Chandler, Jr., and Amy E. Armstrong, of Pawleys Island, for Amicus Curiae SC Wildlife, Upstate Forever, Save our Saluda, et al.

JUSTICE KITTREDGE: The South Carolina States Ports Authority (SPA) and the South Carolina Department of Transportation (DOT) each applied for and received permits from the South Carolina Department of Health and Environmental Control (DHEC) to begin development of a marine container terminal. The South Carolina Coastal Conservation League (the League) sought review of the decision, but the DHEC Board affirmed the DHEC staff decision to issue the permits. The League filed a request for a contested case with the administrative law court (ALC). However, the ALC dismissed the case, finding the League had failed to timely file an appeal with the DHEC Board. The court of appeals affirmed. *S.C. Coastal Conservation*

League v. S.C. Dep't of Health and Envtl. Control, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008). We granted a writ of certiorari to review that decision.[1] We reverse.

I.

SPA submitted permit applications to DHEC seeking a critical area permit, coastal zone consistency certification, and a Section 401 water quality certification in order to begin developing a 300-acre marine container terminal on the west bank of the Cooper River. *See* S.C. Code Ann. § 54-3-270 (Supp. 2008). To provide access to the terminal, DOT sought a permit from DHEC to construct a road linking the terminal with Interstate 26.

DHEC issued public notices regarding the pending applications and held many public hearings. The League participated in the hearings and filed multiple comment letters objecting to the permit applications.

On October 30, 2006, DHEC staff granted all necessary permits to SPA authorizing the construction of the terminal, and on October 31, a copy of the decision was sent to SPA by certified mail. On November 2, DHEC staff made an amendment to the permit and sent notice of the amended permit to SPA by certified mail. On November 13, SPA filed a notice of appeal with the DHEC Board merely seeking to clarify certain terms and conditions.

On November 17, counsel for the League emailed DHEC indicating he was made aware that DHEC granted SPA a permit, but that no public notice had been issued. An employee from DHEC responded in an email, making it plain that DHEC was aware of the League's involvement and desire to be notified of the agency decision: "Did he also mention they [SPA] appealed it???? You were on the mailing list and should have received a copy. Did you not get it?" DHEC immediately sent notice of the staff decision to the

[1] We note that the issues presented in this case are purely questions of statutory interpretation regarding appeals from the DHEC staff decisions to the DHEC Board. The merits of the staff decision are not implicated in this appeal and are not addressed by either side.

League. The League received the notice on November 20 by mail[2] and filed a notice of appeal that day.

On November 13, DHEC approved DOT's permit and issued notice to DOT by certified mail. The League received notice of this decision on November 29 and filed a notice of appeal the following day on November 30.[3]

South Carolina Code Ann. § 44-1-60(E) (Supp. 2008) was enacted in 2006 as a part of Act No. 387 and became effective July 1, 2006. This act amended and added statutory provisions relating to administrative procedures and appeals. Section 44-1-60(E) provides:

> Notice of the department decision must be sent to the applicant, permittee, licensee, and affected persons who have asked to be notified by certified mail, return receipt requested. The department decision becomes the final agency decision fifteen days after notice of the department decision has been mailed to the applicant, unless a written request for final review is filed with the department by the applicant, permittee, licensee, or affected person.

The League filed its notices of appeal of the DHEC staff decisions regarding SPA's and DOT's permits more than fifteen days after the staff decisions were mailed to SPA and DOT – the applicants – but within fifteen days of the League receiving notice of the decisions. At the hearing before the DHEC Board, DHEC staff initially argued the League's appeal was not timely. The DHEC Board considered this argument, but found the League

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[2] It appears DHEC mailed written notice of the decision regarding SPA's permit on Friday, November 17, and the League received this notice on Monday, November 20.

[3] In its brief, the League states it never received mailed written notice of the staff decision regarding DOT's permit. It is unclear how the League received actual notice of the issuance of DOT's permit.

had timely appealed. The Board proceeded to hear the merits of the League's appeal and ultimately approved the DHEC staff decision to issue the permits.[4]

A. ALC Order

The ALC found the League's appeal was not timely and issued an order dismissing the case.[5] The ALC interpreted § 44-1-60(E) as unambiguously providing that a party challenging a DHEC staff decision must file a notice of appeal with the DHEC Board within fifteen days after the decision is mailed to the applicant. The ALC ruled that the League had a statutory right to request to be notified of the decision and that there was no "evidence that the League filed a request to be notified of the decision per section 44-1-60(E)."

To counter this interpretation, the League argued it was entitled to notice of the DHEC staff decision pursuant to Regulation 61-101, which requires DHEC to send notice of any decision to issue a Section 401 water certification permit to any party that provides comments to a Section 401 permit application. S.C. Code Ann. Regs. 61-101.G.1 (Supp. 2008). The ALC first ruled Regulation 61-101 notice requirements were not applicable to this permit.[6] However, the ALC went on to find the notice requirements in

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[4] At the beginning of the hearing, SPA and DHEC staff informed the DHEC Board that SPA's appeal, in which they merely sought to clarify certain terms in the permit, had been resolved.

[5] The ALC granted SPA's motion to intervene in the action involving DOT and considered the League's appeals from the issuance of both permits together. The matters were consolidated in the court of appeals.

[6] Specifically, the ALC found this permit involved not only a Section 401 permit, but also a critical area permit. Regulation 61-101 provides that where a critical area is involved, the procedures found in the critical area permitting regime apply, rather than the procedures found in the Section 401 permitting regime. The critical area regulations do not require DHEC to notify all parties who provide comment to the application.

Regulation 61-101 directly conflicted with the notice requirements in § 44-1-60(E) and, therefore, ruled the regulation "had been superseded" by the statute.[7]

B. Court of Appeals

The court of appeals' opinion followed the reasoning of the ALC. The court of appeals held § 44-1-60(E) unambiguously requires a party to file a request for final review within fifteen days from the date DHEC mails the decision to the applicant – not fifteen days after notice of the decision is received. It held the League "**failed to request notification of the staff decision as delineated in Section 44-1-60(E)**." *S.C. Coastal Conservation League*, 380 S.C. at 373, 669 S.E.2d at 911 (emphasis in original). The court examined the relevant dates and held the League had failed to comply with the statute.

The court of appeals also affirmed the ALC's ruling that Regulation 61-101 was invalid to the extent its notice provisions conflicted with § 44-1-60(E). The court found Regulation 61-101 conflicted with § 44-1-60(E) because it expanded the group to which DHEC was required to give notice of a decision regarding the issuance of a Section 401 permit.[8]

We granted DHEC's and the League's petition for a writ of certiorari to review the court of appeals' opinion. Although the parties disagree on the merits of the decision to issue the permits, they both take the position that the

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[7] *See* Act No. 387, § 53 ("This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.").

[8] Regulation 61-101 requires DHEC to notify: agencies having jurisdiction or an interest in the site; adjoining property owners; and parties providing comments. However, § 44-1-60(E) only requires DHEC to notify: the applicant; permittee; licensee; and affected parties requesting notification.

League's appeal to the DHEC Board was timely and that the ALC and court of appeals erred in ruling § 44-1-60(E) repealed the notice provisions set forth in Regulation 61-101.[9]

II.

Statutory Interpretation

Statutory interpretation is a question of law. *City of Newberry v. Newberry Elec. Co-op., Inc.*, 387 S.C. 254, 256, 692 S.E.2d 510, 512 (2010). The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. *Id*. When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

A. Time Period

Section 44-1-60(E) provides, in relevant part:

> The department decision becomes the final agency decision fifteen days after notice of the department decision has been mailed to the applicant, unless a written request for final review is filed with the department by the applicant, permittee, licensee, or affected person.

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[9] Following oral argument, the parties notified the Court that the League and SPA had resolved the League's substantive challenge to the underlying permits. DHEC, which is not a party to the League's settlement agreement with SPA, has requested that the Court resolve the appeal. Accordingly, we proceed with a resolution of this appeal.

The League and DHEC argue the fifteen day time period begins when a party receives notice, not when notice is deposited in the mail. Like the court of appeals, we cannot accept such an interpretation. The clear and unambiguous language in the statute provides that the staff decision becomes final "fifteen days after notice of the department decision *has been mailed* . . ." Had the legislature intended for the time period to begin running from the date a party receives notice of the decision, the statute would have been drafted accordingly. Indeed, § 44-1-60(F)(2), the provision immediately following § 44-1-60(E), provides "[w]ithin thirty days after the **receipt** of the decision an applicant, permittee, licensee, or affected person desiring to contest the final agency decision may request a contested case hearing." (Emphasis added). The use of the phrase "receipt of the decision" in § 44-1-60(F)(2) indicates that had the legislature intended for the fifteen day time period to begin after receipt of notice, the legislature knew how to draft the statute to accomplish this result.

The League and DHEC argue this Court's precedent requires that the time period to file an appeal must begin with receipt of notice. In *Hamm v. S.C. Pub. Svs. Comm.*, we held that S.C. Code Ann. § 1-23-380(b) (1984), which provides that a party may appeal "within thirty days after the final decision of the agency," must be read to allow a party to appeal thirty days after receiving notice of the decision. 287 S.C. 180, 336 S.E.2d 470 (1985). Otherwise, an agency could essentially preclude judicial review by concealing its decision until after the expiration of the thirty days. We held such an interpretation would lead to an absurd result.

We disagree with the argument that *Hamm* requires the time to appeal begins upon receiving notice. The Court in *Hamm* did not hold that a filing period must begin with receipt of notice of an agency's decision. Rather, the Court read a notice requirement into § 1-23-380(b) to avoid "an absurd result not possibly intended by the legislature." Section 44-1-60(E), on the other hand, does not suffer from the same notice infirmity, for it specifically requires DHEC to mail notice of its decision to the applicant, permittee, licensee, and affected persons who have asked to be notified.

B. Parties to be Notified

In relevant part, § 44-1-60(E) provides that "[n]otice of the department decision must be sent to the applicant, permittee, licensee, and affected persons who have asked to be notified by certified mail, return receipt requested." As stated above, the statute clearly and unambiguously provides that the decision is final fifteen days after notice is mailed to the applicant. However, the statute is not clear as to how an individual or entity acquires the status of "affected persons who have asked to be notified." Moreover, the statute is silent as to whether DHEC must **simultaneously** mail notice to "the applicant, permittee, licensee, and affected persons who have asked to be notified." Of course, without construing § 44-1-60(E) as requiring that notice of the agency decision be mailed simultaneously to those entitled to notice, the statute would be meaningless in terms of providing notice. Here, simultaneous notice was not given to the League. The question becomes whether the League is an "affected person."

1. Affected Persons Who Have Asked to be Notified

The ALC and the court of appeals found that the League failed to avail itself of the right to be notified under § 44-1-60(E) because the League failed "to make a formal request to be notified of a decision" and "failed to request notification of the staff decision as delineated in section 44-1-60(E)." We believe the November 17th email acknowledgement by DHEC refutes the suggestion that the League failed to request to be notified of the agency decision.

In our view, the ALC's and the court of appeals' foray into the degree of "formality" needed for § 44-1-60(E) "affected person" status is not necessary for deciding this appeal. DHEC's concession that the League was on the

"mailing list and should have received a copy [of the permit decision]" is sufficient for purposes of acquiring "affected person" status. Therefore, given DHEC's concession, we hold the League had asked to be notified of the DHEC staff decision on the permits.

Furthermore, the DHEC Board found the appeal was timely. Although the Board based this decision on the fact that the League filed a request for an appeal within fifteen days of receiving notice, which is not consistent with the statutory language that the appeal be filed within fifteen days of mailing, the Board's ruling indicates that DHEC recognized that the League had asked to be notified of the decision and was entitled to notification. Along the same lines, at the hearing before the ALC, DHEC never stated it followed a formal procedure as to how a party acquires "affected persons who have asked to be notified" status. To the contrary, DHEC indicated it took an informal approach in deciding which parties it notified of its decision.

In finding that the League had asked to be notified of the DHEC staff decision regarding the SPA and DOT permits, we decline to set forth a process of how a party asks to be notified in all cases falling under § 44-1-60(E). We merely hold, under the facts of this case, it is clear the League asked to be notified of the DHEC staff decision regarding the SPA and DOT permits and DHEC believed the League had asked to be notified. The record clearly establishes that throughout the permit application process in this matter, the League was not an obscure or unknown party. The League has been involved in this particular permitting process from the beginning. Therefore, SPA's bold statement that DHEC should not bear the burden of "guess[ing] which commenter or member of the public would like to know about particular decisions" is unavailing under these facts.

2. Simultaneous Notifications

We now turn to a potential ambiguity in the statute. For the reasons stated above, the plain language of § 44-1-60(E) provides the decision of DHEC staff becomes final fifteen days after notice of the decision is mailed, and the statute requires DHEC to send notice of the decision to the applicant,

permittee, licensee, and affected persons who have asked to be notified by certified mail. However, the statute is silent as to whether DHEC must mail these notifications simultaneously. In *Hamm*, we read a notice requirement into the statute in order to avoid an absurd result. We believe the same concerns are present here. Failing to interpret this statute as requiring DHEC to mail notifications simultaneously would mean DHEC could mail notice of its decision to the applicant and, fifteen days later, mail notice of the decision to affected persons who have asked to be notified. Under this scenario, the time period for appealing the decision would have expired by the time the affected person receives notice; thus, "affected persons" could be precluded from seeking review. Interpreting the statute to require DHEC to mail the notice of decision to the applicant, permittee, licensee, and affected person at the same time provides a uniform procedure, gives all parties equal opportunity to challenge a decision, and is consistent with the legislative purpose. *See* Act No. 387, § 53 ("This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies."). As a final matter, we hold that in situations where DHEC fails to simultaneously notify the applicant, permittee, licensee, and affected persons asking to be notified, the latest date of mailing controls when the fifteen day period begins to run.

C. Repeal of Regulation 61-101

Finally, DHEC argues the ALC and the court of appeals erred in finding Regulation 61-101 conflicts with § 44-1-60(E) and is therefore invalid. DHEC expresses particular concern that this ruling could invalidate other notification provisions contained within its numerous regulations.

An administrative regulation is valid as long as it is reasonably related to the purpose of the enabling legislation. *McNickel's Inc. v. S.C. Dept. of Revenue*, 331 S.C. 629, 634, 503 S.E.2d 723, 725 (1998). Although a regulation has the force of law, it must fall when it alters or adds to a statute. *Id.*

DHEC is responsible for managing the welfare of our public health systems and environment. In discharging these duties, DHEC has implemented practices and procedures which foster transparency and full disclosure in all matters regarding its regulatory authority. To this end, DHEC has enacted various notification regulations requiring it to send notice to the public of permit applications and to notify particular parties of DHEC's decision on the applications. Regulation 61-101 is one of these types of notification regulations. This regulation establishes procedures and policies for implementing water quality certification requirements of Section 401 of the Clean Water Act and requires DHEC to send notice to specific parties. *See* Regs. 61-101.G.1 (providing DHEC shall mail notice of a proposed decision on an application for water certification to the applicant; agencies having jurisdiction or interest over the activity site; owners or residents of property adjoining the area of the proposed activity; and those persons providing comment in response to the initial notice of application).

In our view, the notice provisions in Regulation 61-101 do not conflict with § 44-1-60(E). Section 44-1-60(E) sets forth the procedure for appealing from a staff decision and provides which parties DHEC is required to notify by certified mail of the decision. On the other hand, Regulation 61-101 serves to further DHEC's policy goals including providing notice to the public, fostering openness, and keeping the public informed about important environmental decisions. Section 44-1-60(E) addresses appellate procedures, while Regulation 61-101 addresses public notice. Although § 44-1-60(E) places an affirmative duty on DHEC to send simultaneous notification of appealable staff decisions to the applicant, permittee, licensee, and affected persons who have asked to be notified by certified mail, it does not prohibit DHEC from sending notice of these decisions to additional persons. For these reasons, we find the regulation does not alter or add to the statute.

III.

In sum, we hold the ALC and court of appeals erred in ruling the League's appeal was not timely. Section 44-1-60(E) requires DHEC to simultaneously send notice of its decision to the applicant, permittee, licensee, and affected persons requesting to be notified by certified mail, and the decision becomes final fifteen days after the decision has been mailed. In this case, we find that because the League was an affected person who asked to be notified, the decision did not become final until fifteen days after DHEC mailed the decision to the League. Because the League filed the request for appeal within fifteen days of DHEC mailing it notice of the decision, the appeal was timely. Finally, we hold the notice provision in Regulation 61-101 does not add to or alter § 44-1-60(E), and the regulation therefore remains valid.[10]

REVERSED.

BEATTY, J., and Acting Justices James E. Moore and William P. Keesley, concur. PLEICONES, ACTING CHIEF JUSTICE, dissenting in a separate opinion.

[10] Because the League and SPA have reached an agreement on the League's substantive challenges to the underlying permits, a remand is unnecessary.

ACTING CHIEF JUSTICE PLEICONES: I respectfully dissent. Given the settlement agreement between the South Carolina Coastal Conservation League and the South Carolina Ports Authority, our ruling can have no practical effect upon the case before us. Consequently, I would find that the case is moot and would dismiss certiorari. See Willis v. Wukela, 379 S.C. 126, 128, 665 S.E.2d 171, 172 (2008) (holding a case becomes moot when a ruling will have no practical effect upon the existing controversy).

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Jessica R. Boney, Respondent.

Opinion No. 26893
Submitted October 20, 2010 – Filed November 15, 2010

DISBARRED

Lesley M. Coggiola, Disciplinary Counsel, and Barbara M. Seymour, Deputy Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Jessica R. Boney, of Union, pro se Respondent.

PER CURIAM: In this attorney disciplinary matter, the Commission on Lawyer Conduct ("Commission") investigated allegations of misconduct involving Jessica R. Boney ("Respondent") in six matters, including the failure to keep clients reasonably informed, the mishandling of client funds, and the failure to act with due diligence. The Office of Disciplinary Counsel ("ODC") filed formal charges against Respondent. A hearing panel of the Commission ("Hearing Panel") issued its Panel Report recommending disbarment based on the underlying misconduct, Respondent's failure to fully cooperate in the disciplinary investigation, and her failure to answer the formal charges and appear at the hearing on those charges. The Hearing Panel also recommended that Respondent be required to pay the costs of these proceedings and to reimburse the Lawyers' Fund for Client Protection

for any amounts paid on her behalf. Neither Respondent nor ODC has filed a brief taking exception to the Panel Report. We agree with the recommendation of the Hearing Panel and hereby disbar Respondent for her misconduct.

I. FACTS

Respondent was admitted to the practice of law in South Carolina on September 23, 2003. Respondent closed her law practice in Union, South Carolina and left the state in January 2006.

By order of the Court, she was placed on interim suspension on February 1, 2006 and Sammy Diamaduros was appointed to protect her clients' interests.

The South Carolina Commission on Continuing Legal Education ("CLE") and Specialization administratively suspended Respondent from the practice of law on April 1, 2007 for failing to comply with CLE requirements. By order dated June 6, 2007, this Court formally suspended Respondent and ordered her to surrender her certificate to practice law in this state for her continued failure to meet the CLE requirements.

On October 6, 2009, ODC filed formal charges with the Commission alleging Respondent had committed misconduct in six matters. The formal charges were served on Respondent by certified mail sent to her last two known addresses.

Respondent failed to file an answer or otherwise respond to the formal charges, and a Default Order was issued by the Commission. The Hearing Panel subsequently conducted a hearing on the formal charges to determine the appropriate, recommended sanction, but Respondent did not appear and she was not represented by counsel.

The Hearing Panel found the allegations in the six matters were deemed admitted pursuant to Rule 24(b) of the Rules for Lawyer Disciplinary Enforcement ("RLDE"), contained in Rule 413, South Carolina Appellate

Court Rules ("SCACR"), as a result of Respondent's default. The allegations, now deemed admitted, are as follows.

A. The E. Gault Matter

Ms. E. Gault consulted Respondent about possibly filing for bankruptcy. At that time, Respondent worked as an associate at the Fleming Law Firm. Respondent met with Gault and advised her that she should not file for bankruptcy. Respondent believed Gault left the meeting considering whether to accept her advice. The Fleming Law Firm collected $610.00 from Gault, but Respondent did no work on the file and had no further communication with Gault until after she left the Fleming Law Firm two months later.

The client files Respondent took with her to her new practice were determined by Mr. Fleming. Respondent did not take Gault's file. When Gault contacted her several weeks later, Respondent referred her to the Fleming Law Firm, but thereafter someone from the firm delivered Gault's file to Respondent's new office. Respondent again reviewed the matter and advised Gault not to file for bankruptcy.

Gault continued to call Respondent's office and, at one point, paid $110.00 to Respondent's secretary. Respondent failed to ensure that Gault understood her advice and failed to take affirmative steps with Fleming to determine which files she was going to handle after her departure.

Respondent timely responded to ODC's initial inquiry in this matter, but did not timely respond to the notice of full investigation.

B. The Malpass Matter

Respondent was appointed to represent Mr. Malpass in a criminal matter, and she appeared at a hearing on his behalf. Another individual, Ms. Moore, made numerous unsuccessful attempts to contact Respondent by phone and in person at her office on behalf of Malpass. Respondent did not have permission from Malpass to talk to Moore about his case; however,

Respondent never consulted with Malpass about whether he would give her permission to speak to Moore, despite Moore's repeated inquiries.

Respondent was placed on interim suspension while she was waiting for an evaluation to submit to the court regarding Malpass's release. She failed to turn over Malpass's file to the attorney appointed to protect her clients' interests, and to date Respondent has been unable to locate the file.

Respondent did not timely respond to the notice of full investigation in this matter.

C. The Sloan Matter

Respondent conducted a real estate closing in December 2005 at which Mr. Sloan was the borrower. Respondent's paralegal miscalculated the payoff of Sloan's mortgage and Respondent did not catch this error. Sloan learned of this when he received a notice from his mortgage company in January 2006.

After Sloan was unable to reach Respondent, he enlisted the assistance of the other party to the transaction, who then contacted Respondent. Respondent issued a check for the correct amount to Sloan's lender. Respondent made up the difference resulting from her miscalculation from her attorney's fee.

Respondent did not timely respond to the notice of full investigation in this matter.

D. The T. Gault Matter

Respondent represented Mr. T. Gault in a domestic matter. After the hearing, the judge instructed Respondent to prepare an order. Respondent prepared and submitted the order, which the judge signed within eight days of the hearing. The same week, Respondent suffered from a serious medical episode. She then closed her office and moved out of state. The order was not actually filed until two and a half months after it was signed.

Respondent did not take appropriate steps to notify Gault or the court about the closing of her office and her departure from the state, or to protect Gault's interests upon her unilateral termination of representation. Respondent did not turn Gault's file over to the attorney appointed to protect her clients' interests and to date she has been unable to locate the file.

E. The Canupp Matter

Ms. Canupp paid Respondent a $2,000.00 retainer in December 2005 to represent her on a DUI charge. Respondent represented to ODC that she referred Canupp's case to Mr. Wood, an attorney who agreed to take her cases when she closed her office. Wood subsequently died, however, and Respondent was unable to locate Canupp's file.

Respondent has no record of depositing Canupp's fee into her trust account or paying it to attorney Wood, and she is unable to recall or document what she did with the fee. The Lawyers' Fund for Client Protection has reimbursed Canupp the full amount of the fee she paid to Respondent.

F. The Spoone Matter

Respondent was appointed to represent Mr. Spoone in a Department of Social Services ("DSS") matter. At the time Respondent closed her office and left South Carolina in January 2006, a hearing had been scheduled for March 2006. Respondent did not seek to be relieved as counsel or take steps to protect Spoone's interests, and she did not turn over Spoone's file to the attorney appointed to protect her clients' interests while she was on interim suspension. To date she has been unable to locate Spoone's file.

G. Hearing Panel's Findings of Misconduct

The Hearing Panel found that by her conduct, Respondent was subject to sanctions for violating the following Rules of Professional Conduct (RPC) of Rule 407, SCACR: Rule 1.1 (competence), Rule 1.2 (scope of representation), Rule 1.4 (communication with clients), Rule 1.5 (fees), Rule 1.15 (safekeeping property), Rule 1.16 (terminating representation), and Rule 8.1 (failure to respond to disciplinary authority).

The Hearing Panel further found Respondent is subject to discipline for violating the following provisions of the RLDE contained in Rule 413, SCACR: Rule 7(a)(1), RLDE (violating the RPC); Rule 7(a)(3), RLDE (knowing failure to respond to a lawful demand from a disciplinary authority); Rule 7(a)(5), RLDE (engaging in conduct tending to pollute the administration of justice, tending to bring the legal profession into disrepute, and demonstrating an unfitness to practice law); and Rule 7(a)(6), RLDE (violating the Oath of Office taken upon the admission to practice law in South Carolina).

H. Aggravating and Mitigating Circumstances

The Hearing Panel took two aggravating factors into consideration: (1) Respondent failed to fully cooperate in the disciplinary investigations, and (2) Respondent did not answer the formal charges or appear at the hearing.

The Hearing Panel noted Respondent had failed to appear at the hearing to offer evidence in mitigation, but that disciplinary counsel did report to the Hearing Panel "that Respondent had suffered a medical emergency and a subsequent domestic issue in 2005 and 2006 that interrupted her law practice and resulted in her leaving the state unexpectedly."

Respondent did return to the state for a time and during one interval she cooperated in the disciplinary investigation and was represented by counsel. However, on March 25, 2008 the Commission Chair granted counsel's motion to be relieved on the ground that he had been unable to communicate with Respondent. Respondent corresponded with ODC in April 2008, but she did not appear in August 2008 as required by an ODC subpoena and she has not contacted ODC since July 2008.

Because of these circumstances, the Hearing Panel found that Respondent's alleged "medical condition and domestic issue do not mitigate the sanction in this matter since she did not answer or appear to offer any evidence in that regard." The Hearing Panel did take into account, however, the fact that Respondent has no disciplinary history.

I. Hearing Panel's Recommended Sanction

The Hearing Panel recommended the sanction of disbarment and that Respondent be ordered to pay the costs of these proceedings. The recommendation was based on the underlying misconduct, Respondent's failure to fully cooperate in the disciplinary investigation, and her failure to answer the formal charges and appear at the hearing. By letter of April 22, 2010 to this Court, the Commission reported the costs incurred amounted to $411.69.

The Hearing Panel also recommended that "Respondent be ordered to reimburse the Lawyers' Fund for Client Protection for any amount paid to clients as a result of her misconduct prior to readmission to the practice of law."[1]

II. LAW/ANALYSIS

Neither Respondent nor ODC has filed a brief raising any exceptions to the Panel Report. In addition, as noted by the Hearing Panel, Respondent did not answer the formal charges, for which she was deemed in default, and she did not appear at the hearing on these matters.

"Failure to answer the formal charges shall constitute an admission of the factual allegations." Rule 24(a), RLDE, Rule 413, SCACR. "If the respondent should fail to appear when specifically so ordered by the hearing panel or the Supreme Court, the respondent shall be deemed to have admitted the factual allegations which were to be the subject of such appearance and to have conceded the merits of any motion or recommendations to be considered at such appearance." Id. Rule 24(b), RLDE.

"The authority to discipline attorneys and the manner in which the discipline is given rests entirely with this Court." In re Tullis, 375 S.C. 190, 191, 652 S.E.2d 395, 395 (2007). The Court "has the sole authority . . . to decide the appropriate sanction after a thorough review of the record." In re

[1] Disciplinary counsel noted at the hearing in this matter that the Fund has reimbursed Canupp the $2,000.00 that Respondent could not account for, and it has also "paid some other claims, but they are not related to these complainants."

Thompson, 343 S.C. 1, 10, 539 S.E.2d 396, 401 (2000). "The Court is not bound by the panel's recommendation and may make its own findings of fact and conclusions of law." In re Hazzard, 377 S.C. 482, 488, 661 S.E.2d 102, 106 (2008).

A disciplinary violation must be proven by clear and convincing evidence. In re Greene, 371 S.C. 207, 216, 638 S.E.2d 677, 682 (2006); see also Rule 8, RLDE, Rule 413, SCACR ("Charges of misconduct or incapacity shall be established by clear and convincing evidence, and the burden of proof of the charges shall be on the disciplinary counsel.").

Based on Rule 24 of the RLDE, the factual allegations against Respondent are deemed admitted and we agree with disciplinary counsel that such acts constitute misconduct. Having found disciplinary counsel has met the burden of establishing Respondent's misconduct by clear and convincing evidence, this Court need only determine the appropriate sanction and whether to accept the Hearing Panel's recommendation of disbarment. See In re Jacobsen, 386 S.C. 598, 606, 690 S.E.2d 560, 564 (2010) ("Because Respondent has been found in default and, thus, is deemed to have admitted to all of the factual allegations, the sole question before the Court is whether to accept the Panel's recommended sanction.").

In recommending the sanction of disbarment for Respondent, the Hearing Panel cited to several instances where attorneys were disbarred for failing to answer formal charges or appear at a panel hearing in addition to committing other acts of misconduct.

In the first, In re Tullis, 375 S.C. 190, 652 S.E.2d 395 (2007), the attorney failed to file an answer to the formal charges; therefore, he was in default and the factual allegations were deemed admitted. This Court observed the attorney "failed to adequately communicate with his clients, failed to act with diligence and competence; misused and mismanaged trust account funds; and failed to respond to Disciplinary Counsel inquiries and notices of full investigation regarding these matters." Id. at 192, 652 S.E.2d at 396. We noted the attorney had an extensive disciplinary history, including a public reprimand and a suspension. Id. at 193 n.2, 652 S.E.2d at 396 n.2. We held the sanction of disbarment was justified and also ordered

the attorney to make $410.00 in restitution and pay the costs of the disciplinary proceeding. Id. at 193-94, 652 S.E.2d at 396.

In another case, In re Murph, 350 S.C. 1, 4-5, 564 S.E.2d 673, 675 (2002), we stated the attorney's "failure to answer the formal charges and appear at the hearing before the sub-panel, when coupled with his admission that he committed criminal acts, his failure to respond to Disciplinary Counsel, the fact that he practiced law on two occasions while on suspension, the fact that he has failed to earn or return over $7,000 in fees, and his failure to represent clients competently and diligently in numerous cases, warrants the severe sanction of disbarment."

This Court stated an attorney's failure to answer charges or appear to defend the misconduct is to be accorded "substantial weight" and is likely to result in "the most severe sanctions":

> An attorney usually does not abandon a license to practice law without a fight. Those who do must understand that "neglecting to participate [in a disciplinary proceeding] is entitled to substantial weight in determining the sanction." *In the Matter of Sifly*, 279 S.C. 113, 115, 302 S.E.2d 858, 859 (1983). An attorney's failure to answer charges or appear to defend or explain alleged misconduct indicates an obvious disinterest in the practice of law. Such an attorney is likely to face the most severe sanctions because a central purpose of the disciplinary process is to protect the public from unscrupulous or indifferent lawyers.

Id. at 4, 564 S.E.2d at 675 (quoting In re Hall, 333 S.C. 247, 251, 509 S.E.2d 266, 268 (1998) (alteration in original)).

In the case of In re Wofford, 330 S.C. 522, 500 S.E.2d 486 (1998), the Court determined disbarment was appropriate where the attorney failed to answer the formal charges or appear at the panel hearing or the hearing before this Court (and thus was deemed to have admitted the factual allegations in the charges), failed to provide competent representation, failed to keep clients reasonably informed, misappropriated client funds, and committed criminal acts.

In the current matter, Respondent's abandonment of her law practice without appropriate regard for the interests of her clients, and her subsequent misconduct in failing to answer the formal charges, failing to submit to ODC's subpoena, and failing to appear at the hearing convened by the Hearing Panel, as well as her continued failure to participate in the disciplinary process, warrant her disbarment.

Respondent has not communicated with ODC for over two years and, according to an investigator with the South Carolina Law Enforcement Division (SLED), she has left the state. At this point, the only facts that are certain are that Respondent has abandoned her clients and her law practice in this state and the reasons for this conduct have not been substantiated. Respondent has presented no evidence in mitigation at any stage of this proceeding.

In the case of In re Okpalaeke, 374 S.C. 186, 648 S.E.2d 593 (2007), the attorney was aware formal charges were being brought against him, but he left the state and apparently had no intention of returning (the last entry on his passport was Amsterdam, Holland). This Court noted the charges against the attorney described approximately nine acts of misconduct, including failing to properly disburse settlement money, threatening criminal prosecution to gain advantage in a civil matter, and systematically failing to properly oversee and fulfill the financial obligations of his law practice. This Court accepted the Hearing Panel's recommendation of disbarment, stating Respondent had "shown no regard for the status of his license to practice law in South Carolina":

> [W]e agree with the Panel's finding that Respondent's conduct indicates an obvious disinterest in the practice of law. By all accounts, Respondent has left this jurisdiction with no apparent intention of returning. Respondent departed this jurisdiction with the knowledge that disciplinary action against him was imminent, and since his departure, Respondent has shown no regard for the status of his license to practice law in South Carolina. As this Court has noted, a central purpose of the attorney disciplinary process is to protect the public from unscrupulous or indifferent lawyers. *In re Hall*, 333 S.C. 247, 251, 509 S.E.2d 266, 268

(1998). Furthermore, we have disbarred attorneys who fail to answer formal charges or appear at hearings before the Panel or this Court in egregious cases.

Id. at 194, 648 S.E.2d at 597-98 (footnote omitted).

III. CONCLUSION

Based on the foregoing, we agree with the Hearing Panel's recommended sanction of disbarment. This is warranted based on Respondent's abandonment of her law practice and other acts of misconduct. Having found Respondent has committed sanctionable misconduct, we hold she is required to pay the costs of these proceedings and to reimburse the Lawyers' Fund for Client Protection for any amounts paid to clients on her behalf, as recommended by the Hearing Panel.

DISBARRED.

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Carolyn Jackson Mosley, Respondent,

v.

Rollin Arnold Mosley, Appellant.

Appeal From York County
Robert E. Guess, Family Court Judge

Opinion No. 4759
Submitted September 1, 2010 – Filed November 10, 2010

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

James Wilson Tucker, Jr., of Rock Hill, for Appellant.

Daniel D. Agostino, of York, for Respondent.

WILLIAMS, J.: In this divorce action, Rollin Mosley (Husband) assigns several errors to the family court's final decree, including: (1) its calculation of Husband's monthly child support obligation based on Carolyn Mosley's (Mother) alleged childcare costs; (2) its decision to require Husband

to pay retroactive child support; (3) its finding that Husband withdrew a second mortgage on the parties' home without Wife's consent; (4) its apportionment of the equity in the marital home; and (5) its award of attorney's fees and costs. We affirm in part, reverse in part, and remand.

FACTS

Husband and Wife were married for approximately one year prior to Wife filing this action on August 7, 2006. In her complaint, Wife sought a divorce on the ground of one year's continuous separation and requested sole custody of the parties' one-year-old child as well as child support, equitable division of the marital estate, and reasonable attorney's fees and costs. Husband answered and counterclaimed for joint custody and sought an annulment of the parties' marriage based on the parties' failure to consummate their marriage.

On August 6, 2008, the family court granted Wife and Husband a divorce on the ground of one year's continuous separation. Wife was awarded sole custody of the parties' child and Father was granted liberal visitation. In setting Husband's child support obligation at $277.77 per week, the family court found Mother provided daycare for the child at the cost of $390 per month; both parties paid the child's medical insurance; and Husband was responsible for one other child in his home. The family court also included a $25 weekly payment towards Husband's child support arrearage until Husband paid the arrearage in full. Husband's arrearage was based on the family court's finding that Husband misstated his income on his financial declaration submitted at the temporary hearing by failing to account for his military retirement and stating his net as opposed to his gross income.

In the final order, the family court found the parties' home and lot in Clover, South Carolina, to be marital property. The family court stated the absence of evidence, specifically the lack of an appraisal at the time the parties executed their first mortgage for $377,455, created a valuation issue

for purposes of equitably dividing the home.[1] As a result, the family court resorted to a recent appraisal, which valued the house and lot at $415,000.

Additionally, the family court found that after litigation commenced, Husband took out a second mortgage on the parties' home in the amount of $77,000 without Wife's consent. The family court determined the $77,000 represented the remaining equity in the home and concluded Wife was entitled to half of this sum, $38,500, as her share of the value of the home. Husband was ordered to pay this amount to Wife as well as $3,880 in Wife's attorney's fees.

The family court, however, failed to divide the remainder of the marital estate, or in the alternative, to find the parties had mutually resolved the distribution of their remaining assets. Moreover, the court failed to mention or discuss any statutory factors it considered in equitably dividing the marital estate and only specified one other piece of property, Wife's Suzuki motorcycle, which was subject to equitable distribution.

Husband filed a Rule 59(e), SCRCP, motion for reconsideration, which the family court denied. This appeal followed.

ISSUES ON APPEAL

Husband contends the family court erred in (1) its child support calculation and award of retroactive child support; (2) its calculation and division of equity in the marital home; and (3) its award of attorney's fees and costs.

STANDARD OF REVIEW

In appeals from the family court, this court may find facts in accordance with its own view of the preponderance of the evidence. Nasser-

[1] We recognize that marital property is generally valued on the date marital litigation is filed or commenced. See Fields v. Fields, 342 S.C. 182, 186, 536 S.E.2d 684, 686 (Ct. App. 2000).

Moghaddassi v. Moghaddassi, 364 S.C. 182, 189, 612 S.E.2d 707, 711 (Ct. App. 2005). However, this broad scope of review does not require this court to disregard the family court's findings. Id. at 189-90, 612 S.E.2d at 711. When evidence is disputed, the appellate court may adhere to the findings of the family court, who saw and heard the witnesses. Id. at 190, 612 S.E.2d at 711. The family court was in a superior position to judge the witnesses' demeanor and veracity and, therefore, its findings should be given broad discretion. Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996). Moreover, the court's broad scope of review does not relieve the appellant of the burden of proving to this Court that the family court committed error. Nasser-Moghaddassi, 364 S.C. at 190, 612 S.E.2d at 711.

LAW/ANALYSIS

I. Child Support

A. Childcare Costs

Husband first contends the family court erred in calculating his child support obligation based on Wife's alleged childcare costs. We agree.

Child support awards are within the family court's sound discretion and, absent an abuse of discretion, will not be disturbed on appeal. Mitchell v. Mitchell, 283 S.C. 87, 92, 320 S.E.2d 706, 710 (1984). An abuse of discretion occurs when the family court's decision is controlled by some error of law or when the order, based upon the findings of fact, is without evidentiary support. Kelley v. Kelley, 324 S.C. 481, 485, 477 S.E.2d 727, 729 (Ct. App. 1996).

Wife testified at trial that she paid their child's babysitter, Ms. Allison, $390 per month for childcare. When Ms. Allison later testified, she stated Wife initially paid her $100 per week, but at Ms. Allison's insistence, the pay decreased in $10 increments to her current weekly earnings of $60 per week. Ms. Allison then stated, "When she feels like blessing me, she will give me a little more." When questioned by Husband's counsel as to whether Wife was

paying Ms. Allison $390 per month, Ms. Allison stated, "When she blesses me, it add[s] up to that." Ms. Allison then reiterated that she was charging Wife $60 per week, but when Wife tells her she wants to "bless" her, she does not refuse the additional payment.

The family court erred in attributing $390 per month as childcare costs when the testimony presented at the final hearing established Ms. Allison only charged $60 per week. While Wife's decision to "bless" Ms. Allison with additional money on a random basis is an affable gesture, this voluntary gift given at Wife's sole discretion should not be attributed to Husband in calculating his child support obligation. See generally Mixson v. Mixson, 253 S.C. 436, 442-43, 171 S.E.2d 581, 584 (1969) (finding husband was not entitled to a child support credit for money he spent on his children for a beach trip or Christmas gifts because those expenditures were gratuities that were not mandated under the terms of the decree); Foster v. Foster, 294 S.C. 373, 375, 364 S.E.2d 753, 754 (Ct. App. 1988) (citing to Mixson and acknowledging the general rule that voluntary expenditures not prescribed by a child support decree are gifts or gratuities); cf. Steffenson v. Olsen, 360 S.C. 318, 323-24, 600 S.E.2d 129, 132 (Ct. App. 2004) (finding family court properly offset amount of husband's child support arrearage because husband's overpayment in child support was involuntary and not intended as a gift).

Accordingly, we reverse the family court's order insomuch as it credited Wife $390 per month in childcare when it calculated Husband's child support obligation.

B. Retroactive Child Support

Husband also argues the family court erred in ordering retroactive child support to the date of filing because Wife did not request it in her pleadings and there is no basis for this award in the record. We disagree.

The decision to award retroactive child support rests in the sound discretion of the family court. Kelly v. Kelly, 310 S.C. 299, 302, 423 S.E.2d 153, 155 (Ct. App. 1992).

Our courts have previously awarded retroactive child support, despite a party's failure to specifically mention it in the pleadings. See Sutton v. Sutton, 291 S.C. 401, 409, 353 S.E.2d 884, 888 (Ct. App. 1987) (finding wife's failure to specifically mention retroactive child support by name in her petition did not deprive the family court of jurisdiction to award retroactive child support because it was appropriate based on the facts and circumstances of the case). In the case at hand, Wife requested child support in conjunction with other relief that the family court deemed just and proper. We find Wife's petition sufficient under the circumstances. Id. at 408, 353 S.E.2d at 888 (stating the entitlement to retroactive child support depends upon the facts and circumstances of each case).

Moreover, we find a review of the record supports an award of retroactive support. In its temporary order dated May 8, 2007, the family court determined Husband owed $147 per week in temporary child support and $4,233 in arrearages based upon Husband's financial declaration showing his gross monthly income to be $4,973. The family court recalculated the amount of Husband's arrearages in the final divorce decree based on its finding that Husband understated his gross monthly income by $1,795.85 and failed to account for $761 in monthly military retirement income.

At the final hearing, Husband conceded the pay stub submitted into evidence denoting his monthly gross income to be $6,768.65 was accurate. Because Husband's stated income on his financial declaration was at issue, Husband's pay stub was the most credible evidence for determining child support. See S.C. Code Ann. Regs. § 114-4720(A)(6) (Supp. 2009) ("[W]here the amounts reflected on the financial declaration may be at issue, the court may rely on suitable documentation of current earnings, preferably for at least one month, using such documents as pay stubs, employer statements, or receipts and expenses if the parent is self-employed."); see also Spreeuw v. Barker, 385 S.C. 45, 66-67, 682 S.E.2d 843, 853-54 (Ct. App.

2009) (upholding family court's decision to deviate from father's most recent financial declaration in imputing additional income to father for child support purposes when financial declaration understated father's gross income). The family court was within its power to rely on Husband's pay stub in adjusting Husband's child support and ensuing arrearages. See Rogers v. Rogers, 343 S.C. 329, 332-33, 540 S.E.2d 840, 841-42 (2001) (finding increase in monthly child support was warranted based on evidence of father's increased income); see also Harris v. Harris, 307 S.C. 351, 354, 415 S.E.2d 391, 393 (1992) (concluding the family court has jurisdiction to order retroactive increase in child support when party misrepresented income).

Accordingly, we affirm the family court's retroactive increase in Husband's child support obligation. We remand to recalculate child support and to modify arrearages, if any, based on our disposition regarding daycare costs. Further, the family court shall calculate Husband's present child support obligation based on the current status of the parties and include Worksheet A from the South Carolina Child Support Guidelines in its order.

II. Equitable Distribution

Husband argues the family court erred in finding he removed $77,000 in equity by way of a second mortgage on the parties' home without Wife's consent. Moreover, Husband claims the family court erred in finding there was equity in the parties' home because the record established the mortgage indebtedness exceeded the value of the home. We agree.

The division of marital property is within the family court's discretion and will not be disturbed on appeal absent an abuse of that discretion. Craig v. Craig, 365 S.C. 285, 290, 617 S.E.2d 359, 361 (2005). "For purposes of equitable distribution, 'marital debt' is debt incurred for the joint benefit of the parties regardless of whether the parties are legally jointly liable for the debt or whether one party is legally individually liable." Hardy v. Hardy, 311 S.C. 433, 436-37, 429 S.E.2d 811, 813 (Ct. App. 1993).

First, we hold the family court erred in finding Wife did not consent to the second mortgage on the house when the testimony adduced at the final hearing clearly demonstrates otherwise. Husband testified that after marital litigation commenced,[2] he and Wife took out a second mortgage on their house to pay for construction overruns and to avoid a lien being placed on the property, which Wife acknowledged at the final hearing. Husband admitted Wife initially hesitated to sign the mortgage, but she was afforded well over a week to take her name off the mortgage before the closing. Wife presented no testimony that she signed the mortgage as a result of fraud, accident, or mistake. Wife said she was advised by counsel that she needed to sign the document to protect her rights, but she should not have been responsible because the construction of the house was solely Husband's project.

Regardless of Wife's involvement or lack thereof, she has failed to negate the fact that she knowingly signed the mortgage. Because Wife did not prove Husband instituted the second mortgage without her permission, the family court's finding on this issue was in error. See generally Frank v. Frank, 311 S.C. 454, 457, 429 S.E.2d 823, 825 (Ct. App. 1993) (finding wife's premarital home should have been considered in equitable distribution award when both parties signed a promissory note securing a mortgage on the house and were jointly liable for the discharge of the debt).

Further, we fail to see how the home contained any equity to be divided between the parties. The evidence shows the first and second mortgage totaled $454,455 and the value of the house at the time of the second mortgage was $415,000. Thus, the indebtedness on the house exceeded its

[2] Because both parties admit this debt was incurred in an effort to avoid any further encumbrances on the property, the family court properly considered it as part of the marital estate. See Wooten v. Wooten, 364 S.C. 532, 546, 615 S.E.2d 98, 105 (2005) ("When a debt is incurred after the commencement of litigation but before the final divorce decree, the family court may equitably apportion it as a marital debt when it is shown the debt was incurred for marital purposes, i.e., for the joint benefit of both parties during the marriage.").

worth by $39,455.[3] We find the $77,000 mortgage that the family court classified as the remaining equity in the home to be more appropriately classified as marital debt. The family court failed to explain how the remainder of the debt on the marital home was to be divided much less how the remainder of the marital estate was to be apportioned. See Smith v. Smith, 327 S.C. 448, 457, 486 S.E.2d 516, 520-21 (Ct. App. 1997) (citing to former section 20-7-472 and stating that marital debt, like marital property, must be specifically identified and apportioned in equitable distribution). Without any findings as to what the marital estate comprises and in what proportion the parties' assets and debts are to be divided, we remand the issue of equitable distribution for further findings consistent with the mandates of section 20-3-620 of the South Carolina Code (Supp. 2009).[4]

III. Attorney's Fees

Last, Husband asserts the family court erred by (1) omitting any findings of fact to support its attorney's fees award pursuant to Rule 26(a), SCRFC, and (2) failing to address the appropriate factors to determine Wife's entitlement to attorney's fees and the reasonableness of the award.

We need not reach Husband's argument on this issue. Given our disposition on the child support and equitable division issues, the family court should reconsider Wife's request for attorney's fees on remand. See Sexton v. Sexton, 310 S.C. 501, 503-04, 427 S.E.2d 665, 666 (1993) (reversing and remanding issue of attorney's fees for reconsideration when the substantive results achieved by trial counsel were reversed on appeal).

[3] The parties failed to include any documentation in the record to demonstrate how much they paid on their first mortgage, which would reduce their indebtedness and necessarily affect the amount of equity in the home. Accordingly, we resort to the figures cited by the family court in its final order.

[4] Formerly S.C. Code Ann. § 20-7-472 (Supp. 2007).

CONCLUSION

Based on the foregoing, the family court's order is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

PIEPER and KONDUROS, JJ., concur.