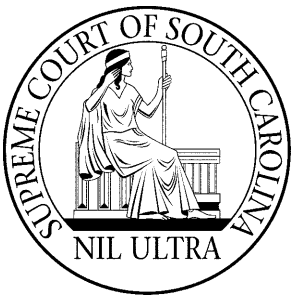

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 47
November 2, 2009
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Frances Irene Todd, Petitioner,

v.

Barbara C. Joyner, Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Georgetown County
Thomas A. Russo, Circuit Court Judge

Opinion No. 26722
Heard June 9, 2009 – Re-filed November 2, 2009

AFFIRMED

Gene M. Connell, Jr., of Kelaher, Connell & Connor, of Surfside Beach, for Petitioner.

Linda Weeks Gangi, of Thompson and Henry, of Conway, for Respondent.

JUSTICE PLEICONES: This case stems from an auto accident in which Petitioner Frances Irene Todd was injured. A jury awarded Todd $37,191.11. Petitioner appealed and the Court of Appeals affirmed. Todd v. Joyner, Op. No. 4315 (S.C. Ct. App. re-filed January 18, 2008) (2009 Shearouse Adv. Sh. No. 46 at 15).[1] We granted certiorari and, finding no error, now affirm the Court of Appeals.

FACTS

A car driven by Joyner collided with a car in which Todd was a passenger. Todd sustained injuries and sued for damages. State Farm, Joyner's insurer, defended her at trial. Joyner admitted negligence and the trial court directed a verdict on liability. Consequently, the sole issue before the jury was the amount of damages owed Todd. In disputing Todd's claimed damages, Joyner presented Dr. Richard J. Friedman as an expert in orthopedic surgery. Because Dr. Friedman was unavailable during trial, his deposition testimony was read to the jury. At the deposition, Todd questioned Dr. Friedman concerning his relationship with State Farm, but Friedman was unable to provide answers to most questions. Dr. Friedman testified that he did not know the number of times he testified for other lawyers in defense cases or how many depositions he testified in per year. He explained that he does not keep records and routinely throws out invoices relating to past expert testimony once his bill is paid. Moreover, when asked what percentage of his practice was comprised of expert testimony, Dr. Friedman answered "very small" and outlined a typical busy work week which left "not much time . . . for anything else."

[1] The Court of Appeals filed the original opinion in this matter on November 27, 2007. The Court of Appeals denied the petition for rehearing but withdrew the original opinion and substituted the above-referenced opinion, which makes only minor changes to the original version. Apparently, the new opinion was never submitted for publication. We now revise the citation to reference the re-filed opinion.

Following the deposition, Todd subpoenaed payment records from State Farm for regarding Dr. Friedman's expert consultation in any case for the past three years. The records supplied showed that Friedman was paid between $50,000 and $60,000 for work on eighteen different claim numbers during calendar years 2003-2005. Todd attempted to introduce the payment records at trial as evidence of bias, but the trial judge refused, citing Rule 403 of the South Carolina Rules of Civil Procedure (SCRCP).

In his testimony, Dr. Friedman opined that Todd suffered no permanent impairment from the auto accident and that any treatment she received more than roughly four months after the accident was not reasonable and necessary or proximately caused by the accident. Dr. Friedman was the only expert whose testimony was offered at trial. At the conclusion of the trial, the jury found for Todd in the amount of $37,191.11, the amount of medical bills presented at the trial. Todd moved for *additur* and filed a motion for a new trial, both of which were denied.

Todd contested a number of evidentiary rulings by the trial court as well as the trial court's refusal to grant her motion for *additur*. The Court of Appeals affirmed the trial court's rulings on all points. Todd, 376 S.C. 144, 654 S.E.2d 862. We granted certiorari.

ISSUES

I. Did the Court of Appeals err in affirming the trial court's decision to bar the introduction of evidence of payments made by State Farm to the expert?

II. Did the Court of Appeals err in affirming the trial court's decision allowing Joyner's expert to read from Todd's medical records during his testimony?

DISCUSSION

I. Yoho v. Thompson

On certiorari, Todd argues that the Court of Appeals erred in affirming the trial court's refusal to allow introduction of the payment records because the records were properly admissible to show bias under Yoho v. Thompson, 345 S.C. 361, 548 S.E.2d 584 (2001). We disagree.

Prior to 1995, the long-standing rule in South Carolina was that, in an action for damages, a defendant's insurance coverage should not be revealed to the jury. Yoho, 345 S.C. at 365, 548 S.E.2d at 585. Rule 411 of the South Carolina Rules of Evidence (SCRE) altered the bar on evidence of insurance and provides:

> Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Rule 411, SCRE (2008).

In Yoho, we adopted a framework for analysis in considering whether or not to admit evidence of insurance. We held that if Rule 411 does not require the exclusion of evidence of insurance, the court should then proceed to perform Rule 403 analysis and consider whether the probative value of the evidence is substantially outweighed by the prejudicial effect and potential for confusing the jury. Yoho, 345 S.C. at 365, 548 S.E.2d at 586. As liability was admitted in this case, Rule 411 is not implicated and the question whether the records are admissible turns on Rule 403.

In considering whether an expert's connection to a defendant's insurer is sufficiently probative to outweigh the prejudice to the defendant resulting from the jury's knowledge that the defendant carries liability insurance, this Court adopted the "substantial connection" analysis employed in a majority of jurisdictions. Id. at 366, 548 S.E.2d at 586. Applying the "substantial connection" test, the Yoho Court noted (1) that the expert was not merely paid an expert fee in the case but instead maintained an employment relationship with the insurance company and other insurance companies; (2) the expert consulted for the insurance company and gave lectures to its agents and adjusters; (3) 10-20% of the expert's practice consisted of reviewing records for insurance companies; and (4) the expert's yearly salary was based in part on his insurance consulting work. Id. Based on these facts, the Yoho Court found that the expert had a substantial connection to the insurance company and therefore, the trial court erred in barring admission of evidence of insurance. Id.

Todd showed, through payment records and the testimony of Potts, that Dr. Friedman earned approximately $50,000 from State Farm during calendar years 2003-2005 based on work on eighteen claims, but presented no evidence as to Dr. Friedman's total earnings during that period. Moreover, unlike Yoho, the evidence appears to show that Dr. Friedman was paid an expert fee rather than having an employment relationship with State Farm. In short, the evidence presented by Todd does not show as strong a connection between the expert and the insurance company as in Yoho and we cannot conclude that the Court of Appeals erred in affirming the trial court.

II. Medical Records

Todd contends that the Court of Appeals erred in upholding the trial court's decision allowing Dr. Friedman to read from Todd's medical records at trial. We disagree.

During the deposition, which was read to the jury at trial, Dr. Friedman was asked to comment on the reasonableness of Todd's medical treatment and whether injuries Todd claimed resulted from the car accident actually

existed before that time. Dr. Friedman based his opinions, in part, on a review of Todd's medical records and, in explaining his opinions, Dr. Friedman referenced Todd's medical records a number of times and occasionally read from the records. Since Dr. Friedman's testimony centered on the idea that injuries Todd claimed resulted from the wreck actually existed prior to the accident, most of the portions of the records read by Dr. Friedman referred to Todd's statements or complaints to her doctors.[2]

At trial, Todd objected to Dr. Friedman's testimony as to medical records as hearsay. We find no error. We find that the records introduced through Dr. Friedman's testimony referring to complaints or statements Todd made to her physicians are not barred by the hearsay rule. Rule 803, SCRE provides as follows:

> The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
> . . .
> (4) Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment; provided, however, that the admissibility of statements made after commencement of the litigation is left to the court's discretion.

Rule 803(4), SCRE (2008). The medical history referenced by Dr. Friedman falls within the ambit of Rule 803(4) and therefore, does not run afoul of the hearsay rule. The Court of Appeals, therefore, did not err in affirming the trial court's decision to allow the testimony.

[2] For example, Dr. Friedman testified that Todd "did complain of headaches to her doctor on March 19th, 1998."

CONCLUSION

We find that the Court of Appeals did not err in affirming the trial court's finding that Todd did not show a "substantial connection" between State Farm and Dr. Friedman to require admission of evidence of insurance. We further find no error in the decision to allow Dr. Friedman to refer to Todd's medical records, and therefore affirm on this ground. We affirm all remaining issues under Rule 220(c).

AFFIRMED.

TOAL, C.J., WALLER, J., and Acting Justice E. C. Burnett, III, concur. BEATTY, J., dissenting in a separate opinion.

JUSTICE BEATTY: I respectfully dissent. Dr. Friedman was employed by State Farm on eighteen different occasions over a three year period immediately prior to trial. This employment relationship clearly constitutes a substantial connection between State Farm and Dr. Friedman. Evidence of this substantial connection should have been admitted to show possible bias on Dr. Friedman's part. See Yoho v. Thompson, 345 S.C. 361, 548 S.E.2d 584 (2001) (holding evidence of a defense expert's medical consulting work for an insurance carrier was admissible, even though the evidence contained a reference to insurance, because considerable latitude is allowed during cross-examination to test a witness's bias, prejudice, or credibility).

The probative value of this evidence far outweighed its prejudicial effect. See id. at 366, 548 S.E.2d at 586 (stating that a substantial connection between an expert and a defendant's insurer is sufficiently probative on the issue of bias so as to outweigh the prejudice to the defendant resulting from the fact that the jury knows the defendant carries liability insurance). Considering the fact that liability insurance has been required in South Carolina for decades, see S.C. Code Ann. §§ 56-10-10, -20, -220 (2006), it is highly probable that every juror already knew that insurance was available. The only unknown was the name of the carrier. Therefore, it is probable that there was no prejudicial effect to be concerned with.

Connecting Dr. Friedman to the insurance carrier was highly probative on the issue of his bias in favor of the insurance carrier, State Farm, and Joyner. In my view there was very little, if any, unfair prejudice to Joyner.

I concur in the remaining issues.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Marvin Stewart, individually and in his capacity as the chairman of, and as a duly elected member of Constituent School District 20; Pam Kusmider, individually and as a duly elected member of Constituent District 20; Tara Lowry, as an individual; and Constituent District Number 20, Appellants,

v.

Charleston County School District, Respondent.

Appeal From Charleston County
Mikell R. Scarborough, Special Circuit Court Judge

Opinion No. 4613
Submitted April 23, 2009 – Filed August 31, 2009
Withdrawn, Substituted, and Refiled October 27, 2009

AFFIRMED

Lawrence C. Kobrovsky, of Charleston, for Appellants.

Alice F. Paylor, of Charleston, for Respondent.

KONDUROS, J.: Marvin Stewart, Pam Kusmider, Tara Lowry, and Constituent School District 20 (collectively Appellants) appeal the circuit court's ruling that the Charleston County School District Board (CCSD) has the authority to set attendance guidelines for Buist Academy, a school physically located in Constituent School District 20 (District 20), for intellectually gifted students.[1] Appellants also appeal the circuit court's finding that the hearing before the CCSD did not violate their due process rights. We affirm.

FACTUAL/PROCEDURAL BACKGROUND

The South Carolina General Assembly consolidated the eight individual school districts in Charleston County into the Unified Charleston County School District in 1967. See Act No. 340, 1967 S.C. Acts 470 (the Act). The eight individual districts, including District 20, called constituent districts, remained in existence under the umbrella of the CCSD with the authority to control certain aspects of the running of their own districts.

Buist Academy is a county-wide magnet school established by the CCSD for intellectually gifted children. The school is physically located within the confines of District 20. As of 2003, admission to Buist Academy was determined on the following basis: priority for one-fourth of available openings was given to students residing in District 20; priority for another one-fourth of openings was reserved for siblings of Buist Academy students; priority for one-fourth of openings was given to students who would otherwise attend low-performing schools; and priority for the final one-fourth of seats would be equal among students county-wide. The applications for the school have always exceeded the available openings, and a lottery is used

[1] District 20 is comprised of the peninsular area of Charleston County.

at the kindergarten level to select students who will be tested to determine if they meet the academic requirements for admission.

In January 2006, the District 20 Board adopted a motion giving priority for all seats to qualified students residing in District 20. Any remaining seats would be given to siblings of current Buist Academy students. The principal of Buist Academy, Sallie Ballard, appealed that action to the CCSD alleging the District 20 Board did not have the authority to set attendance guidelines for the school. Principal Ballard was represented by CCSD's attorney, Alice Paylor, and Paylor's services were paid for by CCSD. Additionally, Paylor had recently represented the CCSD Chairperson, Nancy Cook, in a legal matter free of charge.

On June 13, 2006, the CCSD began a hearing to consider the propriety of the District 20 Board's action, but the hearing was adjourned. The hearing was not reconvened until September 29, 2007. In the interim, Appellants filed an action seeking to require the CCSD to recognize the January 2006 motion changing the admission guidelines for Buist Academy.

When the hearing before CCSD was resumed, the CCSD voted that the January 2006 motion was null and void. Appellants appealed that outcome alleging the CCSD erred in declaring the January 2006 motion null and void and that their due process rights were violated because Paylor worked for CCSD and represented Ballard in her appeal to that body. Following a bench trial, the circuit court determined the CCSD Board had the authority to set the attendance guidelines for Buist Academy and Appellants had received due process during the hearing. This appeal followed.

STANDARD OF REVIEW

In this case, our standard of review is mixed. Whether Act 340 empowered the District 20 Board to establish attendance guidelines for Buist Academy calls for interpretation of the Act. Statutory interpretation is a question of law for the court to be made without any particular deference to the lower court. Thompson ex rel. Harvey v. Cisson Constr. Co., 377 S.C. 137, 154, 659 S.E.2d 171, 180 (Ct. App. 2008). Whether the hearing before the CCSD Board violated Appellants' due process rights was a factual

question before the circuit court. In an action at law, tried without a jury, the appellate court will not disturb the circuit court's findings of fact unless no evidence reasonably supports them. Townes Assoc. Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

LAW/ANALYSIS

I. Attendance Policy

Appellants contend the District 20 Board has the authority to determine which students would attend Buist Academy pursuant to Section 7(1) of the Act. We disagree.

"In interpreting statutes, the [c]ourt looks to the plain meaning of the statute and the intent of the Legislature." State v. Dingle, 376 S.C. 643, 649, 659 S.E.2d 101, 105 (2008). "All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used." State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). In ascertaining that intent, the "court should not focus on any single section or provision but should consider the language of the statute as a whole." Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996).

Here, each party claims authority to set attendance guidelines for Buist Academy under different sections of the Act. Appellants contend the District 20 Board should set admissions guidelines at Buist Academy because it has authority to "determine the school within such constituent district in which any pupil shall enroll." Act No. 340, § 7(1), 1967 S.C. Acts 470. We interpret this language to mean a constituent district may determine what school within that district a student who resides in the district will attend. Because Buist Academy's attendance zone is county-wide, the authority given to a constituent district under section 7(1) is not really implicated in this case as it does not involve the constituent district making an assignment to a traditional neighborhood school.

On the other hand, section 5(8) of the Act states the CCSD has the authority to "provide for intellectually gifted children a program which shall

challenge their talents." Act No. 340, § 5(8), 1967 S.C. Acts 470. District 20 argues a "program" and a "school" are not the same and the legislature purposefully employed the terms to mean two different things. While the term program is not defined in the Act, we do not conclude the term program cannot be interpreted to encompass the creation of a county-wide magnet school such as Buist Academy. It could likewise, as Appellants suggest, refer to the establishment of a program within a pre-existing neighborhood school.[2]

Statutes dealing with the same subject matter are to be construed together, if possible, to produce a harmonious result. Joiner ex rel Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000). The adoption of Appellants' interpretation of the Act would be inconsistent with the authority given to CCSD under section 5(8). Additionally, the constituent districts only have the powers bestowed upon them by the Act in Sections 6 and 7. See Act No. 340, § 5, 1967 S.C. Acts 470 ("In addition to the duties, powers and responsibilities now provided by law for county boards of education, and for school district trustees other than those devolved upon the constituent trustees in Sections 6 and 7 of this act, the Board of the Charleston County School District shall . . . ."). Those powers granted to the constituent districts are subject to appeal to the CCSD. See Act No. 340, § 7, 1967 S.C. Acts 470 ("The trustees in each of the constituent districts shall have the power in their respective districts, subject to the appeal to the Board of Trustees of the Charleston County School District . . . ."). Therefore, because section 7(1) does not empower the District 20 Board to set attendance guidelines at Buist Academy, that authority is vested in the CCSD.

Our adoption of Appellants' position as to the Act would not seem to reflect legislative intent. Placing all emphasis on the physical location of a school such as Buist Academy would permit a constituent school district to monopolize a county-wide magnet school to the exclusion of all other

[2] In a similar vein, the CCSD administers programs for handicapped students on an interdistrict basis based on the authority given in section 5. See Act No. 340, § 5(8), 1967 S.C. Acts 470 ("The CCSD shall [p]rovide for physically and mentally handicapped children educational programs organized and conducted in cooperation with the social or civic organizations and agencies in the county or community.").

students in the county. That interpretation of the Act leads to an absurd result unintended by the General Assembly. See Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) ("We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention."); Miller v. Lawrence Robinson Trucking, 333 S.C. 576, 582, 510 S.E.2d 431, 434 (Ct. App. 1998) ("The interpretation of a term set forth in a statute should support the statute and should not lead to an absurd result."); see also TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998) ("Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers."). Consequently, we cannot adopt the interpretation of this statute proposed by Appellants, and we conclude the circuit court properly found Act 340 grants the CCSD ultimate authority with respect to setting admission criteria for Buist Academy.

II. Due Process Rights

Appellants further contend the conduct of the hearing before the CCSD violated their due process rights. We disagree.

The circuit court concluded the CCSD did not waive its right to hear Ballard's appeal because of the delay in the institution of the hearing in June 2006 and its resumption in September 2007. The record reflects the CCSD instructed the attorneys for both parties to set up a time for reconvening the hearing. This was not done. Furthermore, the record shows the CCSD and the District 20 Board were working on a compromise to satisfy all parties during the hiatus, but those negotiations were ultimately unsuccessful. The circuit court concluded Appellants should have filed a writ of mandamus compelling the CCSD Board to act if the delay was unacceptable.[3] While a writ of mandamus may or may not have been the proper procedural step for Appellants, the record shows the delay in reconvening the hearing was at least in part due to the ongoing negotiations between the two school boards

[3] "The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law." Wilson v. Preston, 378 S.C. 348, 353, 662 S.E.2d 580, 583 (2008).

and the failure of both parties to pursue rescheduling the matter. In addition, the record shows all the qualified students from District 20 who sought admission to kindergarten in 2007 were admitted. So any delay, regardless of cause, did not clearly prejudice District 20 students.[4] Under those circumstances, the record supports the circuit court's conclusion that the delay did not violate Appellants' rights.

The circuit court found Appellants presented no evidence of substantial prejudice created by Paylor's prior representation of Cook.[5] See Felder v. Charleston County Sch. Dist., 327 S.C. 21, 26, 489 S.E.2d 191, 193 (1997) ("Substantial prejudice is required to establish a violation of due process."). Likewise, the circuit court found no evidence Paylor had advised the CCSD Board while representing Ballard in the hearing before it. See Rule 1.8(l), RPC, Rule 407, SCACR ("In any adversarial proceeding, a lawyer shall not serve as both an advocate and an advisor to the hearing officer, trial judge or trier of fact."). We find the circuit court's conclusions are supported by the record.

For all of the foregoing reasons, the ruling of the circuit court is

AFFIRMED.

HEARN, C.J., and THOMAS, J., concur.

[4] Testimony in the record shows that two first-graders high on the waiting list for District 20 students may have been admitted in 2007 under the policy adopted by the District 20 Board provided vacancies became available.

[5] While the circuit court's conclusions are supported by the record, we caution elected officials and attorneys to avoid even the appearance of impropriety in matters of public concern.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Lee B. Jeffrey, Sr., Amicus Curiae,

v.

Sunshine Recycling, Employer, and Capital City Insurance, Alleged Carrier, and South Carolina Uninsured Employers' Fund, Defendants,

of whom Sunshine Recycling and South Carolina Uninsured Employers' Fund are the Appellants,

and Capital City Insurance, Alleged Carrier is the Respondent.

Appeal From Orangeburg County
James C. Williams, Jr., Circuit Court Judge

Opinion No. 4626
Heard September 2, 2009 – Filed October 28, 2009

REVERSED

Robert Merrell Cook, II, of Batesburg-Leesville, for Appellants.

Grady L. Beard and Daniel W. Hayes, both of Columbia, for Respondent.

Preston McDaniel, of Columbia, for Amicus Curiae.

LOCKEMY, J.: Sunshine Recycling (Sunshine) and the South Carolina Uninsured Employers' Fund (UEF) appeal the circuit court's reversal of the Appellate Panel of the South Carolina Workers' Compensation Commission's (Appellate Panel) finding that Capital City Insurance (Capital City) was the workers' compensation insurance carrier for Sunshine when Lee B. Jeffrey, Sr. was injured. Specifically, Sunshine and UEF argue the circuit court erred in (1) incorrectly applying the substantial evidence rule; (2) failing to give proper deference to the Appellate Panel's coverage determination when that determination is exclusively within the purview of the Appellate Panel per Labouser v. Harleysville Mutual Ins. Co., 302 S.C. 540, 397 S.E.2d 526 (1990); and (3) failing to find as an additional sustaining ground for upholding the Appellate Panel's coverage determination that Capital City was estopped to deny coverage. We reverse the circuit court's determination that the Appellate Panel lacked substantial evidence in finding Capital City reinstated Sunshine's insurance policy without a lapse in coverage.

FACTS

Sunshine was insured by Capital City under a policy of workers' compensation coverage. The effective dates of coverage for Sunshine's policy were April 2, 2002 to April 2, 2003. On August 2, 2002, Capital City issued a policy termination notice to Sunshine, which cancelled Sunshine's policy due to nonpayment of premium effective September 6, 2002. Sunshine subsequently paid the premium due and on September 26, 2002, Capital City issued a reinstatement notice to Sunshine stating that its policy was reinstated effective September 25, 2002. In December 2002, Jeffrey filed an amended Form 50 with the Commission reporting an injury he

sustained while employed by Sunshine on September 11, 2002 and requesting a hearing. Jeffrey listed Capital City as the workers' compensation insurance carrier for Sunshine at the time of his injury.

In January 2003, Capital City filed a motion to add UEF as a party to this action. Capital City argued Sunshine's policy was cancelled due to nonpayment of premiums effective September 6, 2002 and it was not the insurance provider for Sunshine on September 11, 2002. In making its cancellation argument, Capital City relied upon the South Carolina Workers' Compensation Assigned Risk Plan Operating Rules and Procedures (Assigned Risk Plan) promulgated by the National Council on Compensation Insurance. The single commissioner ordered UEF added as a party, finding that due to a lapse in coverage, Capital City was not the insurance provider for Sunshine on September 11, 2002. Following the single commissioner's ruling, the parties entered into a consent order and agreed to vacate the single commissioner's order and add UEF as a party. Additionally, Sunshine and UEF withdrew their appeals to the Appellate Panel.

In January 2004, a different single commissioner held the underlying hearing in this matter. The single commissioner found Jeffrey sustained a compensable injury by accident to his back on September 11, 2002, while employed with Sunshine. The single commissioner further determined that although Capital City had properly cancelled the insurance policy of Sunshine due to nonpayment of premiums, the policy was reinstated with no lapse in coverage. The single commissioner found the reinstatement notice lacked clear and unambiguous language indicating the precise dates during which a lapse occurred. Furthermore, the single commissioner specifically noted that the reinstatement notice made no reference to the policy being reinstated with a lapse in coverage. Capital City appealed the single commissioner's order to the Appellate Panel. The Appellate Panel affirmed the single commissioner's determination that coverage applied with no lapse under the reinstated Capital City policy. However, the Appellate Panel reversed the single commissioner's award with regard to Jeffrey's entitlement to compensation. The Appellate Panel determined the settlement of Jeffrey's prior back claim had the same effect as an order, decision, or award, and therefore, Jeffrey was not entitled to additional compensation.

Jeffrey and Capital City appealed the Appellate Panel's order to the circuit court. The circuit court reversed the Appellate Panel's determination regarding coverage, holding Capital City was not the insurance carrier for Sunshine on September 11, 2002. Additionally, the circuit court remanded the case to the Appellate Panel to determine whether Jeffrey sustained a compensable injury by accident. Sunshine and UEF appealed.

STANDARD OF REVIEW

The substantial evidence rule of the Administrative Procedures Act governs the standard of review in a workers' compensation decision. Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 619, 611 S.E.2d 297, 300 (Ct. App. 2005). "In an appeal from the [Appellate Panel], neither this court nor the circuit court may substitute its judgment for that of the [Appellate Panel] as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law." Stone v. Traylor Bros., 360 S.C. 271, 274, 600 S.E.2d 551, 552 (Ct. App. 2004). "Any review of the [Appellate Panel's] factual findings is governed by the substantial evidence standard." Id. "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." Liberty Mut. Ins., 363 S.C. at 620, 611 S.E.2d at 300. "The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." Id.

LAW/ANALYSIS

I. Substantial Evidence Rule

Sunshine and UEF argue the circuit court erred in its application of the substantial evidence rule. Specifically, Sunshine and UEF contend the record contained substantial evidence to support the Appellate Panel's finding that Sunshine's insurance policy with Capital City was reinstated without a lapse in coverage. We agree.

The circuit court found the Appellate Panel lacked substantial evidence in finding Capital City provided workers' compensation coverage to Sunshine at the time of Jeffrey's injury. Citing Section II.D.5 of the Assigned Risk Plan, the circuit court found the Assigned Risk Plan did not require the specific dates of the lapse be included in the reinstatement notice. The circuit court found the reinstatement notice only had to note that a lapse had occurred. The circuit court concluded Capital City advised Sunshine coverage had lapsed because the reinstatement notice stated that its policy would be reinstated effective September 25, 2002.

Sunshine and UEF contend the reinstatement notice failed to specifically identify any lapse in coverage. According to Section II.D.5 of the Assigned Risk Plan, "if a reinstatement notice is issued, any lapse in coverage must be clearly stated on the notice." The reinstatement notice issued to Sunshine stated Capital City reinstated its policy effective September 25, 2002. Sunshine and UEF contend the notice is void of any reference to any period during which a lapse in coverage occurred. They argue that while the circuit court asserted the Appellate Panel lacked substantial evidence in finding coverage had not lapsed, the circuit court failed to provide any reasoning for its finding. Sunshine and UEF contend the circuit court did not find the Appellate Panel made a specific error. Rather, they argue the circuit court merely had a different interpretation of the reinstatement notice. They assert the substantial evidence rule requires the circuit court to accept the Appellate Panel's findings if substantial evidence supported them.

Applying the rules set forth in the Assigned Risk Plan, Capital City contends the policy did not cover Sunshine at the time of Jeffrey's accident because Sunshine failed to pay its premium until after the date of cancellation, resulting in a lapse in coverage. According to Section II.D.5 of the Assigned Risk Plan, "if an item correcting a fault which resulted in cancellation is received on or within sixty (60) days after the effective date of cancellation, the carrier shall reinstate insurance with a lapse in coverage." Furthermore, Capital City contends the Appellate Panel's decision appears to be based on the testimony of Gary Smith, the director of the Commission's Coverage and Compliance Division. Smith testified that while coverage had lapsed, he believed coverage would have still been in effect under Capital

City's policy because "for years what we have done is we have treated reinstatement as a restoration of an insurance policy, a complete restoration of an insurance policy, without a lapse in coverage." Capital City argues the Appellate Panel relied on Smith's testimony and failed to take judicial notice of the Assigned Risk Plan. Capital City cites Rodriguez v. Romero, 363 S.C. 80, 610 S.E.2d 488 (2005), and Avant v. Willowglen Academy, 367 S.C. 315, 626 S.E.2d 797 (2006), to support its assertion that the Assigned Risk Plan governs the issue of whether a lapse in coverage occurred.

While Capital City contends the Appellate Panel failed to acknowledge the applicability of the Assigned Risk Plan, evidence in the record suggests otherwise. The single commissioner applied the language of the Assigned Risk Plan in finding the reinstatement notice did not clearly state the policy had lapsed and the Appellate Panel affirmed this decision. Furthermore, nothing in the Appellate Panel's order indicates its decision was based on Smith's testimony or that it did not apply the Assigned Risk Plan.

Substantial evidence in the record supported the Appellate Panel's finding that the reinstatement notice did not clearly state coverage had lapsed. While Section II.D.5 of the Assigned Risk Plan states a carrier shall reinstate coverage with a lapse when an item correcting a fault that resulted in cancellation is received within sixty days after cancellation, Section II.D.5 further states that any reinstatement notice issued must clearly state any lapse in coverage. As the single commissioner noted, the reinstatement notice did not include clear and unambiguous language indicating the policy was reinstated with a lapse. The Assigned Risk Plan requires any lapse be clearly stated "on the notice." The reinstatement notice stated that the policy effective dates were "4/02/02" through "4/02/03"; however, the notice did not mention a lapse from September 6, 2002 to September 25, 2002, during which Jeffrey's injury occurred. The reinstatement notice did not even mention the September 6 cancellation date.

Moreover, witness testimony indicates the reinstatement notice did not clearly indicate coverage had lapsed. Gary Smith testified that a reasonable person could not tell from looking at the reinstatement notice whether coverage had lapsed. While the circuit court had a different interpretation of the reinstatement notice, the possibility of drawing two different conclusions

from the evidence does not prevent the Appellate Panel's findings from being supported by substantial evidence. See Liberty Mut. Ins., 363 S.C. at 620, 611 S.E.2d at 301. Furthermore, workers' compensation statutes and regulations should be liberally construed in favor of finding coverage and the Appellate Panel should be given great deference in determining coverage. Earl v. HTH Assoc., Inc./Ace Usa Insurance Co. of N. Am., 368 S.C. 76, 81, 627 S.E.2d 760, 762 (Ct. App. 2006). Therefore, the record contains substantial evidence to support the Appellate Panel's finding coverage had not lapsed. Accordingly, we reverse the circuit court's finding that Capital City was not the insurance provider for Sunshine at the time of Jeffrey's injury.

II. Remaining Issues

Sunshine and UEF also argue the trial court erred in (1) failing to give proper deference to the Appellate Panel's coverage determination when that determination was exclusively within the purview of the Appellate Panel per Labouser v. Harleysville Mutual Ins. Co., and (2) failing to find as an additional sustaining ground for upholding the Appellate Panel's coverage determination that Capital City was estopped to deny coverage. Based upon our determination substantial evidence supported the Appellate Panel's finding on coverage, we don't address these issues. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

CONCLUSION

The circuit court erred in determining the Appellate Panel lacked substantial evidence in making its finding that Capital City was Sunshine's workers' compensation insurance provider on September 11, 2002. Accordingly, the circuit court's determination that Capital City was not the workers' compensation insurance provider for Sunshine at the time of Jeffrey's injury is

REVERSED.

HEARN, C.J., and KONDUROS, J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina Department of Social Services, Respondent,

v.

C. H., L. K., T. M., and D. M., Defendants,

Of Whom L. K. is the Appellant.

In the Interest of: Two minor children under the age of 18.

Appeal From Dorchester County
William J. Wylie, Jr., Family Court Judge

Opinion No. 4627
Heard October 7, 2009 – Filed October 28, 2009

REVERSED

John Harleston, of Mount Pleasant, for Appellant.

Deborah Murdock, of Mauldin and Graves Wilson, Jr., of Summerville, for Respondent.

Gina Jolly McAlhany, of Summerville, for Guardian Ad Litem.

GOOLSBY, A.J.: L.K. (Appellant) appeals the family court's order: (1) finding Appellant physically abused a minor child as defined by section 63-7-20 of the South Carolina Code (2008);[1] and (2) requiring Appellant's name be placed in the Central Registry for Child Abuse and Neglect (Central Registry). We reverse.

FACTS AND PROCEDURAL HISTORY

The Department of Social Services (Department) brought this action in the family court against C.H. (Mother) and Appellant, Mother's friend, seeking removal of Mother's two minor children. The Department's amended complaint alleged:

> [One of Mother's minor children (Child)] was abused or neglected as defined by [section 63-7-20 of the South Carolina Code (2008)] in that [Child] was harmed or threatened with harm when [Appellant], while responsible for [Child's] welfare, did or allowed the following:
>
> [Child] was discovered at school having bruises and scratches on his left hand and was unable to use his hand. . . . He reported that his mother's friend, [Appellant], had slammed his hand on the wall.

[1] The amended complaint and the briefs cite section 20-7-490 of the South Carolina Code (Supp. 2007); however, effective June 16, 2008, the General Assembly amended the Code of Laws of South Carolina by adding Title 63, the South Carolina Children's Code, and transferring all provisions of Title 20, Chapter 7, to Title 63. See Act No. 361, 2008 S.C. Acts 3623 (stating "the transfer and reorganization of the code provisions in this act are technical . . . and are not intended to be substantive").

While the family court action was pending, a grand jury indicted Appellant for assault and battery of a high and aggravated nature. Appellant subsequently pled guilty to simple assault and battery and was sentenced to three days' imprisonment.

At the family court merits hearing, the Department submitted Appellant's guilty plea and indictment into evidence. Following the hearing, the family court stated:

> Well, my ruling today is that on the strength of these guilty pleas where [Appellant] has admitted to having assaulted and committed a battery against [Child], I am going to enter this finding of abuse against [Appellant]. It will be a Central Registry finding. And that my ruling for the purpose of this record and any appeal she will not be allowed to take a contrary position to [her guilty plea] in a trial in this matter. . . .

Appellant filed a timely motion for reconsideration, which the family court denied. This appeal followed.

LAW/ANALYSIS

Appellant argues the family court erred in finding she abused Child as defined by section 63-7-20 of the South Carolina Code (2008) because the statute applies only to acts committed by a person responsible for a child's welfare. Appellant further argues the family court erred by requiring the placement of her name on the Central Registry. We agree.

Child abuse occurs when "the parent, guardian, or other person responsible for the child's welfare . . . inflicts or allows to be inflicted upon the child physical or mental injury." § 63-7-20(4)(a) (emphasis added). "An investigation . . . must be initiated when the information contained in a report . . . does not establish whether the person has assumed the role or

responsibility of a parent or guardian for the child." § 63-7-20(16). Once the family court finds a child was abused or neglected pursuant to section 63-7-20(4), the court "must order that a person's name be entered in the Central Registry. . . if the court finds that there is a preponderance of evidence that the person physically or sexually abused . . . the child." S.C. Code Ann. § 63-7-1940(A) (2008).

Here, the family court entered a finding of abuse or neglect against Appellant, relying solely on Appellant's indictment for assault and battery of a high and aggravated nature and her guilty plea to simple assault and battery. In fact, the Department failed to present any independent evidence regarding Appellant's relationship with Child.

Just as one cannot see something that is not there, one cannot plead to something that is not there. Appellant never pled to an indictment alleging she committed an assault and battery in violation of the child abuse statute. The indictment only alleged Appellant, "in violation of the common law," committed an assault and battery of a high and aggravated nature upon a minor child. It did not describe Appellant as a person "responsible for the child's welfare." Further, Appellant never pled guilty to assault and battery in violation of the child abuse statute. Instead, she pled guilty to simple assault and battery. Neither assault and battery of a high and aggravated nature nor simple assault and battery contains the same elements as the child abuse statute.[2]

[2] Appellant's indictment provides: "[Appellant] did . . . commit an assault and battery upon the victim . . . , constituting an unlawful act of violent injury to the person of the said victim, accompanied by circumstances of aggravation . . . . This offense [is] in violation of the common law of this State." "[S]imple assault and battery is an unlawful act of violent injury to another, unaccompanied by any circumstances of aggravation." State v. Tyndall, 336 S.C. 8, 21, 518 S.E.2d 278, 285 (Ct. App. 1999).

Moreover, we note the plea court did not order Appellant's placement on the Central Registry by checking the appropriate box[3] on Appellant's sentencing sheet.

The Department's arguments regarding issue preservation, waiver, and estoppel are all without merit. As to issue preservation, the issue of whether Appellant was responsible for Child's welfare was before the family court because the relationship between Appellant and Child was pled in the complaint and Appellant was not required to deny the allegation to preserve the issue for review. See S.C. Code Ann. § 63-7-1660(D) (2008) ("No responsive pleading to the petition [for removal] is required."); Rule 8(d), SCRCP ("Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided."). The family court ruled on the issue by making a finding of child abuse against Appellant. Moreover, Appellant challenged the sufficiency of the guilty pleas as conclusive evidence of child abuse in her Rule 59(e), SCRCP, motion.

As to waiver, Appellant did not waive her right to challenge the sufficiency of the guilty plea by failing to object to the plea when it was admitted into evidence. Appellant's failure to object did not constitute an admission that the plea was conclusive evidence of child abuse; instead, Appellant acknowledged the plea was authentic and relevant to the family court action.

Regarding estoppel, Appellant is not estopped from denying liability for child abuse. As set forth above, Appellant pled guilty to assault and battery, not child abuse, and the guilty plea does not establish Appellant was a person responsible for the Child's welfare.

REVERSED.

KONDUROS and LOCKEMY, JJ., concur.

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[3]An empty box precedes the following language on Appellant's sentencing sheet: "The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code Ann. § 17-25-135."