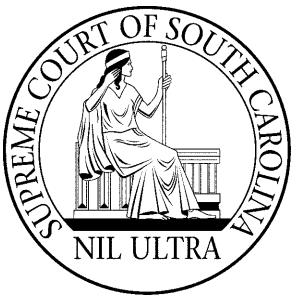

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 5
February 1, 2017
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

None

PETITIONS - UNITED STATES SUPREME COURT

PETITIONS FOR REHEARING

EXTENSION OF TIME TO FILE A PETITION FOR REHEARING

27698 - Harleysville Group, Inc. v. Heritage Communities	Granted until 2/10/2017

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

PETITIONS FOR REHEARING

5457-Richard A. Hartzell v. Palmetto Collision	Pending
5458-William Turner v. SAIIA Construction	Pending
5460-Frank Mead, III, v. Beaufort County Assessor	Pending
5462-In the matter of the estate of Eris Singletary Smith	Pending
5464-Anna D. Wilson v. SCDMV	Pending
2016-UP-413-SCDSS v. Salisha Hemphill	Pending
2016-UP-431-Benjamin Henderson v. Patricia Greer	Denied 01/20/17
2016-UP-470-Mark and Elizabeth Heil v. Stewart and Christina Hines	Pending
2016-UP-475-Melissa Spalt v. SCDMV	Pending
2016-UP-485-Johnson Koola v. Cambridge Two (2)	Pending
2016-UP-486-State v. Kathy Revan	Pending
2016-UP-487-Mare Baracco v. Beaufort County	Pending
2016-UP-489-State v. Johnny J. Boyd	Pending
2016-UP-490-Clark D. Thomas v. Evening Post Publishing	Pending
2016-UP-496-Wells Fargo Bank v. Gisela Moore	Pending
2016-UP-506-George Cleveland, III v. S.C. Dep't of Corrections	Pending
2016-UP-515-Tommy S. Adams v. State	Pending
2016-UP-517-SCDSS v. Andrew J. Myers	Pending
2016-UP-520-James W. Trexler v. The Humane Society	Pending
2016-UP-524-Palmetto Residential v. Michael Cox	Pending
2016-UP-525-JMT Capital v. VDMT (Daufuskie Island)	Pending

2016-UP-527-Grange S. Lucas v. Karen A. Sickinger	Pending
2016-UP-528-Betty Fisher v. Bessie Huckabee	Pending
2016-UP-529-Kimberly Walker v. Sunbelt	Pending
2017-UP-008--SCDSS v. Renauda Brunson	Pending
2017-UP-009-In the matter of Daryl Snow	Pending
2017-UP-013-Amisub of South Carolina, Inc. v. SCDHEC	Pending
2017-UP-015-State v. Jalann Williams	Pending
2017-UP-017-State v. Quartis Hemingway	Pending
2017-UP-019-Stephen Dudek v. Thomas Ferro (Morphew)	Pending
2017-UP-021-State v. Wayne Polite	Pending
2017-UP-022-Kenneth W. Signor v. Mark Keel	Pending
2017-UP-023-State v. John Henry Lowery II	Pending
2017-UP-025-State v. David Glover	Pending
2017-UP-026-State v. Michael E. Williams	Pending
2017-UP-028-State v. Demetrice R. James	Pending
2017-UP-029-State v. Robert D. Hughes	Pending
2017-UP-031-FV-I, Inc. v. Bryon J. Dolan	Pending
2017-UP-037-State v. Curtis Brent Gorny	Pending
2017-UP-039-R.P. v. SCDHHS	Pending
2017-UP-043-Ex Parte: Carter v. Roe	Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

5253-Sierra Club v. Chem-Nuclear	Pending
5301-State v. Andrew T. Looper	Pending
5326-Denise Wright v. PRG	Pending
5328-Matthew McAlhaney v. Richard McElveen	Pending
5345-Jacklyn Donevant v. Town of Surfside Beach	Pending
5355-State v. Lamar Sequan Brown	Pending
5359-Bobby Joe Reeves v. State	Pending
5366-David Gooldy v. The Storage Center	Pending
5368-SCDOT v. David Powell	Pending
5369-Boisha Wofford v. City of Spartanburg	Pending
5374-David M. Repko v. County of Georgetown	Pending
5375-Mark Kelley v. David Wren	Pending
5378-Stephen Smalls v. State	Pending
5382-State v. Marc A. Palmer	Pending
5387-Richard Wilson v. Laura B. Willis	Pending
5388-Vivian Atkins v. James R. Wilson, Jr.	Pending
5389-Fred Gatewood v. SCDC (2)	Pending
5390-State v. Tyrone King	Pending
5391-Paggy D. Conits v. Spiro E. Conits	Pending
5393-SC Ins. Reserve Fund v. East Richland	Pending

5395-State v. Gerald Barrett, Jr.	Pending
5398-Claude W. Graham v. Town of Latta	Pending
5402-Palmetto Mortuary Transport v. Knight Systems	Pending
5403-Virginia Marshall v. Kenneth Dodds	Pending
5406-Charles Gary v. Hattie M. Askew	Pending
5408-Martina R. Putnam v. The State	Pending
5410-Protection and Advocacy v. Beverly Buscemi	Pending
5411-John Doe v. City of Duncan	Pending
5414-In the matter of the estate of Marion M. Kay	Pending
5415-Timothy McMahan v. SC Department of Education	Pending
5416-Allen Patterson v. Herb Witter	Pending
5417-Meredith Huffman v. Sunshine Recycling	Pending
5418-Gary G. Harris v. Tietex International, Ltd.	Pending
5419-Arkay, LLC v. City of Charleston	Pending
5420-Darryl Frierson v. State	Pending
5421-Coastal Federal Credit v. Angel Latoria Brown	Pending
5424-Janette Buchanan v. S.C. Property and Casualty Ins.	Pending
5428-State v. Roy L. Jones	Pending
5430-Wilfred Allen Woods v. Etta Catherine Woods	Pending
5431-Lori Stoney v. Richard Stoney	Pending
5432-Daniel Dorn v. Paul Cohen	Pending

5433-The Winthrop University Trustees v. Pickens Roofing	Pending
5434-The Callawassie Island v. Ronnie Dennis	Pending
5435-State v. Joshua W. Porch	Pending
5436-Lynne Vicary v. Town of Awendaw	Pending
5438-The Gates at Williams-Brice v. DDC Construction Inc.	Pending
5443-State v. Steven Hoss Walters, Jr.	Pending
5448-Shanna Kranchick v. State	Pending
2015-UP-010-Latonya Footman v. Johnson Food Services	Pending
2015-UP-091-U.S. Bank v. Kelley Burr	Pending
2015-UP-266-State v. Gary Eugene Lott	Pending
2015-UP-303-Charleston County Assessor v. LMP Properties	Pending
2015-UP-304-Robert K. Marshall, Jr. v. City of Rock Hill	Pending
2015-UP-330-Bigford Enterprises v. D. C. Development	Pending
2015-UP-376-Ron Orlosky v. Law Office of Jay Mullinax	Pending
2015-UP-377-Long Grove at Seaside v. Long Grove Property Owners (James, Harwick & Partners)	Pending
2015-UP-466-State v. Harold Cartwright, III	Pending
2015-UP-505-Charles Carter v. S.C. Dep't of Corr. (3)	Pending
2015-UP-547-Evalena Catoe v. The City of Columbia	Pending
2015-UP-574-State v. Brett D. Parker	Pending
2016-UP-010-State v. James Clyde Dill, Jr.	Pending
2016-UP-013-Ex parte State of South Carolina In re: Cathy J. Swicegood v. Polly A. Thompson	Pending

2016-UP-015-Onrae Williams v. State	Pending
2016-UP-023-Frankie Lee Bryant, III, v. State	Pending
2016-UP-028-Arthur Washington v. Resort Services	Pending
2016-UP-052-Randall Green v. Wayne Bauerle	Pending
2016-UP-054-Ex Parte: S.C. Coastal Conservation League v. Duke Energy	Pending
2016-UP-056-Gwendolyn Sellers v. Cleveland Sellers, Jr.	Pending
2016-UP-068-State v. Marcus Bailey	Pending
2016-UP-073-State v. Mandy L. Smith	Pending
2016-UP-074-State v. Sammy Lee Scarborough	Pending
2016-UP-084-Esvin Perez v. Gino's The King of Pizza	Pending
2016-UP-089-William Breland v. SCDOT	Pending
2016-UP-091-Kyle Pertuis v. Front Roe Restaurants, Inc.	Pending
2016-UP-109-Brook Waddle v. SCDHHS	Pending
2016-UP-118-State v. Lywone S. Capers	Pending
2016-UP-119-State v. Bilal Sincere Haynesworth	Pending
2016-UP-132-Willis Weary v. State	Pending
2016-UP-135-State v. Ernest M. Allen	Pending
2016-UP-137-Glenda R. Couram v. Christopher Hooker	Pending
2016-UP-138-McGuinn Construction v. Saul Espino	Pending
2016-UP-139-Hector Fragosa v. Kade Construction	Pending
2016-UP-141-Plantation Federal v. J. Charles Gray	Pending

2016-UP-151-Randy Horton v. Jasper County School	Pending
2016-UP-158-Raymond Carter v. Donnie Myers	Pending
2016-UP-160-Mariam R. Noorai v. School Dist. of Pickens Cty.	Pending
2016-UP-162-State v. Shawn L. Wyatt	Pending
2016-UP-168-Nationwide Mutual v. Eagle Windows	Pending
2016-UP-171-Nakia Jones v. State	Pending
2016-UP-174-Jerome Curtis Buckson v. State	Pending
2016-UP-182-State v. James Simmons, Jr.	Pending
2016-UP-184-D&C Builders v. Richard Buckley	Pending
2016-UP-187-Nationstar Mortgage, LLC v. Rhonda L. Meisner	Pending
2016-UP-189-Jennifer Middleton v. Orangeburg Consolidated	Pending
2016-UP-193-State v. Jeffrey Davis	Pending
2016-UP-198-In the matter of Kenneth Campbell	Pending
2016-UP-199-Ryan Powell v. Amy Boheler	Pending
2016-UP-206-State v. Devatee Tymar Clinton	Pending
2016-UP-239-State v. Kurtino Weathersbee	Pending
2016-UP-245-State v. Rodney L. Rogers, Sr.	Pending
2016-UP-247-Pankaj Patel v. Krish Patel	Pending
2016-UP-261-Samuel T. Brick v. Richland Cty. Planning Comm'n	Pending
2016-UP-263-Wells Fargo Bank v. Ronald Pappas	Pending
2016-UP-268-SCDSS v. David and Kimberly Wicker	Pending

2016-UP-274-Bayview Loan Servicing v. Scott Schledwitz	Pending
2016-UP-276-Hubert Bethune v. Waffle House	Pending
2016-UP-280-Juan Ramirez v. Progressive Northern	Pending
2016-UP-299-State v. Donna Boyd	Pending
2016-UP-314-State v. Frank Muns	Pending
2016-UP-315-State v. Marco S. Sanders	Pending
2016-UP-318-SunTrust Mortgage v. Mark Ostendorff	Pending
2016-UP-320-State v. Emmanual M. Rodriguez	Pending
2016-UP-325-National Bank of SC v. Thaddeus F. Segars	Pending
2016-UP-328-SCDSS v. Holly M. Smith	Pending
2016-UP-330-State v. William T. Calvert	Pending
2016-UP-331-Claude Graham v. Town of Latta (2)	Pending
2016-UP-336-Dickie Shults v. Angela G. Miller	Pending
2016-UP-338-HHH Ltd. of Greenville v. Randall S. Hiller	Pending
2016-UP-340-State v. James Richard Bartee, Jr.	Pending
2016-UP-344-State v. William Anthony Wallace	Pending
2016-UP-348-Basil Akbar v. SCDC	Pending
2016-UP-351-Tipperary Sales v. S.C. Dep't of Transp.	Pending
2016-UP-352-State v. Daniel W. Spade	Pending
2016-UP-366-In Re: Estate of Valerie D'Agostino	Pending
2016-UP-367-State v. Christopher D. Campbell	Pending
2016-UP-368-Overland, Inc. v. Lara Nance	Pending

2016-UP-382-Darrell L. Goss v. State	Pending
2016-UP-392-Joshua Cramer v. SCDC (2)	Pending
2016-UP-395-Darrell Efird v. The State	Pending
2016-UP-402-Coves Darden v. Francisco Ibanez	Pending
2016-UP-403-State v. Arthur Moseley	Pending
2016-UP-404-George Glassmeyer v. City of Columbia (2)	Pending
2016-UP-405-Edward A. Dalsing v. David Hudson	Pending
2016-UP-406-State v. Darryl Wayne Moran	Pending
2016-UP-408-Rebecca Jackson v. OSI Restaurant Partners	Pending
2016-UP-411-State v. Jimmy Turner	Pending
2016-UP-421-Mark Ostendorff v. School District of Pickens	Pending
2016-UP-424-State v. Daniel Martinez Herrera	Pending
2016-UP-430-State v. Thomas James	Pending
2016-UP-448-State v. Corey J. Williams	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Brad Lightner, individually, and on behalf of all others similarly situated, Respondent,

v.

Hampton Hall Club, Inc., State of South Carolina, South Carolina Department of Revenue, Beaufort County and John Doe, Defendants,

of whom State of South Carolina and South Carolina Department of Revenue are, Petitioners.

Appellate Case No. 2015-001952

ON WRIT OF CERTIORARI

Appeal From Beaufort County
Perry M. Buckner, III, Circuit Court Judge

Opinion No. 27700
Heard May 18, 2016 – Filed February 1, 2017

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Attorney General Alan M. Wilson and Deputy Solicitor General J. Emory Smith, Jr., both of Columbia, for Petitioner State of South Carolina; Milton G. Kimpson and Tasha B. Thompson, both of Columbia, for Petitioner South Carolina Department of Revenue.

Kathleen C. Barnes, of Barnes Law Firm, LLC; Ronnie L. Crosby and William F. Barnes, III, both of Peters Murdaugh Parker Eltzroth & Detrick, PA, all of Hampton, for Respondent.

CHIEF JUSTICE BEATTY: Brad Lightner, individually, and on behalf of all others similarly situated, ("Respondent") brought this action against Hampton Hall Club, Inc., the State of South Carolina, the South Carolina Department of Revenue ("SCDOR"), Beaufort County, and John Doe[1] ("Defendants"), alleging Defendants wrongfully collected and retained admissions taxes. After Respondent filed a motion for class certification, the State and the SCDOR ("Petitioners") filed a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, or, in the alternative, to strike pursuant to Rule 12(f), SCRCP, to dismiss the State as a party and to stay discovery. In so moving, Petitioners asserted, *inter alia*, Respondent is required to exhaust the administrative remedies under the South Carolina Revenue Procedures Act[2] ("Act") and is prohibited from proceeding as a class action against the SCDOR.

The circuit court determined the Act is inapplicable to this action because the General Assembly intended to limit the Act's application to disputes with the SCDOR concerning property taxes, which both parties conceded were not at issue. Thus, contrary to Petitioners' assertions, Respondent was not required to exhaust the administrative remedies under the Act in order to proceed *individually* against all Defendants. The court, however, granted Petitioners' motion to dismiss the *class action allegations*, finding the Act, which it determined was inapplicable to

---

[1] "John Doe" collectively represents other unknown nonprofit corporations that have wrongfully collected admissions taxes from its members.

[2] S.C. Code Ann. §§ 12-60-10 to -3390 (2014 & Supp. 2015).

this dispute, nevertheless prohibited Respondent from bringing a class action lawsuit against Petitioners. We affirm in part, reverse in part, and remand.

I. Factual and Procedural History

Hampton Hall Club, Inc. is a nonprofit organization in Beaufort County. Respondent, a member of Hampton Hall, filed this action individually, and on behalf of all others similarly situated against Defendants, alleging Defendants collected and retained an admissions tax on its members' club and golf dues in contravention of section 12-21-2420(4) of the South Carolina Code, which states, in pertinent part: "[N]o admission tax shall be charged or collected by reason of any charge made to any member of a nonprofit organization or corporation for the use of the facilities of the organization or corporation of which he is a member." S.C. Code Ann. § 12-21-2420(4) (2014).

Respondent asserted three causes of action in his complaint. Against all Defendants, Respondent sought damages under *quantum meruit* and a declaration that Defendants' collection and retention of the admissions tax was unlawful. Against John Doe and Hampton Hall, Respondent also asserted a breach of fiduciary duty claim. In addition, Respondent requested an order enjoining Defendants from continuing to collect and retain the admissions tax.

After Respondent filed a motion for class certification, Petitioners filed a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, or, in the alternative, to strike pursuant to Rule 12(f), SCRCP. Petitioners argued the action against the SCDOR should be dismissed pursuant to Rule 12(b)(6), SCRCP, since: (1) Respondent is required to exhaust the administrative remedies under the Act; and (2) the Act bars Respondent from bringing a class action lawsuit under section 12-60-80(C).[3] In the alternative, Petitioners contended all class action allegations

[3] Section 12-60-80(C) provides:

> Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Court or any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.

against the SCDOR should be stricken pursuant to Rule 12(f), SCRCP, because of the prohibition on class action lawsuits under section 12-60-80(C). Petitioners also argued Respondent's allegations that he is entitled to injunctive relief to prevent the collection of admissions taxes should be stricken in accordance with section 12-60-60.[4] In addition, Petitioners asserted the State should be dismissed as a party because the SCDOR is responsible for administering and enforcing the tax laws of the State.

In Respondent's memorandum in opposition to Petitioners' motion, Respondent argued the application of the Act is limited to property tax disputes with the SCDOR. Because this dispute does not concern property taxes, Respondent contended the provisions under the Act concerning the exhaustion of administrative remedies, prohibition of class action lawsuits, and bar on injunctive relief do not apply to this action. Further, while section 12-4-10 grants the SCDOR the authority "to administer and enforce the revenue laws of this State," Respondent maintained the State is still a proper party to this dispute because the statute does not state or imply the SCDOR is the sole entity with that authority.

After a hearing, the circuit court determined the Act did not apply because its application is limited to disputes with the SCDOR concerning property taxes. Thus, Respondent was not required to exhaust the administrative remedies under the Act in order to proceed individually against all Defendants. Nevertheless, relying on this Court's decision in *Drummond v. State*, 378 S.C. 362, 662 S.E.2d

---

S.C. Code Ann. § 12-60-80(C) (2014).

[4] Section 12-60-60 states:

> An action of a court or an administrative law judge cannot stay or prevent the department or an officer of the State charged with a duty in the collection of taxes, from acting to collect a tax, whether or not the tax is legally due.

Id. § 12-60-60 (2014).

587 (2008),[5] the circuit court granted Petitioners' motion to strike the class action allegations, finding the Act, which it previously determined did not apply to this action, prevented Respondent from proceeding as a class action against the SCDOR.

Following the issuance of the circuit court's order, the SCDOR emailed the court's law clerk and asked for clarification regarding the court's decision on the issue of whether the State is a proper party to the action. The email stated: "There is one matter for clarification: The Order does not specify, but it is the Department's understanding that granting the Department's motion to dismiss is effectively dismissing the State as well - as the Department is acting on behalf of the State. Is this a correct reading of the Order?" The law clerk replied "That was our understanding as well."

Respondent filed a Rule 59(e), SCRCP motion to reconsider, arguing: (1) it is inconsistent to find the Act does not apply to this dispute, yet apply a provision from the Act to prohibit Respondent from proceeding as a class action; (2) *Drummond* does not apply to this action; and (3) the circuit court's order does not have the effect of dismissing a defendant. The circuit court denied Respondent's motion to reconsider. However, in its order denying the motion, the court clarified its initial order, stating:

> Finally, to clear up any confusion from the July 9 Order, the Court finds that the Plaintiffs may proceed as an individual against all Defendants, including the SCDOR and the State of South Carolina,

---

[5] In *Drummond*, plaintiff sought, *inter alia*, a declaratory judgment that the SCDOR exceeded its authority in promulgating a regulation that allegedly did not conform to the statute authorizing a state tax exemption for diabetic supplies. *Drummond*, 378 S.C. at 369, 662 S.E.2d at 590. This Court recognized that Drummond was in effect challenging the facial validity of the regulation. In remanding this issue to the circuit court, we held, in this instance, the Act did not apply because the Administrative Law Court ("ALC") does not have the authority "to rule on the validity of a regulation." *Id*. at 370, 662 S.E.2d at 591. Following our holding on this issue, we stated section "12-60-80(C), which prohibits a class action, applies not only to administrative law cases but also to tax cases brought in circuit court. . . . Accordingly, this action may not be certified as a class action." *Id*. at 370 n.5, 662 S.E.2d at 591 n.5.

without the necessity of exhausting administrative remedies. The class action allegations against the SCDOR and the State of South Carolina are ordered dismissed.

Respondent subsequently filed a notice of appeal in the Court of Appeals. Shortly thereafter, Petitioners filed a petition for extraordinary relief including a writ of certiorari in this Court, asserting: (1) the circuit court erred in determining the Act is limited to disputes concerning property taxes; (2) Respondent is required to exhaust the administrative remedies under the Act; and (3) the State should be dismissed from this action. By way of return, Respondent argued, *inter alia*, the circuit court erred in applying the class action prohibition under the Act. After this Court granted certiorari, the Court of Appeals dismissed Respondent's appeal on the basis that class certification orders are not immediately appealable. As a result, Respondent filed a petition for certiorari, asking this Court to review both the Court of Appeals' dismissal and the circuit court's dismissal of the class action allegations against Petitioners. That appeal is being held in abeyance until the resolution of this appeal.

II. Standard of Review

"An issue regarding statutory interpretation is a question of law." *Univ. of S. California v. Moran*, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005). "[T]his Court reviews questions of law de novo." *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). "The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible." *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015).

III. Discussion

A. Whether the Act is limited to disputes with the SCDOR concerning property taxes.

Petitioners contend the circuit court erred in determining the Act is only applicable to disputes with the SCDOR concerning property taxes. We agree.

Section 12-60-20 of the South Carolina Code provides:

> It is the intent of the General Assembly to provide the people of this State with a straightforward procedure ***to determine a dispute with the Department of Revenue and a dispute concerning property taxes***. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.

S.C. Code Ann. § 12-60-20 (2014) (emphasis added).

In determining the Act only applies to property tax disputes with the SCDOR, the circuit court essentially interpreted the language "a dispute with the Department of Revenue and a dispute concerning property taxes" as "a dispute with the Department of Revenue concerning property taxes." This interpretation, however, renders the words "and a dispute" in the statute meaningless and thereby violates our rules of statutory interpretation. *See In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." (citation omitted)).

Giving effect to *each* word in the statute, we do not believe the General Assembly intended to limit the application of the Act to property tax disputes with the SCDOR. The plain language of the statute, including the repetition of the terms "a dispute" after the term "and," indicates the General Assembly intended to distinguish "a dispute with the Department of Revenue" from "a dispute concerning property taxes." It does not suggest the General Assembly intended for these two provisions to be combined into one limited category of disputes to which the Act would apply.

Respondent argues this interpretation effectively changes the "and" in the statute to "or." We disagree. By recognizing that the General Assembly intended to distinguish between "a dispute with the Department of Revenue" and "a dispute concerning property taxes," we clarify that the Act applies to disputes with the SCDOR, which may not concern property taxes, *and* to disputes concerning property taxes, which may involve the SCDOR or a county or municipality. Thus, we do not believe the General Assembly intended for the "and" to be interpreted as limiting the Act's application to property tax disputes with the SCDOR. This belief is further supported by a review of the Act as a whole and the statute's legislative history.

1. Act as a whole

The Act consists of four articles—1, 5, 9, and 13. S.C. Code Ann. §§ 12-60-10 to -3390 (2014 & Supp. 2015). Article 1 is titled "General Provisions" and includes, *inter alia*, the legislative intent and definitions. *Id*. §§ 12-60-10 to -90 (2014). Article 5 outlines the procedures for filing a claim for a tax refund and for challenging tax assessments. *Id*. §§ 12-60-410 to -920 (2014). Article 5 also outlines the procedures involved in adjudicating disputes concerning the licensing of beer, wine, and liquor. *Id*. §§ 12-60-1310 to -1350 (2014). Article 9 concerns the procedures for resolving state and county property tax disputes. *Id*. §§ 12-60-1710 to -2940 (2014 & Supp. 2015). Article 13 provides the procedures for revenue cases in the ALC. *Id*. §§ 12-60-3310 to -3390 (2014).

It is clear the Act concerns more than property tax disputes with the SCDOR. Therefore, limiting the Act's application to property tax disputes with the SCDOR would effectively render the remaining provisions under the Act concerning, *inter alia*, the adjudication of disputes over the licensing of beer, wine, and liquor superfluous and meaningless. "This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless." *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012).

2. Legislative history[6]

---

[6] The General Assembly enacted the Act in 1995. At that time, the legislative intent under section 12-60-20 read, in pertinent part, "to provide the people of this State with a straightforward procedure to determine *any disputed revenue liability*." Act No. 60, 1995 S.C. Acts 362, 367 (emphasis added). In 2000, the General Assembly amended the legislative intent to "to provide the people of this State with a straightforward procedure to determine *any dispute with the Department of Revenue*." Act No. 399, 2000 S.C. Acts 3432, 3461 (emphasis added). In 2007, the General Assembly amended section 12-60-20 to its current form "to provide the people of this State with a straightforward procedure to determine *a dispute with the Department of Revenue and a dispute concerning property taxes*." Act No. 110, 2007 S.C. Acts 557, 583 (emphasis added); Act No. 116, 2007 S.C. Acts 688, 730 (emphasis added).

In the preamble of the 2007 Act that amended the statute to its current form, the General Assembly explained it intended "***to include disputes concerning property taxes***." Act No. 110, 2007 S.C. Acts 557, 561-62 (emphasis added); Act No. 116, 2007 S.C. Acts 688, 694 (emphasis added). This Court has stated that "[w]hile the preamble is not a part of the effective portion of a statute, it may supply the guide to the meaning of an act." *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015). By stating its intent was "to include disputes concerning property taxes," we do not believe the General Assembly intended to *limit* the Act's application to property tax disputes with the SCDOR.

For these reasons, we find the circuit court erred in determining the Act is limited to property tax disputes with the SCDOR.

B. Whether Respondent is required to exhaust the administrative remedies under the Act.

Petitioners assert the circuit court erred in finding Respondent was not required to exhaust the administrative remedies under the Act. We agree.

Section 12-60-80 provides, in relevant part:

> (A) Except as provided in subsection (B), ***there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes***.
>
> (B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons.

S.C. Code Ann. § 12-60-80 (2014) (emphasis added).

The term "tax" is defined under the Act as "taxes, licenses, permits, fees, or other amounts, including interest, regulatory and other penalties, and civil fines, imposed by this title, or subject to assessment or collection by the department." *Id.* § 12-60-30(27) (2014). The admissions tax at issue here is a "tax" as defined under

the Act because it is a tax subject to the assessment or collection by the SCDOR.[7] Therefore, because this action does not challenge the constitutionality of a statute, but rather the wrongful collection of taxes, Respondent is limited to the administrative remedies available under the Act.

Accordingly, the circuit court's decision on this issue is reversed and the action is remanded for the circuit court to dismiss the case without prejudice. *See id*. § 12-60-3390 (2014) ("If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice.").

C. Whether Respondent is prohibited from proceeding as a class action.

As an initial matter, Petitioners contend Respondent's argument as to whether the circuit court erred in applying the class action prohibition under the Act is not properly before this Court because the issue was not raised in Petitioners' petition for a writ of certiorari. Even assuming Petitioners are correct, we nonetheless reach the merits of Respondent's argument given: (1) the interest of judicial economy; (2) the already tortured procedural history of this case; (3) the issue is intertwined with the other arguments raised on appeal; and (4) both parties addressed the issue in their briefs and oral arguments before the Court in this case.

Turning to the issue's merits, we hold Respondent is prohibited from proceeding as a class action albeit not for the same reasons relied on by the circuit court. Section 12-60-80(C) provides:

> Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Court or any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.

---

[7] *See id*. § 12-21-2550 (2014) ("A person liable to the [admissions] tax shall make a true and correct return to the department . . . . If a person fails to make a true and correct return or fails to file the return, the department shall make an estimate of the tax liability from the best information available, and issue a proposed assessment for the taxes, including penalties and interest.").

S.C. Code Ann. § 12-60-80(C) (2014). The plain language of the statute prohibits a claim for a tax refund from being brought as a class action in any court of law in this state. Therefore, Respondent is prohibited from proceeding as a class action for the refund of the state admissions taxes.[8]

IV. Conclusion

In sum, we hold the circuit court erred in finding the Act's application is limited to disputes with the SCDOR concerning property taxes. Because the Act is applicable to this case, Respondent is required to follow the administrative remedies under the Act and is prohibited from proceeding as a class action against Petitioners. Based on the disposition of the abovementioned issues, we decline to reach Petitioners' remaining argument. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing this Court need not address remaining issues when disposition of prior issue is dispositive of the appeal).

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

KITTREDGE, HEARN, JJ., and Acting Justice Costa M. Pleicones, concur. FEW, J., concurring in a separate opinion.

---

[8] After finding the Act was inapplicable to this case, the circuit court, relying on this Court's decision in *Drummond v. State*, 378 S.C. 362, 662 S.E.2d 587 (2008), determined Respondent was prohibited from proceeding as a class action against Petitioners. Respondent argues it is inconsistent to find the Act is inapplicable to this case, yet apply a provision from the Act to its outcome. We need not address Respondent's argument or the circuit court's reliance on *Drummond* because we find the Act, and its provisions concerning the prohibition on class actions and exhaustion of administrative remedies, applies to this case.

JUSTICE FEW: I concur with the majority opinion except for subsection III.A. As to that subsection, I concur only with the result reached by the majority because I have one important disagreement regarding the application of our rules of statutory interpretation.

This Court has repeatedly held, "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed . . . ." *State v. Ramsey*, 409 S.C. 206, 209, 762 S.E.2d 15, 17 (2014) (quoting *Hodges v. Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)); *see also Lambries v. Saluda Cty. Council*, 409 S.C. 1, 10, 760 S.E.2d 785, 789 (2014) ("If a statute is ambiguous, the courts must construe its terms."); *Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 401, 175 S.E.2d 805, 817 (1970) ("If a statute is clear and explicit in its language, then there is no need to resort to statutory interpretation or legislative intent to determine its meaning."). In this case, relying on what it calls "the plain language" of section 12-60-20 of the South Carolina Code (2014), the majority finds the exhaustion of remedies requirement of the Revenue Procedures Act applies both to "a dispute with the Department of Revenue" and to "a dispute concerning property taxes." Nevertheless, the majority proceeds to employ various rules of statutory interpretation to explain the meaning of section 12-60-20.

I agree the plain language of section 12-60-20 is unambiguous and conveys a clear and definite meaning. Therefore, I agree the section requires the result the majority reaches. I disagree, however, that it is appropriate to employ rules of statutory interpretation after finding the statute's meaning is plain. Under this Court's own repeatedly-stated admonition, "the rules of statutory interpretation are not needed." *Ramsey*, 409 S.C. at 209, 762 S.E.2d at 17.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Laura Toney, Respondent,

v.

Lee County School District, Appellant.

Appellate Case No. 2015-000558

Appeal From Lee County
Maité Murphy, Circuit Court Judge

Opinion No. 5466
Heard November 17, 2016 – Filed February 1, 2017

AFFIRMED

Charles Boykin, Shawn David Eubanks, and Deidre D. Laws, all of Boykin Davis & Smiley, LLC, of Columbia, for Appellant.

W. Allen Nickles, III and Susan M. Fittipaldi, both of Nickles Law Firm, LLC, of Columbia, for Respondent.

LOCKEMY, C.J.: The Lee County School District Board of Trustees (the Board) appeals the circuit court's reversal of its decision to terminate the employment of teacher Laura Toney. We affirm.

FACTS/PROCEDURAL BACKGROUND

Laura Toney was employed as a social studies teacher at Lee Central High School (the School) in the Lee County School District (the District).[1] On September 27, 2013, Toney attended a social studies departmental meeting at the School along with five other teachers, including Teacher B. During the meeting, Toney commented to Teacher B that she knew he could relate to her sadness over losing her husband because Teacher B had also recently lost a spouse. Several days after the meeting, Teacher B filed a grievance alleging Toney revealed private information regarding his sexual orientation to his coworkers during the September 27 meeting. Teacher B asserted Toney's sharing of private details of his life was an attack on his character and could have resulted in him losing his job and his positive relationships with his coworkers and students.

Upon receipt of the grievance, the School's principal—Ron Webb—and another School administrator—Bernard McDaniel—met with Toney to advise her of the grievance. Webb informed Toney he would handle the grievance upon his return from a conference and instructed Toney not to pursue the matter until his return. Several days later, Toney contends she found a packet left in her classroom containing copies of Facebook posts written by Teacher B.[2] Toney reported her receipt of the packet to McDaniel, and he refused to discuss it with her. McDaniel subsequently told Toney that if she had something to tell him regarding the matter, she should put it in writing. Toney then gave McDaniel a copy of the Facebook posts. Toney also left a sealed envelope containing a copy of the posts at the office of the District's Superintendent, Dr. Wanda Andrews. According to Toney, she provided a copy to the Superintendent because she was concerned a child might be in danger.

---

[1] Toney was employed by the District for twenty-three years.

[2] The contents of the packet were later proffered under seal at an evidentiary hearing before the Board and inspected *in camera*. The postings included negative comments about Toney and an exchange with an individual identified as a student at Sumter High School containing sexual implications. The posts also contained references to Teacher B's sexual orientation and a photo of his deceased spouse. According to Teacher B, the posts were his, were not set to "private," and were accessible by his Facebook friends including fellow teachers and at least one student.

Upon Webb's return to the School, he learned Toney had taken the Facebook posts to the Superintendent. Thereafter, the Superintendent met with Webb, McDaniel, and Toney at the School. According to the Superintendent, Toney was uncooperative during the meeting and did not give direct answers to any of the questions she was asked.

In an October 4, 2013 letter, the District notified Toney she was being placed on administrative leave with pay while the District investigated an incident in which she "violated district policy by creating a disruption to [her] assigned school by sharing personal information on another staff member to other staff and students at [the School]." The letter instructed Toney not to "visit any Lee County facility, utilize any school equipment to communicate (including access to computers or e-mail), [or] . . . contact fellow employees of the [District]."

During her investigation, the Superintendent reviewed Toney's personnel file and discussed Toney's employment record with Webb. The Superintendent's investigation revealed other instances of misconduct including challenging administrators, becoming irate with a parent, failing to follow School protocol, insubordination, and other unprofessional conduct. The Superintendent also learned that while on leave, Toney contacted a Board member to discuss her concerns regarding the substitute teacher assigned to teach her classes.

On December 18, 2013, the Superintendent notified Toney of her intent to recommend the termination of Toney's 2013-14 employment contract to the Board. The recommendation was based on Toney's conduct with regard to discussing another faculty member's personal information with other employees and her failure to adhere to the directives of an administrator. The Superintendent's recommendation was further based upon a review of Toney's personnel file, which revealed she had engaged in other incidents of unprofessional conduct. The notice stated Toney displayed "unacceptable behavior" and "lack of candor" during the investigation into her conduct.

The Board held hearings on April 28, June 7, and July 1, 8, and 29, 2014. In her testimony, Toney denied the allegation she caused a disruption by sharing personal information about Teacher B. According to Toney, she only repeated information she learned from another School employee that Teacher B had lost his spouse. Toney testified she was not aware Teacher B's spouse was a man. On July 29, 2014, the Board voted to accept the Superintendent's recommendation to terminate Toney's employment. Thereafter, on August 8, 2014, the Board issued its written decision. The Board found Toney had engaged in a pattern of unprofessional

conduct evidenced by repeated resistance to following the directives of supervisors and administrators. Toney subsequently appealed the Board's decision to the circuit court.[3]

Following a hearing, the circuit court reversed the Board's decision and ordered the reinstatement of Toney's employment contract with back pay and benefits. The court held (1) delivering the packet of Facebook posts to the Superintendent, even if inconsistent with the principal's directive, did not reflect upon Toney's fitness to teach; (2) Toney's communication with a Board member did not support termination; and (3) the record did not support the Board's finding that Toney had a pattern of unprofessional conduct amounting to evident unfitness to teach. The circuit court subsequently denied the Board's motion to reconsider. This appeal followed.

LAW/ANALYSIS

I. Standard of Review

The Board argues the circuit court erred in failing to apply the proper standard of review.

Citing *Kizer v. Dorchester County Vocational Education Board of Trustees*, 287 S.C. 545, 550, 340 S.E.2d 144, 147 (1986), the circuit court held "[w]here, as here, the challenged action arises from immediate termination, the record must contain evidence of unfitness to teach that is 'undeniably and abundantly present.'" The circuit court also cited this court's holding in *Barr v. Board of Trustees of Clarendon County School District Number 2*, 319 S.C. 522, 526, 462 S.E.2d 316, 318 (Ct. App. 1995), that the authority of the courts to review school board decisions is limited to determining whether the decision to terminate employment is supported by substantial evidence.

Although the circuit court quoted the "undeniably and abundantly present" language in its order, it appears the court made its decision using the substantial evidence standard of review. The court found the "record [did] not establish substantial evidence of Ms. Toney's unfitness to teach or failure to improve

[3] The Board's decision to terminate Toney's employment was not based on the comments Toney made to Teacher B at the September 2013 departmental meeting; rather, its decision was based, in part, on Toney's response to the directives she was given by School administrators following the grievance filed by Teacher B.

performance to a satisfactory level following written notice, assistance and reasonable opportunity."

On appeal, the Board contends the proper standard of review regarding the propriety of a teacher's termination is the substantial evidence test. We agree. *See Kizer*, 287 S.C. at 550, 340 S.E.2d at 147; *Barr*, 319 S.C. at 526, 462 S.E.2d at 318; *Felder v. Charleston Cty. Sch. Dist.*, 327 S.C. 21, 25, 489 S.E.2d 191, 193 (1997); *Hall v. Bd. of Trs. of Sumter Cty. Sch. Dist. No. 2*, 330 S.C. 402, 405, 499 S.E.2d 216, 218 (Ct. App. 1998); *Barrett v. Charleston Cty. Sch. Dist.*, 348 S.C. 426, 431, 559 S.E.2d 365, 368 (Ct. App. 2001).

In her brief, Toney cites *Kizer* and *Hall* to support her position that proof of conduct must be undeniably and abundantly present. Toney misapprehends these cases. As explained by this court in *Barrett*,

> [i]n *Kizer*, the [s]upreme [c]ourt was merely typifying the evidence as undeniably and abundantly present, not articulating a new standard: "Therefore, the officially enunciated public policy of this State is to provide for immediate removal of those whose conduct manifests evident unfitness. Such conduct is undeniably and abundantly present in this case." [287 S.C.] at 550, 340 S.E.2d at 147. Earlier in the *Kizer* opinion, however, the [c]ourt stated that the substantial evidence test was the proper test. *Id.* at 548, 340 S.E.2d at 146. Although the *Hall* case references the "undeniably and abundantly present" language in *Kizer*, a reading of the entire *Hall* opinion makes clear that the court is not declaring a new standard of review but is applying the substantial evidence test.

348 S.C. at 432, 559 S.E.2d at 368. Therefore, this court is limited to examining the record to determine whether substantial evidence supported the Board's decision to terminate Toney's employment. "The court cannot substitute its judgment for that of the school board." *Felder*, 327 S.C. at 25, 489 S.E.2d at 193. "'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 that the administrative agency reached or must have reached in order to justify its action."

Laws v. Richland Cty. Sch. Dist. No. 1, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978).

II. Unprofessional Conduct Findings

The Board argues the circuit court erred in holding the Board's findings of unprofessional conduct based upon (1) Toney's delivery of Facebook posts to a School administrator and the Superintendent; (2) her communication with a Board member; and (3) her pattern of conduct, did not support termination.

Toney is a contract teacher. As such, the rules regarding her termination fall under the South Carolina Teacher Employment and Dismissal Act, sections 59-25-410 to -530 of the South Carolina Code (2004 & Supp. 2016) (the Act). The Act provides for certain situations in which a school board can immediately terminate a teacher:

> Any teacher may be dismissed at any time who . . . manifest[s] an evident unfitness for teaching . . . . Evident unfitness for teaching is manifested by conduct such as, but not limited to, the following: persistent neglect of duty, willful violation of rules and regulations of district board of trustees, drunkenness, conviction of a violation of the law of this State or the United States, gross immorality, dishonesty, illegal use, sale or possession of drugs or narcotics.

S.C. Code Ann. § 59-25-430 (2004).

A. Failure to Follow Directives

Citing *Hall*, the circuit court found Toney's delivery of the packet of Facebook posts to McDaniel and the Superintendent, even if inconsistent with Webb's directive to "leave the matter alone" until his return to the School, did not reflect on Toney's fitness to teach.

In *Hall*, the school board terminated Hall's employment as a media specialist due to her failure to supervise a class trip and her insubordination stemming from her discussion of the matter with coworkers. 330 S.C. at 405, 499 S.E.2d at 217-18. Hall had agreed with another teacher, unbeknownst to the principal, that she would chaperone a trip to Florida only while traveling to and from Florida and during a shopping mall visit. *Id.* at 404, 499 S.E.2d at 217. She would be "off duty" at all

other times. *Id.* When the administration learned of the arrangement, the superintendent placed Hall on administrative leave and told her not to discuss the matter with any other employees. *Id.* at 405, 499 S.E. 2d at 217. Hall subsequently discussed the matter with three employees. *Id.* The board terminated Hall's employment, and the circuit court reversed the board's decision. *Id.* at 405, 499 S.E.2d at 218. In affirming the circuit court, this court held "the [b]oard produced insufficient evidence to show that Hall's alleged insubordination demonstrated evident unfitness for teaching." *Id.* at 409, 499 S.E.2d at 220. The court found the record did not contain any evidence that Hall's insubordination in not following the superintendent's directive affected her primary duties as a media specialist. *Id.* at 410, 499 S.E.2d at 220. The court also held the record did not contain any evidence showing Hall attempted to undermine the investigation. *Id.* One of the three conversations used to justify her termination occurred when a fellow teacher unassociated with the trip heard Hall was upset and called to check on her. *Id.* In addition, the superintendent did not know whether Hall initiated these conversations or their substance. *Id.* The court noted that "[w]hile we recognize that a single act of disobedience could, under some circumstances, be sufficient to justify a teacher's termination even though it was unrelated to that teacher's classroom performance, the scant evidence introduced here is insufficient to show Hall's unfitness for teaching within the meaning [of section] 59-25-430." *Id.*

In the present case, the Board contends its decision to terminate Toney's employment was supported by substantial evidence. The Board asserts that by delivering the packet of Facebook posts to the Superintendent, Toney failed to follow Webb's directive to not discuss the matter. The Board also argues this case is distinguishable from *Hall* because here, unlike in *Hall*, the Superintendent, Webb, and McDaniel all testified Toney did not follow orders and initiated conversations in direct violation of Webb's directive. In addition, the Board notes the record includes other examples of Toney's history of unprofessional conduct.

"At common law, insubordination was defined as a wilful or intentional disregard of the lawful and reasonable instructions of an employer." *Id.* at 409, 499 S.E.2d at 220. "Notwithstanding this broad definition, our supreme court has limited its application in the context of teacher employment to cases where insubordination evidences 'unfitness to teach, substantially interfere[s] with the performance of [a teacher's] duty, and constitute[s] unprofessional conduct.'" *Id.* (alterations by court) (quoting *Felder*, 327 S.C. at 25, 489 S.E.2d at 193).

Although Toney disobeyed Webb's directive by discussing her situation with others, we find the Board failed to produce sufficient evidence showing Toney's alleged insubordination demonstrated evident unfitness to teach. Section 59-25-430 defines "unfitness for teaching" in a nonexclusive manner. Nevertheless, the types of conduct referred to in the statute—persistent neglect of duty, wilful violation of rules and regulations, drunkenness, conviction of a crime, gross immorality, dishonesty, and illegal use, sale, or possession of drugs—exceed Toney's failure to comply with Webb's directive to not discuss the matter until his return to the School. The record does not contain substantial evidence Toney's insubordination affected her primary duties as a teacher. Accordingly, we affirm the circuit court as to this issue.

B. Communication with a Board Member

The circuit court found Toney did not violate any of the directives in the District's letter regarding Toney's contact with other District employees when she contacted a Board member about the qualifications of her substitute teacher. The circuit court further held "any directive prohibiting Ms. Toney from communicating with a Board member on a matter of public concern unrelated to her personal circumstances would violate freedoms protected by the state and federal constitutions."

On appeal, the Board argues the District's letter to Toney was not the only evidence of the directives given to her regarding contact with other employees. The Board asserts the Superintendent advised Toney during a meeting that "[Toney] did not need to talk with anyone" and if "she had any questions, she could call [her]." According to the Superintendent, Toney "left [the meeting] with a good understanding that she was not going to have this communication with anyone."

Toney testified she contacted a Board member after receiving a complaint from one of her students regarding the substitute. Toney admitted she did not follow the Superintendent's directive to contact her with any questions because she "didn't feel comfortable" taking her concerns to the Superintendent because their initial conference was "not a pleasant one." Toney further testified she would not have contacted a Board member if the letter had stated she was not permitted to speak with any member of the Board.

We find the record does not contain substantial evidence to support the Board's decision to terminate Toney's employment based upon her communication with a Board member. Notably, the District's letter did not prohibit Toney from

contacting a Board member. Furthermore, her contact with the Board was not related to the reasons for her administrative leave.[4] Substantial evidence does not indicate Toney willfully disregarded a directive in contacting a Board member. *See Hall*, 330 S.C. at 409, 499 S.E.2d at 220 ("At common law, insubordination was defined as a wilful or intentional disregard of the lawful and reasonable instructions of an employer."). Moreover, we find Toney's contact with the Board member did not amount to insubordination evidencing an unfitness to teach. *See id.* ("Notwithstanding this broad definition, our supreme court has limited its application in the context of teacher employment to cases where insubordination evidences 'unfitness to teach, substantially interfere[s] with the performance of [a teacher's] duty, and constitute[s] unprofessional conduct.'"). Accordingly, we affirm the circuit court as to this issue.

C. Pattern of Conduct

The circuit court determined the record did not support the Board's finding that Toney engaged in a pattern of unprofessional conduct that demonstrated her unfitness to teach. The court found Toney had never been reprimanded by Webb for unprofessional conduct and Webb testified he had no reason to recommend Toney's termination prior to her removal from the School. The court further noted Toney's teaching contract was renewed every year without any conditions.

The Board asserts the following incidents demonstrated Toney's pattern of unprofessional conduct and failure to follow directives:

(1) In a January 2006 letter, Toney's former principal, Lenora Scott, advised Toney that her inappropriate behavior could lead to termination. The letter described an incident in which Toney questioned an assistant principal, became angry, and was not receptive to her requests. Scott noted she found evidence of Toney's poor classroom management, inappropriate use of instructional time, and inappropriate questioning of students. Scott also stated Toney's behavior and attitude during a conference with Scott was argumentative, unprofessional, and unacceptable.

[4] The Board contends the circuit court erred in holding Toney's communication with a Board member was a matter of public concern. The Board maintains Toney's communication was directly related to her personal circumstances. We disagree. The record contains no indication Toney discussed her administrative leave with any member of the Board.

(2) In a March 2012 email, a former assistant principal reminded Toney that instructional materials were to be picked up during Toney's planning period. Webb testified Toney had previously sent students during class time to pick up materials and he addressed the matter with Toney.

(3) In a February 2013 letter, Webb wrote to Toney, "[y]ou are receiving this letter as a reminder to make sure you always conduct yourself in a professional manner." Webb testified the letter was sent because Toney became irate with a parent during a parent teacher conference and was acting unprofessionally.

(4) On May 7, 2013, Webb wrote to Toney regarding her failure to enter fourth quarter grades.

(5) In September 2013, Toney was again advised not to send students to collect supplies during class time.

(6) In a September 2013 email, Kara Fowler, a member of the School's administrative team, provided feedback to Toney regarding Fowler's classroom observation of Toney's teaching. Toney responded via email the next day. Webb testified Toney's reaction to the observation was negative, defensive, and not supportive of the instructional process.

(7) Toney was cited in September 2013 for failing to attend a mandatory faculty meeting.

We find the record does not contain substantial evidence to support the Board's decision to terminate Toney's employment based upon a pattern of unprofessional conduct. As noted by Toney, Webb testified that prior to Toney's placement on administrative leave in October 2013, he had no reason to recommended Toney's employment be terminated. In addition, we note that while the record contains some evidence of unprofessional conduct, Toney was continually offered a contract to teach through the 2013-14 school year. Furthermore, Toney's personnel file only included the 2006 incident described above and none of the other documents listed above were placed in her file or considered as grounds for disciplinary action. We find the incidents cited above by the Board do not reveal a pattern of conduct demonstrating Toney's unfitness for teaching within the meaning of section 59-25-430.

CONCLUSION

We affirm the circuit court's reversal of the Board's decision because the record does not contain substantial evidence to support the Board's decision to terminate Toney's employment contract for the 2013-14 school year under section 59-25-430.

AFFIRMED.

KONDUROS and MCDONALD, JJ., concur.