The Supreme Court of South Carolina

In the Matter of
Charles Dennis Aughtry, Deceased.

ORDER

The Commission on Lawyer Conduct has filed a petition advising the Court that Mr. Aughtry passed away on January 12, 2010, and requesting the appointment of two attorneys to protect Mr. Aughtry's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR. The petition is granted.

IT IS ORDERED that David E. Taylor, Esquire, and Joe R. North, Esquire, are hereby appointed to assume responsibility for Mr. Aughtry's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) Mr. Aughtry maintained. Mr. Taylor and Mr. North shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of Mr. Aughtry's clients. Mr. Taylor and Mr. North may make disbursements from Mr. Aughtry's trust account(s), escrow account(s), operating

account(s), and any other law office account(s) Mr. Aughtry maintained that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of Mr. Aughtry, shall serve as notice to the bank or other financial institution that David E. Taylor, Esquire, and Joe R. North, Esquire, have been duly appointed by this Court.

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

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

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

Columbia, South Carolina

January 19, 2010

The Supreme Court of South Carolina

In the Matter of Donna Leydorf, Petitioner.

ORDER

The records in the office of the Clerk of the Supreme Court show that on May 14, 1979, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the Clerk of the South Carolina Supreme Court dated January 8, 2010, Petitioner submitted her resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court her certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of her resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that she has fully complied with the provisions of this order. The resignation of Donna Leydorf shall be effective upon full compliance with this order. Her name shall be removed from the roll of attorneys.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

January 21, 2010

The Supreme Court of South Carolina

In the Matter of Timothy Orr, Petitioner.

ORDER

The records in the office of the Clerk of the Supreme Court show that on November 18, 2002, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the clerk of the Supreme Court of South Carolina, Petitioner submitted his resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court his certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of his resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that he has fully complied with the provisions of this order. The resignation of Timothy Orr shall be effective upon full compliance with this order. His name shall be removed from the roll of attorneys.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

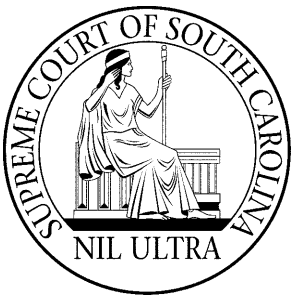
s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

January 21, 2010



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 4
January 25, 2010
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

EXTENSION TO FILE PETITION FOR WRIT OF CERTIORARI

PETITIONS FOR REHEARING

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

PETITIONS FOR REHEARING

4633-State v. Cooper	Denied 01/20/10
4634-DSS v. Laura D.	Pending
4635-State v. C. Liverman	Denied 01/20/10
4637-Shirley's Iron Works v. City of Union	Pending
4639-In the Interest of Walter M.	Denied 01/20/10
4640-Normandy Corporation v. SCDOT	Denied 01/20/10
4641-State v. Florence Evans	Pending
4643-McDaniel v. Kendrick	Pending
2009-UP-526-State v. Belton	Denied 01/21/10
2009-UP-527-State v. King	Denied 01/21/10
2009-UP-528-State v. Cabbagestalk	Denied 01/21/10
2009-UP-539-State v. McGee	Denied 01/20/10
2009-UP-540-State v. Sipes	Denied 01/20/10
2009-UP-564-Hall v. Rodriquez	Denied 01/20/10
2009-UP-585-Duncan v. SCDC	Pending
2009-UP-587-Oliver v. Lexington Cty. Assessor	Pending
2009-UP-590-Teruel v. Teruel	Denied 01/20/10
2009-UP-594-Hammond v. Gerald	Pending
2009-UP-596-Todd v. SCDPPPS	Pending
2009-UP-603-State v. M. Craig	Pending
2010-UP-001-Massey v. Werner Enterprises	Pending

PETITIONS – SOUTH CAROLINA SUPREME COURT

4367-State v. J. Page	Pending
4370-Spence v. Wingate	Pending
4387-Blanding v. Long Beach	Pending
4423-State v. Donnie Raymond Nelson	Pending
4441-Ardis v. Combined Ins. Co.	Pending
4454-Paschal v. Price	Pending
4458-McClurg v. Deaton, Harrell	Pending
4462-Carolina Chloride v. Richland County	Pending
4465-Trey Gowdy v. Bobby Gibson	Pending
4469-Hartfield v. McDonald	Pending
4472-Eadie v. Krause	Pending
4473-Hollins, Maria v. Wal-Mart Stores	Pending
4476-Bartley, Sandra v. Allendale County	Pending
4478-Turner v. Milliman	Pending
4480-Christal Moore v. The Barony House	Pending
4483-Carpenter, Karen v. Burr, J. et al.	Pending
4487-John Chastain v. Hiltabidle	Pending
4491-Payen v. Payne	Pending
4492-State v. Parker	Pending
4493-Mazloom v. Mazloom	Pending
4495-State v. James W. Bodenstedt	Pending

4500-Standley Floyd v. C.B. Askins	Pending
4504-Stinney v. Sumter School District	Pending
4505-SCDMV v. Holtzclaw	Pending
4510-State v. Hicks, Hoss	Pending
4512-Robarge v. City of Greenville	Pending
4514-State v. J. Harris	Pending
4515-Gainey v. Gainey	Pending
4516-State v. Halcomb	Pending
4518-Loe #1 and #2 v. Mother	Pending
4522-State v. H. Bryant	Pending
4525-Mead v. Jessex, Inc.	Pending
4526-State v. B. Cope	Pending
4528-Judy v. Judy	Pending
4534-State v. Spratt	Pending
4541-State v. Singley	Pending
4542-Padgett v. Colleton Cty.	Pending
4544-State v. Corley	Pending
4545-State v. Tennant	Pending
4548-Jones v. Enterprise	Pending
4550-Mungo v. Rental Uniform Service	Pending
4552-State v. Fonseca	Pending

4553-Barron v. Labor Finders	Pending
4554-State v. C. Jackson	Pending
4560-State v. C. Commander	Pending
4561-Trotter v. Trane Coil Facility	Pending
4574-State v. J. Reid	Pending
4575-Santoro v. Schulthess	Pending
4576-Bass v. GOPAL, Inc.	Pending
4578-Cole Vision v. Hobbs	Pending
4585-Spence v. Wingate	Pending
4588-Springs and Davenport v. AAG Inc.	Pending
4597-Lexington County Health v. SCDOR	Pending
4598-State v. Rivera and Medero	Pending
4599-Fredrick v. Wellman	Pending
4600-Divine v. Robbins	Pending
4604-State v. R. Hatcher	Pending
4605-Auto-Owners v. Rhodes	Pending
4606-Foster v. Foster	Pending
4607-Duncan v. Ford Motor	Pending
4609-State v. Holland	Pending
4610-Milliken & Company v. Morin	Pending
4611-Fairchild v. SCDOT/Palmer	Pending
4613-Stewart v. Chas. Cnty. Sch.	Pending

4614-US Bank v. Bell	Pending
4616-Too Tacky v. SCDHEC	Pending
4617-Poch v. Bayshore	Pending
4621-Michael P. v. Greenville Cnty. DSS	Pending
4622-Carolina Renewal v. SCDOT	Pending
4630-Leggett (Smith v. New York Mutual)	Pending
2008-UP-116-Miller v. Ferrellgas	Pending
2008-UP-285-Biel v. Clark	Pending
2008-UP-565-State v. Matthew W. Gilliard	Pending
2008-UP-629-State v. Lawrence Reyes Waller	Pending
2008-UP-651-Lawyers Title Ins. V. Pegasus	Pending
2009-UP-007-Miles, James v. Miles, Theodora	Pending
2009-UP-028-Gaby v. Kunstwerke Corp.	Pending
2009-UP-029-Demetre v. Beckmann	Pending
2009-UP-031-State v. H. Robinson	Pending
2009-UP-040-State v. Sowell	Pending
2009-UP-042-Atlantic Coast Bldrs v. Lewis	Pending
2009-UP-064-State v. Cohens	Pending
2009-UP-076-Ward, Joseph v. Pantry	Pending
2009-UP-079-State v. C. Harrison	Pending
2009-UP-093-State v. K. Mercer	Pending

2009-UP-138-State v. Summers	Pending
2009-UP-147-Grant v. City of Folly Beach	Pending
2009-UP-172-Reaves v. Reaves	Pending
2009-UP-199-State v. Pollard	Pending
2009-UP-204-State v. R. Johnson	Pending
2009-UP-205-State v. Day	Pending
2009-UP-208-Wood v. Goddard	Pending
2009-UP-228-SCDOT v. Buckles	Denied 01/07/10
2009-UP-229-Paul v. Ormond	Pending
2009-UP-244-G&S Supply v. Watson	Pending
2009-UP-265-State v. H. Williams	Pending
2009-UP-276-State v. Byers	Pending
2009-UP-281-Holland v. SCE&G	Pending
2009-UP-299-Spires v. Baby Spires	Pending
2009-UP-300-Kroener v. Baby Boy Fulton	Pending
2009-UP-336-Sharp v. State Ports Authority	Pending
2009-UP-337-State v. Pendergrass	Pending
2009-UP-338-Austin v. Sea Crest (1)	Pending
2009-UP-340-State v. D. Wetherall	Pending
2009-UP-359-State v. P. Cleveland	Pending
2009-UP-364-Holmes v. National Service	Pending

2009-UP-369-State v. T. Smith	Pending
2009-UP-385-Lester v. Straker	Pending
2009-UP-396-McPeake Hotels v. Jasper's Porch	Pending
2009-UP-401-Adams v. Westinghouse SRS	Pending
2009-UP-403-SCDOT v. Pratt	Pending
2009-UP-434-State v. Ridel	Pending
2009-UP-524-Durden v. Durden	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Allie James, Claimant, Appellant,

v.

Anne's Inc., Employer, and
Villanova Insurance Company,
in liquidation through the South
Carolina Property & Casualty
Insurance Guaranty
Association, Carrier, Respondents.

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 26762
Heard November 19, 2008 – Filed January 25, 2010

AFFIRMED

Jody Vann McKnight, of Reisen Law Firm, of Charleston, for Appellant.

Mark D. Cauthen, and T. Jeff Goodwyn, Jr., both of McKay, Cauthen, Settana, Martin & Addison, of Columbia, for Respondents.

CHIEF JUSTICE TOAL: The South Carolina Workers' Compensation Commission (Commission) determined that Allie James (James) was totally and permanently disabled from a work accident. The circuit court affirmed the Commission's denial of James' request to put proration language in the order over the objection of Anne's, Inc. and Villanova Insurance Co. (Respondents). We affirm.

FACTUAL/PROCEDURAL BACKGROUND

James was injured when she fell down steps while working at Anne's Dress Shop. When she sought worker's compensation benefits, the Commission found she was totally and permanently disabled and entitled to 500 weeks of compensation, with a credit for the weeks of compensation already paid. The Commission also found a lump sum payment was in James' best interests.

James requested the Commission include in the order language prorating the award over her life expectancy, calculated using the table found in S.C. Code Ann. § 19-1-150 (1985 & Supp. 2008). Respondents objected to the inclusion of this language, and the Commission found it lacked authority to include the language over Respondents' objection. The circuit court affirmed. James appeals, arguing the Commission has the authority to include proration language in a lump sum award without consent of Respondents and that it was error not to do so in this case.

STANDARD OF REVIEW

An appellate court may reverse a Commission decision when that decision is affected by an error of law. *Grant v. Grant Textiles*, 372 S.C. 196, 200, 641 S.E.2d 869, 871 (2007). "Review is limited to deciding whether the

commission's decision is unsupported by substantial evidence or is controlled by some error of law." *Id.*at 201, 641 S.E.2d at 871.

LAW/ANALYSIS

James argues the Commission has the authority to order life expectancy proration language over the objection of the Respondents. We disagree.

The question before us is whether the workers' compensation statute allows the Commission to implement a specific procedural mechanism for releasing James's funds. We agree with the circuit court that on such procedural questions, courts must strictly construe the statute and leave the definition of any ambiguous terms to the legislature. *Callahan v. Beaufort County Sch. Dist.*, 375 S.C. 92, 96, 651 S.E.2d 311, 313 (2007).

James claims S.C. Code Ann. § 42-3-180 clearly gives the Commission the ability to enter proration language without consent of both parties. Section 42-3-180 states that "[a]ll questions arising under this Title, if not settled by agreement of the parties interested therein with the approval of the Commission, shall be determined by the Commission, except as otherwise provided in this Title." Contrary to James' position, this statute does not address the Commission's authority to place proration language in an order. While it commands the Commission to answer questions arising under the statute, it does not allow the Commission to extend its powers beyond the scope of expressly authorized actions. Nothing in the statute authorizes the Commission to use life expectancy proration language without consent of both parties. Without an express grant from the legislature, the Commission is without that power.

James contends that the proration language is necessary to maximize both her workers' compensation and Social Security benefits. Federal law requires a reduction in Social Security payments when the combination of monthly Social Security payments and monthly workers' compensation

benefits exceeds eighty percent (80%) of the claimant's pre-disability income. 42 U.S.C.A. § 424a (2003). However, the Social Security offset provision does not apply if a state enacted its own "reverse offset" provision limiting workers compensation benefits prior to February 18, 1981. South Carolina did not legislatively adopt a reverse offset provision in that time.

As James concedes, the proration of this lump sum award is intended to have the same effect as a reverse offset provision – to maximize her award. Although we recognize that the Social Security Administration modifies its payments to account for lump sum awards that are prorated over a claimant's life expectancy, we remain convinced that the Commission must derive its authority to do so from the legislature.

CONCLUSION

We hold that the circuit court and the Commission were correct in concluding that the Commission did not have the authority to prorate James's lump sum award over her life expectancy without the consent of both parties. The authority of the Commission is statutorily derived, therefore, the Commission cannot exceed the scope of the legislature's grant of authority. There is no specific grant of authority to the Commission to order life expectancy proration language absent consent of both parties. We affirm the circuit court's ruling.

KITTREDGE, J., and Acting Justice James E. Moore, concur. BEATTY, J., dissenting in a separate opinion in which WALLER, J., concurs.

JUSTICE BEATTY: I respectfully dissent. This case is before us only because the insurance company wants to bully the injured worker into accepting less benefits than the worker is entitled to under the law. Life expectancy proration does not cost the insurance company anything; zero. Yet the insurance company objects unless the injured worker agrees to accept less than she is entitled to in workers' compensation. I cannot countenance such abhorrent behavior and I fail to see the judicial attraction to assisting insurance companies in their efforts to mistreat injured workers.

The Commission issued a two-to-one decision in this case, with the dissenting panel member finding the Commission does have the authority to include age proration language in an order awarding workers' compensation benefits. Moreover, despite the result reached here, the Commission itself has also since expressly concluded in other cases that it has the authority to prorate lump sum awards over a claimant's life expectancy in order to serve the purposes of the Workers' Compensation Act. See Pressley v. REA Constr. Co., 374 S.C. 283, 288, 648 S.E.2d 301, 303 (Ct. App. 2007) (stating "ordinarily, the construction of a statute by an agency charged with its administration will be accorded the most respectful deference and will not be overruled absent compelling reasons"). For the reasons discussed below, I believe the Commission does have this authority, and I would reverse and remand the matter before us.

I. LAW/ANALYSIS

(A) Social Security Offset

Allie James was deemed totally and permanently disabled as a result of a fall and was awarded workers' compensation benefits. Although the benefits were for a permanent disability, they were issued by means of a lump-sum award. James requested that the Commission include language in the award indicating the prorated amount of this award over her lifetime using the life expectancy table found in section 19-1-150 of the South Carolina Code. Such proration would not affect the actual distribution of the award. As noted by the circuit court, James's "concern is that her Social

Security Disability benefits will be offset by the workers' compensation benefits she receives." Respondents (the employer and its carrier) have objected to inclusion of language prorating the lump-sum award over James's life expectancy.

Under federal law, when a person is deemed disabled and is entitled to monthly disability payments under the Social Security Act, the disability payments must be reduced when the combined amount of the person's monthly Social Security disability payments and any monthly workers' compensation benefits exceeds eighty percent of the person's pre-disability earnings. See 42 U.S.C.A. § 424a(a) (2003) (providing for the reduction of disability benefits). When the workers' compensation benefits are "payable on other than a monthly basis (excluding a benefit payable as a lump sum except to the extent that it is a commutation of, or a substitute for, periodic payments), the reduction under this section shall be made . . . in such amounts as the Commissioner of Social Security finds will approximate as nearly as practicable the reduction prescribed by subsection (a) of this section." Id. § 424a(b) (emphasis added). Thus, lump sum awards generally necessitate a reduction in Social Security disability benefits in instances where they result from a commutation of periodic payments.

The Social Security Administration does not apply a reduction or an offset, however, in cases where a state has enacted a reduction of their workers' compensation benefits in these circumstances by February 18, 1981; this reduction (by the individual states) is known as a "reverse-offset" provision. Tommy W. Rogers & Willie L. Rose, Workers' Compensation and Public Disability Benefits Offset from Social Security Disability Benefits, 29 S.U. L. Rev. 57, 60 (2001). South Carolina did not legislatively enact a reverse-offset provision.

In order to minimize the reduction of her Social Security benefits, James seeks to prorate her lump sum, workers' compensation award for a permanent disability over her lifetime using the life expectancy table set forth in section 19-1-150. James asserts the Social Security Administration expressly accepts the monthly amount derived from using a life expectancy

table as one of the bases for calculating the offset to be made to Social Security benefits.

The Social Security Administration will use the prorated time frame stated in an order awarding a lump sum benefit if a time frame is provided; otherwise, it will use an alternative basis for this computation:

> According to SSA policy, a lump sum award of workers' compensation benefits . . . will be prorated at an established weekly rate. The priority for establishing a weekly rate of payment is as follows:
>
> (1) the rate specified in the lump sum award, including a rate based on life expectancy;
>
> (2) the periodic rate paid prior to the lump sum award if no rate was specified in the lump sum award; or
>
> (3) the state workers' compensation maximum rate in effect on the date of injury, which is the periodic rate that, in almost every case, would have been payable had periodic payments been made instead of a lump sum, if a workers' compensation claim is involved and if no rate was specified in the lump sum award and no prior periodic payments had been made.

2A Soc. Sec. Law & Prac. § 26:72 (2006) (emphasis added) (footnotes omitted); see also United States Dep't of Health & Human Servs., 979 F.2d 1082, 1084 (5th Cir. 1992) (noting the Social Security Program Operations Manual specifically sets forth this method for prorating lump sum awards).

(B) Authority of the Commission

In the current appeal, the circuit court concluded that it was "constrained to agree with the decision of the Commission that no authority exists in our Workers' Compensation laws for allocation of a lump sum

award over the claimant's life expectancy in the absence of consent of the parties."

(1) Utica-Mohawk Mills v. Orr

James initially cited Utica-Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 589 (1955), in addition to the general authority of the Commission under statutory law, for support of the Commission's use of proration language. Although Utica-Mohawk Mills is often cited in the Commission's orders along with statutory law when prorating lump sum awards, the circuit court concluded Utica-Mohawk Mills is not applicable here because that case involves "construing a permanent partial disability award of the Commission." The circuit court stated this case essentially stands for the proposition that, "in the absence of the consent of the parties" the Commission and the Courts are without authority to "increase the amount of the weekly installments above the sum [allowed by law] or [to] reduce the length of the statutory period."

Utica-Mohawk Mills interpreted a statute concerning partial disability and held that the weekly compensation (not to exceed 300 weeks) for a claimant who sustained a thirty percent permanent disability should be calculated by taking a percentage of the difference between the average weekly wages he was earning before the injury and the average weekly wages that the employee was able to earn after the injury. Id. at 230, 87 S.E.2d at 591.

As the parties concede on appeal, although the Commission, the Social Security Administration, and the courts have referred to the Utica-Mohawk Mills case in this context, it does not actually address the lifetime proration issue presently before us. Further, reliance on this case is misplaced because Utica-Mohawk Mills was issued in 1955, and the first offset provision in the Social Security Act was not added until 1956, which "conclusively shows that *Utica-Mohawk's* authority for a reduction in workers' compensation benefits before social security disability insurance benefits are reduced is

unfounded." Grady L. Beard et al., The Law of Workers' Compensation Insurance in South Carolina, 568 (5th ed. 2008). "Nonetheless, due to its history of accepting the priority of workers' compensation reductions under South Carolina law, the Social Security Administration accepts this case as authority that workers' compensation benefits can be reduced to maximize a claimant's entitlement to Social Security disability insurance benefits." Id.

For the reasons noted above, I agree with the circuit court that the Utica-Mohawk Mills case has no application here. However, it is important to next consider the Commission's authority under statutory law.

(2) Statutory Authority

Section 42-3-180 of the South Carolina Code confers a general grant of authority to the Commission to decide all questions arising under the Workers' Compensation Act: "All questions arising under this Title, if not settled by agreement of the parties interested therein with the approval of the Commission, shall be determined by the Commission, except as otherwise provided in this Title." S.C. Code Ann. § 42-3-180 (1985) (emphasis added).

The circuit court found section 42-3-180 did not specifically address the Commission's authority to allocate lump sum awards over the employee's life expectancy. The circuit court further found that, because "workers' compensation statutes provide an exclusive compensatory system in derogation of common law rights, we must strictly construe such statutes, leaving it to the legislature to amend and define any ambiguities," citing the reasoning of Cox v. BellSouth Telecommunications, 356 S.C. 468, 472, 589 S.E.2d 766, 768 (Ct. App. 2003).

In Cox, the Court of Appeals held that the workers' compensation statute prohibiting total lump sum awards in lifetime benefits cases should be strictly construed and not expanded to prohibit partial lump sum awards in lifetime benefits cases. The court stated, as a matter of first impression, that the Commission erred as a matter of law in ruling that it was not empowered to award a partial lump sum. Id. at 473, 589 S.E.2d at 769. The court

explained that "[p]ermitting partial lump sum payments provides the [C]ommission needed flexibility in lifetime benefits cases, flexibility it regularly exercises with respect to all other compensation awards, to ensure the best interests of the injured worker are protected." Id. at 472-73, 589 S.E.2d at 768-69 (emphasis added).

Cox involved the strict construction of a statute prohibiting certain awards. In contrast, there is nothing in the Act that prohibits, either expressly or impliedly, the proration language at issue here. Cf. Geathers v. 3V, Inc., 371 S.C. 570, 641 S.E.2d 29 (2007) (finding where South Carolina had not adopted the last injurious exposure rule, but there was both statutory and case law that favored adoption of this rule rather than an apportionment rule, South Carolina would adopt the last injurious exposure rule; thus, the Commission erred in using the apportionment rule to apportion liability between two carriers when an employee is injured after working for successive employers).

Cox confirms that the Commission regularly exercises its flexibility in making compensation awards to ensure the best interests of the workers are protected to the extent the award is not otherwise prohibited by the Workers' Compensation Act. This is consistent with the general rule that workers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Act; only exceptions and restrictions on coverage are to be strictly construed. See Peay v. U.S. Silica Co., 313 S.C. 91, 94, 437 S.E.2d 64, 65 (1993) ("[W]orkers' compensation statutes are construed liberally in favor of coverage. It follows that any exception to workers' compensation coverage must be narrowly construed." (internal citation omitted)); Cross v. Concrete Materials, 236 S.C. 440, 114 S.E.2d 828 (1960) (stating workers' compensation law will be construed liberally to effect its beneficent purpose); Olmstead v. Shakespeare, 348 S.C. 436, 559 S.E.2d 370 (Ct. App. 2002) (noting the law is liberally construed to apply coverage, while exceptions are strictly construed). Therefore, Cox does not require the strict construction of the Act's provisions in this case.

Respondents argue the proration provision is typically part of a negotiated settlement, whereby the employee agrees to give up certain benefits in exchange for inclusion of this proration language. However, I find Respondents' desire to use proration language as a "bargaining chip," as it were, is not appropriate. This is particularly true since the South Carolina legislature did not choose to enact a reverse offset provision.

Respondents further argue that, because the maximum period for benefits is generally 500 weeks, that is the maximum period that can be used for proration. See S.C. Code Ann. § 42-9-10(A) (Supp. 2008) ("In no case may the period covered by the compensation exceed five hundred weeks except as provided in subsection (C)."); id. § 42-9-10(C) (stating "any person determined to be totally and permanently disabled who as a result of a compensable injury is a paraplegic, a quadriplegic, or who has suffered physical brain damage is not subject to the five-hundred-week limitation and shall receive the benefits for life").

The 500 weeks limitation, however, represents the limit of the monetary amount of compensation that may be recovered. It has no relation to the duration or the extent of the injury. A permanent impairment, by definition, lasts for a lifetime. Thus, the proration of compensation over the claimant's lifetime is a reasonable method of accounting for this compensation. Proration of the lump sum award does not affect the amount of the award in any manner. Rather, it affects only the allocation of the award; it is purely an accounting mechanism specifically approved of by the Social Security Administration in determining the amount of a Social Security offset. The amount of the award is still limited to the value of 500 weeks of compensation and it has absolutely no effect on the liability of Respondents.

I can discern no reason why Respondents would object to this proration, except as a means of giving them the power to either positively or negatively impact a claimant's receipt of Social Security disability benefits based on whether they confer or withhold their consent to proration language. Allowing such a result is not in accordance with the purpose of our Workers'

Compensation Act. See Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960) (observing the courts of this country have universally viewed workers' compensation law as being enacted for the benefit of employees and that the law is to be liberally construed for the employees' protection; further, one of the primary purposes of the Act is to help prevent employees from becoming charges upon society for support).

Simply prorating benefits for the maximum period of weekly benefits available under state law is not a rational solution to the problem of how to account for workers' compensation benefits. This method assumes the award is intended as compensation only for that limited period of time, when in reality the award is intended as compensation for a lasting disability. Such disability does not end after 500 weeks, and it thwarts the authority of the Commission to prohibit it from apportioning the award in the manner it deems appropriate. See 70B Am. Jur. 2d Social Security and Medicare § 1501 (2000) (observing proration for the maximum period of benefits under state law is inconsistent with the purpose of the Social Security Act as it improperly assumes the state lump sum workers' compensation award represents the maximum benefit over the shortest period of time, thus guaranteeing application of the Social Security offset); see also 1 Harvey L. McCormick, Social Security Claims and Procedures § 8:32 (5th ed. 1998) (noting at least one federal Circuit Court of Appeals has held that the Social Security Administration was required to prorate a lump-sum award or settlement over the remainder of an individual's working life (citing Hodge v. Shalala, 27 F.3d 430 (9th Cir. 1994))).

The purpose of allocating a lump sum disability award over the claimant's lifetime is to make sure a claimant is not being economically penalized by the Social Security Administration's calculation of an offset. The Social Security Administration expressly recognizes and accepts such allocations as a matter of routine practice. See 2A Soc. Sec. Law & Prac. § 26:72 (2006) (noting a state's proration based on life expectancy in the workers' compensation order is the Social Security Administration's first choice to use when calculating any offset). Section 42-3-180 of the South Carolina Code confers a general grant of authority for the Commission to

address all issues arising under the Workers' Compensation Act that are not otherwise provided for under South Carolina law. S.C. Code Ann. § 42-3-180 (1985). Further, section 42-9-301 gives the Commission the authority to establish and award lump sum payments. Id. § 42-9-301.

The Commission has the authority to interpret its provisions and to issue regulations governing the administration of awards. See S.C. Code Ann. § 42-3-30 (1985) ("The Commission shall promulgate all regulations relating to the administration of the workers' compensation laws of this State necessary to implement the provisions of this title and consistent therewith."); see also 100 C.J.S. Workers' Compensation § 718 (2000) ("Workers' compensation boards or commissions are generally empowered to make and enforce rules and regulations to enable the board or commission to carry out . . . its duties, and such rules and regulations have the force and effect of law if reasonable and not inconsistent with pertinent statutory provisions.").

I would hold that the Commission has the authority to prorate a lump sum award over a claimant's expected lifetime pursuant to its general authority under section 42-3-180 to address all issues arising under the Act and its statutory authority to fix lump sum awards.

"A state workers' compensation commission or board is, in the first instance, responsible for effectuating the purposes of the workers' compensation act by administering, enforcing, and construing its provisions in order to secure its humane objectives." 100 C.J.S. Workers' Compensation § 706 (2000). "Such commission, board, or bureau is vested with the authority to formulate policies and standards for administering the workers' compensation act." Id.

The Commission's proration of lump sum awards over an employee's life expectancy is clearly within the purview of the Commission's authority and serves to further the Act's humane objectives. This is particularly true in light of the fact that the Social Security Administration itself specifically provides for and accepts such proration language from state workers' compensation commissions all over the country when calculating the

applicable offset. To deny proration in these circumstances to the employees of our state would be inconsistent with the recognized purpose of our Workers' Compensation Act. Accordingly, I would reverse and remand.[1]

WALLER, J., concurs.

[1] Moreover, if, as found by the majority, the Commission does not have the authority to prorate awards in the absence of a specific grant of authority from our legislature, then I would argue that the Commission also does not have the authority to prorate awards in cases where the employers have simply given their "consent." Under the majority's analysis, the employers and carriers would have sole authority to determine which awards shall be prorated, depending on whether they have given their "consent." It is clear that our legislature has vested the Commission, not the employers, with the authority to determine all questions arising under the Workers' Compensation Act.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

In the Matter of Mary Elizabeth Rabens,

David M. Adams, Respondent/Appellant,

v.

Dennis J. Rhoad, Special Administrator, Appellant/Respondent.

Appeal From Charleston County
Roger M. Young, Circuit Court Judge

Opinion No. 4646
Heard September 2, 2009 – Filed January 20, 2010

REVERSED AND REMANDED

Robert Wyndham, of Charleston, for Appellant/Respondent.

James Richardson, Jr., of Columbia, for Respondent/Appellant.

LOCKEMY, J.: In this cross-appeal, David Adams and Dennis Rhoad appeal the circuit court's order affirming and modifying the probate court's award of attorney's fees to Adams. Rhoad argues the circuit court erred in: (1) finding a prior circuit court order was controlling as the law of the case and required an award of attorney's fees; (2) awarding attorney's fees when the contingencies of the written fee agreement were not met prior to Adams' suspension and ultimate disbarment; and (3) failing to find Adams' claim for attorney's fees was barred pursuant to the unclean hands doctrine. Adams argues the circuit court erred in finding an action to recover attorney's fees was an equitable matter and not an action at law. We reverse and remand.

FACTS

In 1995, James Clark retained attorney Adams to represent him in connection with his application to serve as personal representative of the Estate of Mary Elizabeth Rabens (the Estate) and with the subsequent administration of the Estate. Before Clark petitioned to administer the Estate, an alleged will of Rabens was filed for probate. Clark retained Adams to represent him in challenging the will, and the parties agreed to a contingent fee equal to one-third of the value of the estate, rising to forty percent in any appeal. In 1996, Clark died, and Margaret B. Clark succeeded him as personal representative of the estate.[1]

The Estate was successful in the probate court, circuit court, and the court of appeals. In December 1998, the South Carolina Supreme Court suspended Adams for actions unrelated to this case.[2] Margaret Clark

[1] Margaret Clark served as personal representative until Dennis J. Rhoad was substituted and appointed special administrator.

[2] Adams was disbarred by order of the South Carolina Supreme Court on June 26, 2000. The supreme court found Adams misappropriated client funds, commingled client money, neglected legal matters, and failed to file

subsequently hired attorney Gedney M. Howe, III to replace Adams. Howe and Margaret Clark signed a contingency fee agreement identical to that which existed between James Clark and Adams, allowing for a fee of forty percent of the value of the estate. In 1999, the proponent of the will filed a petition to the supreme court seeking a writ of certiorari. Howe and attorney Alvin Hammer filed a return to the writ. The supreme court denied the petition, and the will contest was complete. The Estate paid Howe $121,798.42, equal to forty percent of the value of the Rabens estate, for his representation in the will contest.

Adams subsequently filed a claim for attorney's fees in the amount of forty percent of the value of the Estate. The Estate denied that Adams was entitled to a fee and moved for summary judgment. The probate court granted the Estate summary judgment finding Adams abandoned the representation and was not entitled to attorney's fees. Additionally, the probate court found Adams had unclean hands and was thus not entitled to a fee under the doctrine of substantial performance. In 2002, Adams appealed the probate court's decision to the circuit court, which found no South Carolina case law concerning an attorney's entitlement to a fee for services performed prior to a suspension. The circuit court relied on Stein v. Shaw, 679 A.2d 525 (N.J. 1951), in which the New Jersey Supreme Court found that "when an attorney is disbarred or suspended from practice for reasons which are unrelated to his or her representation of a particular client . . . the attorney is still entitled to recover for the reasonable value of services provided to that client prior to the suspension or disbarment." The circuit court noted that determining whether to award attorney's fees to a suspended or disbarred attorney "on a case by case matter under appropriate equitable principles seems to be a better approach than a bright line test that in all circumstances provides that the suspended attorney loses their entitlement to any fees." The circuit court remanded the case to the probate court to "conduct a hearing with respect to Adams' entitlement to attorney['s] fees."

On remand, the probate court agreed with the dissent in Stein that no fee should be awarded to a disbarred attorney. However, the probate court

---

federal income taxes. See In re Adams, 341 S.C. 313, 318, 534 S.E.2d 278, 281 (2000).

determined it was bound by the circuit court's decision and therefore had to equitably divide the fee. The probate court awarded Adams $45,000 and Howe $50,000 for their services.[3] Additionally, the probate court awarded Adams 75% of the $26,798.42 remaining contingency fee and Howe 25% of the remaining fee. Thus, Adams' total award was his hourly fee of $45,000 plus 75% of the excess, or $20,098.81, for a total of $65,098.42. The probate court deducted $15,000 from Adams' award to repay a personal loan he received from Margaret Clark. Adams' total award from the probate court was $50,098.42. The Estate appealed to the circuit court.

The circuit court found the 2002 circuit court order was the law of the case, and therefore, Adams was entitled to attorney's fees. The circuit court further found it would be inequitable to allow Adams to receive any fee in excess of the hours he actually worked on the case and reduced Adams' fee award to $45,000. This award was offset by Adams' $15,000 loan from Margaret Clark, resulting in a judgment of $30,000. This appeal followed.

LAW/ANALYSIS

Rhoad argues the circuit court erred in affirming the probate court's finding the 2002 circuit court order was the law of the case and required it to award attorney's fees in some amount to Adams. We agree.

First, the 2002 order did not, as Adams argues, require the probate court on remand to award Adams attorney's fees. The 2002 order merely provided handling attorney's fees issues "on a case by case matter under appropriate equitable principles seems to be a better approach than a bright line test that in all circumstances provided that the suspended attorney loses their entitlement to any fees." The order further states "<u>if</u> the [probate] court determines that Mr. Adams is entitled to any recovery as to his claims for

[3] The probate court determined that while Adams did not keep time records, an outside review indicated he worked in excess of three hundred hours on the case. Applying a customary $150 hourly fee, the probate court determined Adams was entitled to $45,000. Furthermore, the probate court awarded Howe $50,000 for his services based on two hundred hours at a rate of $250 per hour.

attorney's fees, then that creates a fund that can be utilized to make payment to award the reimbursement previously ordered by the Supreme Court." (emphasis added).

Additionally, the 2002 order technically constituted a reversal of the initial grant of summary judgment by the probate court in favor of Rhoad. The reversal of a grant of summary judgment is equivalent to the denial of summary judgment. Blyth v. Marcus, 335 S.C. 363, 367, 517 S.E.2d 433, 434 (1999). A denial of summary judgment does not establish the law of the case and is not directly appealable. Ballenger v. Bowen, 313 S.C. 476, 477-78, 443 S.E.2d 379, 380 (1994).

Accordingly, we find the 2002 order was not the law of the case and did not require the probate court to award some amount of attorney's fees to Adams.[4] We remand to the probate court to conduct a hearing to determine if, under the facts of this case, Adams is entitled to any award of attorney's fees and if so in what amount.

REVERSED AND REMANDED.

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

[4] Based on this decision, we need not address the remaining 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).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

W. L. Madden, Appellant,

v.

Bent Palm Investments, LLC,
Roger Douglas Brown, and
Tom Williams, Respondents.

Appeal From Lexington County
James W. Johnson, Jr., Circuit Court Judge

Published Opinion No. 4647
Heard October 7, 2009 – Filed January 20, 2010

AFFIRMED AS MODIFIED

Kenneth C. Hanson, Walter M. Riggs, both of Columbia, for Appellant.

Joseph G. Studemeyer, of Columbia, for Respondents.

THOMAS, J.: In this breach of contract action, W.L. Madden (Appellant) appeals the trial court's award of $1,449, arguing the trial court erred in finding the contract between him and Bent Palm Investments, Inc., to be unambiguous. Appellant argues the court erroneously interpreted the contract and erred in finding him entitled to only $1,449. We affirm as modified.

FACTS

In May of 2004, Appellant entered into an agreement with Bent Palm Investments, Inc. and its owners Roger Brown and Tom Williams (collectively Respondent). The agreement provided Respondent would finance the construction of a speculation house, to be performed by Appellant, at cost. The agreement also stipulated profits from the sale of the house would be split evenly between Appellant and Respondent. Pamela White, a realtor, drafted the agreement which left her with the responsibility of marketing and facilitating a purchase of the home.

The parties entered into an "investor-builder" agreement which provided in pertinent part:

> The [parties] agree . . . [that] Bent Palm Investments agrees to purchase lot #340 . . . [for] $36,750. Bent Palm Investments also agrees to provide the financing needed for building a custom-spec home to be built by [Appellant] at cost (supplies and labor). A plan for the house has been selected and reviewed by both [parties]. All additional costs to include drawing of plans, permits, tap fees, interest payments on loan, closing costs, realty fees, etc. will be added together and deducted from the gross sales price of the home. Net proceeds will be divided 50/50 . . . . [Appellant] has estimated a cost per square foot of $72.50 . . . . Any deviations from the plans or specs . . . will need to be approved and signed off by

> [Respondent]. . . . *ATTACHED IS AN ESTIMATED DRAW SCHEDULE AND COST SHEET*.

The attached sheet states:

> THE DOLLAR AMOUNTS ARE BASED ON 2196[1] SQUARE FEET X $72.5/FOOT AND 286 SQUARE FEET (FINISHED BONUS ROOM) $5,000 FOR A TOTAL OF $164,355 BUILDING COSTS. . . . OPTIONAL SCREEN PORCH COST $6,000 (NOT INCLUDED IN ABOVE FIGURES).

The architect's drawings were affixed to the agreement and originally indicated a front load garage with a heated square footage of 2,198 plus 286 for a bonus room. However, because the parties agreed to change the home to a side load garage, the total heated square footage of the house changed to 2,280, plus 286 square feet for the bonus room, a total increase of 82 heated square feet.

During the course of the construction, Appellant informed Respondent that the house could not be finished for the contract price of $164,355, and work ceased until an additional and unscheduled draw of $22,000 was paid to Appellant. After receipt of this unscheduled draw, Appellant completed construction, and Pamela White facilitated the purchase of the home for $272,525. Shortly after the closing, Appellant submitted an invoice to Respondent and demanded a second unscheduled draw of $20,205.94, claiming the actual construction cost of the house was $209,057.64. Having already paid all scheduled draws plus an additional $22,000 unscheduled draw, for a total of $188,851, Respondent anticipated the $272,525 sale of the home to yield a profit of $28,000, prior to receiving the invoice for a second unscheduled draw. Respondent refused to pay the second unscheduled draw, and Appellant commenced this action for breach of contract, inter alia.

[1] Respondent maintains and the trial court agreed that this is a typographical error and should read 2,198 square feet.

After a bench trial, the court held: (1) Appellant was entitled to total construction expenses in the amount of $176,300, determined by the original $164,355 agreed upon, plus $6,000 for the addition of a screened porch, plus an additional $5,945 for the 82 square foot modification at the estimated price of $72.50/square foot; (2) the total profit of the project was $28,000 to which Appellant was entitled to one half, in the amount of $14,000; (3) because Appellant was entitled to $176,300 in expenses and $14,000 in profits under the contract, Appellant was entitled to a total sum of $190,300; and finally (4) because Appellant had already received $188,851, this left a difference of only $1,449. Accordingly, the trial court's ruling left the remaining $26,551, of the $28,000 in claimed profit, to Respondents.

ISSUES ON APPEAL

I. Did the trial court err in failing to find the contract ambiguous and consequently construing the agreement to be a contract for a fixed price?

II. Did the trial court err by deducting the final outstanding expenses from the Appellant's share of the profits, or in other words, did the trial court err in interpreting the agreement so as to award Appellant only $1,449?

STANDARD OF REVIEW

A breach of contract action is an action at law. Silver v. Aabstract Pools & Spas, Inc., 376 S.C. 585, 590, 658 S.E.2d 539, 541-42 (Ct. App. 2008); Conway v. Charleston Lincoln Mercury Inc., 363 S.C. 301, 305, 609 S.E.2d 838, 841 (Ct. App. 2005). "In an action at law tried without a jury, an appellate court's scope of review extends merely to the correction of errors of law." Temple v. Tec-Fab, Inc., 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009). Accordingly, "[this] Court will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings." Id.

ANALYSIS

I. Ambiguity of the Contract and Interpretation of Costs

Appellant alleges the trial court erred in failing to find the contract ambiguous, and as a result erred in reading the contract as a construction contract at a fixed price. We disagree.

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). The language alone will determine the contract's force where such language is unambiguous; however, where the language is subject to multiple interpretations, the fact finder must determine the parties' intentions from the evidence presented. Compare Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) (stating that where the language is clear and unambiguous the intent of the parties is to be derived from the language of the contract) with Charles v. B&B Theatres, Inc., 234 S.C. 15, 18, 106 S.E.2d 455, 456 (1959) (finding that when the contract is ambiguous in its terms other evidence must be considered to ascertain the intent of the parties). A party may not create an ambiguity by reading a single sentence or clause, but rather the contract and the language used must be considered as a whole. Schulmeyer, 353 S.C. at 495, 579 S.E.2d at 134.

In this case, Appellant claims the crux of the parties' disagreement is that the agreement failed to designate the total square footage of the house and whether or not the parties intended the quoted amount of $72.50 per heated square foot or for total square footage under the roof. Appellant maintains that the price of $72.50 per square foot was intended to mean all square footage under the roof, which amounted to 3,140, including the screened porch, garage, and front porch, rather than simply heated square feet. However, we find there is evidence to support the trial court's ruling that Appellant is entitled to $176,300 for construction of the house at the stated rate of $72.50 per heated square foot.

Initially, the INVESTOR-BUILDER AGREEMENT clearly states a house plan had been reviewed and selected by the parties. Appellant had estimated the cost per square foot to be $72.50. Incorporated with the agreement is an ESTIMATED DRAW SCHEDULE AND COST SHEET. This document explicitly states the dollar amounts are based on 2,196[2] at a price of $72.50 per square foot and a 286 square foot bonus room at an additional $5,000, for a total of $164,355. The sheet also provides an option for the addition of a screened porch for an extra $6,000.

Contrary to Appellant's position, review of the contract and attached documents yields no ambiguity. Initially, the original architect's plans for the selected house delineated a heated square footage of 2,198 with the addition of a 286 square foot bonus room. Considering that the bonus room and screened porch were addressed and provided for separately under the agreement, and the square footage referenced in the original architect's plans mirrored (within 2 square feet) that referenced in the agreement and the draft sheet, the trial court's determination that this contract was to be calculated based on heated square footage is supported by the evidence.

Moreover, the record supports the trial court's conclusion that Appellant was entitled to total costs in the amount of $176,300. First, the parties agreed to change the garage to a side load, rather than a front load. This change increased the total heated square footage of the house by 82 square feet. Therefore, at the agreed upon rate of $72.50 per square foot, Appellant was entitled to an additional $5,945. Furthermore, Appellant constructed the optional screened porch, entitling him to $6,000. In total, these figures coupled with the $5,000 for the bonus room, result in Appellant being entitled to $176,300[3] in expenses.

---

[2] Respondent claims this is a typo and should actually read 2,198 square feet, and points to the architect's plans to demonstrate.

[3] 159,355 + 5,000 + 5,945 + 6,000 = 176,300.

The Appellant also claims the trial court erred by ignoring a sentence in the agreement which reads: "Some costs may vary up or down." However, as even Appellant indicates in its brief on appeal, "the parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof." Thomas-McCain, Inc. v. Siter, 268 S.C. 193, 197, 232 S.E.2d 728, 729 (1977). Accordingly, the sentence must be read in the larger context in which it appears. The full paragraph reads:

> Builder has estimated a cost per square foot of $72.50. A Specifications and Allowances sheet has been provided. These are general standards used in building and some may not apply to this building job should the plan not call for it. *Some costs could vary up or down*. Should there be an unreasonable increase the Investors (Respondent) will be notified accordingly to make the final decision. The draws will be made according to the draw schedule and will be followed closely. This will help in keeping us within our budget.

(emphasis added).

This section serves to bolster that building expenses were to be based upon $72.50 per square foot, as all parties agreed to follow the draw schedule as closely as possible, which is based on that amount. It also makes clear the phrase "[s]ome costs could vary up or down" is referring to the items on the specifications and allowances sheet. Thus, Appellant's contention that this phrase creates an ambiguity as to the appropriate expense per square foot is unfounded. Rather, there is ample evidence to support the trial court's interpretation of the contract.

Appellant next argues that the trial court erred by failing to interpret the contract against Respondent; however, because there is no ambiguity in the contract, this court need not address this argument. See Duncan v. Little, 384 S.C. 420, 426, 682 S.E.2d 788, 791 (2009) (indicating that only when the

contract is deemed ambiguous will the rule of contract interpretation mandating construction against the drafting party be employed).

Accordingly, the trial court did not err in finding Appellant entitled to $176,300 in costs.

II. Reduction of Appellant's share of profits

Next Appellant alleges that the trial court erred in awarding only $1,449. We agree.

Construction and interpretation of a clear and unambiguous contract is a question of law for the trial court to determine. Bowen v. Bowen, 345 S.C. 243, 249, 547 S.E.2d 877, 880 (Ct. App. 2001).

Appellant argues that the trial court erred by inexplicably deducting $12,551 from his $14,000 share of the profits, effectively awarding $26,551 of the $28,000 in claimed profits to Respondent.

Initially, we note the trial court's deduction of $12,551 is not inexplicable; however, it is nonetheless an erroneous interpretation of an unambiguous contract. In this case, the trial court found, and we agree, that the contract entitled Appellant to $176,300 in expenses, but instead, he was paid and received $188,851. The trial court calculated the difference between these amounts and determined that Appellant had received $12,551 in excess of what he was entitled. Accordingly, the trial court halved the $28,000 in profits, and then reduced Appellant's $14,000 share by $12,551, arriving at a total entitlement of $1,449. Put another way, the trial court found that Appellant was entitled to $176,300 plus a $14,000 share of profits, for a total entitlement of $190,300, of which he had received $188,851, leaving a difference of $1,449.

However, the trial court's interpretation does not consider that profits of $28,000 were calculated after having paid Appellant $188,851, of which

$12,551 he was not entitled to receive. The contract indicates profit is dependent upon the amount of costs Appellant is entitled to under the contract; profit is not a fixed amount. Here, the agreement unambiguously provides Appellant is entitled to $176,300 "plus one-half profits;" however, the trial court interpreted the contract as entitling Appellant to $176,300 plus one-half of $28,000.

The agreement stipulates each party was to receive one-half of profits, not one-half of $28,000; therefore, it is significant that Appellant received $12,551 in excess of the $176,300 he was entitled to under the contract. Because the $12,551 "expense" should not have been paid by Respondent, the $28,000 profit figure was artificially deflated by $12,551[4]. Consequently, each party is entitled to one-half of $40,551 ($28,000 + $12,551). Therefore, Appellant should receive $176,300 plus "one-half of profits" ($20,275.50) for a total amount of $196,575.50, not $176,300 plus $14,000 as the trial court interpreted the agreement.

As noted, Appellant has already received $188,851 of the $196,575.50 due him. Thus, he remains entitled to the difference of $7,724.50. Accordingly, the order of the trial court is modified to award Appellant $7,724.50 rather than $1,449.[5]

CONCLUSION

Although we do not find the contract to be ambiguous, we do find error in the trial court's interpretation of the unambiguous contract to find

---

[4] Put in mathematical terms; because all expenses are paid and undisputed, it remains Appellant was paid $188,851, and Respondent possessed $28,000 in residual monies. Therefore, $216,851 ($188,851 + $28,000) represents proceeds. Because Appellant is entitled to $176,300: $40,551 ($216,851 - $176,300) represents the amount remaining after all expenses are paid.

[5] For the reasons above, Appellant's argument that he is entitled to a full $14,000 share of the profits fails.

Appellant entitled to expenses plus $14,000 or $1,449. Rather, the appropriate interpretation demonstrates Appellant is entitled to $7,724.50, and we herein modify the trial court's order accordingly. Therefore, the ruling of the trial court is

AFFIRMED AS MODIFIED.

HUFF A.C.J. and PIEPER, J., concur.