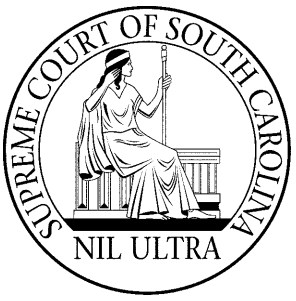

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 46
November 21, 2018
Daniel E. Shearouse, Clerk
Columbia, South Carolina
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Frank Gordon, Jr., Individually and as Trustee of Dorothy S. Gordon (Deceased) Trust, Respondent,

v.

Donald W. Lancaster, Petitioner.

Appellate Case No. 2017-000640

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 27847
Heard June 14, 2018 – Filed November 21, 2018

REVERSED

Stephen P. Groves, Sr. and Alexandra H. Austin, both of Nexsen Pruet, LLC, of Charleston, and John J. Dodds, III, of The Law Firm of Cisa & Dodds, LLP, of Mt. Pleasant, all for Petitioner.

Justin O'Toole Lucey and Stephanie D. Drawdy, of Justin O'Toole Lucey, P.A., of Mount Pleasant, for Respondent.

JUSTICE HEARN: We granted certiorari on the narrow question of whether a creditor may execute on a judgment more than ten years after its enrollment when the time period has expired during the course of litigation. Our resolution of this case requires us to revisit our decision in *Linda Mc*,[1] which the court of appeals broadly interpreted as extending a judgment's life beyond the statutory ten-year limit merely by filing the action within ten years. *Gordon v. Lancaster*, 419 S.C. 48, 795 S.E.2d 857 (Ct. App. 2016). We reverse and overrule *Linda Mc*.

FACTUAL BACKGROUND

In December of 2001, Rudolph Drews, the now-deceased uncle of Petitioner Donald Lancaster, was found liable in a civil action for violating securities laws in an investment scheme for a new business venture in Charleston. Judgment was enrolled against Drews in March of 2002; over the next three years, the court of appeals affirmed and this Court denied certiorari. Thereafter, in August of 2006, Respondent Frank Gordon, a creditor on the 2002 judgment, filed a petition in the circuit court for supplemental proceedings. The court granted the petition, and a hearing ensued one month later, wherein Gordon's counsel became suspicious that Drews' wife and Lancaster were complicit in shielding Drews' assets from creditors. Gordon noted, "[Drew's wife] is intertwined in this, and we believe the nephew is, too, by these gifts." This hearing was continued when Drews failed to produce tax and financial documents.

A year later, in September of 2007, Rudolph Drews died, and his estate was opened shortly thereafter. Gordon sought to continue supplemental proceedings, but delays in administering the estate arose. In February of 2010, Lancaster was deposed as part of supplemental proceedings, which confirmed Gordon's suspicions that he and Drews' wife were involved in shielding Drews' assets. Soon after, one day before her scheduled deposition, Drews' wife died.

On November 2, 2010, Gordon filed this action, asserting Lancaster assisted Drews in hiding assets from creditors in violation of the Statute of Elizabeth.[2] A year

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[1] *Linda Mc Co. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010).

[2] For further background on the specific transactions, we refer to the court of appeals' recitation of the facts. *Gordon v. Lancaster*, 419 S.C. 48, 795 S.E.2d 857 (Ct. App. 2016)

later, in November of 2011, Drews' estate confessed judgment of $293,703.43, and his wife's estate settled with Gordon for $60,000. Both estates assigned their interests to him.

A two-day bench trial occurred in June of 2013, wherein Lancaster moved for a directed verdict based on Gordon's prior concession that this suit was based on the 2001 judgment. Therefore, according to Lancaster, because more than ten years had elapsed from the date the judgment was entered, the judgment's "active energy" had expired. The court disagreed, relying on this broad language in *Linda Mc*: "If a party takes action to enforce a judgment within the ten-year statutory period of active energy, the resulting order will be effective even if issued after the ten-year period has expired." Thus, the court denied the motion and found in favor of Gordon for $211,677.30.

Lancaster appealed to the court of appeals, and in a split decision, the majority, relying on *Linda Mc*., held the trial court correctly determined section 15-39-30 did not bar satisfaction of the 2001 judgment because Gordon had timely filed this action within the ten-year window and continued to pursue it. *Gordon*, 419 S.C. at 58, 795 S.E.2d at 862. The dissent found the facts here distinguishable from *Linda Mc*, noting "[Gordon] had only filed the present action in the circuit court and settled his allegations against the Drews' estates. Although [Gordon] filed this action prior to the expiration of the ten-year period, he was not 'merely waiting on the court's order regarding execution and levy….'" *Id.* at 63, 795 S.E.2d at 865 (Thomas, J., dissenting). Additionally, the dissent noted the merits hearing did not occur for over a year after the ten-year period expired, and therefore posited that extending *Linda Mc* "thwarts the public policy of this state that limits the life of a judgment to ten years." *Id.* at 64, 795 S.E.2d at 865. While Lancaster sought certiorari on multiple issues, this Court granted certiorari solely on whether the judgment retained "active energy" and thus, was enforceable.

ISSUE

Does a judgment's ten-year "active energy" terminate when the judgment creditor's enforcement action remains untried when the ten-year period expires, or conversely, does a judgment creditor's mere institution of the enforcement action within ten years extend that ten-year period indefinitely until trial is held and a final order is issued?

STANDARD OF REVIEW

The interpretation of a statute is a question of law, which an appellate court is free to decide without deference to the trial court. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

DISCUSSION

Lancaster contends the court of appeals erroneously expanded this Court's holding in *Linda Mc*, effectively nullifying the statutory ten-year limit to execute on a judgment. Conversely, Gordon asserts the court of appeals correctly followed *Linda Mc*, noting he timely filed this action within the ten-year period and continued to pursue satisfaction of the judgment.

Section 15-39-30 provides,

> Executions may issue upon final judgments or decrees at any time *within ten years from the date of the original entry thereof* and shall have *active energy during such period, without any renewal or renewals thereof*, and this whether any return may or may not have been made during such period on such executions.

S.C. Code Ann. § 15-39-30 (2005) (emphasis added). According to the statute's plain language, a creditor has ten years to execute on the judgment from the date of its entry, a time period that cannot be renewed.

Linda Mc is this Court's most recent decision addressing section 15-39-30. There, the parties executed a judgment by confession on June 2, 1995. *Linda Mc*, 390 S.C. at 548, 703 S.E.2d at 501. While the judgment debtor paid a portion of the judgment thereafter, Linda Mc filed a petition for supplemental proceedings nine years after the effective date of the judgment, arguing the debtor had assets subject to execution. *Id.* at 549, 703 S.E.2d at 502. The trial court granted the petition and referred the matter to a special referee, who held two hearings before the ten-year time period expired. *Id.* at 549–50, 703 S.E.2d at 502. The referee issued a report in favor of the judgment creditor and the circuit court issued an order of execution, both on June 3, 2005, one day after the time period terminated. *Id.* at 550, 703 S.E.2d at 502. Despite the passage of more than ten years, the Court held the judgment continued to have "active energy," initially noting

> *We want to stress that this is a narrow holding limited to facts similar to those at issue in this case.* Hence, when a party has complied with the applicable statutes, as Respondent did in this case, and is merely waiting on a court's order regarding execution and levy, the ten year limitation found in section 15–39–30 is extended to when the court finally issues an order.

Id. at 554–55, 703 S.E.2d at 505 (emphasis added). However, in the next paragraph, the Court explained, "While the order came after the ten-year period, a petition for supplemental proceedings was filed before the ten-year period expired. Therefore, the judgment had active energy on June 3, 2005, because that order was the result of the supplemental proceedings filed during the ten-year period." *Id.* at 555, 703 S.E.2d at 505. Finally, the Court concluded, "[i]f a party takes action to enforce a judgment within the ten-year statutory period of active energy, the resulting order will be effective even if issued after the ten-year period has expired." *Id.* It is this language the court of appeals relied on in holding the judgment in the instant case retained active energy.[3]

We note *Linda Mc* represents a departure from this Court's historic approach in analyzing section 15-39-30, and while we appreciate the compelling facts at issue therein, the decision has created confusion in what was heretofore a well-settled area of the law. Accordingly, we overrule it and return to the traditional bright-line rule. Nevertheless, even if *Linda Mc* were to remain good law, the court of appeals erred in relying on it and *Hardee v. Lynch*, 212 S.C. 6, 46 S.E.2d 179 (1948), to grant relief to Gordon. In *Linda Mc*, the order of execution was issued only one day after expiration of the ten-year time period, whereas here, the hearing was not even held until over a year past expiration of the time period, and an order of execution has still not been issued. Moreover, *Hardee* is inapposite because the statute at issue there expressly granted a party the opportunity to revive or extend the active life of a judgment after ten years by seeking leave of the court, provided the action was filed within twenty years of the judgment. *Id.* at 12, 46 S.E.2d at 181–82. As the

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[3] We note the issue before us today involves precisely the confusion former Justice Pleicones predicted in a footnote, stating, "Either the period is extended so 'long as a party has taken steps within the ten year period to enforce the judgment' or such an extension is limited to the majority's 'narrow holding' and 'limited to facts similar to those at issue in this case.'" *Linda Mc*, 390 S.C. at 562 n.9, 703 S.E.2d at 509 n.9.

Court in *Hardee* explained, "Our statutes…*and without reference to the repealing statute of 1946*—clearly evince the legislative purpose to nullify the effective force of a judgement after ten years, unless revived, or suit thereon be brought before the expiration of the period allowed by law." *Id.* at 14, 46 S.E.2d at 182 (emphasis added). However, the General Assembly subsequently removed the ability to extend the life of a judgment, as the court noted: "[The amended statute] embodies the substantive law of the state. It provides no limitation period, but completely destroys any right of action upon judgments. The logical result…was to utterly extinguish a judgment after the expiration of ten years from the date of entry." *Id.* at 17, 46 S.E.2d at 183. Indeed, in repealing the prior statute that provided a renewal mechanism, this Court concluded the amended provision "radically changed the operation and effect of existing statutes governing limitation of actions on judgments." *U.S. Rubber Co. v. McManus*, 211 S.C. 342, 345, 45 S.E.2d 335, 336 (1947).

After *Hardee*, this Court again noted the General Assembly's intent to "utterly extinguish" a judgment after ten years in *Garrison v. Owens*, 258 S.C. 442, 189 S.E.2d 31 (1972). There, a creditor sought to enforce a judgment lien by filing an action approximately two months before the ten-year time period expired. During the course of litigation, the ten years expired, and over a year later, the defendant moved to dismiss, arguing the time period was not extended by filing the action within ten years. *Id.* at 445, 189 S.E.2d at 32. This Court agreed, noting, "A judgment lien is purely statutory, its duration as fixed by the legislature may not be prolonged by the courts and the bringing of an action to enforce the lien will not preserve it beyond the time fixed by the statute, if such time expires before the action is tried." *Id.* at 446–47, 189 S.E.2d at 33.[4] While the *Linda Mc* Court declared in a footnote that the more equitable approach is to provide an exception to the bright-line rule in similar cases—we believe the proper approach is to leave the policy concerns regarding this provision to the General Assembly. Therefore, we overrule *Linda Mc*.

Our decision is in accord with how we have historically interpreted section 15-39-30. *Home Port Rentals, Inc. v. Moore*, 369 S.C. 493, 496, 632 S.E.2d 862, 863 (2006) ("This Court has consistently held that under the statute, a judgment becomes stale and a judgment lien is extinguished after ten years."); *Garrison*, 258 S.C. at 446–47, 189 S.E.2d at 33. Although Gordon argues our approach is in

[4] While the Court in *Linda Mc* overruled *Garrison*, it only did so "to the extent [it is] inconsistent with this opinion." *Linda Mc*, 390 S.C. at 555 n.8, 703 S.E.2d at 505 n.8. Regardless, *Garrison* is good law in light of today's decision.

isolation compared with other jurisdictions, we must remain faithful to the text of the act. While some states do not statutorily set forth a revival period, others do, which render those decisions inapposite to this analysis. *See, e.g.*, *Good v. Kleinhammer*, 251 P. 405 (Kan. 1926) (state with a revival statute); *Ellis v. McCrary*, 183 S.E. 823 (Ga. App. 1936) (analyzing a statute that authorized a creditor to revive a dormant judgment as a statute of limitations); *Thomas v. Thomas*, 66 Ga. 78 (1880) (noting a dormant judgment can be revived). Conversely, section 15-39-30 is not a statute of limitations, as even the majority in *Linda Mc* acknowledged. *Linda Mc*, 390 S.C. at 554, 703 S.E.2d at 505. Further, in dissent, then-Justice Beatty explained it is clearly a statute of repose. *Linda Mc*, 390 S.C. at 558, 703 S.E.2d at 507 (Beatty, J., dissenting). Therefore, we decline to judicially adopt an exception to the bright-line rule that a judgment expires after ten years from its enrollment.[5]

CONCLUSION

We overrule *Linda Mc* and reverse the court of appeals.[6]

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[5] As an additional sustaining ground, Gordon argues that as an assignee of the Drews' estates, the judgment is timely because the estates' rights did not accrue until after the Drews' deaths. However, his amended complaint demonstrates that he still seeks to execute upon the 2001 judgment, noting "By these assignments, Plaintiff does not seek to enlarge or change the judgment upon which he is suing; Plaintiff is still collecting on the 2001-2002 Trial Judgments…." Therefore, we reject Gordon's additional sustaining ground. *See Carr v. Guerard*, 365 S.C. 151, 154, 616 S.E.2d 429, 431 (2005) ("South Carolina courts will not permit a litigant to bypass the ten-year limitation on executions by styling an action as something other than an action to execute.").

[6] We overrule *Linda Mc* prospectively, yielding protection only to pending cases that fall within its narrow holding. *See Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 399, 520 S.E.2d 142, 155 (1999) (holding decisions creating new substantive rights should be applied prospectively). However, this decision affords no relief to Gordon because he cannot fall within the very limited exception to the ten-year rule articulated in *Linda Mc* where the hearing was held prior to expiration of the judgment, and the only thing needed to conclude the case was issuance of the order. While the concurrence agrees with this conclusion, it also suggests that we need not overrule *Linda Mc* because the broad language contained therein was mere dictum. Curiously, the concurrence then posits that our decision to

REVERSED.

BEATTY, C.J., and KITTREDGE, J., concur. FEW, J., concurring in a separate opinion. JAMES, J., concurring in part and dissenting in part in a separate opinion.

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overrule *Linda Mc* is in itself mere dictum. To be clear, we are overruling *Linda Mc* not only because it is contrary to the unequivocal language contained in Section 15-39-30, but also because, as former Justice Pleicones predicted, it created confusion in a previously settled area of the law. Moreover, we disagree that our analysis is mere dictum, but even assuming *arguendo* that it is, in the words of former Chief Judge Sanders:

> [T]hose who disregard dictum, either in law or in life, do so at their peril. We are reminded of the apocryphal story of a duel which was about to take place in a saloon. One of the antagonists was an unimposing little man, thin as a rail-but a professional gunfighter. The other was a big, bellicose fellow who tipped the scales at 300 pounds. "This ain't fair," said the big man, backing off. "He's shooting at a larger target." The little man quickly moved to resolve the matter. Turning to the saloon keeper, he said, "Chalk out a man of my size on him. Anything of mine that hits outside the line don't count."

Yaeger v. Murphy, 291 S.C. 485, 490 n.2, 354 S.E.2d 393, 396 n.2 (Ct. App. 1987) (quoting Paul Trachtman, *The Gunfighters* 39 (1974)).

JUSTICE FEW: I concur in the result reached by the majority as to the outcome of *this* case. I disagree, however, that we should overrule the actual holding in *Linda Mc Co. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010). I would reverse the decision of the court of appeals on the narrow basis explained by Judge Thomas in her dissent. *See Gordon v. Lancaster*, 419 S.C. 48, 63, 795 S.E.2d 857, 865 (Ct. App. 2016) (Thomas, J., dissenting) (explaining Gordon "was not 'merely waiting on the court's order regarding execution and levy' as was the situation in *Linda Mc*" (quoting *Linda Mc*, 390 S.C. at 554, 703 S.E.2d at 505)).

In *Linda Mc*, this Court created what we called a "narrow" exception to the bright-line ten-year limitation for the issuance of an execution on a judgment, which is clearly set forth in section 15-39-30 of the South Carolina Code (2005). *See* 390 S.C. at 554, 703 S.E.2d at 505 (stating, "We want to stress that this is a narrow holding . . . ."). Nevertheless, the *Linda Mc* Court proceeded to rewrite section 15-39-30 in expansive terms that were completely unnecessary to resolve the narrow dispute before the Court in that case. The Court's expansive language appeared to drastically extend the period of time in which an execution may be issued. 390 S.C. at 555, 703 S.E.2d at 505. However, because the Court's expansive statement was not necessary to the decision of the case, the statement is dictum. *See Nash v. Tindall Corp.*, 375 S.C. 36, 40-41, 650 S.E.2d 81, 83 (Ct. App. 2007) (explaining "dictum 'is a statement on a matter not necessarily involved in the case, . . . is not binding as authority . . . , [and] is not the court's decision.'" (quoting 21 C.J.S. *Courts* § 227 (2006)). Dictum is not the law.

The majority explains—as did Judge Thomas—the facts of this case are different from the facts in *Linda Mc*. "In *Linda Mc*, the order of execution was issued only one day after expiration of the ten-year time period, whereas here, the hearing was not even held until over a year past expiration of the time period." *Supra*, slip op. at 5; *see also Gordon*, 419 S.C. at 63, 795 S.E.2d at 865 (Thomas, J., dissenting). Because of this difference—which I view as a significant difference—the "narrow" exception the Court created in *Linda Mc* provides Gordon no relief. To resolve this case, therefore, the Court need only find "the 'narrow' exception the Court created in *Linda Mc* provides Gordon no relief," and the court of appeals erred in holding it did. It

is not necessary to our decision in this case that we overrule *Linda Mc*. Therefore, the majority's statement that we do overrule *Linda Mc* is itself dictum, just like the expansive language in *Linda Mc* was in the first place. Dictum is not the law.

JUSTICE JAMES: I respectfully concur in part and dissent in part. I agree *Linda Mc Co., Inc. v. Shore*[7] should be overruled, and I agree it should be overruled prospectively. However, I disagree with the majority's conclusion that this case does not fall within the exception recognized in *Linda Mc*.

In *Linda Mc*, the judgment creditor commenced supplemental proceedings nine years after obtaining its judgment and the matter proceeded to a hearing within the ten-year active energy of the judgment. 390 S.C. at 549, 703 S.E.2d at 502. The day after the ten-year life of the judgment would have expired, the circuit court issued an order granting relief to the judgment creditor. *Id*. at 550, 703 S.E.2d at 502. We held the judgment continued to have active energy through the date the order was issued. *Id*. at 554-55, 703 S.E.2d at 505. We concluded the "more equitable approach" was to provide an exception to the bright-line rule that extinguished a judgment upon the passage of ten years, if the time expired before the action was tried. *Id*. at 554 n.7, 703 S.E.2d at 505 n.7. This was a drastic departure from our holding in *Garrison v. Owens*,[8] which we overruled in *Linda Mc* "to the extent [it is] inconsistent with this opinion."

In *Linda Mc*, we emphasized that the narrowness of our holding was "limited to *facts similar* to those at issue in this case." 390 S.C. at 554, 703 S.E.2d at 505 (emphasis added). Note we did not state that our holding was limited to "facts identical" to those in *Linda Mc*. Instead, we further explained the parameters of our holding when we concluded the judgment retained its active energy "because [the circuit court] order was the result of the supplemental proceedings filed during the ten-year period." *Id*. at 555, 703 S.E.2d at 505. We ended our discussion of the timeliness issue by stating, "Furthermore, if a party *takes action to enforce a judgment* within the ten-year statutory period of active energy, the resulting order will be effective even if issued after the ten-year period has expired." *Id.* (emphasis added). It is this language upon which the court of appeals understandably relied when it concluded Gordon's judgment retained its active energy under the instant circumstances. Gordon "took action to enforce his judgment" by commencing his supplemental proceedings within the ten-year active energy of the judgment, and the circuit court order granting him relief was "the result of the supplemental

[7] 390 S.C. 543, 703 S.E.2d 499 (2010).

[8] 258 S.C. 442, 189 S.E.2d 31 (1972).

proceedings filed during the ten-year period." Gordon's circumstances undeniably fall within the confines we staked out in *Linda Mc*.

Both the court of appeals and Gordon relied upon this Court's retreat from *Garrison* and our clear dictate in *Linda Mc* that the narrowness of our holding was "limited to facts similar to those at issue" in *Linda Mc*. However, the majority has re-defined our holding to apply only to "facts identical" to those in *Linda Mc*. The majority notes the confusion created by our holding in *Linda Mc* but concludes Gordon's efforts to collect his judgment are for naught. Respectfully, I find that conclusion equally confusing.

With regard to Justice Few's concurrence, I will not delve into the vagaries of whether certain parts of this Court's conclusions in *Linda Mc* are dicta or not. Justice Few concludes some parts are dicta. I disagree. The analytical exercise of trying to determine what parts are dicta and what parts are not dicta ignores the obvious: this Court issued an opinion in *Linda Mc* explaining its rationale for extending the active energy of a judgment that was outside the ten-year bounds of section 15-39-30 of the South Carolina Code (2005). This rationale for extending the active energy of the judgment was, in part, predicated upon the fact that the judgment creditor "[took] action to enforce a judgment within the ten-year statutory period of active energy." *Linda Mc*, 390 S.C. at 555, 703 S.E.2d at 505. And again, this Court recognized the circuit court order granting relief was "the result of the supplemental proceedings filed during the ten-year period." *Id.*

I concur in the majority's prospective overruling of *Linda Mc*. However, I dissent from the majority's conclusion that the facts in this case do not fall within the exception recognized in *Linda Mc*. I would not apply the overruling of *Linda Mc* to pending supplemental proceedings in other cases with "facts similar" to those found in *Linda Mc*. I would also afford appropriate protection to those other judgment creditors who have relied upon our holding in *Linda Mc* in planning their collection efforts. To protect such other creditors whose judgments may have otherwise expired, I would not apply the overruling of *Linda Mc* to cases in which supplemental proceedings are commenced within one hundred eighty (180) days of the date the remittitur in this case is sent to the lower court, provided the proceedings are commenced within the ten-year period of active energy of the subject judgment.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

William Lee Turner, Employee, Petitioner,

v.

SAIIA Construction, Employer, and Old Republic General Insurance Corporation c/o Gallagher Bassett Services, Inc., Carrier, Respondents.

Appellate Case No. 2017-000699

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from the Workers' Compensation Commission

Opinion No. 27848
Heard May 2, 2018 – Filed November 21, 2018

CERTIORARI DISMISSED AS IMPROVIDENTLY GRANTED

Preston F. McDaniel, of McDaniel Law Firm, of Columbia, for Petitioner.

Jason W. Lockhart, of Columbia, and Helen F. Hiser, of Mount Pleasant, both of McAngus Goudelock & Courie, LLC, for Respondents.

PER CURIAM: We issued a writ of certiorari to review the decision of the Court of Appeals in *Turner v. SAIIA Construction*, 419 S.C. 98, 796 S.E.2d 150 (Ct. App. 2016). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

BEATTY, C.J., KITTREDGE, HEARN, FEW, JJ. and Acting Justice Thomas E. Huff, concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Arkay, LLC and Robert R. Knoth, its member,
Petitioners,

v.

City of Charleston, City of Charleston Board of Zoning Appeals, Andrew Pinckney Inn, and Michael A. Molony,
Respondents.

Appellate Case No. 2016-002360

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Charleston County
J. C. Nicholson Jr., Circuit Court Judge

Opinion No. 27849
Heard November 7, 2018 – Filed November 21, 2018

CERTIORARI DISMISSED AS IMPROVIDENTLY GRANTED

Capers G. Barr III, of Barr Unger & McIntosh, LLC, of Charleston, for Petitioners.

Frances Isaac Cantwell and Daniel Simmons McQueeney Jr., both of Charleston; and Wilbur E. Johnson, of Young Clement Rivers, LLP, of Charleston; and Thomas S.

Tisdale Jr., of Hellman, Yates & Tisdale, PA, of Charleston, all for Respondents.

PER CURIAM: We granted a writ of certiorari to review the court of appeals' decision in *Arkay, LLC v. City of Charleston*, 418 S.C. 86, 791 S.E.2d 305 (Ct. App. 2016). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Allstate Vehicle and Property Insurance Company,
Plaintiff,

v.

Rose Wadford Hunter, Jane Doe, by and through her mother and natural Guardian ad Litem, Mary Roe, and Mary Roe, individually, Defendants.

Appellate Case No. 2018-001068

CERTIFIED QUESTION

ON CERTIFICATION FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA
David C. Norton, United States District Judge

Opinion No. 27850
Heard October 16, 2018 – Filed November 21, 2018

CERTIFIED QUESTION ANSWERED

Alfred Johnston Cox and Janice Holmes, both of Gallivan, White & Boyd, P.A., of Columbia, for Plaintiff.

Aaron Eric Edwards and Lawrence E. Richter, Jr., both of The Richter Firm, LLC, of Mt. Pleasant, and Benjamin Terrell Coppage, of Beaufort , all for Defendants.

Aaron Eric Edwards and Lawrence E. Richter, Jr., both of The Richter Firm, LLC, of Mt. Pleasant, for Guardian ad Litem Mary Roe.

JUSTICE FEW: This Court accepted the following certified question from the United States District Court for the District of South Carolina:

> In *Manufacturers & Merchants Ins. Co. v. Harvey*, 330 S.C. 152, 498 S.E.2d 222 (Ct. App. 1998), the South Carolina Court of Appeals held that in a coverage dispute involving sexual abuse, negligence claims against a non-abusing third party constitute "occurrences" and are not barred by the intentional act exclusion in an insurance policy. How does this holding interact with the intentional or criminal act exclusion and joint obligations provision found in Allstate's insurance policy? Specifically, does Allstate's intentional or criminal act exclusion and the joint obligations provision operate to bar coverage for claims such as negligent supervision and breach of fiduciary duty levied against the non-abusing third party that is the other "named insured" in a policy?

This case arises out of years of alleged sexual abuse against minor Jane Doe by Joseph Stephen Hunter. Rose Wadford Hunter is the wife of Joseph Hunter. Doe, through her mother Mary Roe, brought suit against Rose Hunter in state court in Beaufort County, South Carolina. She asserts causes of action for negligence, defamation, and breach of fiduciary duty based on Rose Hunter's non-intentional inaction in the face of evidence of "her husband's sexual proclivities concerning young girls," and Rose Hunter's intentional post-abuse social media comments "disparaging, denigrating, and defaming" Roe as a "sorry mother."

Allstate Vehicle and Property Insurance Company issued a homeowner's policy to Joseph Hunter and Rose Hunter. Both Joseph Hunter and Rose Hunter were named insureds under the policy. Allstate is currently defending Rose Hunter in the state action subject to a reservation of rights.

Allstate filed suit in federal district court asking the court to declare that Allstate was not required to defend or provide coverage to Rose Hunter under the Hunter policy. Allstate filed a motion for summary judgment. Before ruling on the motion, the district court determined "only the negligence claim and breach of fiduciary duty

claims against Rose Hunter could possibly be covered under the [Hunter] Policy."[1] As to those claims, the district court first found the Hunter policy clearly barred coverage to Joseph Hunter for his intentional acts of sexual abuse. The court then concluded, "[T]he policy unambiguously denies coverage to one named insured where the other named insured has been barred from coverage." However, the court did not immediately grant the motion for summary judgment as to the negligence and breach of fiduciary duty claims, but certified this question to us.

The certified question requires us to decide: (1) whether the court of appeals' holding in *Harvey* alters the conclusion of no duty to defend and no coverage for Rose Hunter that would otherwise follow from the district court's reading of the Hunter policy, and (2) whether there is any South Carolina public policy that prohibits the application of the Hunter policy to deny coverage for Rose Hunter.

We answer the certified question as follows,

> There is nothing in *Harvey* or in the public policy of this State that would alter the district court's conclusion "the [Hunter] policy unambiguously denies coverage to [Rose Hunter] where [Joseph Hunter] has been barred from coverage."

The holding in *Harvey* is limited to the insurance policy at issue in that case. *Harvey* does not stand for the general proposition that a negligence claim—or other claim of unintentional conduct—against a non-abusing named insured is always an "occurrence," nor that an intentional acts exclusion is never effective, in the context of a sexual abuse coverage case. The insurance policy in *Harvey* contained an intentional acts exclusion different from the intentional acts exclusion found in the Hunter policy. The insurance policy in *Harvey* did not contain a joint obligations provision. Finally, there is no public policy that would alter the district court's conclusion that the language of the Hunter policy denies coverage to Rose Hunter.

CERTIFIED QUESTION ANSWERED.

BEATTY, C.J., KITTREDGE, HEARN and JAMES, JJ., concur.

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[1] The district court found the defamation cause of action to be a claim for intentional conduct, and thus "the 'intentional acts' exclusion precludes coverage for damages arising out of the defamation claim."