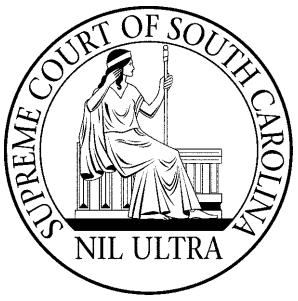

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 5
February 1, 2023
Patricia A. Howard, 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UNPUBLISHED OPINIONS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

None

EXTENSION TO FILE PETITION - UNITED STATES SUPREME COURT

28120 – State v. Angela D. Brewer Granted until 3/11/2023

PETITIONS FOR REHEARING

28095 – The Protestant Episcopal Church v. The Episcopal Church Pending

28115 – Progressive Direct v. Shanna Groves Denied 1/12/2023

28121 – State Farm v. Myra Windham Pending

28126 – Barry Clarke v. Fine Housing Inc. Pending

28127 – Planned Parenthood South Atlantics, et al. v. State of South Carolina, et al. Pending

28129 – ArrowPointe Federal Credit Union v. Jimmy Eugene Bailey Pending

28130 – Stephany A. Connelly v. The Main Street America Group Pending

THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

2023-UP-042 –Thomas Jackson v. Joe Henry

2023-UP-043 – In the matter of Craig Carroll (2)

2023-UP-044 – Deutsche Bank National Trust Co. v. Doris J. Dixon

2023-UP-045 – State v. Joshua T. Rothwell

2023-UP-046 – Robert DeCiero v. Horry County (2)

PETITIONS FOR REHEARING

5916 – Amanda Huskins v. Mungo Homes, LLC	Pending
5946 – State v. Frankie L. Davis, III	Pending
5947 – Richard W. Meier v. Mary J. Burnsed	Pending
5948 – Frankie Padgett v. Cast and Crew Entertainment	Pending
5949 – Phillippa Smalling v. Lisa R. Maselli	Pending
5951 – State v. Xzariera O. Gray	Denied 01/23/2023
5954 – State v. Rashawn Carter	Pending
5955 – State v. Philip Guderyon	Pending
5956 – Trident Medical v. SCDHEC (Medical University)	Pending
5957 – SCDSS v. Brian Frank	Pending
5960 – State v. Kenneth Lamont Robinson, Jr.	Pending
2022-UP-402 – Todd Olds v. Berkeley County	Pending
2022-UP-422 – Paula Russell v. Wal-Mart Stores, Inc.	Pending

2022-UP-429 – Bobby E. Leopard v. Perry W. Barbour Pending

2022-UP-436 – Cynthia Holmes v. James Holmes Pending

2022-UP-437 – Nicholas Thompson v. Bluffton Township Fire District Pending

2022-UP-442 – Hardy Lanier #381975 v. SCDC Denied 01/24/2023

2022-UP-444 – State v. James H. Baldwin Denied 01/23/2023

2022-UP-455 – In the Matter of the Estate of Herbert Franklin Dickson, Jr. Pending

2022-UP-462 – Karrie Gurwood and Howard Gurwood v. GCA Services, Inc. Pending

2023-UP-005 – David Abdo v. City of Charleston Pending

2023-UP-011 – Therese Hood v. USAA Pending

PETITIONS – SUPREME COURT OF SOUTH CAROLINA

5824– State v. Robert Lee Miller, III Granted 10/07/2022

5826 – Charleston Development v. Younesse Alami Pending

5832 – State v. Adam Rowell Pending

5834 – Vanessa Williams v. Bradford Jeffcoat Pending

5839 – In the Matter of Thomas Griffin Pending

5843 – Quincy Allen #6019 v. SCDC Pending

5846 – State v. Demontay M. Payne Pending

5849 – SC Property and Casualty Guaranty Fund v. Second Injury Fund Pending

5855 – SC Department of Consumer Affairs v. Cash Central	Pending
5856 – Town of Sullivan's Island v. Michael Murray	Pending
5858 – Beverly Jolly v. General Electric Company	Granted 1/12/2023
5860 – Kelaher, Connell & Conner, PC v. SCWCC	Pending
5871 – Encore Technology Group, LLC v. Keone Trask and Clear Touch	Granted 1/12/2023
5877 – Travis Hines v. State	Granted 1/12/2023
5882 – Donald Stanley v. Southern State Police	Pending
5892 – State v. Thomas Acker	Pending
5898 – Josie Bostick v. Earl Bostick, Sr.	Granted 1/12/2023
5900 – Donald Simmons v. Benson Hyundai, LLC	Pending
5903 – State v. Phillip W. Lowery	Pending
5905 – State v. Richard K. Galloway	Granted 1/12/2023
5907 – State v. Sherwin A. Green	Pending
5906 – Isaac D. Brailey v. Michelin N.A.	Pending
5912 – State v. Lance Antonio Brewton	Pending
5914 – State v. Tammy D. Brown	Pending
5915 – State v. Sylvester Ferguson, III	Pending
5921 – Cynthia Wright v. SCDOT	Pending
5922 – State v. Olandio R. Workman	Pending

5923 – Susan Ball Dover v. Nell Ball		Pending
5925 – Patricia Pate v. College of Charleston		Pending
5926 – Theodore Wills v. State		Pending
5930 – State v. Kyle M. Robinson		Pending
5931 – Stephen R. Edwards v. Scapa Waycross, Inc.		Pending
5932 – Basilides Cruz v. City of Columbia		Pending
5933 – State v. Michael Cliff Eubanks		Pending
5934 – Nicole Lampo v. Amedisys Holding, LLC		Pending
5935 – The Gulfstream Café v. Palmetto Industrial		Pending
5942 – State v. Joseph L. Brown, Jr.		Pending
5943 – State v. Nicholas B. Chhith-Berry		Pending
5950 – State v. Devin J. Johnson		Pending
2021-UP-230 – John Tomsic v. Angel Tomsic	Denied	01/12/2023
2021-UP-242 – G. Allen Rutter v. City of Columbia		Pending
2021-UP-252 – Betty Jean Perkins v. SCDOT		Pending
2022-UP-274 – SCDSS v. Dominique G. Burns		Pending
2021-UP-277 – State v. Dana L. Morton		Pending
2021-UP-280 – Carpenter Braselton, LLC v. Ashley Roberts		Pending
2021-UP-281 – In the Matter of the Estate of Harriet Kathleen Henry Tims		Pending

2021-UP-288 – Gabriel Barnhill v. J. Floyd Swilley Pending

2021-UP-396 – State v. Matthew J. Bryant Denied 1/12/2023

2021-UP-418 – Jami Powell (Encore) v. Clear Touch Interactive Granted 1/12/2023

2022-UP-028 – Demetrius Mack v. Leon Lott (2) Denied 01/27/2023

2022-UP-033 – E.G. and J.J. v. SCDSS Granted 1/12/2023

2022-UP-051 – Ronald I. Paul v. SCDOT (2) Pending

2022-UP-081 – Gena Davis v. SCDC Pending

2022-UP-085 – Richard Ciampanella v. City of Myrtle Beach Pending

2022-UP-089 – Elizabeth Lofton v. Berkeley Electric Coop. Inc. Pending

2022-UP-095 – Samuel Paulino v. Diversified Coatings, Inc. Pending

2022-UP-097 – State v. Brandon K. Moore Denied 1/12/2023

2022-UP-113 – Jennifer McFarland v. Thomas Morris Pending

2022-UP-114 – State v. Mutekis J. Williams Pending

2022-UP-118 – State v. Donald R. Richburg Pending

2022-UP-119 – Merilee Landano v. Norman Landano Pending

2022-UP-161 –Denis Yeo v. Lexington Cty. Assessor Pending

2022-UP-163 – Debi Brookshire v. Community First Bank Pending

2022-UP-169 – Richard Ladson v. THI of South Carolina at Charleston Pending

2022-UP-170 – Tony Young v. Greenwood Cty. Sheriff's Office Pending

2022-UP-175 – Brown Contractors, LLC v. Andrew McMarlin Pending

2022-UP-180 – Berkley T. Feagin v. Cambria C. Feagin Denied 1/12/2023

2022-UP-183 – Raymond A. Wedlake v. Scott Bashor Pending

2022-UP-184 – Raymond Wedlake v. Woodington Homeowners Assoc. Pending

2022-UP-186 – William B. Justice v. State Pending

2022-UP-189 – State v. Jordan M. Hodge Pending

2022-UP-192 – Nivens v. JB&E Heating & Cooling, Inc. Pending

2022-UP-197 – State v. Kenneth W. Carlisle Pending

2022-UP-203 – Estate of Patricia Royston v. Hunt Valley Holdings Pending

2022-UP-205 – Katkams Ventures, LLC v. No Limit, LLC Pending

2022-UP-207 – Floyd Hargrove v. Anthony Griffis, Sr. Pending

2022-UP-209 – The State v. Dustin L. Hooper Pending

2022-UP-213 – Dr. Gregory May v. Advanced Cardiology Pending

2022-UP-214 – Alison Meyers v. Shiram Hospitality, LLC Pending

2022-UP-228 – State v. Rickey D. Tate Pending

2022-UP-229 – Adele Pope v. Estate of James Brown (3) Pending

2022-UP-236 – David J. Mattox v. Lisa Jo Bare Mattox Pending

2022-UP-239 – State v. James D. Busby Pending

2022-UP-243 – In the Matter of Almeter B. Robinson (2) Pending

2022-UP-245 – State v. John Steen d/b/a John Steen Bail Bonding Pending

2022-UP-251 – Lady Beaufort, LLC v. Hird Island Investments Pending

2022-UP-252 – Lady Beaufort, LLC v. Hird Island Investments (2) Pending

2022-UP-253 – Mathes Auto Sales v. Dixon Automotive Pending

2022-UP-255 – Frances K. Chestnut v. Florence Keese Pending

2022-UP-256 – Sterling Hills v. Elliot Hayes Pending

2022-UP-269 – Steven M. Bernard v. 3 Chisolm Street Pending

2022-UP-270 – Latarsha Docena-Guerrero v. Government Employees Insurance Pending

2022-UP-274 – SCDSS v. Dominique G. Burns Pending

2022-UP-276 – Isiah James, #096883 v. SCDC (2) Pending

2022-UP-282 – Roger Herrington, II v. Roger Dale Herrington Pending

2022-UP-293 – State v. Malette D. Kimbrough Pending

2022-UP-294 – Bernard Bagley #175851 v. SCDPPPS (2) Pending

2022-UP-296 – SCDOR v. Study Hall, LLC Pending

2022-UP-298 – State v. Gregory Sanders Pending

2022-UP-303 – Daisy Frederick v. Daniel McDowell Pending

2022-UP-340 – State v. Amy N. Taylor Pending

2022-UP-305 – Terri L. Johnson v. State Farm Pending

2022-UP-307 – Frieda H. Dortch v. City of Columbia Pending

2022-UP-308 – Ditech Financial, LLC v. Kevin Snyder Pending

2022-UP-309 – State v. Derrick T. Mills	Pending
2022-UP-312 – Guardian ad Litem, James Seeger v. Richland School Dt.	Pending
2022-UP-313 – Vermell Daniels v. THI of SC	Pending
2022-UP-314 – Ronald L. Jones v. Rogers Townsend & Thomas, P.C.	Pending
2022-UP-316 – Barry Adickes v. Phillips Healthcare (2)	Pending
2022-UP-319 – State v. Tyler J. Evans	Pending
2022-UP-320 – State v. Christopher Huggins	Pending
2022-UP-321 – Stephen Franklin II v. Kelly Franklin	Pending
2022-UP-323 – Justin R. Cone v. State	Pending
2022-UP-326 – Wells Fargo Bank v. Michelle Hodges	Pending
2022-UP-331 – Ex parte: Donald Smith (In re: Battersby v. Kirkman)	Pending
2022-UP-333 – Ex Parte: Beaullah and James Belin	Pending
2022-UP-334 – Anthony Whitfield v. David Swanson	Pending
2022-UP-337 – U.S. Bank, N.A. v. Rhonda Lewis Meisner (3)	Pending
2022-UP-338 – State v. Derrick J. Miles	Pending
2022-UP-346 – Russell Bauknight v. Adele Pope (3)	Pending
2022-UP-354 – Chicora Life Center v. Fetter Health Care Network	Pending
2022-UP-360 – Nationstar Mortgage LLC v. Barbara A. Gibbs	Pending
2022-UP-362 – Jonathan Duncan v. State	Pending

2022-UP-382 – Mark Giles Pafford v. Robert Wayne Duncan, Jr. Pending

2022-UP-410 – Alvetta L. Massenberg v. Clarendon County Treasurer Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Freddie Eugene Owens, Brad Keith Sigmon, Gary DuBose Terry, and Richard Bernard Moore, Respondents-Appellants,

v.

Bryan P. Stirling, in his official capacity as the Director of the South Carolina Department of Corrections; South Carolina Department of Corrections; and Henry McMaster, in his official capacity as Governor of the State of South Carolina, Appellants-Respondents.

Appellate Case No. 2022-001280

Appeal from Richland County
Jocelyn Newman, Circuit Court Judge

Opinion No. 28132
Heard January 5, 2023 – Filed January 26, 2023

REVERSED IN PART AND REMANDED

Chief Legal Counsel Thomas Ashley Limehouse, Jr., Senior Legal Counsel William Grayson Lambert, and Deputy Legal Counsel Erica Wells Shedd, all of Columbia, for Appellant-Respondent Governor Henry McMaster; Daniel Clifton Plyler and Austin Tyler Reed, both of Smith Robinson, of Columbia, for Bryan P.

Stirling, Director, and the South Carolina Department of Corrections, Appellants-Respondents.

Lindsey Sterling Vann, Emily C. Paavola, Hannah Lyon Freedman, Breedan Matthew Van Winkle, and Allison Ann Franz, all of Justice 360; Elizabeth Anne Franklin-Best, of Elizabeth Franklin-Best, P.C., and John Christopher Mills, of J. Christopher Mills, LLC, all of Columbia; Joshua Snow Kendrick, of Kendrick & Leonard, P.C., of Greenville; and John H. Blume, III, of Ithaca, NY, for Respondents-Appellants.

CHIEF JUSTICE BEATTY: Four prisoners filed this declaratory judgment action challenging two of the execution methods set forth in South Carolina's death penalty statute[1]—electrocution and the firing squad—because they violate the South Carolina Constitution's article I, section 15 prohibition against cruel, corporal, or unusual punishment. The circuit court concluded electrocution and the firing squad are unconstitutional under state law, and the parties filed cross-appeals with this Court.[2] The primary appeal concerns the merits of the ruling, and the prisoners' cross-appeal challenges the partial denial of their pretrial discovery request for information on the availability of a third statutory method of execution, lethal injection. At this time, we reverse the circuit court's discovery ruling, which is the subject of the cross-appeal, and we remand the discovery issue to the circuit court for further proceedings to be completed in accordance with the time limits set forth in this opinion. We will hold the remainder of the appeal in abeyance pending the circuit court's resolution of the discovery issue.

I. FACTS

Freddie Eugene Owens, Brad Keith Sigmon, Gary DuBose Terry, and Richard Bernard Moore ("Inmates") were each convicted of murder in unrelated

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[1] S.C. Code Ann. § 24-3-530 (Supp. 2022).

[2] *See* Rule 203(d)(1)(A), SCACR (stating the notice of appeal shall be filed directly with this Court when the principal issue on appeal challenges the constitutionality of a state law or local ordinance).

capital cases and sentenced to death. After their individual actions for direct and collateral review were completed, they brought the current action in the circuit court challenging the constitutionality of two methods of execution—electrocution and the firing squad—set forth in South Carolina's recently amended death penalty statute. *See* S.C. Code Ann. § 24-3-530 (Supp. 2022). The suit was brought against Bryan Stirling, in his official capacity as Director of the South Carolina Department of Corrections ("SCDC Director"); the department itself ("SCDC"); and Governor Henry McMaster ("Governor"). Because all of the defendants represent South Carolina, they will be referred to collectively (as "the State"), where appropriate.

Prior to the recent amendment, section 24-3-530 provided any person sentenced to the penalty of death had a "right of election" to select either lethal injection or electrocution as the method of execution. S.C. Code Ann. § 24-3-530(A) (2007). In the event the right of election was waived, the statute designated lethal injection as the default method to be used in South Carolina. *Id.*

In 2021, the statute was amended to change the default method of execution from lethal injection to electrocution and to add the firing squad as a third option. *Id.* § 24-3-530(A) (Supp. 2022). The amended statute now provides that any person sentenced to death has a "right of election" among electrocution, the firing squad, or lethal injection. *Id.* The statute establishes electrocution as the method to be used in the event no election is made or if, in the judgment of the SCDC Director, the other two methods are not "available" at the time of election. *Id.*

The firing squad has never been a method of execution for civilians in South Carolina. After the statute's amendment, the State indicated no protocols then existed for its use. In addition, the State indicated lethal injection was not available due to the State's alleged inability to procure the necessary drugs. This left only electrocution, a method that several Inmates have rejected.[3]

Prior to trial, Inmates served interrogatories and requests for production asking the State to supply discovery information describing the State's efforts to obtain the drugs needed for lethal injection. Inmates stated that, to the extent those efforts involved communication with other individuals or entities, the information

[3] The State has since advised the Court that protocols have been developed for the use of the firing squad.

sought included the identification of any person or entity with whom the State communicated, the contents and dates of those communications, and a list of each person who had been involved in the efforts to obtain the drugs for lethal injection, along with their title and the nature of their efforts. Inmates also sought to discover information regarding SCDC's development of the protocols for lethal injection, as well as a copy of the protocols. *See id.* § 24-3-530(F) (providing SCDC is responsible for establishing the protocols and procedures for carrying out executions).

The State objected to the discovery requests based on overbreadth and relevance, asserting Inmates had not challenged the constitutionality of lethal injection as a method of execution. The State also asserted the discovery requests could result in the disclosure of the identity of members of the execution team in violation of state law.[4] In the event the court permitted limited discovery on this subject, the State requested the issuance of a protective order.

Inmates, in contrast, maintained their discovery requests would not necessitate the disclosure of members of the execution team. However, they noted that, to the extent the court believed their discovery requests could result in this disclosure, the names of the team members could be redacted or the court could place the materials under seal. Inmates maintained information regarding lethal injection was relevant to their ex post facto claim because that analysis required a consideration of whether the newly imposed punishment is greater than that imposed at the time of the offense. They also contended the discovery related to what steps the State had taken to obtain the drugs for lethal injection was directly relevant to their claim regarding the meaning of "available" in the amended death penalty statute.

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[4] *See* S.C. Code Ann. § 24-3-580 (Supp. 2022) ("A person may not knowingly disclose the identity of a current or former member of an execution team or disclose a record that would identify a person as being a current or former member of an execution team. However, this information may be disclosed only upon a court order under seal for the proper adjudication of pending litigation. Any person whose identity is disclosed in violation of this section shall have a civil cause of action against the person who is in violation of this section and may recover actual damages and, upon a showing of a wilful violation of this section, punitive damages.").

The court held a hearing on the discovery issue on June 23, 2022. The court subsequently filed a Form 4 order on July 5, 2022 that denied the State's motion for a protective order regarding the execution protocols (stating they "shall be subject to a Confidentiality Order"), but granted the motion "as to the remaining topics (i.e., lethal injection information, members of the execution team, etc.)."

As a result, the State produced the execution protocols pursuant to a Confidentiality Order. However, during depositions, the State directed its witnesses not to answer some questions, such as how the protocols were developed, if they had ever witnessed an execution, and similar topics.

The circuit court conducted a trial on the merits of the case in August 2022. On the first day of the trial, upon Inmates' request, the court required the State to produce any autopsy reports of prior South Carolina executions via electrocution within twenty-four hours, but the court otherwise adhered to the prior ruling. The court clarified that its prior order was not intended to exclude the autopsy information and stated the information to be disclosed would be subject to the existing Confidentiality Order. The parties revisited the discovery issue during trial, and the court commented at one point that it was reading the statute preventing the disclosure of members of the execution team broadly to extend to "more than the handful of people" who are directly involved in the execution, such as the person who "flips the switch" for the electric chair. Rather, the court stated its understanding was that the statute's reach extended to "the other staff members of SCDC who play a role in that execution."

On September 6, 2022, the court issued an order granting Inmates' requests for declaratory and injunctive relief. The court concluded South Carolina's death penalty statute, section 24-3-530, was constitutionally invalid in several respects and issued a permanent injunction against the use of the firing squad and electrocution as methods of execution. Specifically, the court declared that (1) carrying out executions by either firing squad or electrocution violates the prohibition on the infliction of cruel, corporal, or unusual punishment in article I, section 15 of the South Carolina Constitution; (2) the statutory language providing a defendant has the "right to elect" his method of execution when alternatives are deemed "available" by the SCDC Director is unconstitutionally vague and an improper delegation of authority; (3) the lack of constitutional alternatives violates the statute; and (4) the retroactive application of the amended statute violates the

ex post facto prohibitions of the United States Constitution and the South Carolina Constitution. The State and Petitioners have cross-appealed.

III. DISCUSSION

In their cross-appeal, Inmates argue the circuit court's pretrial ruling denying a portion of their discovery requests constitutes an abuse of discretion. We agree.

A trial court's ruling on a discovery matter will not be disturbed on appeal except where there is an abuse of discretion. *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989). "The burden is upon the party appealing from the order to demonstrate the trial court abused its discretion." *Id.* "An 'abuse of discretion' may be found by this Court where the appellant shows that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and, therefore, amounted to an error of law." *Id.* (citation omitted).

In the primary appeal, the State challenges, *inter alia*, the circuit court's rulings that section 24-3-530 is unconstitutionally vague and violative of the non-delegation doctrine to the extent the statute allows the SCDC Director, an unelected official, the sole authority to determine whether lethal injection is "available" to Inmates in South Carolina as a method of execution. *See* S.C. Code Ann. § 24-3-530(A) (Supp. 2022).

In their cross-appeal, Inmates contend that, before this Court renders its decision on the merits of the circuit court's conclusions, it should find, as a preliminary matter, that the circuit court abused its discretion in denying Inmates' requests for discovery concerning (1) the State's efforts to obtain the drugs for lethal injection, and (2) the process it undertook to determine the drugs were not "available" in South Carolina. Inmates contend the South Carolina General Assembly has failed to set forth any guidance or parameters for determining whether a means of execution is "available," but the term "available" as used in section 24-3-530 must have a discernible meaning requiring the State to take some affirmative steps to make all three methods of execution available to any person who has been convicted of a capital crime and received a sentence of death. Inmates further allege the State has failed to meet its statutory obligations to properly assess availability, however those obligations are to be defined.

On the current record, it is impossible to know exactly what steps the State has taken to procure the drugs for lethal injection and to evaluate the State's assessment that such drugs are not "available" in South Carolina. The State represented to this Court during oral arguments that it presumed ongoing efforts were being made to procure the drugs for lethal injection, and that it was not simply relying on prior representations of unavailability made to this Court in recent years. When pressed on this point, however, the State could not articulate precisely what those efforts were or when they may have occurred. In any event, even assuming good faith efforts have been made and the State could advise the Court of its actions in this regard, we cannot rely on the arguments of counsel to fill in the record. The arguments of counsel are not evidence, and this information should be passed upon by the circuit court in the first instance because that court is the proper fact-finder in this matter. *See generally Chapman v. Allstate Ins. Co.*, 263 S.C. 565, 567, 211 S.E.2d 876, 877 (1975) (stating when "a law case is tried by a judge without a jury, [the judge's] findings of fact have the force and effect of a jury verdict upon the issues[] and are conclusive upon appeal when supported by competent evidence"); *Bowers v. Bowers*, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991) (observing mere allegations are not evidence, and "[a]rguments of counsel are also not evidence").

Inmates' discovery requests regarding lethal injection are particularly relevant and reasonable in light of the fact that, for over ten years, other states have continued to perform executions using lethal injection, rather than electrocution and the firing squad. Inmates have argued in this case that the latter two methods are unnecessarily destructive to the body and constitute cruel, corporal, and unusual punishment. We appreciate the circuit court's conscientious efforts to avoid the revelation of any information that would violate section 24-3-580's prohibition on the knowing disclosure of the identity of a current or former member of an execution team or a record that would lead to this identification. *See* S.C. Code Ann. § 24-3-580. We note, however, that the purpose of the statute is to prevent the *public* disclosure of this information. An additional key component of the statute is that it does contemplate that disclosure may be authorized when it is needed "for the proper adjudication of pending litigation," and the information is held under seal. *See id.* ("However, this information may be disclosed only upon a court order under seal for the proper adjudication of pending litigation.").

We find Inmates' requests for information regarding lethal injection are relevant and necessary for the proper adjudication of the issues in this matter. That

being said, the circuit court noted a legitimate concern that some of this information had the potential to violate the prohibition on disclosing members of the execution team. This potential, however, did not require the broad denial of discovery to Inmates; rather, the court should have permitted discovery to proceed and required all such information to be placed under seal until the disclosed materials could be properly evaluated by a court, including the process of appeal. Accordingly, although its intentions were based on well-founded concerns, we hold the court committed an error of law amounting to an abuse of discretion in its denial of Inmates' discovery requests pertaining to lethal injection. *See generally Dunn*, 298 S.C. at 503, 381 S.E.2d 734, 736 (1989) (holding the court's conclusion that a party's refusal to continue a deposition was unjustified where it was based on the good-faith advice of counsel, and the court's imposition of sanctions based on this finding constituted an abuse of discretion); *Logan v. Gatti*, 289 S.C. 546, 549, 347 S.E.2d 506, 508 (Ct. App. 1986) (holding the trial judge committed "an error of law and consequently an abuse of discretion" in denying the plaintiffs motion for continuance for additional time for discovery when a witness was temporarily unavailable as the judge's order "left the plaintiffs, through no fault of their own, without an expert witness to testify as to the standards of medical care").

IV. CONCLUSION

We find the circuit court abused its discretion in denying Inmates' pretrial discovery requests for information regarding lethal injection. Accordingly, we reverse the ruling as to discovery and remand the matter to allow the parties to conduct discovery on this subject. Upon remand, the circuit court shall consult with the parties in any manner it deems appropriate to determine the specific discovery responses that remain outstanding regarding the State's efforts to procure the drugs for lethal injection and the process it undertook to determine the drugs were not "available" in South Carolina. The circuit court shall oversee the completion of this discovery within sixty (60) days of the date of this opinion. Thereafter, the circuit court will have sixty (60) days to conduct any hearing it deems appropriate and to present an order to this Court regarding its factual findings and determination as to the availability of lethal injection in South Carolina.

In light of the statutory requirements to maintain the confidentiality of the members of an execution team, information obtained shall not be disclosed to anyone other than the parties' attorneys, the circuit court, and this Court, and we

direct that this information and any supplemental record that is developed on remand be kept confidential and under seal. The remainder of the appeal is held in abeyance pending the circuit court's resolution of the discovery issue.

REVERSED IN PART AND REMANDED.

KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

The Supreme Court of South Carolina

In the Matter of David Paul Traywick, Petitioner.

Appellate Case No. 2022-001524

ORDER

By opinion dated June 18, 2021, Petitioner was suspended from the practice of law in South Carolina for a definite period of six months, retroactive to June 12, 2020. *In re Traywick*, 433 S.C. 484, 860 S.E.2d 358 (2021). Petitioner now seeks reinstatement pursuant to Rule 32, RLDE, Rule 413, SCACR.

Based on the petition and supporting documentation, Petitioner has demonstrated that he satisfied the conditions imposed by the opinion suspending him and the requirements for reinstatement. Therefore, the petition for reinstatement is granted conditioned upon Petitioner's continued compliance with his current Lawyers Helping Lawyers contract and the ongoing requirement that he timely submit to the Commission on Lawyer Conduct the reports required by this Court's June 18, 2021 opinion.

s\ Donald W. Beatty C.J.
FOR THE COURT

Columbia, South Carolina
January 26, 2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

National Trust for Historic Preservation in the United States and the City of Charleston,
Respondents/Appellants,

v.

City of North Charleston, Appellant/Respondent.

Appellate Case No. 2019-000728

Appeal From Charleston County
Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 5965
Heard October 11, 2022 – Filed February 1, 2023

AFFIRMED

Derk Van Raalte, IV, of City of North Charleston Legal Department, and J. Brady Hair, of Law Office of J. Brady Hair, both of North Charleston, for Appellant/Respondent City of North Charleston.

George Trenholm Walker, of Walker Gressette Freeman & Linton, LLC, of Charleston; and Anne Elizabeth Nelson, of National Trust for Historic Preservation, of Washington, D.C., both for Respondent/Appellant National Trust for Historic Preservation in the United States.

Frances Isaac Cantwell, of City of Charleston Legal Department; Julia Parker Copeland, of Hinchey Murray & Pagliarini, LLC; and Wilbur E. Johnson and Russell Grainger Hines, both of Clement Rivers, LLP, all of Charleston, all for Respondent/Appellant City of Charleston.

WILLIAMS, C.J.: This cross-appeal involves the municipal annexation by the City of North Charleston (North Charleston) of a one-acre tract of real property. The National Trust for Historic Preservation in the United States (the National Trust) and the City of Charleston (Charleston) (collectively, Respondents) appeal the circuit court's order finding Respondents did not have standing to challenge North Charleston's annexation of the acre. North Charleston also appeals, arguing the circuit court erred in alternatively finding North Charleston did not properly annex the acre pursuant to section 5-3-100 of the South Carolina Code (2004). We affirm.

FACTS/PROCEDURAL HISTORY

In 1967, Georgia-Pacific Investment Corporation (Georgia-Pacific) obtained title to approximately 12,293 acres of real property located in Charleston County. In 1980, Georgia-Pacific conveyed approximately 26.53 acres of that property to the Nature Conservancy. The deed included the following description of the property:

> Those certain strips or parcels of land, being 100 feet in width and immediately adjacent to the southern right-of-way line of Highway 61, and parallel with said Highway; and being a total of approximately 11,556 feet in length, composed of three strips of land, and being along the northern boundary line of all of the property owned by Grantor along the southern right-of-way line of Highway 61.

The Nature Conservancy immediately conveyed this property to the National Trust (the National Trust Parcel; TMS 301-00-00-017). The deed conveying the National Trust Parcel did not have a corresponding recorded plat. In 2005, Charleston annexed the National Trust Parcel.

In 1989, Georgia-Pacific conveyed to Whitfield Construction Company (Whitfield) 2,294.17 acres (the Whitfield Parcel; TMS 301-00-00-005). In 2009, Whitfield recorded plats illustrating eighteen access easements through the National Trust Parcel (the Easement Plats), which Georgia-Pacific reserved in the deed it conveyed to the Nature Conservancy.[1]

On September 22, 2017, Whitfield executed a quit claim deed conveying one acre (the Acre; TMS 301-00-00-797) of its larger parcel from Georgia-Pacific to North Charleston. Whitfield recorded a plat of the Acre (the Acre Plat) with the deed on September 22, 2017.[2] The deed described the Acre as part of the Whitfield Parcel.

In October 2017, North Charleston annexed 113 acres (the Runneymede Parcel; TMS 361-00-00-002), without challenge. On December 21, 2017, North Charleston annexed the Acre, pursuant to section 5-3-100, by Ordinance 2017-080 (the Annexation Ordinance). Runneymede and the Acre are separated by Highway 61 and the National Trust Parcel.

In March 2018, Respondents filed a summons and complaint challenging North Charleston's annexation of the Acre, arguing the Acre was not contiguous to North Charleston. North Charleston answered, counterclaimed, and subsequently filed (1) a motion for partial summary judgment, asserting section 5-3-100 does not require contiguity and (2) a motion to dismiss Respondents' complaint for lack of standing. Respondents also filed a motion for summary judgment, arguing the annexation of the Acre was void because (1) the Acre was not contiguous or adjacent to North Charleston and (2) the Acre included a portion of the National Trust Parcel, which was already annexed into Charleston.

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[1] The Nature Conservancy deed stated "the foregoing conveyance is subject to the reservation by Grantor of certain easements over and across the foregoing real property, . . . [s]aid easements shall be limited to eighteen (18) in number, and each separate easement shall be limited to a total of sixty feet (60') in width."

[2] In mapping the dimensions of the Acre Plat, the surveyor relied on the Easement Plats and the original plat recorded with the deed conveying the Whitfield Parcel. Both the Easement Plats and the Acre Plat have width variations regarding the boundary lines between the National Trust and Whitfield parcels.

The circuit court held a hearing on the motions and issued an order dismissing Respondents' complaint for lack of standing. The court alternatively found that should this court find Respondents had standing to challenge the annexation, North Charleston failed to properly annex the Acre because it was not adjacent to the municipality. All parties filed motions to reconsider pursuant to Rule 59(e), SCRCP, which the circuit court denied. This cross-appeal followed.

ISSUES ON APPEAL

I. Did the circuit court err in dismissing Respondents' action because it found Charleston and the National Trust lacked standing to challenge North Charleston's annexation of the Acre?

II. Did the circuit court err in alternatively finding that North Charleston failed to lawfully annex the Acre pursuant to section 5-3-100?

STANDARD OF REVIEW

"A motion to dismiss for lack of standing challenges the court's subject matter jurisdiction." *S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022). "Whether subject matter jurisdiction exists is a question of law, which this [c]ourt is free to decide with no particular deference to the circuit court." *Id.* "The party seeking to establish standing has the burden of proving it." *Vicary v. Town of Awendaw*, 425 S.C. 350, 355, 822 S.E.2d 600, 602 (2018).

LAW/ANALYSIS

I. STANDING

A. Statutory Standing

Respondents argue the circuit court erred in dismissing their claims challenging the annexation for lack of standing because the Acre contained a portion—four inches—of the National Trust Parcel, which Charleston annexed in 2005. Therefore, Respondents assert North Charleston's annexation violated their statutory and proprietary rights. Respondents further maintain the circuit court improperly dismissed their claims because a question of fact existed as to whether the Acre included a portion of the National Trust Parcel. We disagree.

Chapter Three of Title Five of the South Carolina Code addresses a municipality's ability to extend its corporate limits and annex additional areas. Chapter Three contains various methods of annexation that a municipality can employ. Specifically, section 5-3-100 provides:

> If the territory proposed to be annexed *belongs entirely* to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality. When the territory proposed to be annexed to the municipality belongs entirely to the county in which the municipality is located and is adjacent thereto, it may be annexed by resolution of the governing body of the municipality and the governing body of the county. Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.

§ 5-3-100 (emphasis added).

In its order, the circuit court found North Charleston did not claim to annex or own any portion of the National Trust Parcel and any deviations in the legal description or plat did not affect Charleston's or the National Trust's ownership rights. The order stated:

> No matter what the property description or plat to the Acre might say, it is legally impossible for Whitfield to have conveyed to North Charleston title to any of the [National] Trust's land. Since North Charleston acquired its ownership to the Acre through a Quit Claim rather than a Warranty deed, assuming National Trust is correct that its boundary is exactly 100' from Ashley River Road rather than the 99.7' shown on the Acre plat, the result would not be that North Charleston owns any of National Trust's 100' strip property. As a matter of law, National Trust would retain its full undiminished acreage. The claimed 4" error could only reduce the amount of land

> obtained by North Charleston from a perfect acre to 99.999% of an acre.

The circuit court therefore found Respondents lacked standing to challenge the annexation because North Charleston only intended to annex the property that it owned. Thus, Respondents did not "have the requisite ownership to challenge the annexation."

We agree with the circuit court. Section 5-3-100 is a method for annexation when the municipality *wholly owns* the property to be annexed. *See id.* ("If the territory proposed to be annexed *belongs entirely* to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality." (emphasis added)). Here, North Charleston annexed the Acre pursuant to section 5-3-100 via the Annexation Ordinance. Thus, although there is a four-inch deviation in the proposed plat, we find North Charleston only sought to annex the property within its proprietary rights as the proposed plat relied on the previously recorded Easement Plats in mapping the boundaries. Further, the legal description in the Annexation Ordinance stated North Charleston sought to annex property "consisting of *approximately* 1.0 acres." (emphasis added). Even if North Charleston believed it owned the contested four inches, it would be of no consequence. *See F.C. Enters., Inc. v. Dibble*, 335 S.C. 260, 266, 516 S.E.2d 459, 462 (Ct. App. 1999) ("The courts of South Carolina have traditionally followed the property rule that a purchaser cannot purchase more than his grantor owns."); *Cummings v. Varn*, 307 S.C. 37, 42, 413 S.E.2d 829, 832 (1992) ("No deed can convey an interest which the grantor does not have in the land described in the deed, even though by its terms the deed may purport to do so.").

Accordingly, we hold the circuit court properly found Respondents lacked standing to challenge North Charleston's annexation of the Acre. *See Glaze v. Grooms*, 324 S.C. 249, 255, 478 S.E.2d 841, 845 (1996) ("The general rule is that a municipality must allege an infringement of its own proprietary interests or statutory rights to establish standing."); *Wilson*, 437 S.C. at 341, 878 S.E.2d at 895 ("If a plaintiff lacks standing, he does not have the right to proceed to the merits of his claim against the defendant.").

B. Public Importance Exception

Respondents assert the circuit court erred in finding they did not have standing to challenge the annexation via the public importance exception. We disagree.

"This Court has consistently acknowledged that even without an allegation of particularized injury, 'standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance.'" *Wilson*, 437 S.C. at 341, 878 S.E.2d at 895 (quoting *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004)). However, our jurisprudence has also established that public interest standing is rarely utilized within the context of annexation disputes. *See St. Andrews Pub. Serv. Dist. v. City Council of Charleston*, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002) ("[T]he better policy is to limit 'outsider' annexation challenges to those brought by the State 'acting in the public interest.'"). When considering whether a party has standing under the public interest doctrine, appellate courts must make this determination "*without regard to the merits* of the underlying claim." *Vicary*, 425 S.C. at 358, 822 S.E.2d at 603 (emphasis added).

We find the circuit court did not err in holding Respondents did not have standing under the public interest doctrine. Although we acknowledge our precedent has not yet addressed whether the term "adjacent" within section 5-3-100 requires contiguity, which is specifically required for municipal annexations under section 5-3-150, Respondents have failed to demonstrate that North Charleston's annexation of the Acre incites anything more than a boundary dispute between two municipalities. Further, the absence of a challenge to the annexation by the State is illustrative of the State's position on whether the matter rises to a level of public concern. Respondents have also failed to show any deceitful conduct by North Charleston that would necessitate finding standing under the public interest doctrine. *See Vicary*, 425 S.C. at 358, 822 S.E.2d at 604 ("We do not believe the General Assembly intended to preclude standing where there is a credible allegation that the annexing body engaged in deceitful conduct.").

Based on the foregoing, we find Respondents lack standing to challenge the annexation of the Acre by North Charleston; therefore, further consideration of the matter by this court is foreclosed.[3]

CONCLUSION

Accordingly, the circuit court is

AFFIRMED.

THOMAS, J., and LOCKEMY, A.J., concur.

[3] In its appellate brief, North Charleston states that should this court affirm the circuit court's dismissal of Respondents' claims, then consideration of its issue on appeal—the validity of the annexation—is unnecessary. We agree. *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

City of Charleston, Appellant,

v.

City of North Charleston and Millbrook Plantation, LLC, Respondents.

AND

Millbrook Plantation, LLC, Plaintiff,

v.

City of Charleston, Defendant.

AND

City of Charleston, Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC, Defendants.

Appellate Case No. 2019-000903

Appeal From Charleston County
Eugene C. Griffith, Circuit Court Judge

Opinion No. 5966
Heard October 11, 2022 – Filed February 1, 2023

AFFIRMED

Frances Isaac Cantwell, of City of Charleston Legal Department; Julia Parker Copeland, of Hinchey Murray & Pagliarini, LLC; and Wilbur E. Johnson and Russell Grainger Hines, both of Clement Rivers, LLP, all of Charleston, all for Appellant.

Bruce E. Miller, of Bruce E. Miller, P.A., of Charleston, for Respondent Millbrook Plantation, LLC.

Derk Van Raalte, IV, of City of North Charleston Legal Department; and J. Brady Hair, of Law Office of J. Brady Hair, both of North Charleston, for Respondent City of North Charleston.

WILLIAMS, C.J.: This appeal arises from three consolidated actions[1] challenging cross-annexations by Appellant City of Charleston (Charleston) and Respondent City of North Charleston (North Charleston) of certain real property (Parcel 006) owned by Respondent Millbrook Plantation, LLC (Millbrook). Charleston argues the circuit court erred in concluding: (1) Charleston lacked standing to challenge North Charleston's annexation of Parcel 006 because North Charleston's 2017 Ordinance did not annex property previously annexed in 2005 (Parcel 006-1) and (2) the Supreme Court of South Carolina has declined to adopt the "prior jurisdiction doctrine." We affirm.

FACTS/PROCEDURAL HISTORY

Parcel 006 consists of approximately thirty-one acres of real property located on South Carolina Highway 61 in Charleston County. On May 10, 2005, Charleston

[1] These actions are individually designated as Case Nos. 2018-CP-10-0846 ("*Millbrook I*"); 2018- CP-10-2131 ("*Millbrook II*"); and 2018-CP-10-2539 ("*Millbrook III*").

adopted an ordinance (the 2005 Ordinance) annexing the portion of Parcel 006 located within 100 feet of Highway 61 (Parcel 006-1). On December 19, 2017, Charleston began the annexation of the remainder of Parcel 006 (the Charleston Ordinance) by accepting an annexation petition under the "75% Annexation Method" pursuant to subsection 5-3-150(1) of the South Carolina Code (2004) and voting to have a public hearing on the petition.

Two days later, North Charleston gave first reading to its petition to annex Parcel 006 (the 2017 Ordinance) under the "100% Annexation Method" of subsection 5-3-150(3), which was adopted seven days later. The 2017 Ordinance's property description unintentionally included Parcel 006-1, which Charleston previously annexed in 2005. Weeks later, on January 23, 2018, Charleston City Council held a public hearing and gave first reading to the Charleston Ordinance, which attempted to annex the same parcel North Charleston annexed the prior month.

At the time North Charleston drafted the 2017 Ordinance, Charleston County records did not reflect the existence of Parcel 006-1. Therefore, on March 15, 2018, North Charleston gave first reading to the 2018 Ordinance, purporting to clarify the 2017 Ordinance's legal description by discounting any perceived intent to annex Parcel 006-1 and reaffirming its intent to annex only the remainder of Parcel 006. The 2018 Ordinance states in part:

> The City of North Charleston recently annexed Parcel TMS #361-00-00-006. The clearly expressed intent of the ordinance was to annex only this parcel. Based upon then-existing Charleston County TMS mapping data[,] the map and legal description described Parcel 361-00-00-006 as extending all the way to Ashley River Road. County TMS mapping data has recently been corrected to reflect the existence of a sub-parcel. 361-00-00-006-1. This sub-parcel is a 100' deep strip of land along the side of Ashley River Road. Based on updated County records[,] it appears that this sub-parcel was annexed into the City of Charleston in 2005. Obviously, it was North Charleston's intent to annex unincorporated parcel 361-00-00-006, not annex property already within the jurisdiction of any another City. The attached ordinance would amend Ordinance 2017-083 to

> make the boundaries consistent with this intent and consistent with the now corrected County data.

On March 22, 2018, North Charleston adopted the 2018 Ordinance. Five days later, Charleston filed the summons and complaint in *Millbrook I*, asserting that the 2017 Ordinance was invalid because (1) the 2017 Ordinance illegally included Parcel 006-1 and (2) Charleston took the first step to annex the remainder of Parcel 006 before North Charleston, entitling Charleston to proceed with its annexation without interference pursuant to the "prior pending jurisdiction rule." Additionally, Charleston City Council adopted the Charleston Ordinance on April 10, 2018. Shortly thereafter, Millbrook filed the summons and complaint in *Millbrook II* challenging the Charleston Ordinance.

On May 18, 2018, Charleston filed the summons and complaint in *Millbrook III* challenging the 2018 Ordinance adopted by North Charleston. Charleston alleged in *Millbrook III* that it obtained prior jurisdiction over Parcel 006 based upon the "prior pending proceedings rule . . . by accepting the annexation petition, holding a public hearing, and giving first reading to the ordinance annexing [Parcel 006] into the City prior to North Charleston's beginning the process of passing [the 2018 Ordinance]." Further, Charleston alleged the 2018 Ordinance could not cure the substantive defect contained in the 2017 Ordinance's legal description incorporating Parcel 006-1.

Millbrook moved to dismiss *Millbrook I* and *Millbrook III*, arguing Charleston lacked standing to challenge a 100% annexation petition. The circuit court granted Millbrook's motion to dismiss and held Millbrook's annexation into North Charleston was complete on December 28, 2017, upon the enactment of the 2017 Ordinance. The circuit court stated our supreme court has ruled that a municipality has no standing to challenge a 100% annexation petition and the only non-statutory party that may challenge a municipal annexation is the State through a *quo warranto* action. Charleston acknowledged that the State has not challenged either the 2017 or the 2018 Ordinance. Furthermore, the circuit court examined the language of the 2017 Ordinance and found it never made any claim to annex Parcel 006-1 and thus did not attempt to annex it. Lastly, the circuit court held our supreme court declined to adopt the prior pending proceedings rule in *City of Columbia v. Town of Irmo* and likewise declined to do so. *See* 316 S.C. 193, 447 S.E.2d 855 (1994). As a result, the circuit court found North Charleston's 2017

Ordinance properly annexed Parcel 006 on December 28, 2017, and Charleston had no standing to challenge this annexation.

ISSUES ON APPEAL

I. Did the circuit court err in concluding North Charleston's 2017 Ordinance did not intend to annex Parcel 006-1?

II. Did the circuit court err in concluding the Supreme Court of South Carolina has declined to adopt the prior jurisdiction doctrine?

STANDARD OF REVIEW

"In reviewing the dismissal of a claim for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Sloan Constr. Co. v. Southco Grassing, Inc*., 377 S.C. 108, 112, 659 S.E.2d 158, 161 (2008).

> A ruling on a 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint and the motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.

Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

LAW/ANALYSIS

I. Statutory Standing

Charleston argues it possesses standing to challenge North Charleston's annexation of Parcel 006 as the 2017 and 2018 Ordinances infringe upon its "proprietary interests or statutory rights" because the 2017 Ordinance included Parcel 006-1, which was annexed into Charleston in 2005. Charleston relies on *Bostick v. City of*

Beaufort in arguing that the 2017 Ordinance was fatally flawed because the inaccuracies in the description of the proposed property to be annexed created a substantive defect that could not be corrected through a subsequent ordinance. *See* 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992). We disagree.

Our supreme court in *Bostick* held:

> Procedural or technical deficiencies in an ordinance may be corrected by a subsequent ordinance, but not substantive defects. We conclude that omission of the date from two of the petitions constituted a technical flaw in Ordinance 0-07-89. This flaw was corrected by Ordinance 0-31-89, which effectively ratified the valid portion of Ordinance 0-07-89. Conversely, the omission of descriptions for the area to be annexed and failure to also shade such property on the plat which shows shaded the area to be annexed is a substantive defect in the petitions. We find that Ordinance 0-07-89 was fatally flawed from its inception as to annexation of the Bosticks' property.

307 S.C. at 350, 415 S.E.2d at 391. The court specifically referenced the property description requirement of subsection 5-3-150(1), which states, "*The petition shall contain a description of the area to be annexed and there shall be attached to the petition a plat of the area to be annexed . . . .*" *Bostick*, 307 S.C. at 349–50, 415 S.E.2d at 391. Therefore, the court found the *omission* of the property description for the area to be annexed and the failure to show this area on the plat was substantive because it was in direct contravention of subsection 5-3-150(1)'s statutory requirements.

Here, the 2017 Ordinance does not omit the property description but inadvertently incorporates Parcel 006-1 (a parcel that did not exist at the time North Charleston drafted the 2017 Ordinance). Subsection 5-3-150(1) requires that "the petition must contain a description of the area to be annexed and there must be attached to the petition a plat of the area to be annexed." S.C. Code Ann. § 5-3-150(1) (2004). The record demonstrates that North Charleston sufficiently complied with both of subsection 5-3-150(1)'s requirements by including a description of the property to be annexed and attaching a plat of the area. North Charleston's inadvertent

inclusion of Parcel 006-1 based upon then existing county information was a technical deficiency capable of correction by the 2018 Ordinance. *See Bostick*, 307 S.C. at 350, 415 S.E.2d at 391; *see also* 62 C.J.S. Municipal Corporations § 102 ("[W]here a statute or ordinance so requires, a map, plan, or plat must be filed or recorded and approved by municipal or other authorities. A substantial compliance with the statutes is sufficient."); § 8:33 Boundary changes—Procedures, 1 Local Government Law § 8:33 ("Courts have generally held that a description which conforms substantially to the provisions of the pertinent statute suffices, allowing leeway for slight or trivial errors . . . ."). Further, South Carolina does not require scientific precision when describing property in other property disputes. *See Hoyler v. State*, 428 S.C. 279, 295, 833 S.E.2d 845, 853–54 (Ct. App. 2019) ("While a property description need not be perfect, it must allow one examining it to identify the property conveyed; otherwise, the conveyance is void.").

We therefore affirm the circuit court's finding that the 2017 Ordinance was lawful as it did not attempt to annex Parcel 006-1 but, instead, attempted to clarify its intent to annex only Parcel 006. Consequently, Charleston's argument that it possesses standing based on infringement of its statutory and proprietary rights is moot. *See Futch v. McAllister Towing of Georgetown, Inc*., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address remaining issues when a prior issue was dispositive); *Ex parte State ex rel. Wilson*, 391 S.C. 565, 572, 707 S.E.2d 402, 406 (2011) ("The 100% petition method provides neither an express notice provision nor an authorization for third parties to challenge the annexation. . . . Rather, '[i]n order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights.'" (quoting *St. Andrews Pub. Serv. Dist. v. City Council of Charleston*, 349 S.C. 602, 604, 564 S.E.2d 647, 648 (2002))); *id.* at 573–74, 707 S.E.2d at 407 ("The ordinance recites that the annexation was achieved using the 100% petition method. If we went behind that assertion without a proper plaintiff, we would be inviting a sliding scale for standing: the more meritorious a claim appears, the more relaxed the standing requirement would be. We rejected such reasoning when we overruled *Quinn v. City of Columbia*.").

II. Prior jurisdiction doctrine

Charleston argues that before North Charleston gave first reading to either the 2017 Ordinance or the 2018 Ordinance, Charleston's City Council already accepted

a petition to annex Parcel 006 and ordered a public hearing on the matter. According to Charleston, under the common law "prior jurisdiction doctrine" also called the "prior pending proceedings rule," this entitled Charleston to complete the annexation without interference. However, our supreme court has previously declined to address whether these common law doctrines apply in South Carolina. *See City of Columbia v. Town of Irmo*, 316 S.C. 193, 196, 447 S.E.2d 855, 857 (1994) ("We *decline to reach the issue* of whether the 'prior pending proceedings' rule *should be adopted by this Court*." (emphases added)). As such, the circuit court did not err in holding that Charleston lacks current or existing precedent supporting this alternative argument for standing.

Based on the foregoing analysis, the circuit court is

AFFIRMED.

THOMAS, J., and LOCKEMY, A.J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Amber Geohaghan, Appellant,

v.

South Carolina Department of Employment and Workforce and South Carolina Department of Social Services, Respondents.

Appellate Case No. 2019-000995

Appeal From The Administrative Law Court
Shirley C. Robinson, Administrative Law Judge

Opinion No. 5967
Heard April 14, 2022 – Filed February 1, 2023

AFFIRMED

Adam Protheroe, of South Carolina Appleseed Legal Justice Center, of Columbia, for Appellant.

Eugene Hamilton Matthews, of Richardson Plowden & Robinson, PA, of Columbia, for Respondent South Carolina Department of Social Services.

Todd Stuart Timmons and Benjamin Thomas Cook, both of Columbia, for Respondent South Carolina Department of Employment and Workforce.

VINSON, J.: Amber Geohaghan appeals the Administrative Law Court's (the ALC's) order affirming the South Carolina Department of Employment and Workforce's (the Department's) final decision determining Geohaghan was indefinitely ineligible for receipt of unemployment benefits. Geohaghan argues the ALC erred (1) in holding the question of whether she had good cause to resign was a question of fact subject to substantial evidence review and (2) in affirming the Department's finding she resigned without good cause when that finding was not supported by substantial evidence. We affirm.

FACTS AND PROCEDURAL HISTORY

Geohaghan began working for the South Carolina Department of Social Services (DSS) in March 2013. On or about March 2, 2018, Geohaghan resigned, effective March 16, 2018, and she filed for unemployment benefits on March 9, 2018. In response to the Department's fact-finding questionnaire, Geohaghan stated the reason she gave DSS for resigning was that the "change [would] be beneficial to [her] long-term career goals and objectives." Whereas the reason she gave on the questionnaire for her resignation was an incident that occurred on January 31, 2018, involving verbal threats made to her by a client (the Client). Following a review of her claim, the Department's claims adjudicator found that, effective March 18, 2018, Geohaghan was indefinitely ineligible for unemployment benefits because there were no significant changes to her working conditions and she left her position voluntarily without good cause. Geohaghan appealed this decision to the Department's Appeal Tribunal.

In support of her appeal, Geohaghan provided the Appeal Tribunal with a copy of an email she sent to her Human Resources (HR) liaison, Cynthia Brown, on February 12, 2018, and a letter addressed to the Appeal Tribunal explaining the circumstances of the January 31 incident in more detail. In the email, Geohaghan alleged the Client "verbally attacked" her by calling her a derogatory term and "stupid." She noted a DSS staff member informed her the Client "made a comment about a gun" while being escorted out of the DSS building. Geohaghan indicated she had not had any further contact with the Client since the January 31 incident, but expressed concern for her safety if she were required to conduct future face-to-face visits with the Client at the Client's home. Geohaghan stated she had reason to believe the Client owned a firearm and she believed it was in the best interest of the Client for Brown to assign a new caseworker to the Client's case.

In her letter to the Appeal Tribunal, Geohaghan framed the Client's statement about a gun as a threat directed toward her. Geohaghan stated her direct supervisor, Gwendolyn Breeland, told her "to not follow '[the Client] up'" and that the Client was "all bark no bite." She explained Breeland asked another caseworker to take the Client's case, but the caseworker refused. Geohaghan questioned whether DSS took appropriate action in notifying the agency director and the state office.

The Appeal Tribunal held a telephonic evidentiary hearing on June 8, 2018. During the hearing, Geohaghan maintained the sole reason for her resignation was the January 31 incident. She explained the incident arose out of a contentious family meeting with the Client. According to Geohaghan, when security became involved, the Client called her a "bitch," said she was stupid, and requested a new case manager. As Geohaghan removed herself from the situation, the Client continued to scream loudly and stated, "You better be glad I don't have my gun," which Geohaghan perceived as being directed at her because she was the Client's case manager. Geohaghan's DSS performance coach directed her to remove herself from the situation after the Client made the comment about the gun. Geohaghan explained she was afraid of the Client because the Client had threatened to confront one of her own family members with a gun four days prior. Security informed Geohaghan that the Client would not be allowed on the premises for the time being, but it was unclear to Geohaghan how long the ban would continue. Brown and Breeland were both present for the January 31 incident. Brown told Geohaghan she would notify the DSS county director and the state office, as required under DSS policy, and instructed all of the witnesses to provide a statement.

Geohaghan later discussed the incident with Breeland and raised her concerns about continuing as the Client's case manager, including fears about her safety. She specifically asked Breeland to reassign the Client's case to avoid any contact with the Client on visits; however, the caseworker Breeland approached declined the assignment based on the Client's behavior. Geohaghan reiterated that Breeland and other employees assured her the Client was "all bark, no bite." After discussing her concerns with Brown and Breeland, she did not receive any "feedback" or an update on the matter. Geohaghan was not instructed to interact with the Client but based on the lack of feedback she received, she believed she would still be responsible for conducting home visits with the Client. Geohaghan stated "nothing happened" between February 12 and her resignation and she did not have any contact with the Client after the January 31 incident. She added that

she made Brown aware she had not contacted the Client during that time and she "did not get penalized . . . for that. But [she] did not get any feedback."

Geohaghan did not contact Brown or HR after her February 12 email to Breeland, nor did she contact state-level HR or the state office. Geohaghan specifically named the individual at the state office she could have contacted and did, in fact, contact in preparation for the hearing. She explained she did not reach out to anyone before resigning because she believed DSS would not take any further action. Geohaghan acknowledged she did not know the process for handling her complaint or the timeframe in which DSS was required to complete its investigation.

When asked what prompted her to resign, Geohaghan responded it was due to the upward trend in gun violence, including an incident that occurred in another DSS county office in 1994, and her concern that DSS was not addressing the January 31 incident. Subsequently, Geohaghan added she resigned because she felt as though Brown had not adequately addressed her concerns about her safety and she had not received any "feedback." Geohaghan stated that had she not resigned, she would still have been employed.

Brown testified the Client used profanity and acted in an "irate" manner during the January 31 incident but she did not hear the Client make a threat about a gun. Brown requested that everyone who witnessed the incident draft a statement for her to provide to the appropriate personnel. After receiving all of the statements in April 2018, Brown contacted DSS's central HR employee relations unit and submitted the statements to the critical response office. Brown testified she followed all the proper protocols in gathering the witness statements but she did not give the time frame in which she was required to notify critical response. She met with the critical response program coordinator, who told her she would handle the matter from that point forward. Brown confirmed that while the investigation was ongoing, the Client would not be allowed on DSS premises and that the Client was eventually served with a notice of no trespassing in April 2018.

When asked what an employee could do in a situation like Geohaghan's, Brown explained an employee could submit an agency complaint, which required the employee to go through their chain of command. Because Breeland was the acting program coordinator, Brown stated Geohaghan should have reached out to the regional administrator, who was the interim county director. Furthermore, Brown

stated that if Breeland or the interim county director were unresponsive, Geohaghan should have notified her or directly contacted DSS's central HR employee relations manager or director. When asked how she would have assisted Geohaghan had she notified her prior to her resignation, Brown stated she would have sought guidance from DSS's central employee relations unit. Brown was unaware whether it was normal protocol to require Geohaghan to meet with a client in this situation but as a supervisor, if one of her staff were threatened, then she would not expect them to conduct monthly visits.

Nicole Foulks, the DSS regional director and interim county director, was unable to recall if Geohaghan contacted her about the January 31 incident or her concerns about the alleged inaction by her supervisors. Had Geohaghan contacted her, Foulks explained there were several things she could have done to assist Geohaghan, such as additional training, pairing her with another employee to handle the Client's case, or reassignment of the case. She stated the particular course of action would have been determined on a case-by-case basis. When asked whether Geohaghan would have been held accountable for not meeting with the Client, Foulks responded she would have been held accountable, but only if a plan assisting Geohaghan had already been implemented. However, Foulks did not know whether a plan had ever been put in place for Geohaghan.

The Appeal Tribunal affirmed the claims adjudicator's decision, finding Geohaghan voluntarily quit without good cause. The Appeal Tribunal defined "good cause" as used in section 41-35-120(1) of the South Carolina Code (2021)[1] as "a material, substantial change in the conditions of employment, or other circumstances directly attributable to the employment, which would cause a reasonable person to become totally unemployed rather than continue working." Although the Appeal Tribunal found Geohaghan's concerns about her safety were justified, it nevertheless determined that "[t]he circumstances would not cause a reasonable person to become totally unemployed rather than continue working, given the time and distance from the precipitating incident and the additional options available to [Geohaghan] to have [DSS] further address her concerns." Geohaghan appealed the Appeal Tribunal's decision to the Department's Appellate Panel. The Appellate Panel affirmed the Appeal Tribunal's decision, restating the Appeal Tribunal's definition of good cause and finding Geohaghan failed to present

[1] Section 41-35-120(1) provides "[a]n insured worker is ineligible for benefits . . . [i]f the [D]epartment finds he left voluntarily, without good cause."

"specific credible evidence of circumstances directly attributable to the employment which would cause a reasonable person to become totally unemployed rather than continue working."

Geohaghan appealed the Appellate Panel's decision to the ALC. In her ALC brief, Geohaghan included a paragraph in her argument section addressing the meaning of good cause under section 41-35-120(1); it read:

> An employee who leaves employment voluntarily and without good cause is disqualified from receiving unemployment benefits. S.C. Code Ann. § 41-35-120(1). "To constitute good cause, the circumstances which lead an employee to leave the job must be such as would cause a reasonable person to leave." 76 Am. Jur. 2d *Unemployment Compensation* § 102[(2005)]. Good cause to leave must, generally, be attributable to or connected with the claimant's employment. *See* [*Stone Mfg. Co. v. S.C. Emp. Sec. Comm'n*, 219 S.C. 239, 64 S.E.2d 644 (1951)].

Geohaghan argued, "Here, it is undisputed that the events [that] caused [her] to resign were attributable to or connected with her employment at DSS. Therefore, the question presented in this case is whether [her] decision to resign in lieu of placing her life in jeopardy was reasonable." She further argued the Department "misapplied the good cause standard contained in [section] 41-35-120(1) and relied upon findings which were irrelevant or unsupported by the record" in finding her decision to resign was unreasonable.

Geohaghan asserted South Carolina appellate courts had not addressed the specific situation presented in her case—"a threat of lethal violence against [Geohaghan] under circumstances where [her] fear for her safety was clearly justified." She cited to *Scott v. Butler*,[2] a Georgia Court of Appeals decision, for the proposition that "whe[n] an employee is unnecessarily exposed to the actual threat of violence due to circumstances entirely beyond their control, voluntary resignation would be with due cause *as a matter of law*." Geohaghan contended section 41-35-710 of

[2] 759 S.E.2d 545 (Ga. Ct. App. 2014).

the South Carolina Code (2010)[3] did not independently support the conclusion that the question of whether an employee left work voluntarily and with good cause was a question of fact and several states "have recognized that the question of whether an employee had good cause to resign is, to some degree, a question of law." She claimed the ALC therefore need not defer to the Department's finding she lacked good cause to resign. Geohaghan cited to additional case law from other jurisdictions to support her proposition that threats of physical violence "may" constitute good cause for resignation.

Geohaghan concluded two propositions supported her claim of entitlement to unemployment benefits: (1) "whether an employee has good cause to resign is, to some degree, a question of law" and as a result, the ALC need not defer to the Department's findings and (2) "threats of physical violence may constitute good cause to resign." She also challenged five of the Department's factual findings as being irrelevant or not supported by the record. In her reply, Geohaghan stated "whether [she] had good cause to resign is, as numerous courts have recognized, a question of law"; however, in her conclusion, Geohaghan again argued her decision to resign was reasonable.

The ALC affirmed the Appellate Panel's decision without oral argument. In its order, the ALC did not address Geohaghan's argument that whether an employee had good cause to resign was a question of law but found substantial evidence supported the Appellate Panel's finding Geohaghan voluntarily left employment without good cause. The ALC did however include a section addressing the definition of good cause under section 41-35-120(1). It stated:

> Good cause means "attributable to or connected with the employment." [*Stone Mfg. Co.*, 219 S.C. at 247, 64 S.E.2d at 647]. A claimant who terminates their employment voluntarily for good cause has the burden of proof on that issue. 81 C.J.S. *Social Security and Public Welfare* § 417 [(2015)]. The claimant must show that the reason for voluntary termination was of a necessitous and

[3] Section 41-35-710 states the Department "may on its own motion affirm, modify, or set aside a decision of an appeal tribunal on the basis of evidence previously submitted in the case; direct the taking of additional evidence; or permit a party to the decision to initiate further appeals before it."

> compelling nature. *Id.* Basically, circumstances causing the voluntary termination must be "real, substantial, and reasonable, and which would compel a reasonable person under similar circumstances to act in the same manner. *Id.* For example, "intentional harassment by a supervisor may constitute good cause" to voluntarily leave employment. [*Kowalski v. Dir. Of Div. of Emp. Sec.*, 460 N.E.2d 1042, 1043 (Mass. 1984)]. However, a claimant must take measures to resolve the problem before quitting, unless such measures would only be futile gesture. *See id.* ("[T]he claimant has the burden of proving a reasonable attempt to correct those conditions of employment which [s]he now claims justified [her] leaving [the] employment, unless [s]he can show that such an attempt would have been futile."); [*s*]*ee also* 76 Am. Jur. 2d *Unemployment Compensation* § 104 [(2016)].

Geohaghan moved for reconsideration of the ALC's order, arguing the ALC failed to rule on her argument that she had good cause to resign as a matter of law and applied the incorrect standard of review. She asserted the ALC should have applied a de novo standard of review to the question of whether she had good cause to resign because it was a question of law. Geohaghan further asserted, "threats of violence and a reasonable fear of bodily harm have repeatedly been held to constitute good cause to resign as a matter of law." She asked that the ALC either find she had good cause to resign as a matter of law, or in the alternative, apply a de novo standard of review and find she had good cause to resign. Geohaghan also argued the ALC improperly substituted its judgment on questions of fact.

In its order denying Geohaghan's motion for rehearing, the ALC explained it refrained from addressing Geohaghan's argument that whether she had good cause to resign from her employment was a matter of law and that the ALC erred by failing to employ a de novo standard of review because such argument was without merit. Citing to *Stone* and 81 C.J.S. *Social Security and Public Welfare* § 417, the ALC found the meaning of good cause as used in section 41-35-120(1) had already been established, and thus, the Appellate Panel need only make factual findings regarding the existence of good cause. The ALC further found that South Carolina

appellate courts had consistently treated the question of whether an employee had good cause to resign as a question of fact, citing *Sviland v. South Carolina Emp. Sec. Comm'n*, 300 S.C. 305, 387 S.E.2d 688 (Ct. App. 1989). As to its finding that "[DSS] policy did not require its case workers to conduct monthly visits with clients if they feel threatened," the ALC acknowledged the Appellate Panel did not make such a finding but held the hearing testimony supported its finding as permitted under SCALC Rule 40.[4] This appeal followed.

ISSUES ON APPEAL

1. Did the ALC err in holding that whether Geohaghan had good cause to resign was a question of fact subject to substantial evidence review?

2. Did the ALC err in affirming the Department's finding that Geohaghan resigned without good cause when the ALC's findings were not supported by substantial evidence?

STANDARD OF REVIEW

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;

[4] Rule 40 provides, "The administrative law judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit."

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B) (Supp. 2022).

"[T]his Court's review is limited to determining whether the ALC's findings were supported by substantial evidence or were controlled by an error of law." *Engaging & Guarding Laurens Cnty.'s Env't v. S.C. Dep't of Health & Env't Control*, 407 S.C. 334, 341, 755 S.E.2d 444, 448 (2014). "Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). "The [c]ourt may not substitute its judgment for the ALC's judgment as to the weight of the evidence on questions of fact." *Engaging & Guarding Laurens Cnty.'s Env't*, 407 S.C. at 342, 755 S.E.2d at 448. "In determining whether the ALC's decision was supported by substantial evidence, this court need only find that, upon looking at the entire record on appeal, there is evidence from which reasonable minds could reach the same conclusion that the ALC reached." *Id.*

LAW AND ANALYSIS

I. ALC Review Standard

Geohaghan first argues the ALC erred in holding that whether she had good cause to resign was a question of fact subject to substantial evidence review. She asserts binding precedent holds the meaning of the term "good cause" as used in section 41-35-120(1) is a question of law; even if the meaning of good cause has been defined by South Carolina case law such that it has become a question of fact, this is only true in a limited context not applicable to this case; and, South Carolina courts have not consistently treated the meaning of good cause as a question of fact. We disagree.

"Judicial review of disputes arising from the [Department] is governed by the Administrative Procedures Act (APA)." *Nucor Corp. v. S.C. Dep't of Emp. & Workforce*, 410 S.C. 507, 514, 765 S.E.2d 558, 562 (2014). Section 1-23-380(4) to (5) of the South Carolina Code (Supp. 2022) applies the same standard to the ALC's review of agency decisions as the review standard set forth in section 1-23-610(B).

> An insured worker is ineligible for benefits for . . . [l]eaving work voluntarily. If the department finds he left voluntarily, *without good cause*, his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim.

§ 41-35-120(1) (emphasis added).

In her appeal to the ALC, Geohaghan failed to directly challenge the Department's definition of good cause as used in section 41-35-120(1), and therefore, we hold the Department's definition is the law of the case. *See Dreher v. S.C. Dep't of Health & Env't Control*, 412 S.C. 244, 249, 772 S.E.2d 505, 508 (2015) ("An unappealed ruling is the law of the case and requires affirmance." (quoting *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013))); *id.* at 250, 772 S.E.2d at 508 ("Thus, should the appealing party fail to raise all of the grounds upon which a lower court's decision was based, those unappealed findings—whether correct or not—become the law of the case."). In her ALC brief, Geohaghan included a paragraph in her argument section addressing the meaning of good cause under section 41-35-120(1), including a citation to 76 Am. Jur. 2d *Unemployment Compensation* § 102 (2005) that read, "To constitute good cause, the circumstances which lead an employee to leave the job must be such as would cause a reasonable person to leave." She also included a citation to *Stone* to support the proposition that "[g]ood cause to leave must,

generally, be attributable to or connected with the claimant's employment." Geohaghan argued, "Here, it is undisputed that the events which caused [her] to resign were attributable to or connected with her employment at DSS. *Therefore, the question presented in this case is whether* [*her*] *decision to resign in lieu of placing her life in jeopardy was reasonable*." (emphasis added). Geohaghan further argued the Department's finding that her decision to resign was unreasonable "misapplied the good cause standard contained in [section] 41-35-120(1)." We conclude this argument did not raise a challenge to the Department's definition of good cause because she framed the issue as one of reasonableness. Further, she failed to challenge the Department's definition of good cause in her motion to reconsider. Rather, she argued the ALC should have applied a de novo standard of review to the question of whether she had good cause to resign because it was a question of law. Geohaghan further asserted, "threats of violence and a reasonable fear of bodily harm have repeatedly been held to constitute good cause to resign as a matter of law." As such, we find Geohaghan still did not challenge the Department's definition of good cause in her motion to reconsider.

Furthermore, Geohaghan does not challenge the Department's or the ALC's definition of good cause on appeal. Instead, she argues *Stone* does not adequately define good cause for purposes of her case and the ALC therefore should have applied a de novo standard of review in determining whether the legislature intended the meaning of good cause to include a justified fear for one's safety that is connected with the employment. Although Geohaghan argues the term good cause as used in section 41-35-120(1) is ambiguous and therefore requires this court to the apply the rules of statutory construction, she does not argue the Department or the ALC incorrectly defined good cause. Based on the foregoing, we hold the Department's definition of good cause is the law of the case.

Because Geohaghan failed to appeal the Department's definition of good cause to the ALC, we hold the ALC properly applied the substantial evidence standard in reviewing the Department's decision. *See Boggero v. S.C. Dep't of Revenue*, 414 S.C. 277, 280, 777 S.E.2d 842, 843 (Ct. App. 2015) ("Certain situations involve a mixed question of law and fact." (quoting *Hopper v. Terry Hunt Constr.*, 373 S.C. 475, 479, 646 S.E.2d 162, 165 (Ct. App. 2007), *aff'd*, 383 S.C. 310, 680 S.E.2d 1 (2009))); *id.* ("For example, '[s]tatutory interpretation is a question of law.'" (alteration in original) (quoting *Hopper*, 373 S.C. at 479, 646 S.E.2d at 165)); *id.* ("But whether the facts of a case were correctly applied to a statute is a question of

fact, subject to the substantial evidence standard." (quoting *Hopper*, 373 S.C. at 479, 646 S.E.2d at 165)). The ALC was free to determine whether substantial evidence supported the Department's decision without the need to interpret the meaning of good cause as used in section 41-35-120(1). We note the Department's definition and the ALC's definition were not identical—the ALC's definition included an additional requirement that the claimant take measures to resolve the problem before resigning, unless such measures would be futile. Nevertheless, both definitions incorporated our supreme court's holding in *Stone* and established a reasonableness standard in determining whether an employee had good cause to terminate their employment. While we agree with Geohaghan's argument that *Stone* did not adequately define good cause for purposes of her case, we find her assertion that this alone meant the ALC was required to review the Department's decision under a de novo standard of review is unpersuasive when she failed to challenge the Department's or the ALC's definitions of good cause. Based on the foregoing, we hold the ALC did not err in applying a substantial evidence standard of review because Geohaghan failed to challenge the Department's definition of good cause in her appeal to the ALC.

II. Substantial Evidence in Support of the ALC's findings

In the alternative, Geohaghan argues the ALC erred in affirming the Department's finding she resigned without good cause because the ALC's findings were not supported by substantial evidence. We disagree.

Applying the Department's definition of good cause under section 41-35-120(1), we hold the ALC did not err in affirming the Department's determination that Geohaghan resigned without good cause when substantial evidence supports the Department's factual findings. *See Milliken & Co. v. S.C. Emp. Sec. Comm'n*, 321 S.C. 349, 350, 468 S.E.2d 638, 639 (1996) ("It is well-settled that decisions of administrative agencies should be upheld on appeal where they are supported by substantial evidence."); *Anderson v. Baptist Med. Ctr.*, 343 S.C. 487, 492, 541 S.E.2d 526, 528 (2001) ("Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached."). We address each of Geohaghan's arguments in turn.

First, we reject Geohaghan's contention that the Department's finding that the nature of her job had not changed was irrelevant under the definition of good cause

in *Stone*. The Department's definition included language addressing "a material, substantial change in the conditions of employment." Thus, this fact was relevant to the Department's decision.

Second, the Department's finding that Geohaghan's job was not in jeopardy was likewise relevant in the application of the Department's definition and supported by substantial evidence. At the evidentiary hearing, Geohaghan testified that at the time of her resignation, she had not been penalized for failing to meet with the Client after the January 31 incident and acknowledged she would have still been employed had she not resigned. Geohaghan merely speculated that she might have been penalized for not meeting with the Client but confirmed she was not instructed to meet with the Client. In addition, Brown testified that as a supervisor, she would not require her staff to conduct monthly visits if they were threatened. Foulks testified Geohaghan would have been held accountable for meeting with the Client only if a plan assisting Geohaghan had already been implemented. However, Foulks did not know whether a plan had ever been put in place for Geohaghan. We find the foregoing constitutes substantial evidence to support the ALC's finding Geohaghan's job was not in jeopardy.

Third, substantial evidence contradicts Geohaghan's claim that it was merely "fortuitous" she was not confronted by the Client after the January 31 incident. In her letter to the Appeal Tribunal, Geohaghan stated Breeland told her "to not follow '[the Client] up.'" She testified security told her the Client would not be allowed on DSS premises for the time being and she was not instructed to meet with the Client nor was she penalized for not doing so. In addition, Brown confirmed the Client would not be allowed on DSS premises until DSS completed its investigation. Although DSS did not complete its investigation until after Geohaghan's resignation, the outcome of that investigation resulted in the Client being served with a notice of no trespassing. As to the Department's alleged mischaracterization of her delay in resigning, we find Geohaghan's assertion she was actively engaged with DSS to address the threat is without evidentiary support. The incident involving the Client occurred on January 31, 2018, and Geohaghan resigned on March 2, 2018. The only actions she took to address her concerns before she resigned were discussing her concerns with Breeland and sending an email to Brown on February 12, 2018. We find this constitutes substantial evidence to support the Department's finding Geohaghan waited only a month to resign after the January 31 incident.

Fourth, substantial evidence supports the Department's finding Geohaghan failed to report her concerns up the chain of command in order to seek a quicker resolution when DSS failed to respond to her concerns. By her own admission, Geohaghan did not contact Brown or HR after her February 12 email to Breeland and she failed to contact state level HR or the state office, even though she knew who she could have contacted at the state office. Brown testified Geohaghan could have submitted an agency complaint, which would have required Geohaghan to go through her chain of command. Foulks added that had Geohaghan reached out to her, she could have facilitated the implementation of a plan to address her concerns. Accordingly, we find substantial evidence supports the Department's finding Geohaghan failed to report her concerns up the chain of command.

Fifth, as to the Department's finding Geohaghan failed to avail herself of the measures DSS could have put in place to ensure her safety, we find substantial evidence supports this finding. Initially, we note the Department considered the ways in which *Geohaghan* failed to take steps to address her concerns, not whether *DSS* failed to act independently to implement safety measures to address her concerns. Foulks testified she could have provided several services to Geohaghan, including additional training, pairing her with another employee to handle the Client's case, or reassignment of the case. Foulks explained, however, that DSS would have determined a specific course of action on a case-by-case basis. Accordingly, we find substantial evidence supports the Department's finding Geohaghan failed to take adequate steps to address her concerns.

Further, as to Geohaghan's argument the ALC erred in finding DSS took meaningful or timely steps to ensure her safety, we find substantial evidence supports this finding. The record contains no evidence showing the time frame within which DSS was required to complete its investigation. Brown testified she followed all the proper protocols in gathering the witness statements but she did not give the time frame in which she was required to provide them to the critical response office. Moreover, Brown confirmed the Client would not be allowed on DSS premises during the pendency of DSS's investigation of the January 31 incident. In addition, Breeland told Geohaghan "to not follow '[the Client] up'" after the incident. We find the foregoing constitutes substantial evidence of DSS's meaningful and timely steps to ensure Geohaghan's safety.

Finally, as to her argument that the ALC erred in finding DSS policy did not require case workers to make monthly visits with clients if they felt threatened

when the Department did not make such a finding, we find Geohaghan misconstrues our supreme court's holding in *Grant v. South Carolina Coastal Council*. *See* 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995) (holding "neither [an appellate court] nor the [ALC] may substitute [its] judgment for that of the agency as to the weight of the evidence on questions of fact"). "[T]he ALC, sitting in its appellate capacity, may not make its own factual findings." *Stubbs v. S.C. Dep't of Emp. & Workforce*, 407 S.C. 288, 292, 755 S.E.2d 114, 116 (Ct. App. 2014). "This court cannot substitute its judgment for that of an administrative agency when the agency's factual findings [are] supported by substantial evidence . . . ." *Todd's Ice Cream, Inc. v. S.C. Emp. Sec. Comm'n*, 281 S.C. 254, 259, 315 S.E.2d 373, 376 (Ct. App. 1984). In its order denying rehearing, the ALC acknowledged the Appellate Panel did not make this specific finding; however, the ALC reasoned SCALC Rule 40 permitted it to rely on any evidence appearing in the record in its review of the Appellate Panel's decision. The ALC's finding did not amount to "judicial fact-finding"; rather, it constituted evidence the ALC considered under its substantial evidence review. *See Todd's Ice Cream, Inc.* 281 S.C. at 258, 315 S.E.2d at 375 ("The substantial evidence rule does not allow judicial fact-finding, or the substitution of judicial judgment for agency judgment."); SCALC Rule 40 ("The administrative law judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit.").

Based on the foregoing, we hold substantial evidence supported the ALC's affirmation of the Department's finding that Geohaghan lacked good cause to resign.

CONCLUSION

For the foregoing reasons, we affirm the ALC's order affirming the Department's final decision determining Geohaghan was indefinitely ineligible for receipt of unemployment benefits.

AFFIRMED.

WILLIAMS, C.J., and KONDUROS, J., concur.