The Supreme Court of South Carolina

In the Matter of Michael Jarrett Dixon, Petitioner

Appellate Case No. 2016-000252

ORDER

Petitioner is currently admitted to practice law in South Carolina, and has now submitted a resignation under Rule 409 of the South Carolina Appellate Court Rules. The resignation is accepted.

If petitioner is currently representing any South Carolina clients, petitioner shall immediately notify those clients of the resignation by certified mail, return receipt requested. Further, if petitioner is currently counsel of record before any court of this State, petitioner shall immediately move to be relieved as counsel in that matter.

Within twenty (20) days of the date of this order, petitioner shall:

(1) surrender the certificate of admission to the Clerk of this Court. If petitioner cannot locate this certificate, petitioner shall provide the Clerk with an affidavit indicating this fact and indicating that the certificate will be immediately surrendered if it is subsequently located.

(2) provide an affidavit to the Clerk of this Court showing that petitioner has fully complied with the requirements of this order.

s/ Costa M. Pleicones C.J.

s/ Donald W. Beatty J.

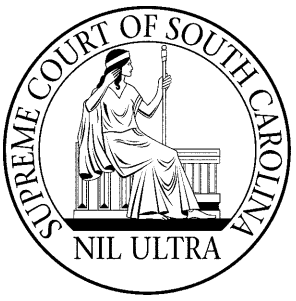
s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

Columbia, South Carolina

March 3, 2016



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 10
March 9, 2016
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

None

PETITIONS - UNITED STATES SUPREME COURT

PETITIONS FOR REHEARING

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

PETITIONS FOR REHEARING

2015-UP-523-State v. Gary Lane Prewitt	Pending
2015-UP-572-KNS Foundation v. City of Myrtle Beach	Pending
2016-UP-012-Whelthy McKune v. State	Pending
2016-UP-015-Onrae Williams v. State	Pending
2016-UP-022-State v. Michael Anderson Manigan	Pending
2016-UP-023-Frankie Lee Bryant v. State	Pending
2016-UP-028-Arthur Washington v. Resort Services	Pending
2016-UP-034-State v. Tyrel R. Collins	Pending
2016-UP-037-Joseph Gelotte v. Davis Roofing	Pending
2016-UP-039-State v. Fritz A. Timmons	Pending
2016-UP-040-State v. Jonathan Xavier Miller	Pending
2016-UP-047-State v. Zinah D. Jennings	Pending
2016-UP-052-Randall Green v. Wayne Bauerle	Pending
2016-UP-054-In the matter of the Jt. Application of Duke Energy	Pending
2016-UP-055-State v. Ryan P. Deleston	Pending
2016-UP-056-Gwendolyn Sellers v. Cleveland Sellers, Jr.	Pending
2016-UP-061-Charleston Harbor v. Paul Davis	Pending
2016-UP-065-State v. Dennis M. Penny, II	Pending
2016-UP-068-State v. Marcus Bailey	Pending
2016-UP-069-John Frick v. Keith Fulmer	Pending
2016-UP-070-State v. Deangelo Mitchell (AA Ace Bail)	Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

5209-State v. Tyrone Whatley	Pending
5247-State v. Henry Haygood	Pending
5250-Precision Walls v. Liberty Mutual Fire Ins.	Pending
5253-Sierra Club v. Chem-Nuclear	Pending
5254-State v. Leslie Parvin	Pending
5295-Edward Freiburger v. State	Pending
5301-State v. Andrew T. Looper	Pending
5308-Henton Clemmons v. Lowe's Home Centers	Pending
5312-R. C. Frederick Hanold, III v. Watson's Orchard POA	Pending
5313-State v. Raheem D. King	Pending
5314-State v. Walter M. Bash	Pending
5317-Michael Gonzales v. State	Pending
5322-State v. Daniel D. Griffin	Pending
5324-State v. Charles A. Cain	Pending
5326-Denise Wright v. PRG	Pending
5328-Matthew McAlhaney v. Richard McElveen	Pending
5329-State v. Stephen Douglas Berry	Pending
5331-State v. Thomas Stewart	Pending
5332-State v. Kareem Harry	Pending
5333-Yancey Roof v. Kenneth A. Steele	Pending

5335-Norman J. Hayes v. State	Pending
5336-Phillip Flexon v. PHC-Jasper, Inc.	Pending
5337-Ruben Ramirez v. State	Pending
5338-Bobby Lee Tucker v. John Doe	Pending
5341-State v. Alphonso Thompson	Pending
5342-John Goodwin v. Landquest	Pending
5344-Stoneledge v. IMK Development (Southern Concrete)	Pending
5345-Jacklyn Donevant v. Town of Surfside Beach	Pending
5346-State v. Lamont A. Samuel	Pending
5347-George Glassmeyer v. City of Columbia	Pending
5348-Gretchen A. Rogers v. Kenneth E. Lee	Pending
5351-State v. Sarah D. Cardwell	Pending
5352-Ken Lucero v. State	Pending
5355-State v. Lamar Sequan Brown	Pending
5360-Claude McAlhany v. Kenneth A. Carter	Pending
5365-Thomas Lyons v. Fidelity National	Pending
5369-Boisha Wofford v. City of Spartanburg	Pending
5370-Ricky Rhame v. Charleston County School	Pending
5371-Betty Fisher v. Bessie Huckabee	Pending
2015-UP-010-Latonya Footman v. Johnson Food Services	Pending
2015-UP-031-Blue Ridge Electric v. Kathleen Gresham	Pending

2015-UP-069-Amie Gitter v. Morris Gitter	Pending
2015-UP-091-U.S. Bank v. Kelley Burr	Pending
2015-UP-167-Cynthia Griffis v. Cherry Hill Estates	Pending
2015-UP-174-Tommy S. Adams v. State	Pending
2015-UP-176-Charles Ray Dean v. State	Pending
2015-UP-201-James W. Trexler v. The Associated Press	Pending
2015-UP-208-Bank of New York Mellon v. Rachel R. Lindsay	Pending
2015-UP-209-Elizabeth Hope Rainey v. Charlotte-Mecklenburg	Pending
2015-UP-215-Ex Parte Tara Dawn Shurling (In re: State v.Harley)	Pending
2915-UP-240-Billy Lisenby, Jr. v. S.C. Dep't of Corr.	Reinstated 03/02/16
2015-UP-248-South Carolina Electric & Gas v. Anson	Pending
2015-UP-259-Danny Abrams v. City of Newberry	Pending
2015-UP-262-State v. Erick Arroyo	Pending
2015-UP-266-State v. Gary Eugene Lott	Pending
2015-UP-269-Grand Bees Development v. SCDHEC	Pending
2015-UP-273-State v. Bryan M. Holder	Pending
2015-UP-280-State v. Calvin Pompey	Pending
2015-UP-300-Peter T. Phillips v. Omega Flex, Inc.	Pending
2015-UP-303-Charleston County Assessor v. LMP Properties	Pending
2015-UP-304-Robert K. Marshall, Jr. v. City of Rock Hill	Pending
2015-UP-307-Allcare Medical v. Ahava Hospice	Pending

2015-UP-311-State v. Marty Baggett	Pending
2015-UP-320-American Community Bank v. Michael R Brown	Pending
2015-UP-327-State v. Shawn Justin Burris	Pending
2015-UP-330-Bigford Enterprises v. D. C. Development	Pending
2015-UP-331-Johnny Eades v. Palmetto Cardiovascular	Pending
2015-UP-333-Jennifer Bowzard v. Sheriff Wayne Dewitt	Pending
2015-UP-339-LeAndra Lewis v. L. B. Dynasty, Inc.	Pending
2015-UP-344-Robert Duncan McCall v. State	Pending
2015-UP-350-Ebony Bethea v. Derrick Jones	Pending
2015-UP-351-Elite Construction v. Doris Tummillo	Pending
2015-UP-353-Wilmington Savings Fund v. Furmanchik	Pending
2015-UP-357-Linda Rodarte v. USC	Pending
2015-UP-359-In the matter of the estate of Alice Shaw Baker (Fisher v. Huckabee)	Pending
2015-UP-361-JP Morgan Chase Bank v. Leah Sample	Pending
2015-UP-362-State v. Martin D. Floyd	Pending
2015-UP-364-Andrew Ballard v. Tim Roberson	Pending
2015-UP-365-State v. Ahmad Jamal Wilkins	Pending
2015-UP-367-Angela Patton v. Dr. Gregory A. Miller	Pending
2015-UP-372-State v. Sheldon L. Kelly	Pending
2015-UP-376-Ron Orlosky v. Law Office of Jay Mullinax	Pending

2015-UP-377-Long Grove at Seaside v. Long Grove Property Owners (James, Harwick & Partners)	Pending
2015-UP-378-State v. James Allen Johnson	Pending
2015-UP-381-State v. Stepheno J. Alston	Pending
2015-UP-382-State v. Nathaniel B. Beeks	Pending
2015-UP-384-Robert C. Schivera v. C. Russell Keep, III	Pending
2015-UP-388-Joann Wright v. William Enos	Pending
2015-UP-391-Cambridge Lakes v. Johnson Koola	Pending
2015-UP-395-Brandon Hodge v. Sumter County	Pending
2015-UP-402-Fritz Timmons v. Browns AS RV and Campers	Pending
2015-UP-403-Angela Parsons v. Jane Smith	Pending
2015-UP-414-Christopher A. Wellborn v. City of Rock Hill	Pending
2015-UP-417-State v. Raheem Jamar Bonham	Pending
2015-UP-423-North Pleasant, LLC v. SC Coastal Conservation	Pending
2015-UP-427-William McFarland v. Sofia Mazell	Pending
2015-UP-428-Harold Threlkeld v. Lyman Warehouse, LLC	Pending
2015-UP-429-State v. Leonard E. Jenkins	Pending
2015-UP-432-Barbara Gaines v. Joyce Ann Campbell	Pending
2015-UP-439-Branch Banking and Trust Co. v. Sarah L. Gray	Pending
2015-UP-446-State v. Tiphani Marie Parkhurst	Pending
2015-UP-455-State v. Michael L. Cardwell	Pending
2015-UP-465-Dushun Staten v. State	Pending

2015-UP-466-State v. Harold Cartwright, III	Pending
2015-UP-474-Edward Whitner v. State	Pending
2015-UP-476-State v. Jon Roseboro	Pending
2015-UP-477-State v. William D. Bolt	Pending
2015-UP-478-State v. Michael Camp	Pending
2015-UP-485-State v. Alfonzo Alexander	Pending
2015-UP-491-Jacquelin S. Bennett v. T. Heyward Carter, Jr.	Pending
2015-UP-501-State v. Don-Survi Chisolm	Pending
2015-UP-505-Charles Carter v. S.C. Dep't of Corr. (3)	Pending
2015-UP-513-State v. Wayne A. Scott, Jr.	Pending
2015-UP-518-SCDSS v. Bruce Walters	Pending
2015-UP-524-State v. Gary R. Thompson	Pending
2015-UP-536-Vondell Sanders v. State	Pending
2015-UP-540-State v. Michael McCraw	Pending
2015-UP-542-Frazier T. Williams, #227393, v. State	Dismissed 02/22/16
2015-UP-547-Evalena Catoe v. The City of Columbia	Pending
2015-UP-548-Thaddess Starks v. State	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Rosalee Hix Davis, Respondent.

Appellate Case No. 2015-002596

Opinion No. 27611
Submitted February 2, 2016 – Filed March 9, 2016

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and Ericka M. Williams, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Elizabeth Ann Hyatt, Esquire, of Hyatt Law, LLC, of Lancaster, for Respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to the imposition of a public reprimand or definite suspension not to exceed three (3) years with conditions. Respondent requests that any suspension be imposed retroactively to May 3, 2013, the date she was transferred to incapacity inactive status. *In the Matter of Davis*, 403 S.C. 370, 744 S.E.2d 502 (2013). We accept the Agreement and suspend respondent from the practice of law in this state for two (2) years, not retroactively to the date of her transfer to incapacity inactive status. In addition, we impose the conditions set forth hereafter in this opinion. The facts, as set forth in the Agreement, are as follows.

Facts

Matter I

Respondent was retained to represent Client A in a domestic matter. Client A requested her file from respondent. Respondent failed to deliver the file as requested and failed to provide Client A with a copy of the final order of divorce that required Client A to pay child support.

Matter II

On April 10, 2012, respondent was retained to represent Client B in a domestic matter. Following a hearing, respondent advised Client B to file an appeal of the court's ruling. Client B signed a new representation agreement with respondent on July 13, 2012, for representation on a motion for reconsideration and an appeal. Respondent was paid an additional $2,500.00 for the new representation.

Respondent failed to file an appeal on behalf of Client B. Due to respondent's failure to timely file the appeal, Client B lost his right to an appeal. Respondent failed to keep Client B informed of the status of the appeal and failed to respond to Client B's numerous telephone calls, texts, and emails regarding Client B's case.

Respondent admits she failed to withdraw from the representation of Client B when respondent's physical and/or mental condition materially impaired respondent's ability to represent Client B. Respondent failed to refund the advance payment of fees that had not been earned by respondent. In addition, respondent also failed to retain the unearned fees in her trust account.

On January 15, 2013, respondent was mailed a Notice of Investigation requesting a response to the complaint within fifteen days. When no response was received, respondent was served with a letter pursuant to *In the Matter of Treacy*, 277 S.C. 514, 290 S.E.2d 240 (1982), again requesting a response. Respondent failed to respond to the *Treacy* letter or Notice of Investigation. Respondent did appear before a representative of the ODC and gave testimony regarding the allegations in this matter.

Matter III

On October 29, 2012, respondent was retained to represent Client C and her husband with a time sensitive domestic matter. Respondent was paid $1,500.00 for the representation. Respondent informed Client C that she would have an emergency custody order signed by the judge by the end of that week.

After no further communication with respondent, Client C called respondent on November 6 and November 7, 2012, and every other day thereafter. Client C received no response or telephone calls from respondent. Client C sent respondent an email on November 12, 2012, requesting an update. Respondent responded that a hearing would take place Thursday or Friday of that week. Respondent made no further contact with Client C and she failed to return Client C's numerous telephone calls.

Respondent admits she failed to withdraw from representation of Client C and her spouse when respondent's physical and/or mental condition materially impaired respondent's ability to represent them. Respondent failed to refund the advance payment of fees that she had not earned. In addition, respondent failed to retain the unearned fees in her trust account.

On January 7, 2013, respondent was mailed a Notice of Investigation requesting a response to the complaint within fifteen days. When no response was received, respondent was served with a letter pursuant to *In the Matter of Treacy*, *id.*, again requesting respondent's response. Respondent did not respond to the *Treacy* letter or to the Notice of Investigation. Respondent did appear before a representative of ODC and gave testimony regarding these allegations.

Matter IV

On August 28, 2012, Client D retained respondent for representation on a domestic matter. Respondent was paid $1,500.00 for the representation. Respondent informed Client D that she would be entitled to an expedited hearing due to the affidavit that Client D provided.

Despite numerous telephone calls, emails, and text messages to respondent regarding the status of the hearing, respondent did not respond to Client D until

September 27, 2012. During that communication, respondent informed Client D that the judge needed an affidavit from Client D indicating why an emergency hearing was needed. Client D immediately prepared the affidavit and submitted it to respondent.

A hearing was held on October 18, 2012. The judge requested additional information from respondent/Client D before finalizing the order. Client D provided the additional information to respondent that same day. On October 22, 2012, respondent informed Client D that the order would be typed and sent to judge to sign that same week. After repeated attempts to contact respondent between October 25, 2012 and December 4, 2012, respondent finally responded to Client D on December 4, 2012 and indicated that she was trying to get the order to the judge for a signature. Client D again attempted to contact respondent several times between December 10, 2012 and December 21, 2012, but received no response. On December 27, 2012, Client D learned from the clerk of court's office that an order of dismissal had been signed on Client D's case. The order stated that the case was dismissed due to respondent's refusal to present an order to the judge after numerous requests from the court.

Respondent admits she failed to withdraw from representation of Client D when respondent's physical and/or mental condition materially impaired respondent's ability to represent Client D.

On February 15, 2013, respondent was mailed a Notice of Investigation requesting a response to the complaint within fifteen days. When no response was received, respondent was served with a letter pursuant to *In the Matter of Treacy*, *id.*, again requesting respondent's response. Respondent failed to respond to the *Treacy* letter or to the Notice of Investigation. Respondent did appear before a representative of ODC and gave testimony regarding these allegations.

Matter V

On June 6, 2012, respondent was retained to represent Client E in a domestic matter. Respondent was paid $1,675.00 for the representation. After an expedited hearing, respondent informed Client E that they would be back in court by the end of August 2012.

Despite several emails, telephone calls, and text messages, Client E received very little response from respondent. On January 21, 2013, Client E sent respondent a letter by email requesting a refund of her retainer. The letter was also mailed to respondent by certified mail. Respondent failed to respond to Client E's letter or to communicate with Client E in any matter.

Respondent admits she failed to withdraw from representation of Client E when respondent's physical and/or mental condition materially impaired respondent's ability to represent Client E. Respondent failed to refund the advance payment of fees that had not been earned. In addition, respondent also failed to retain the unearned fees in her trust account.

On February 15, 2013, respondent was mailed a Notice of Investigation requesting a response to the complaint within fifteen days. When no response was received, respondent was served with a letter pursuant to *In the Matter of Treacy, id.*, again requesting respondent's response. Respondent failed to respond to the *Treacy* letter or to the Notice of Investigation. Respondent did appear before a representative of ODC and gave testimony regarding these allegations.

Matter VI

In September of 2008, respondent's firm was retained to represent Client F in a probate matter. Respondent was the attorney assigned to represent Client F. When respondent left the firm in December 2011, the firm issued Client F a refund of his unused retainer fee in the amount of $996.78. Client F paid the entire amount of $996.78 to respondent to continue the representation.

Client F was unable to locate or communicate with respondent in spite of many messages to respondent's office. Respondent failed to refund the advance payment of fees that had not been earned. In additional respondent also failed to retain the unearned fees in respondent's trust account.

On February 25, 2013, respondent was mailed a Notice of Investigation requesting a response to the complaint within fifteen days. When no response was received, respondent was served with a letter pursuant to *In the Matter of Treacy, id.*, again requesting respondent's response. Respondent failed to respond to the *Treacy* letter or to the Notice of Investigation. Respondent did appear before a representative of ODC and gave testimony regarding these allegations.

Matter VII

On or about February 8, 2012, respondent was retained to represent Client G in a domestic matter. Respondent was paid $1,590.00 for the representation. Respondent failed to file the action for adoption as had been requested. Respondent failed to return Client G's telephone calls or to reply to Client G's numerous requests.

On February 13, 2013, Client G mailed respondent a letter requesting a return of Client G's documents and a refund of Client G's retainer within ten days of the date of the letter. Respondent failed to respond to Client G's letter or to communicate with Client G regarding Client G's requests.

Respondent admits she failed to withdraw from representation of Client G when respondent's physical and/or mental condition materially impaired respondent's ability to represent Client G. Respondent failed to refund the advance payment of fees that had not been earned. In addition, respondent also failed to retain the unearned fees in her trust account.

On March 13, 2013, respondent was mailed a Notice of Investigation requesting a response to the complaint within fifteen days. When no response was received, respondent was served with a letter pursuant to *In the Matter of Treacy, id.*, again requesting respondent's response. Respondent failed to respond to the *Treacy* letter or to the Notice of Investigation. Respondent did appear before a representative of ODC and gave testimony regarding these allegations.

Matter VIII

Respondent was retained on February 6, 2012, to represent Client H in a child custody matter. Respondent was paid $2,000.00 for the representation. Respondent made two court appearances on Client H's behalf concerning child support. Respondent failed to schedule a hearing on Client H's behalf regarding the custody issue. Respondent failed to keep Client H informed regarding the statue of Client H's custody case.

Respondent admits she failed to withdraw from representation of Client H when respondent's physical and/or mental condition materially impaired respondent's ability to represent Client H.

On March 27, 2013, respondent was mailed a Notice of Investigation requesting a response to the complaint within fifteen days. When no response was received, respondent was served with a letter pursuant to *In the Matter of Treacy*, *id.*, again requesting respondent's response. Respondent failed to respond to the *Treacy* letter or to the Notice of Investigation. Respondent did appear before a representative of ODC and gave testimony regarding these allegations.

Matter IX

Respondent was retained to represent Client I in a domestic matter and was paid $3,500.00 for the representation. Respondent failed to do any work in furtherance of the representation.

Respondent admits she failed to withdraw from representation of Client I when respondent's physical and/or mental condition materially impaired respondent's ability to represent Client I. Respondent failed to refund the advance payment of fees that had not been earned. In addition, respondent also failed to retain the unearned fees in her trust account.

On May 1, 2013, respondent was mailed a Notice of Investigation requesting a response to the complaint within fifteen days. Respondent was transferred to incapacity inactive status on May 3, 2013. *In the Matter of Davis*, *supra*. Respondent appeared before a representative of ODC and gave testimony regarding the allegations in this matter.

Matter X

Respondent was retained to represent Client J in a domestic matter for the adoption of Client J's nephew. Respondent was paid $150.00 for the representation. Respondent failed to do any work in furtherance of the representation. Respondent failed to return any of Client J's telephone calls or keep Client J informed about the status of Client J's matter.

Respondent admits she failed to withdraw from representation of Client J when respondent's physical and/or mental condition materially impaired respondent's ability to represent Client J. Respondent failed to refund the advance payment of fees that had not been earned. In addition, respondent also failed to retain the unearned fees in her trust account.

Respondent appeared before a representative of ODC and gave testimony regarding the allegations in this matter.

Matter XI

On April 9, 2012, respondent was retained to represent Client K in a domestic matter. Respondent was initially paid $750.00 on April 9, 2012, and another $200.00 on May 15, 2012. Client K met with respondent at a restaurant and paid her an additional $500.00. During this last meeting, respondent informed Client K that her case was completed and respondent would schedule a final hearing the following week. Despite respondent's representation, respondent failed to do any work in furtherance of Client K's case. Respondent closed her law office without notifying Client K of a new location or contact number.

Respondent admits she failed to withdraw from representation of Client K when respondent's physical and/or mental condition materially impaired respondent's ability to represent Client K. Respondent failed to refund the advance payment of fees that had not been earned. In addition, respondent also failed to retain the unearned fees in her trust account.

Respondent appeared before a representative of ODC and gave testimony regarding the allegations in this matter.

Matter XII

After a finding of fact by the Resolution of Fee Disputes Board (Board), respondent was ordered to pay $2,500.00 to Client B referenced above. Respondent failed to pay the judgment and a certificate of non-compliance was issued by the Board on March 28, 2014. Respondent was mailed a Notice of Investigation on April 30, 2014, requesting a written response within fifteen days. Respondent failed to file a written response to the Notice of Investigation.

Law

Respondent admits that by her conduct she violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.2 (lawyer shall abide by client's decisions concerning objectives of representation); Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing client); Rule 1.4 (lawyer shall keep client reasonably informed about status of matter and promptly comply with reasonable requests for information); Rule 1.5 (lawyer shall not charge or collect unreasonable fee); Rule 1.15 (lawyer shall deposit into client trust account unearned legal fees that have been paid in advance to be withdrawn by lawyer only as fees are earned; lawyer shall hold client's property in lawyer's possession in connection with representation separate from lawyer's own property; lawyer shall promptly deliver to client any funds client entitled to receive); Rule 1.16 (lawyer shall not commence representation and shall withdraw from representation if lawyer's physical or mental condition materially impairs lawyer's ability to represent client; upon termination of representation, lawyer shall take steps to extent reasonably practicable to protect client's interests, such as surrendering papers and property to which client entitled and refunding any advance payment of fee that has not been earned); Rule 3.2 (lawyer shall make reasonable efforts to expedite litigation consistent with interests of client); Rule 8.1(b) (in connection with disciplinary matter, lawyer shall not fail to respond to lawful demand for information from disciplinary authority); Rule 8.4(a) (it is professional misconduct for lawyer to violate Rules of Professional Conduct); Rule 8.4(d) (it is professional misconduct for lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); and Rule 8.4(e) (it is professional misconduct for lawyer to engage in conduct prejudicial to administration of justice). In addition, respondent admits her misconduct constitutes grounds for discipline under the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct) and Rule 7(a)(10) (it shall be ground for discipline for lawyer to willfully fail to comply with final decision the Resolution of Fee Disputes Board).

Conclusion

This Court accepts the Agreement for Discipline by Consent and suspends respondent from the practice of law in this state for two (2) years, not retroactively to the date of her transfer to incapacity inactive status. In addition, in the event she

is reinstated to the practice of law,[1] this Court imposes the following conditions on respondent:

1. respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (the Commission) within thirty (30) days of reinstatement;

2. respondent shall complete the Legal Ethics and Practice Program Ethics School within nine (9) months of reinstatement; and

3. within sixty (60) days of reinstatement, respondent shall execute a restitution agreement with the Commission for repayment as follows: $2,500 to Client B; $1,500 to Client C; $1,675 to Client E; $996.78 to Client F; $1,590 to Client G; $3,500 to Client I; $150 to Client J; $1,450 to Client K; full repayment to the Lawyers' Fund for Client Protection (Lawyers' Fund) of amounts paid to any client referenced in the Agreement by the Lawyers' Fund;[2] and $544.80 to the Lawyers' Fund for its payment of the costs and fees incurred by the attorney appointed to protect the interests of respondent's former clients.[3]

Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that she has complied with Rule 30 of Rule 413, SCACR.

---

[1] For purposes of this opinion, reinstatement shall include respondent's reinstatement from this disciplinary suspension as provided by Rule 33, RLDE, and reinstatement from incapacity inactive status as provided by Rule 28, RLDE.

[2] The amount due to any client listed in the restitution agreement shall be reduced by any amount paid to the client by the Lawyers' Fund.

[3] By order dated April 22, 2014, this Court relieved the attorney appointed to protect the interests of respondent's former clients, directed the Lawyers' Fund to reimburse the attorney for his costs and fees associated with his appointment, and ordered respondent to reimburse the Lawyers' Fund within thirty (30) days of its remittance to the attorney. Respondent has not repaid the Lawyers' Fund as required by this Court's order.

DEFINITE SUSPENSION.

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

The Supreme Court of South Carolina

RE: Amendments to Rule 410 of the South Carolina Appellate Court Rules

---

ORDER

Under Rule 410(h)(1)(G) of the South Carolina Appellate Court Rules (SCACR), a member of the South Carolina Bar may elect to become a Retired Member based on age, illness or disability. If based on age, the member may elect to become a retired member no earlier than the start of the license year[1] in which the member will turn sixty-five years of age. A Retired Member may not engage in the practice of law in South Carolina. Since at least 1977, no license fee has been charged to a Retired Member.

Rule 410(h)(1)(C), SCACR, provides for a membership class for Judicial Members. This class includes South Carolina judges who have retired under a state or local retirement system, have not engaged in the practice of law in South Carolina since retirement and have not made an election to practice law under S.C. Code Ann. § 9-8-120. While many of these retired judges are over sixty-five years of age, these retired judges pay the same license fees as active, non-retired South Carolina judges.

This disparity in treatment between Retired Members who are sixty-five years of age or older and Judicial Members who are retired judges who are sixty-five years of age or older is readily apparent. Further, because many of these retired judges make themselves available for continued judicial service, often without any additional compensation, this disparity in treatment is even more inequitable. Accordingly, we find it appropriate to amend Rule 410, SCACR, to eliminate any license fee for Judicial Members who are retired South Carolina judges and are at least sixty-five years of age.

Further, under Rule 410, SCACR, the Judicial Membership class also includes federal judges who are in senior status. By federal statute, a federal judge who is

[1] The license year is the calendar year.

in senior status is at least sixty-five years of age. Based on comity, we find it appropriate to eliminate any license fee for federal judges serving in senior status.

Accordingly, pursuant to Article V, §4 of the South Carolina Constitution, Rule 410 of the South Carolina Appellate Court Rules (SCACR) is amended as follows:

(1) Rule 410(h)(1)(C), SCACR, is amended to read:

(C) **Judicial Member**. This class shall include any member who:

(i) Is a full-time judge for a South Carolina court (including a judge who continues to hold office while receiving benefits under S.C. Code Ann. § 9-8-60(7)).

(ii) Was a member under (i) above, but has retired as a judge under a state or local retirement system, and has not engaged in the practice of law since retirement or elected to practice law under S.C. Code Ann. § 9-8-120.

(iii) Is a judge of a federal court (including those in senior status).

For the purpose of this rule, the term judge shall include a judge, justice, master-in-equity or magistrate.

(2) Rule 410(j)(3), SCACR, is amended to read:

(**3) Judicial Member.** The license fee shall be $190. If, however, the member is or will be age sixty-five or older during the license year, and is either a retired judge meeting the requirements of (h)(1)(C)(ii) above or a judge of a federal court in senior status, no license fee is required.

(3) Rule 410(k)(3), SCACR, is amended to read:

(3) Judicial Member. The additional license fee shall be $50. If, however, the member is or will be age sixty-five or older during the license year, and is either a retired judge meeting the requirements of (h)(1)(C)(ii) above or a judge of a federal court in senior status, no license fee is required.

These amendments shall be effective immediately. Further, if a Judicial Member has paid license fees for License Year 2016 but is now eligible to pay no fee under these amendments, the South Carolina Bar shall, upon the request of the member, refund the license fees paid for License Year 2016.

s/ Costa M. Pleicones C.J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

Columbia, South Carolina
March 9, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Vivian Atkins, Robert P. Frick and Kay Hollis, in their official capacities as members of the Town Council of the Town of Chapin, Appellants,

v.

James R. Wilson, Jr., in his official capacity as Mayor of the Town of Chapin, Gregg White, in his official capacity as a member of the Town Council of the Town of Chapin, and the Town of Chapin, Defendants,

Of whom James R. Wilson, Jr. and Gregg White are Respondents.

Appellate Case No. 2014-000829

Appeal From Lexington County
G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 5388
Heard January 5, 2016 – Filed March 9, 2016

AFFIRMED IN PART AND REVERSED IN PART

Spencer Andrew Syrett, of Columbia, for Appellants.

Matthew Todd Carroll, of Womble Carlyle Sandridge & Rice, LLP, of Columbia, for Respondents.

GEATHERS, J.: In this declaratory judgment action, Appellants, Vivian Atkins, Robert Frick, and Kay Hollis, a majority of members of Chapin Town Council, seek review of the circuit court's order granting the motion of Respondents, James Wilson, Jr. (the Mayor) and Gregg White, another Council member, to invalidate actions taken by Appellants at two special Council meetings. Appellants also initially challenged the circuit court's order denying their motion for a preliminary injunction and dismissing their complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. However, at oral arguments, Appellants advised the court they wished to waive their assignments of error as to this particular order. Therefore, we summarily affirm this order without further discussion. As to the circuit court's order invalidating the actions taken by Appellants at the two special meetings, we reverse.

FACTS/PROCEDURAL HISTORY

In November 2013, the voters of the Town of Chapin elected a new mayor and a new council member, Respondent White. The Mayor's term of office began on January 7, 2014. According to Appellant Atkins, before the Mayor was sworn in, he announced that he had hired Karen Owens to serve as "Director of Communication and Economic Development" although Council had not voted to create the position or make it a part of the Town's budget.[1] The Mayor also (1) refused to honor a retainer agreement between the Town and an attorney for the Town's utility department, (2) signed a contract to hire Nicole Howland as Town Attorney without first submitting the contract to Council for approval, (3) refused to place several items on the agendas for Council meetings despite requests from certain Council members, and (4) refused to schedule a special meeting at Atkins' request.

Accordingly, on February 26, 2014, Appellants filed a complaint invoking the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 to -140 (2005), and seeking a judgment declaring section 2.206(b) of the Chapin Town Code unenforceable to the extent it grants the Mayor control over the agendas for council meetings. Section 2.206 states,

[1] At a subsequent Council meeting, Council voted to create the position but did not discuss compensation.

> a. Matters to be considered by the Mayor and Council at a regular meeting shall be placed on a written agenda and publicly posted at least twenty-four (24) hours prior to the meeting. Matters not on the agenda may be considered upon request of a member unless a majority of Council objects.
>
> . . . .
>
> b. The agenda shall be approved by the Mayor, prior to distribution. It shall be prepared under the supervision of the Clerk/Treasurer.

The complaint also sought a preliminary injunction requiring the Mayor to "place on the agenda of the next Council meeting . . . any item requested by any member of Council." Appellants filed a separate motion for a preliminary injunction, seeking an order requiring the Mayor "to place any item requested by any member of Council on the agenda of the next occurring Council meeting after the request, without any delay." At the motions hearing, Appellants explained that the Freedom of Information Act (FOIA) prohibited them from exercising their power under section 2.206(a) to amend the agenda during the meeting. *See Lambries v. Saluda Cty. Council* (*Lambries I*), 398 S.C. 501, 506, 728 S.E.2d 488, 491 (Ct. App. 2012) ("[T]he purpose of FOIA is best served by prohibiting public bodies governed by FOIA from amending their agendas during meetings."), *rev'd* (*Lambries II*), 409 S.C. 1, 760 S.E.2d 785 (2014), *superseded in part by* 2015 Act No. 70.[2]

[2] *Lambries I* was issued on June 13, 2012, and *Lambries II* was issued on June 18, 2014. In the present action, Appellants filed their complaint on February 26, 2014. The order dismissing the complaint was dated March 18, 2014, and filed the following day. Therefore, *Lambries II* did not affect the present case at the time of the motions hearing. Further, in 2015 Act No. 70, the legislature superseded the primary holdings of *Lambries II*, i.e., that FOIA does not require an agenda to be issued for a regularly scheduled meeting and, thus, FOIA does not prohibit public bodies from amending an agenda for a regularly scheduled meeting. Act No. 70, which became effective on June 8, 2015, amended section 30-4-80(a) of the South Carolina Code (2007) to prohibit the amendment of a posted meeting agenda

On March 18, 2014, the circuit court issued an order denying Appellants' request for a preliminary injunction and granting Respondents' motion to dismiss. In addressing the motion for a preliminary injunction, the circuit court stated, "the Mayor must sign off on the agenda prior to its distribution to Council, and there is no requirement that the Mayor place items on the agenda that he believes do not merit Council's consideration." In addressing Respondents' motion to dismiss, the circuit court stated, "Ordinance § 2.206(b) grants Mayor Wilson the authority and discretion to approve and, inherently, to deny any item requested to be on the agenda for a Council meeting."

The circuit court addressed the complaint's assertion that if section 2.206 grants the Mayor complete control over the agenda, this provision violates the state and federal constitutions. Despite Appellants' FOIA argument, the circuit court stated that section 2.206(a) allows matters not on the agenda to be considered upon request of a member unless a majority of members object. The circuit court also stated that Council's ability to amend the agenda during the meeting acted "as a safeguard against autocratic mayoral action that may otherwise rise to a constitutional depr[i]vation of basic rights." On April 8, 2014, the circuit court denied Appellants' motion to reconsider pursuant to Rule 59(e), SCRCP. Appellants filed and served a Notice of Appeal of the circuit court's orders on April 22, 2014.

In the meantime, on April 5, 2014, Atkins carried to Appellant Robert Frick's home a prepared notice calling for a special meeting of Council on April 10, 2014, to amend section 2.206(b) of the Chapin Town Code to require the Mayor to place on a meeting agenda any item requested by a member of Council.[3] Atkins discussed the notice with Frick, who agreed to call for a special meeting

---

during the meeting without a finding of exigent circumstances and a two-thirds vote of the members present.

[3] Section 2.202(3) of the Chapin Town Code gives a majority of Council members the authority to call special meetings. Section 2.202 states, "Special meetings may be held: 1. whenever called by the Mayor in cases of emergency, or; 2. when, in the judgment of the Mayor, the good of the municipality requires it, or; 3. by a majority of the members of Council."

and signed the notice. On April 6, 2014, Atkins took the notice to Appellant Kay Hollis's home and discussed the notice with her. Hollis also agreed to calling a special meeting and signed the notice.

On April 7, 2014, Atkins took the notice to the Town Clerk and asked her to post the notice at Town Hall and on the Town's website and to notify the news media.[4] On this same day, Respondents filed a "Motion to Enforce Order and to Enjoin Contrary Conduct" with the circuit court. In this motion, Respondents alleged that Appellants were "disregarding the [circuit court's] March 18th Order with respect to the Mayor's authority to approve or reject agenda items under Ordinance § 2.206(b)." Respondents sought "an order enforcing the [circuit court's] prior ruling and enjoining [Appellants] from taking any action contrary to that ruling, including going forward with the improperly-noticed [special] meeting." On April 8, 2014, the circuit court's presiding judge sent a letter to the parties advising them of his availability for a hearing and stating his opinion that any actions taken by Appellants "in contravention of the [circuit court's] March 18, 2014 Order . . . could be illegal and of no force and effect."

Neither the Mayor nor White attended the April 10 and 17, 2014 special meetings. Therefore, Atkins presided over these meetings in her capacity as Mayor pro tempore. At the April 10 meeting, a first reading was given to the proposed amendment to section 2.206(b).[5] Additional business was conducted at this meeting, although the record does not indicate the subject of this additional business, only that it was included in the published agenda.

On April 14, 2014, Respondents filed a "Motion for Civil Contempt," seeking an order "holding [Appellants] in civil contempt of court and . . . invalidating any actions that [Appellants] purportedly took at any meeting that they attempted to convene in contravention of [the circuit court's] rulings." Subsequently, Council conducted a second reading of the amendment to section 2.206(b) at the April 17 meeting. Again, additional business was conducted at the April 17 meeting, although the record does not indicate the subject of this additional business, only that it was included in the published agenda.

---

[4] Atkins repeated the same procedure for another special meeting conducted on April 17, 2014.

[5] Counsel for Appellants later discovered a scrivener's error in the amendment that limited it to "called" meetings.

On April 25, 2014, the circuit court conducted a hearing on Respondents' motion to enforce the March 18, 2014 order and motion for contempt. On May 5, 2014, the circuit court issued an order denying the motion for contempt but invalidating the actions taken at the April 10 and 17, 2014 special meetings on the ground that Appellants did not present agendas for these meetings to the Mayor for his approval. Appellants filed and served a Notice of Appeal on May 23, 2014, and the Clerk of this court later consolidated the appeal with the previous appeal of the circuit court's March 18, 2014 order.

On March 23, 2015, Respondents filed a motion to dismiss this appeal on the ground that Appellants did not appeal the circuit court's "declarations and rulings as they relate to the Town of Chapin," who was a defendant before the circuit court, and, therefore, "those rulings are the law of the case with respect to the Town." On May 29, 2015, Chief Judge Few issued an order stating, in pertinent part,

> Respondents have not convinced this court that the omission of the Town as a Respondent affects this appeal *other than on a substantive basis as to the merits*. Because Respondents seek dismissal on a substantive basis, which is inappropriate at this stage of the appeal, the motion is denied. *This court will consider the merits of this appeal once briefing is complete and the appeal has been assigned to a panel*.

(emphases added). Notably, Respondents did not amend their appellate brief to list this issue as an additional sustaining ground or to otherwise argue this issue.

LAW/ANALYSIS

Motion to Dismiss

In their motion to dismiss this appeal, Respondents argue the law-of-the-case doctrine renders the circuit court's rulings conclusive as to the Town due to Appellants' failure to designate the Town as a respondent on appeal. Respondents also argue the judgments below apply equally to all defendants and, therefore, Appellants "cannot seek an inconsistent decision from this Court." Respondents

cite *United States v. Aramony* for the following proposition: "[W]hen a rule of law has been decided adversely to one or more codefendants, the [law-of-the-case] doctrine precludes all other codefendants from relitigating the legal issue." 166 F.3d 655, 661 (4th Cir. 1999).

"Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). In other words, "[t]he doctrine of the law of the case prohibits issues [that] have been decided in a prior appeal from being relitigated in the trial court in the same case." *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997). While the doctrine has been referenced as discretionary,[6] it is recognized that principles "of authority . . . do inhere in the 'mandate rule' that binds a lower court on remand to the law of the case established on appeal." 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 4478 (2d ed. 2002).

Here, we do not construe Appellants' formulation of the case caption as a failure to appeal the circuit court's orders as they relate to the Town, especially given the confusion created by the Mayor's refusal to add to a meeting agenda the topic of appointing a town attorney. Appellants have properly perfected their appeal of the circuit court's orders as to all defendants in the case and to hold otherwise would be unreasonably harsh, especially given the view by some jurisdictions that the law-of-the-case doctrine is discretionary. *See supra* n. 6. We

---

[6] *See S. Ry. Co. v. Clift*, 260 U.S. 316, 319 (1922) ("The prior ruling may have been followed as the law of the case, but there is a difference between such adherence and res adjudicata. One directs discretion: the other supersedes it and compels judgment. In other words, in one it is a question of power, in the other of submission."); *Slowinski v. Valley Nat'l Bank*, 624 A.2d 85, 89 (N.J. Super. App. Div. 1993) ("'Law of the case' . . . operates as a discretionary rule of practice and not one of law."); 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 4478 (2d ed. 2002) ("So long as the same case remains alive, there is power to alter or revoke earlier rulings."); 5 C.J.S. *Appeal and Error* § 991 (2007) ("The doctrine is discretionary rather than mandatory. Nonetheless, it should be disregarded only upon a showing of good cause for failure timely to request reconsideration of the original appellate decision, and only as a matter of grace rather than right." (footnotes omitted)).

conclude application of the law-of-the-case doctrine is inappropriate in this case. Therefore, we deny Respondents' motion to dismiss this appeal.

Merits

Appellants contend the circuit court erred in invalidating the actions taken by Council at the April 10 and 17, 2014 special meetings, arguing the requirement of section 2.206(b) of the Chapin Town Code that the Mayor approve meeting agendas does not apply to section 2.202 governing special meetings.[7] We agree.

The standard of review for the circuit court's May 5, 2014 order is determined "by the nature of the underlying issue." *See Kinard v. Richardson*, 407 S.C. 247, 256, 754 S.E.2d 888, 893 (Ct. App. 2014) ("Declaratory judgments in and of themselves are neither legal nor equitable. The standard of review for a declaratory judgment action is therefore determined by the nature of the underlying issue." (quoting *Campbell v. Marion Cty. Hosp. Dist.*, 354 S.C. 274, 279, 580 S.E.2d 163, 165 (Ct. App. 2003))).[8] Here, Respondents were seeking, and were

[7] Section 2.202 states, "Special meetings may be held: 1. whenever called by the Mayor in cases of emergency, or; 2. when, in the judgment of the Mayor, the good of the municipality requires it, or; 3. by a majority of the members of Council."

[8] We note Respondents did not correctly invoke the circuit court's authority to rule under the Uniform Declaratory Judgments Act (the Act). While the circuit court's March 18, 2014 order merely granted Respondents' motion to **dismiss** Appellants' declaratory judgment action, Respondents' memorandum supporting their motions emphasized the order's statement that the Mayor must sign off on the agenda prior to its distribution to Council and characterized that statement as a "declaration." The circuit court then stated in its May 5, 2014 order that it had previously "declared" that agendas for council meetings had to be approved by the Mayor prior to the agenda's distribution. Again, we emphasize the circuit court's March 18 order **dismissed** the declaratory judgment action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, which allows for dismissal of a case for "failure to state facts sufficient to constitute a cause of action." Therefore, the circuit court incorrectly invoked section 15-53-120 of the South Carolina Code (2005), which states that further relief based on a declaratory judgment may be granted whenever necessary or proper, in support of its "declaratory ruling."

granted, an invalidation of Appellants' actions at the two special meetings; such a remedy can be characterized as injunctive relief. *See Bus. License Opposition Comm. v. Sumter Cty.*, 311 S.C. 24, 27-28, 426 S.E.2d 745, 747-48 (1992) (noting FOIA authorizes injunctive relief and characterizing invalidation of an ordinance as injunctive relief). "An order granting or denying an injunction is reviewed for [an] abuse of discretion." *Lambries II*, 409 S.C. at 7, 760 S.E.2d at 788, *superseded on other grounds by* 2015 Act No. 70.

However, Respondents based their motion on their interpretation of section 2.202(3) of the Chapin Town Code, which authorizes a majority of the members of Council to call a special meeting. Because this is a question of law, this court need not give deference to the circuit court's interpretation of the disputed provision. *Cf. id.* at 8, 760 S.E.2d at 788 ("[W]hile an injunction is equitable and subject to the trial court's discretion, where the decision turns on statutory interpretation[,] . . . this presents a question of law. As a result, [the appellate court] need not give deference to the trial court's interpretation. If, based on this [c]ourt's assessment, the trial court committed an error of law in its interpretation of [a statute], that would constitute an abuse of discretion by the trial court.").

As to the merits of the circuit court's order, not only does section 2.202(3) of the Chapin Town Code authorize a majority of the members of Council to call a special meeting, but section 5-7-250(a) of the South Carolina Code (2004) also

---

In any event, we construe Respondents' motion to enforce the March 18 order as a new action seeking declaratory relief under the Act, specifically section 15-53-30 of the South Carolina Code (2005), which allows any person "whose rights, status or other legal relations are affected by" a municipal ordinance to have determined "any question of construction" arising under the ordinance and "obtain a declaration of rights, status or other legal relations thereunder." *See* S.C. Code Ann. § 15-53-130 (2005) (requiring courts to construe and administer the provisions of the Act liberally). We also interpret the circuit court's May 5, 2014 order as an original declaratory judgment issued under the authority of section 15-53-20 of the South Carolina Code (2005), which gives courts of record the power to "declare rights, status and other legal relations whether or not further relief is or could be claimed" and confers on such declarations "the force and effect of a final judgment or decree."

authorizes a majority of council members to call a special meeting. Section 5-7-250(a) states, "The council, after public notice[,] shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. *Special meetings* may be held *on the call of* the mayor or of *a majority of the members*." (emphases added). Section 2.202 of the Chapin Town Code states, "Special meetings may be held: 1. whenever called by the Mayor in cases of emergency, or; 2. when, in the judgment of the Mayor, the good of the municipality requires it, or; 3. by a majority of the members of Council."

The circuit court concluded section 2.206(b) of the Chapin Town Code, requiring the Mayor's approval of the agenda for regularly scheduled meetings, applies to special meetings called under section 2.202. We disagree. Section 2.202 is silent on the question of an agenda for special meetings. There is no express requirement for the Mayor to approve the agenda for a special meeting as there is for regularly scheduled meetings in section 2.206. If Council, when it adopted the Chapin Town Code, had intended to require the Mayor to approve the agenda for a special meeting, it could have included language to that effect in section 2.202, as it did in section 2.206. *See Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) ("[W]hen interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used."); *State v. Johnson*, 396 S.C. 182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011) ("In interpreting a statute, the court will give words their plain and ordinary meaning, and will not resort to forced construction that would limit or expand the statute."); *State v. Leopard*, 349 S.C. 467, 472-73, 563 S.E.2d 342, 345 (Ct. App. 2002) ("The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" (quoting *S.C. Dep't of Consumer Affairs v. Rent–A–Center, Inc.*, 345 S.C. 251, 256, 547 S.E.2d 881, 883-84 (Ct. App. 2001)); *cf. Taylor v. S.C. Dep't of Motor Vehicles*, 382 S.C. 567, 570, 677 S.E.2d 588, 590 (2009) ("If the Legislature had intended the lack of written notice (or any other factor) to be a fatal defect, it could have said so in the statute."); *Leopard*, 349 S.C. at 472-73, 563 S.E.2d at 345 (construing a statutory definition and stating, "The last clause of the definition does contain a cohabiting requirement. The fact that it is included in one phrase but not in the other implies it should not be read into the other"); *State v. Zulfer*, 345 S.C. 258, 262-63, 547 S.E.2d 885, 887 (Ct. App. 2001) ("[H]ad the legislature intended that a prior record of out-of-state convictions for burglary or housebreaking could

not be used for purposes of enhancement, it could easily have limited the statute to only South Carolina offenses.").

Further, the authority to call a special meeting necessarily implies authority over the meeting's purpose(s), which must be designated in the agenda included in the public notice of the meeting and must be the only item(s) in the agenda. *See Lambries II*, 409 S.C. at 13-14, 760 S.E.2d at 791 (emphasizing FOIA's requirement that public notice for a special meeting must include the meeting's agenda); *id.* at 15, 760 S.E.2d at 792 ("[A] 'special' meeting is a meeting called for a special purpose and at which nothing can be done beyond *the objects specified for the call*." (emphasis added)); *id.* at 16, 760 S.E.2d at 792 ("Since *the permissible topics for a special meeting are restricted to the 'objects of the call*,' it is reasonable to infer that our General Assembly has purposefully chosen to mandate that an agenda be prepared for this type of meeting . . . ." (emphasis added)).

To interpret section 5-7-250(a) and section 2.202(3) of the Chapin Town Code otherwise would render these provisions a nullity. If the Mayor can disapprove an agenda for a special meeting called by a majority of Council members—an agenda that must be limited to the purpose(s) for calling the special meeting, *Lambries*, 409 S.C. at 15, 760 S.E.2d at 792—the special meeting will be left without a reason to proceed, effectively stripping the majority of its authority to call the meeting. We decline to infer such an intent on the part of Council when it adopted the Chapin Town Code. *See Somers*, 319 S.C. at 67, 459 S.E.2d at 843 ("[W]hen interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used."); *id.* at 68, 459 S.E.2d at 843 ("An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers."); *id.* ("In construing ordinances, the terms used must be taken in their ordinary and popular meaning.").

Likewise, we decline to infer such an intent on the part of the legislature when it enacted section 5-7-250(a). *See State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) ("All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." (quoting *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000))); *id.* ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with

the purpose, design, and policy of the lawmakers." (quoting *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992))); *id.* at 351, 688 S.E.2d at 575 ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the [l]egislature or would defeat the plain legislative intention."); *State v. Long*, 363 S.C. 360, 364, 610 S.E.2d 809, 811 (2005) ("The legislature is presumed to intend that its statutes accomplish something."); *Johnson*, 396 S.C. at 188, 720 S.E.2d at 520 ("In interpreting a statute, the court will give words their plain and ordinary meaning, and will not resort to forced construction that would limit or expand the statute.").

Based on the foregoing, Appellants acted within their authority under section 5-7-250(a) and section 2.202(3) of the Chapin Town Code when they called the two special meetings and published meeting agendas limited to the meetings' purposes without first presenting the agendas to the Mayor. The circuit court's invalidation of Council's actions at these two meetings on the ground that the agendas were not approved by the Mayor was based on an error of law and, thus, constituted an abuse of discretion.

CONCLUSION

Accordingly, we affirm the circuit court's March 18, 2014 order denying Appellants' motion for a preliminary injunction and dismissing their complaint. We reverse the circuit court's May 5, 2014 order invalidating Council's actions at the April 10 and 17, 2014 special meetings.

AFFIRMED IN PART and REVERSED IN PART.

SHORT and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Fred Gatewood, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-001199

Appeal From The Administrative Law Court
Ralph King Anderson, III, Administrative Law Judge

Opinion No. 5389
Heard November 2, 2015 – Filed March 9, 2016

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Douglas H. Westbrook, of Charleston, for Appellant.

Lake Eric Summers, of Malone Thompson Summers & Ott, LLC, of Columbia, for Respondent.

GEATHERS, J.: Appellant (Inmate), an inmate participating in a Prison Industries service project operated by Respondent South Carolina Department of Corrections (SCDC), challenges an order of the South Carolina Administrative Law Court (ALC) upholding SCDC's denial of Inmate's wage-related grievance.[1]

[1] Inmate's case was one of 197 consolidated appeals from SCDC's denial of wage-related grievances. In *Ackerman v. S.C. Dep't of Corr.*, 07-ALJ-04-0517-AP, the

Inmate argues the ALC erred in denying his motion to supplement the record. Inmate also argues the ALC erred in applying section 24-1-295 of the South Carolina Code (Supp. 2015) to determine the deductions from his gross wages. We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL HISTORY

In 1995, our legislature enacted section 24-3-430 of the South Carolina Code (2007) to authorize the expansion of the Prison Industries program into the private sector. This expansion allowed qualified private entities to use inmate labor but required the wages for participating inmates to be no less than "the prevailing wage for work of [a] similar nature in the private sector." Act No. 7, 1995 S.C. Acts 78. Section 24-3-430 became effective on July 1, 1995. *Id.* at 102. Subsequently, on September 30, 1998, SCDC entered into a contract with Williams Technologies, Inc. (WTI) for the employment of SCDC inmates on the premises of Lieber Correctional Institution (Lieber) in WTI's business of "disassembly and/or remanufacturing of its product lines at [Lieber]." The cover page for the contract document is entitled "Williams Technology Transmissions Service Contract."

The contract's "Scope of Work" provision states, in pertinent part, "Prison Industry inmates under the general oversight of SCDC will disassemble and/or remanufacture [WTI's] product lines according to engineering design and manufacturing specifications developed and provided by [WTI] . . . ." The contract also provides, "For all purposes, inmates shall be considered to be employees of SCDC." With regard to payment for services, the contract requires WTI to pay SCDC "$4.00 per hour per inmate for work performed[,] including training hours and hours in excess of the inmate's normal shift."

The payment provision further states,

ALC affirmed the denial of 196 of the grievances on the ground that they were not timely filed with SCDC and ordered Gatewood's appeal to be briefed on the merits. This court reversed the ALC's order affirming the denial of the other 196 grievances and remanded the case for consideration of these grievances on the merits. *Ackerman v. S.C. Dep't of Corr.*, Op. No. 5379 (S.C. Ct. App. filed February 10, 2016) (Shearouse Adv. Sh. No. 6 at 24).

> SCDC shall be responsible to pay inmate workers, *cover security costs and [Prison Industries] overhead*, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. . . .
>
> Thirty (30) days prior to each anniversary date of this agreement, SCDC and [WTI] may negotiate an increase in the per hour rate paid by [WTI] to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. *It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead*.
>
> [WTI] and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by [WTI] to SCDC for distribution to inmates.

(emphases added). The contract's cover page highlights the contract's "Requirements/Specifications," which include "Wage Rate: $4.00 per hour/per inmate; $.35/[hour] base for inmates." Also, the contract's terms concerning "Bonus Pay/Programs" indicate that the "starting base pay" for participating inmates is $0.35 per hour.

On July 20, 2001, the legislature enacted the first of a series of yearly budget provisos, effective for the fiscal year beginning July 1, permitting SCDC to pay participating inmates less than the prevailing wage for "service work":[2]

> The Director of [SCDC] may enter into contracts with private sector entities that would allow for inmate labor to be provided for prison industry service work. The use of such inmate labor may not result in the displacement of employed workers within the local region in which

[2] The 2001–2002 budget was enacted on July 20, 2001, for the fiscal year beginning July 1, 2001.

> work is being performed. Service work is defined as any work such as repair, replacement of original manufactured items, packaging, sorting, labeling, or similar work that is not original equipment manufacturing. *The department may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts, and such wages may be less than the prevailing wage for work of a similar nature in the private sector*.

H. 3687, Appropriation Bill 2001–2002, Part IB § 37.31 (Act No. 66, 2001 S.C. Acts 738) (emphasis added). The legislature enacted identical, or nearly identical, provisos for each following fiscal year until the 2007–2008 fiscal year, and on August 1, 2007, section 24-1-295 of the South Carolina Code, which codified the language in the provisos, became effective.[3] *See* S.C. Code Ann. § 24-1-295 (Supp. 2015) ("[SCDC] may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts and export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector."). This legislation also established mandatory deductions from the "gross earnings of the inmates engaged in prison industry service work in addition to any other required deductions." *Id.*

Inmate began working under the WTI contract in 2004—he received his first paycheck on October 18, 2004, and he filed his "Step 1" Inmate Grievance Form

[3] H. 4878, Appropriation Bill 2002–2003, Part IB § 37.25 (Act No. 289, 2002 S.C. Acts 3145); H. 3749, Appropriation Bill 2003–2004, Part IB § 37.23 (Act No. 91, 2003 S.C. Acts 1437); H. 4925, Appropriation Bill 2004–2005, Part IB § 37.23 (Act No. 248, 2004 S.C. Acts 2574); H. 3716, Appropriation Bill 2005–2006, Part IB § 37.22 (Act No. 115, 2005 S.C. Acts 1324); H. 4810, Appropriation Bill 2006–2007, Part IB § 37.22 (2006 Act No. 397); Act No. 68, 2007 S.C. Acts 288. The legislature sustained the Governor's veto of H. 3620, Appropriation Bill 2007–2008, Part IB § 37.21, the stated reason for the veto being, "the language is no longer necessary after I signed S. 182, the Prison Industries legislation. This proviso conflicts with the statutory changes and is unneeded." Therefore, from July 1, 2007 to August 1, 2007, there existed no authorization for SCDC to pay participating inmates below the prevailing wage. We address the import of this anomaly in section II of the Law/Analysis portion of this opinion.

with SCDC on this same date. In his grievance, Inmate requested the negotiated wage of $4.00 per hour. SCDC's Inmate Grievance System Policy, designated as Policy GA-01.12, provides for formal review of inmate complaints in two steps. A Step 1 grievance is evaluated by the prison's Warden, and any appeal from the Warden's decision to the "responsible official," is designated as "Step 2." The responsible official must render a decision on the appeal within sixty days, and this decision constitutes SCDC's final response in the matter.

On October 28, 2004, Lieber's Warden denied Inmate's Step 1 grievance. On November 8, 2004, Inmate filed his Step 2 Inmate Grievance Form, challenging SCDC's denial of the requested relief. On May 14, 2007, SCDC issued a final decision on Inmate's Step 2 grievance, basing its denial of relief on both the merits and the fifteen-day filing deadline set forth in paragraph 13.1 of Policy GA-01.12.[4] Inmate then appealed SCDC's decision to the ALC.

According to SCDC, Inmate received his last paycheck on April 13, 2009, during the pendency of his appeal to the ALC. On April 29, 2014, the ALC upheld SCDC's denial of Inmate's grievance on the ground that the deductions taken by SCDC from Inmate's gross wages were proper. This appeal followed.

ISSUES ON APPEAL

1. Did the ALC err in denying Inmate's motion to supplement the record?

2. Did the ALC err in applying section 24-1-295 of the South Carolina Code (Supp. 2015) rather than section 24-3-40 of the South Carolina Code (2007) to determine the deductions from Inmate's gross wages?[5]

3. Did the ALC err in holding that security and overhead constituted "other required deductions" for purposes of section 24-1-295?

---

[4] Paragraph 13.1 states, in pertinent part: "If informal resolution is not possible, the grievant will complete Form 10-5, Step 1 . . . and will submit the Form to *an employee designated by the Warden* . . . within 15 days of the alleged incident. *An inmate will submit a grievance within the time frames established in the policy*."

[5] Section 24-3-40 was amended in 2010; however, in no event would that amendment apply to Inmate because his last day of record working under the WTI contract was April 13, 2009.

4. Does section 24-1-295 apply retroactively to Inmate's pre-August 1, 2007 work?[6]

5. Did the ALC err in holding that the issue of overtime was not preserved for review?

6. Did the ALC err in denying Inmate's request for pre-judgment interest, post-judgment interest, costs, and attorney's fees?

7. Did the ALC err in declining to consider whether SCDC should process grievances for all inmates participating "in the program"?

8. Did the ALC err in declining to enjoin SCDC from further wage violations?

STANDARD OF REVIEW

Section 1-23-610(B) of the South Carolina Code (Supp. 2015) sets forth the standard of review when this court is sitting in review of a decision by the ALC on an appeal from an administrative agency. Here, there are no factual disputes. Rather, the issues on review involve questions of law. Therefore, our review of the ALC's decision is governed by item (d) of section 1-23-610(B), which allows this court to reverse the ALC's decision if it is affected by an error of law.

LAW/ANALYSIS

I. Motion to Supplement

Inmate argues the ALC erred in denying his motion to supplement the record of the grievance proceedings before SCDC. We hold any error in denying the motion was harmless because Inmate's sole issue before the ALC was whether he

[6] We combine this issue with the due process issue listed in Inmate's brief. In light of our analysis of the due process issue, we need not reach the issue concerning the impairment of contractual obligations. *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 address the remaining issues on appeal when resolution of a prior issue is dispositive).

was entitled to a wage of $4.00 per hour, a question of law not requiring review of Inmate's pay stubs and time cards, and Inmate's issues on appeal to this court are likewise issues of law. *See Judy v. Judy*, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009) ("Error is harmless where it could not reasonably have affected the result of the trial."); *id.* ("Generally, appellate courts will not set aside judgments due to insubstantial errors not affecting the result.").

II. Deductions

Inmate asserts the ALC erred in applying section 24-1-295 of the South Carolina Code (Supp. 2015) to determine the deductions from his gross wages earned prior to August 1, 2007 because (1) the parties did not raise this issue in their briefs and (2) section 24-3-40 rather than section 24-1-295 applies to determine deductions from his gross wages earned prior to August 1, 2007. We agree with Inmate that section 24-3-40 governs deductions from his gross wages earned prior to August 1, 2007, but only as to the month of July 2007.

As to Inmate's assertion that the parties did not raise the issue of deductions before the ALC, we note that in his "Level Three Brief," Inmate requested the ALC to calculate his back wages at "$4.00 per hour, less any deductions under [section] 24-3-40(A) applicable to [Inmate] . . . . No deduction should be made from [Inmate's] gross wages unless expressly authorized by [section] 24-3-40. Any ambiguity should be construed in [Inmate's] favor." In its brief, SCDC argued that deductions for overhead and security costs were authorized by the WTI contract. In reply, Inmate argued that SCDC's overhead and other expenses were "not allowable deductions from an inmate's gross wages under [section] 24-3-40." Therefore, the parties clearly raised the issue of deductions in their briefs before the ALC, and the ALC properly addressed the deductions required by statute and by the WTI contract.

As to which statute determines the deductions to be taken from participating inmates' gross wages, the ALC concluded that section 24-3-40 does not apply "because the [WTI contract] was a service work contract, and deductions from wages resulting from service work provided to private industries by inmates is governed by [s]ection 24-1-295, not [s]ection 24-3-40." In evaluating this conclusion, we begin with a chronology of the legislation concerning deductions from an inmate's "gross wages," a/k/a "gross earnings."

In 2004, when Inmate began working under the WTI contract, two separate legislative enactments concerning deductions were in place: (1) section 24-3-40 and (2) the budget proviso concerning "Prison Industry service work" accompanying the appropriation bill for fiscal year 2004–05. Section 24-3-40(A) states, "Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 *or in a prison industry program provided under Article 3 of this chapter* shall pay the prisoner's wages directly to [SCDC]." (emphasis added). The provisions in Article 3 of Chapter 3, in particular, S.C. Code Ann. § 24-3-430 (2007), created the Prison Industries program and established program standards. Further, section 24-3-40 requires SCDC to deduct the following amounts from the gross wages of an inmate: Twenty percent for court-ordered restitution or the State Office of Victim Assistance; thirty-five percent for any child support obligations; ten percent for the inmate's "purchase of incidentals"; ten percent for an escrow account "for the benefit of the prisoner"; and the "remaining balance" for federal and state taxes.

On the other hand, the proviso for fiscal year 2004–05 states, in pertinent part:

> [T]he Director of [SCDC] shall deduct the following from the gross earnings of the inmates engaged in Prison Industry service work. (1) If *restitution* to a particular victim or victims has been *court ordered*[,] . . . then *twenty percent (20%)* must be used to fulfill the restitution obligation. If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the ten percent (10%) [sic] must be applied to the South Carolina Victims' Compensation Fund. (2) *Ten percent (10%)* must be retained by the Department of Corrections to defray the *cost of the inmate's room and board*.

H. 4925, Appropriation Bill 2004–2005, Part IB § 37.23 (Act No. 248, 2004 S.C. Acts 2574) (emphases added).

Identical provisos accompanied the appropriation bills for fiscal years 2005–06, 2006–07, and 2007–08.[7] However, curiously, the legislature sustained the Governor's veto of the proviso for the 2007–08 fiscal year. *See supra* n.3. The Governor's stated reason for the veto was "the language is no longer necessary after I signed S. 182, the Prison Industries legislation. This proviso conflicts with the statutory changes and is unneeded." The referenced legislation, S. 182, added section 24-1-295 to the South Carolina Code to codify the language in the provisos authorizing service work contracts and payment below the prevailing wage. The Governor signed the legislation adding section 24-1-295 to the Code on June 13, 2007, but it did not become effective until August 1, 2007. Therefore, there existed no authorization for SCDC to enter into service work contracts or to pay inmates below the prevailing wage from July 1, 2007 to July 31, 2007. *See* S.C. Const. art. IV, § 21 (granting the Governor the power to veto "one or more of the items or sections contained in any bill appropriating money" and still approve of the residue); *Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. Control*, 407 S.C. 583, 593, 757 S.E.2d 408, 414 (2014) ("The Governor's line item veto is a negative power to void a distinct item."); *id.* at 595, 757 S.E.2d at 415 ("[T]he line item veto power is intended to be a negative power, the power to nullify, or at least suspend, legislative intent."); *S.C. Coin Operators Ass'n v. Beasley*, 320 S.C. 183, 187, 464 S.E.2d 103, 105 (1995) ("[T]he constitutional provisions [that] apply to bills appropriating money apply to the entire appropriations act."). Critically, this gap also left a void in deductions specific to service work contracts.

The Governor's veto message indicates he was apparently unaware that section 24-1-295 became effective on August 1, rather than July 1, 2007, or that a gap in the authorization of the program would be created. However, this court may not consider the Governor's veto message and its effect on the legislature's subsequent action in determining legislative intent. *See Amisub*, 407 S.C. at 600, 757 S.E.2d at 417 (stating the Governor's veto message does not have the force of law because it is neither a legislative act nor an Executive Order and that to hold otherwise "would violate the separation of powers doctrine by altering the allocation of powers granted to the three branches of government by our state's constitution").

---

[7] *See* H. 3716, Appropriation Bill 2005–2006, Part IB § 37.22 (Act No. 115, 2005 S.C. Acts 1324); H. 4810, Appropriation Bill 2006–2007, Part IB § 37.22 (2006 Act No. 397); Act No. 68, 2007 S.C. Acts 288; H. 3620, Appropriation Bill 2007–2008, Part IB § 37.21.

Accordingly, section 24-3-40 governed deductions from the gross earnings of inmates from July 1, 2007 until section 24-1-295 became effective on August 1, 2007. Section 24-1-295 requires the identical deductions required by section 24-3-40 but adds the language "in addition to any other required deductions," i.e., "The Director of [SCDC] shall deduct the following from the gross earnings of the inmates engaged in prison industry service work *in addition to any other required deductions* . . . ."[8] S.C. Code Ann. § 24-1-295 (Supp. 2015) (emphasis added).

In sum, the appropriation bills for the fiscal years 2004–05, 2005–06, and 2006–07 governed deductions from Inmate's gross earnings until the month of July

---

[8] There exists an unsettled question as to the meaning of the term "gross wages," as used in section 24-3-40, and the term "gross earnings," as used in section 24-1-295. Although not raised as a separate issue in this appeal, before the ALC, the parties differed on whether the "gross wages," a/k/a "gross earnings," established by the WTI contract are represented by the rate of $4.00 "per hour per inmate," which WTI agreed to pay to SCDC for "work performed." Neither the term "gross wages" nor the term "gross earnings" is defined in Title 24 of the South Carolina Code. Inmate argued that the $4.00 rate represents gross wages, while SCDC argued that the rate of $0.35 indicated on the contract's "bullet sheet" represents gross wages. The ALC found the $4.00 rate to be Inmate's gross wages. While SCDC argues on page 21 of its brief before this court that the rate of $0.35 represents gross wages, it conceded in oral argument that the ALC's finding on Inmate's gross wages should be affirmed.

Our supreme court addressed the term "gross wages," as used in section 24-3-40, in *Torrence v. S.C. Dep't of Corr.*, 373 S.C. 586, 646 S.E.2d 866 (2007). In *Torrence*, the plaintiffs alleged that the private industry sponsor paid SCDC $7.17 per hour for inmate labor and SCDC improperly diverted $1.92 from this amount and deposited it into an agency "Surplus Fund" before paying the plaintiffs $5.25 per hour. 373 S.C. at 590, 646 S.E.2d at 867. The court stated in dictum, "[I]f appellants prove true their allegation that the SCDC removes any of the money remitted by the private industry sponsor and then disburses the percentages listed in section 24-3-40 based on the lower rate, the SCDC would be in violation of the plain language of the statute which directs it to disburse the money based on the gross wages." 373 S.C. at 594 n.4, 646 S.E.2d at 870 n.4. Therefore, the court viewed the amount paid by the industry sponsor to SCDC as the gross wages.

2007; during July 2007, section 24-3-40 governed deductions from the prevailing wage that should have comprised Inmate's gross earnings for that month. Therefore, SCDC was not entitled to deduct security costs and overhead for July 2007. Finally, section 24-1-295 governed the deductions from Inmate's gross earnings from August 1, 2007 through April 13, 2009, the date Inmate received his last paycheck.

III. Other Required Deductions

Inmate asserts that the ALC erred in concluding that security costs and overhead constituted "other required deductions" for purposes of section 24-1-295. We disagree.

> All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. The Court should give words their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose.

State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (citations omitted).

The ALC concluded SCDC's security costs and Prison Industries overhead constituted "other required deductions" for purposes of section 24-1-295 because they were built into the $4.00 per hour rate WTI agreed to pay to SCDC for inmate labor. We agree. The contract's payment provision states, in pertinent part, "Thirty (30) days prior to each anniversary date of this agreement, SCDC and [WTI] may negotiate an increase in the per hour rate paid by [WTI] to SCDC. . . . *It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead*." (emphasis added).

Further, the application of the language "other required deductions" from section 24-1-295 to the WTI contract is reasonable because it is consistent with: (1) the statute's opening provision allowing SCDC to "*enter into contracts* with private sector entities that allow inmate labor to be provided for prison industry service work" (emphasis added); (2) its subsequent provision stating that SCDC may "*negotiate* the wage to be paid for inmate labor provided under prison industry service work *contracts* . . . ." (emphases added); and (3) the legislative intent underlying the creation of the Prison Industries program.[9] These provisions necessarily imply that SCDC has the flexibility to determine the amount it will charge the industry sponsor to compensate SCDC for inmate labor and any other costs SCDC must incur to make this work available for eligible inmates. *See Sweat*, 386 S.C. at 350, 688 S.E.2d at 575 ("All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." (quoting *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000))); *id.* ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." (quoting *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992))).

[9] *See* S.C. Code Ann. § 24-3-310 (2007) ("Since the means now provided for the employment of [prison] labor is inadequate to furnish a sufficient number of [inmates] with employment, it is the intent of this article to: (1) further provide more adequate, regular, and suitable employment for the [inmates] of this State, consistent with proper penal purposes; (2) further utilize the labor of [inmates] for self-maintenance and for reimbursing this State for expenses incurred by reason of their crimes and imprisonment; (3) effect the requisitioning and disbursement of prison products directly through established state authorities with no possibility of private profits; and (4) provide prison industry projects designed to place inmates in a realistic working and training environment in which they are able to acquire marketable skills and to make financial payments for restitution to their victims, for support of their families, and for the support of themselves in the institution."); *State v. Prince*, 335 S.C. 466, 472, 517 S.E.2d 229, 232 (Ct. App. 1999) ("[T]he court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law.").

Based on the foregoing, the ALC did not err in concluding that security and overhead expenses constitute "other required deductions" for purposes of section 24-1-295.

IV. Retroactive Application

Inmate maintains the ALC's retroactive application of section 24-1-295 to his wages earned prior to the effective date of section 24-1-295, August 1, 2007, violates his right to due process of law.[10] Inmate argues the statute's addition of "other required deductions" to the deductions previously required by section 24-3-40 reduced his net wages beginning on August 1, 2007, and applying this result retroactively would divest him of his right to certain wages that vested when they were earned prior to August 1, 2007. We agree.

Preservation

SCDC contends Inmate did not preserve the question of retroactivity for review because he did not raise it before the ALC. However, the ALC's conclusion that section 24-1-295 applies to Inmate's gross earnings implies section 24-1-295 operates retroactively, given that Inmate began working for the WTI project almost three years before section 24-1-295 became law. Further, the question of whether section 24-3-40 or section 24-1-295 applies to Inmate's gross wages fairly encompasses the question of whether 24-1-295 applies retroactively to the wages earned before the statute's effective date. Therefore, it is proper to address the issue on the merits.[11]

---

[10] Amend. XIV, § 1, U.S. Const.; S.C. Const. Art. I, § 3. As a second ground for his argument that section 24-1-295 cannot operate retroactively, Inmate maintains retroactive operation of the statute would impair the obligations of the WTI contract. Because we agree with Inmate's first ground, we need not reach his second ground. *See Futch*, 335 S.C. at 613, 518 S.E.2d at 598 (holding an appellate court need not address the remaining issues on appeal when resolution of a prior issue is dispositive).

[11] SCDC also contends the ALC did not apply section 24-1-295 retroactively to Inmate's wages earned prior to August 1, 2007, but rather concluded that security costs and overhead were contractually required deductions before section 24-1-295 was enacted. However, in its order, the ALC expressly stated that the deductions required by the WTI contract "constituted 'other required deductions' pursuant to

SCDC also argues Inmate did not raise his due process argument before the ALC, and, therefore, it is not preserved for review. We disagree. The question of whether applying a statute retroactively violates due process is fairly subsumed within the question of whether the statute in fact operates retroactively. In other words, the very standard for determining whether a statute operates retroactively requires analyzing its potential to divest or limit a vested right. *See Dunham v. Davis*, 229 S.C. 29, 35, 91 S.E.2d 716, 718 (1956) (holding retroactive application of a statute relaxing the stringency of a tax sale procedure to respondents, whose rights in certain real property vested prior to the statute's enactment "would be clearly unconstitutional as depriving them of property without due process of law"); *see also Edwards v. State Law Enf't Div.*, 395 S.C. 571, 579, 720 S.E.2d 462, 466 (2011) ("[A]bsent a specific provision or clear legislative intent to the contrary, statutes are to be construed prospectively rather than retroactively, unless the statute is remedial or procedural in nature."); *Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 106, 713 S.E.2d 650, 655 (Ct. App. 2011) ("A statute is remedial where it creates new remedies for existing rights unless it violates a contractual obligation, creates a new right, or divests a vested right."); *Edwards*, 395 S.C. at 580, 720 S.E.2d at 467 ("[A] statute that limits a right is generally not procedural.").

Merits

Section 24-1-295 authorizes SCDC to "enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work." The statute further authorizes SCDC to negotiate the wage to be paid for inmate labor at less than the prevailing wage and requires SCDC to deduct specified amounts from an inmate's gross earnings, "in addition to any other required deductions," for the following purposes: twenty percent for victim restitution;[12] thirty-five percent for the inmate's child support obligations, if any;

---

[s]ection 24-1-295." The ALC further stated "Appellant was never entitled to actually receive $4.00 per hour for his labor, though that is the rate by which his gross wages were to be calculated for purposes of section 24-1-295."

[12] In the event there exists no court-ordered restitution or this obligation has already been satisfied, the twenty percent is required to be paid to the South Carolina Victim's Compensation Fund. S.C. Code Ann. § 24-1-295(2) (Supp. 2015).

ten percent for an inmate's purchase of incidentals; ten percent for an interest-bearing escrow account for the inmate's benefit; and the remaining balance for any federal or state taxes.[13] These specified amounts are identical to those required by section 24-3-40.

"[A]bsent a specific provision or clear legislative intent to the contrary, statutes are to be construed prospectively rather than retroactively, *unless* the statute is remedial or procedural in nature." *Edwards*, 395 S.C. at 579, 720 S.E.2d at 466 (emphasis added). Therefore, it is necessary to determine whether the statute in question is remedial or procedural in evaluating the ALC's retroactive application of section 24-1-295 to Inmate's wages earned prior to August 1, 2007.

"A statute is remedial where it creates new remedies for existing rights *unless* it violates a contractual obligation, creates a new right, or *divests a vested right*." *Se. Site Prep*, 394 S.C. at 106, 713 S.E.2d at 655 (emphases added). On the other hand, "a 'procedural' law sets out a mode of procedure for a court to follow, or 'prescribes a method of enforcing rights.'" *Edwards*, 395 S.C. at 580, 720 S.E.2d at 466 (quoting Black's Law Dictionary 1083 (1979)). However, "a statute that limits a right is generally not procedural." *Id.* at 580, 720 S.E.2d at 467. These standards for remedial and procedural statutes dovetail with Inmate's argument that retroactive application of section 24-1-295 violates due process by divesting his vested right to earn a certain net wage prior to the effective date of section 24-1-295. To evaluate this argument, we first examine Inmate's right to wages, then determine how the implementation of section 24-1-295 should have affected his net wages.

Prior to August 1, 2007, Inmate had a right to wages pursuant to (1) the budget provisos for fiscal years 2004–05, 2005–06, and 2006–07 and (2) as to July 2007, section 24-3-430(D) and section 24-3-315 of the South Carolina Code (2007). *See* H. 4925, Appropriation Bill 2004–2005, Part IB § 37.23 (Act No. 248, 2004 S.C. Acts 2574) (authorizing SCDC to negotiate the wage to be paid for inmate labor and requiring SCDC to deduct certain amounts from a participating inmate's gross wages, thus, implying a right to compensation); H. 3716, Appropriation Bill 2005–2006, Part IB § 37.22 (Act No. 115, 2005 S.C. Acts 1324) (same); H. 4810, Appropriation Bill 2006–2007, Part IB § 37.22 (2006 Act No.

[13] Any funds not used to pay these taxes "must be made available to the inmate for the purchase of incidentals." S.C. Code Ann. § 24-1-295(6) (Supp. 2015).

397) (same); S.C. Code Ann. § 24-3-315 (2007) ("The director must determine prior to using inmate labor in a prison industry project that . . . the rates of pay and other conditions of employment are not less than those paid and provided for work of similar nature in the locality in which the work is performed."); S.C. Code Ann. § 24-3-430(D) (2007) ("No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector."); *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 424, 602 S.E.2d 56, 57 (2004) ("[W]here . . . the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law."). Further, Inmate's right to a certain wage became vested as soon as he earned that wage. *Cf. Bales v. Aughtry*, 302 S.C. 262, 264, 395 S.E.2d 177, 179 (1990) ("Leave benefits are part of compensation earned for services rendered and the right to receive that compensation vests once the services are rendered.").

Prior to the effective date of section 24-1-295, the appropriation bills for the fiscal years 2004–05, 2005–06, and 2006–07 governed deductions from Inmate's gross earnings until the month of July 2007; during July 2007, section 24-3-40 governed deductions from Inmate's gross earnings. When section 24-1-295 became effective, the "other required deductions" language supplemented those deductions already required by section 24-3-40. In other words, section 24-3-40 does not accommodate "any other required deductions." Unlike section 24-1-295, section 24-3-40 does not add such a catch-all phrase to the specifically enumerated deductions. Further, section 24-3-40 requires SCDC to use the balance remaining after all other listed deductions are taken to pay federal and state taxes, which reduces the participating inmate's tax debts. Therefore, the increase in deductions authorized by section 24-1-295 beginning on August 1, 2007, theoretically resulted in less net income to Inmate.[14]

Applying this increase in deductions retroactively to gross wages earned during July 2007 would divest Inmate's vested right to a higher net wage for that month, i.e., his gross wages less only those deductions authorized by section 24-3-40, and, therefore, would violate his due process rights.[15] *See Dunham*, 229 S.C. at

[14] We use the word "theoretically" because it is likely that SCDC was already taking deductions for security costs and overhead from Inmate's gross wages.

[15] Likewise, applying section 24-1-295 retroactively to Inmate's gross wages earned prior to July 2007, when the provisos for fiscal years 2004–05, 2005–06, and 2006–07 would otherwise govern deductions, would violate due process to the

35, 91 S.E.2d at 718 (holding retroactive application of a statute relaxing the stringency of a tax sale procedure to respondents, whose rights in certain real property vested prior to the statute's enactment "would be clearly unconstitutional as depriving them of property without due process of law"); *cf. Wicker*, 360 S.C. at 424, 602 S.E.2d at 57 ("[W]here . . . the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law."). Accordingly, section 24-1-295 is neither remedial nor procedural and operates prospectively only.

Based on the foregoing, we reverse the ALC's retroactive application of section 24-1-295 to Inmate's gross wages earned prior to August 1, 2007.

V. Overtime

Inmate contends the ALC erred in concluding that the issue of overtime pay was not preserved for its review. We disagree.

The ALC noted that Inmate did not request overtime pay in his Step 1 Inmate Grievance Form or his Step 2 form. The ALC also disagreed with Inmate's assertion that SCDC itself raised the issue in its Step 1 and Step 2 responses, referencing the following language from those responses: "*To the extent* that you demand overtime wages in your appeal or grievance, I conclude that neither *Adkins* nor *Wicker* . . . require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance." (emphasis added).[16] The ALC concluded that Inmate did not raise this issue in his grievance forms, and, therefore, "there was no extent to which [Inmate] demanded overtime wages . . . ."

An issue that is not raised to an administrative agency is not preserved for appellate review by the ALC. *Cf. Kiawah Resort Assocs. v. S.C. Tax Comm'n*, 318 S.C. 502, 505, 458 S.E.2d 542, 544 (1995) ("In reviewing a final decision of an administrative agency under [S.C. Code Ann.] § 1-23-380, the circuit court

---

extent that imposing the deductions authorized by section 24-1-295 would reduce Inmate's net wages from what they would have been as a result of taking the deductions allowed by the provisos.

[16] *See Wicker*, 360 S.C. 421, 602 S.E.2d 56 (2004); *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 602 S.E.2d 51 (2004).

essentially sits as an appellate court to review alleged errors committed by the agency. As such, the circuit court, like this [c]ourt, has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency." (citations omitted)). Even if the issue has been addressed by the agency, it is not preserved if the appellant did not raise it. *Cf. Wierszewski v. Tokarick*, 308 S.C. 441, 444 n.2, 418 S.E.2d 557, 559 n.2 (Ct. App. 1992) ("An issue is not preserved for appeal merely because the trial court mentions it."). In *Wierszewski*, the family court judge "suggested at the hearing that attorney's fees might be authorized under" a certain statute. *Id.* This court declined to address the point "because it was not raised in the petition or addressed in the order." *Id.*

Here, while the issue of overtime was addressed in SCDC's written determination, rather than merely in a hearing, the weight of authority concerning issue preservation requires an appellant to initiate consideration of the issue. *See, e.g.*, *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("[I]it is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error."); *id.* at 301–02, 641 S.E.2d at 907 ("There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised *by the appellant*, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." (emphasis added) (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002))); *Mize v. Blue Ridge Ry. Co.*, 219 S.C. 119, 129–30, 64 S.E.2d 253, 258 (1951) (holding the trial court's discussion of a question in ruling on a directed verdict motion did not "have the effect of enlarging the grounds" on which the appellant made the motion); *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 381–82, 597 S.E.2d 181, 186 (Ct. App. 2004) (stating that the issue raised on appeal was raised to the trial court by the respondent, not by the appellant, and, therefore, the issue was not preserved for appellate review).

Based on the foregoing, the ALC properly declined to address the merits of Inmate's argument concerning overtime pay.

VI. Interest, Costs, and Attorney's Fees

Inmate argues if he is the prevailing party, he is entitled to petition the ALC for costs and attorney's fees as well as pre- and post-judgment interest on any back wages due. Because we reverse the ALC's conclusion that section 24-1-295

applies to Inmate's gross earnings prior to August 1, 2007, we remand the issue of Inmate's entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest to the ALC for reconsideration in light of this opinion.

VII. Processing Grievances for All Participating Inmates

Inmate argues the ALC erred in declining to consider the issue of whether SCDC should be ordered to process grievances for other inmates participating "in the program" who did not file their own grievances. We disagree.

ALC Rules 51 through 66 govern "Special Appeals," i.e., "matters heard on appeal from final decisions pursuant to *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000)." ALC Rule 51. Specifically, ALC Rule 65 states, in pertinent part: "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."

Appearing immediately after the text of Rule 65 are the following notes. While not having authoritative value, they are instructive: "Rule 65 incorporates the portion of Rule 220, SCACR, which allows the judge to affirm upon any ground appearing in the Record and *to decline to address points which are without merit*. Motions for reconsideration are not allowed." (emphasis added).

Inmate implies that the ALC could not rely on Rule 65 unless it expressly stated in its order that the issue was manifestly without merit. However, there is no indication in the ALC rules that an opinion must specifically state that an appellant's point is "manifestly without merit" in order to avoid addressing the point. Here, the ALC implicitly found the issue in question to be manifestly without merit, and we agree with that assessment. *See* Rule 220(b)(2), SCACR ("The Court of Appeals need not address a point which is manifestly without merit."); ALC Rule 65 ("The Administrative Law Judge . . . need not address a point which is manifestly without merit.").

Based on the foregoing, the ALC did not err in declining to address the issue in question.

VIII. Injunction

Finally, Inmate asserts the ALC erred in declining to entertain his request for an injunction against SCDC's future wage violations. We disagree and affirm the ALC on this issue. *See* Rule 220(b)(2), SCACR ("The Court of Appeals need not address a point which is manifestly without merit.").

CONCLUSION

Accordingly, we reverse the ALC's conclusion that section 24-1-295 applies retroactively to Inmate's gross wages earned prior to August 1, 2007. We remand the issue of Inmate's entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest to the ALC for reconsideration in light of this opinion. We affirm the ALC as to all other issues of this appeal.

AFFIRMED IN PART, REVERSED IN PART, and REMANDED.

SHORT and MCDONALD, JJ., concur.