Judicial Merit Selection Commission

Erin B. Crawford, Chief Counsel
Kate Crater, Counsel

Post Office Box 142
Columbia, South Carolina 29202
(803) 212-6623

M E D I A R E L E A S E

March 7, 2024

The Judicial Merit Selection Commission is accepting applications for the judicial office listed below:

A vacancy will exist in the office held by the Honorable John W. Kittredge, Justice of the Supreme Court, Seat 3, upon his ascendance to the position of Chief Justice of the Supreme Court on August 1, 2024. The successor will serve the remainder of the unexpired term, which expires July 31, 2028.

In order to receive application materials, a prospective candidate must notify the Commission in writing of his or her intent to apply. Note that an email will suffice for written notification. Correspondence and questions should be directed to the Judicial Merit Selection Commission as follows:

Erin B. Crawford, Chief Counsel
Post Office Box 142
Columbia, South Carolina 29202
ErinCrawford@scsenate.gov or (803) 212-6689

JUDICIAL MERIT SELECTION COMMISSION
S C R E E N I N G S C H E D U L E
Spring 2024

Media Release Announcing Vacancy/
Notice to Supreme Court.....Thursday, March 7, 2024

Deadline for Application .....**12:00 Noon on Monday, April 8, 2024**

Media Release Announcing Candidate/
Notice to Citizens Advisory Committee .....Monday, April 8, 2024

Ballotbox to E-Mail Survey to Bench and Bar .....Monday, April 8, 2024

PDQ Summary to SC Bar and
Citizens Committee..... Tuesday, April 9, 2024

Citizens Committee Interview.....Friday, April 19, 2024

Deadline for Ballotbox Surveys ..... Monday, April 22, 2024

SC Bar Interview.....Tuesday, April 23, 2024

Deadline for Complaints .....**12:00 Noon on Thursday, April 25, 2024**

Report of Citizens Committees due ..... Friday, April 26, 2024

Report of SC Bar due..... Monday, April 29, 2024

SLED Report due..... Monday, April 29, 2024

Interview..... Friday, May 3, 2024

Public Hearing .....Thursday, May 9, 2024

**Nomination Submitted/Draft Report Published ..... Monday, May 20, 2024

Final Report Issued (End of 48-Hour Period).. **12:00 Noon**, **Wednesday, May 22**, **2024**

Election..... **12:00 Noon on Wednesday, June 5, 2024

**Dates to be confirmed.

The Supreme Court of South Carolina

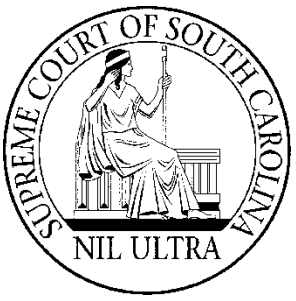
Request for Written Comments

By Order dated November 16, 2022, the Supreme Court adopted a Pilot Program for the Designation of Secure Leave Periods by Lawyers. Under the Pilot Program, lawyers may electronically designate up to three weeks of secure leave each year, during which they are protected from appearing in a trial, hearing, or other court proceeding. Secure leave procedures are intended to enable lawyers to easily schedule secure leave periods in advance, without requiring court approval, that are universal and govern all the courts of this state.

As part of its evaluation of the Pilot Program, the Supreme Court is accepting written comments about the Pilot. The Pilot Order may be viewed at: https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2022-11-16-01.

Persons or entities desiring to submit written comments may submit their comments to the following email address, secureleavecomments@sccourts.org, on or before April 3, 2024. Comments must be submitted as an attachment to the email as either a Microsoft Word document or in Adobe Acrobat portable document format (.pdf).

Columbia, South Carolina
March 13, 2024



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 10
March 13, 2024
Patricia A. Howard, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

None

PETITIONS - UNITED STATES SUPREME COURT

None

EXTENSION TO FILE PETITION - UNITED STATES SUPREME COURT

None

PETITIONS FOR REHEARING

THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

PETITIONS FOR REHEARING

6047 – Amazon Services v. SCDOR Pending

6048 – Catherine Gandy v. John Gandy, Jr. Pending

6051 – Tyrone Anderson v. State of South Carolina Pending

EXTENSIONS TO FILE PETITION FOR REHEARING

None

PETITIONS – SUPREME COURT OF SOUTH CAROLINA

5933 – The State v. Michael Cliff Eubanks Pending

5946 – The State v. Frankie L. Davis, III Pending

5963 – Solesbee v. Fundamental Clinical Pending

5965 – National Trust for Historic Preservation v. City of North Charleston Pending

5972 – McEntire Produce v. SCDOR Pending

5974 – The State v. Calvin D. Ford Denied 3/5/2024

5975 – Rita Glenn v. 3M Company Pending

5986 – The State v. James E. Daniels, Jr. Pending

5987– The State v. Tammy C. Moorer Pending

5988 – The State v. Sidney S. Moorer (2) Pending

5992 – Rufus Rivers v. James Smith, Jr. Pending

5995 – The State v. Kayla M. Cook Pending

5996 – Palmetto Pointe v. Tri-County Roofing	Pending
5999 – Jerome Campbell v. State	Pending
6001 – Shannon P. Green v. Edward C. McGee	Pending
6004 – Joseph Abruzzo v. Bravo Media Productions, LLC	Pending
6007 – Dominic A. Leggette v. State	Pending
6008 – Tekayah Hamilton v. Regional Medical Center	Pending
6009 – John Doe v. Bishop of Charleston	Pending
6011 – James E. Carroll, Jr. v. Isle of Palms Pest Control, Inc.	Pending
6013 – Jamaine Holman v. SCELC	Pending
6016 – Vista Del Mar v. Vista Del Mar, LLC	Pending
6019 – Portfolio Recovery Associates, LLC v. Jennifer Campney	Pending
6020 – Joseph Kelsey, #217218 v. SCDPPPS	Denied 3/5/2024
6021 – Stewart Buchanan, #69848 v. SCDPPPS	Pending
6022 – J&H Grading & Paving v. Clayton Construction	Pending
6025 – Gerald Nelson v. Christopher S. Harris	Pending
6028 – James Marlowe v. SCDOT	Pending
6029 – Mark Green v. Wayne B. Bauerle	Pending
6030 – James L. Carrier v. State	Pending
6031 – The State v. Terriel L. Mack	Pending
6032 – The State v. Rodney J. Furtick	Pending

2022-UP-326 – Wells Fargo Bank v. Michelle Hodges Denied 3/5/2024

2022-UP-380 – Adonis Williams v. State Pending

2022-UP-415 – J. Morgan Kearse v. The Kearse Family Education Trust Pending

2022-UP-417 – Whitfield v. Schimpf Granted 3/5/2024

2022-UP-425 – Michele Blank v. Patricia Timmons (2) Pending

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

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

2023-UP-011 – Therese Hood v. USAA Granted 3/5/2024

2023-UP-037 – Diana Bright v. Craig Bright Pending

2023-UP-055 – M. Baron Stanton v. Town of Pawleys Island Pending

2023-UP-062 – Raglins Creek Farms, LLC v. Nancy D. Martin Pending

2023-UP-070 – James Kincannon v. Ashely Griffith Pending

2023-UP-086 – Henry Nesbit, Jr. v. State Denied 3/5/2024

2023-UP-087 – The State v. Seth H. Smith Pending

2023-UP-091 – The State v. Dale E. King Pending

2023-UP-096 – Viola M. Hackworth v. Bayview Manor LLC Pending

2023-UP-119 – The State v. Angelita Wright Denied 3/5/2024

2023-UP-121 – Mathew C. Dwyer v. State Pending

2023-UP-126 – Innovative Waste Management v. Crest Energy Partners Pending

2023-UP-130 – The State v. Keunte D. Cobbs (2)	Denied 3/5/2024
2023-UP-132 – Monica Brown-Gantt v. Centex Real Estate	Pending
2023-UP-138 – In the Matter of John S. Wells	Pending
2023-UP-143 – John Pendarvis v. SCLD	Pending
2023-UP-151 – Deborah Weeks v. David Weeks	Pending
2023-UP-156 – Haley Burns v. Julius Burns	Denied 3/5/2024
2023-UP-158 – Herman Holcomb v. City of North Augusta	Pending
2023-UP-161 – The State v. Terrell D. Knighter	Pending
2023-UP-172 – The State v. Gary M. Wirtz	Pending
2023-UP-177 – John Mayers v. Konan Henthorn	Pending
2023-UP-178 – CRM of the Carolinas, LLC v. Trevor W. Steel	Pending
2023-UP-179 – Ronald Mims v. Diane Ray	Pending
2023-UP-180 – The State v. Samuel L. Burnside	Pending
2023-UP-201 – Nancy Morris v. State Fiscal Accountability Authority	Pending
2023-UP-202 – SCE&G v. Pitch Landing, LLC	Pending
2023-UP-206 – Andrew McIntire v. Red Bay Constructors Corp.	Pending
2023-UP-232 – Beachwalk Hotel & Condominiums Association, Inc. v. The Town of Hilton Head Island (2)	Pending
2023-UP-236 – U.S. Bank, NA v. Alyce F. Otto	Pending
2023-UP-239 – Wilmington Savings Fund Society v. Rex A. Field	Pending

2023-UP-241 – John Hine v. Timothy McCrory	Pending
2023-UP-243 – David J. Benjamin v. State	Pending
2023-UP-244 – Logan Wood v. Horry County School District	Pending
2023-UP-246 – Ironwork Productions, LLC v. Bobcat of Greenville, LLC	Pending
2023-UP-249 – Buck Investments, LLC v. ROA, LLC	Pending
2023-UP-254 – In the Matter of Lauren Martel	Pending
2023-UP-258 – The State v. Terry R. McClure	Pending
2023-UP-260 – Thomas C. Skelton v. First Baptist Church	Pending
2023-UP-261 – Mitchell Rivers v. State	Pending
2023-UP-263 – Rory M. Isaac v. Laura Kopchynski	Pending
2023-UP-264 – Kathleen A. Grant v. Nationstar Mortgage, LLC	Pending
2023-UP-272 – Estate of Barbara Owens v. Fundamental Clinical and Operational Services, LLC	Pending
2023-UP-274 – Terrence "Terry" Carroll v. Debra Mowery	Pending
2023-UP-281 – Armando Acevedo v. Hunt Valley Holdings, LLC	Pending
2023-UP-283 – Brigette Hemming v. Jeffrey Hemming	Pending
2023-UP-289 – R-Anell Housing Group, LLC v. Homemax, LLC	Pending
2023-UP-290 – Family Services Inc. v. Bridget D. Inman	Pending
2023-UP-293 – NCP Pilgrim, LLC v. Mary Lou Cercopely	Pending
2023-UP-295 – Mitchell L. Hinson v. State	Pending

2023-UP-300 – SCDSS v. Kristie Taylor and George Cleveland, III (2)
Denied 3/6/2024

2023-UP-301 – Olivia M. Thompson v. College of Charleston Pending

2023-UP-311 – The State v. Joey C. Reid Pending

2023-UP-315 – Capital Bank, N.A. v. Rosewood Holdings, LLC Pending

2023-UP-321 – Gregory Pencille, #312332 v. SCDC (2) Pending

2023-UP-324 – Marvin Gipson v. Coffey & McKenzie, P.A. Pending

2023-UP-326 – SCDSS v. Joseph Green (2) Pending

2023-UP-329 – Elisa Montgomery Edwards v. David C. Bryan, III Pending

2023-UP-343 – The State v. Jerome Smith Pending

2023-UP-352 – The State v. Michael T. Means Pending

2023-UP-355 – Terri Sciarro v. Matthew Sciarro Pending

2023-UP-365 – The State v. Levy L. Brown Pending

2023-UP-366 – Ray D. Fowler v. Pilot Travel Centers, LLC Pending

2023-UP-375 – Sharyn Michali v. Eugene Michali Pending

2023-UP-398 – The State v. Rashawn M. Little Pending

2023-UP-399 – The State v. Donnielle K. Matthews Pending

2023-UP-406 – Carnie Norris v. State Pending

2024-UP-033 – The State v. David A. Little, Jr. Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of David J. Gundling, Respondent.

Appellate Case No. 2023-001046

Opinion No. 28195
Submitted February 21, 2024 – Filed March 13, 2024

DISBARRED

Disciplinary Counsel William M. Blitch, Jr., Deputy Disciplinary Counsel Ericka M. Williams, and Assistant Disciplinary Counsel Jeffrey I. Silverberg, all of Columbia, for the Office of Disciplinary Counsel.

Desa Ballard, of Ballard & Watson, of West Columbia, 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, agrees to pay costs, and consents to the imposition of any sanction set forth in Rule 7(b), RLDE, Rule 413, SCACR. We accept the Agreement and disbar Respondent from the practice of law in this state, retroactive to the date of his interim suspension. The facts, as set forth in the Agreement, are as follows.

I.

Respondent was admitted to practice law in South Carolina in 1984. He has no prior disciplinary history. The Agreement in this case involves two separate disciplinary complaints.

Matter A

In 2016, Respondent prepared a revocable trust (Trust) for Client A. The Trust Agreement provided that, upon Client A's death, the Trust would be used for exclusively charitable purposes, and Respondent was named Trustee of the Trust. The Trust Agreement also identified several specific charitable organizations as beneficiaries and allowed the Trustee to choose additional charitable organizations located in Horry and Georgetown Counties to receive contributions in the amount of $5,000. The Trust Agreement also specifically provided that the Trustee is prohibited from using either the Trust or its assets for personal gain.

Upon the death of Client A in 2018, Respondent became Trustee of the Trust, and billed the Trust for his services and expenses through his law firm. Over the next year, Respondent transferred funds from the Trust's brokerage account into his law firm's escrow account and made charitable distributions and paid taxes on behalf of the Trust. Beginning in April 2020, Respondent made a series of six distributions from the Trust to pay tuition for his daughter's attendance at a school in Alabama (School) that conducted a long-term treatment program for girls with mental health and behavioral issues. In making the initial payment to the School, Respondent misrepresented to the admissions coordinator that he had received a grant from a trust to pay his daughter's tuition. Over the next twelve months, Respondent made six separate payments from the Trust totaling $52,000 to fund his daughter's attendance at the School. In the process of transferring the funds from the Trust's brokerage account, Respondent instructed his staff to prepare invoices that misrepresented the purpose for which the transferred funds would be used. Respondent admits he knew at the time that this money was not his to spend for personal expenses and that using the Trust's funds to pay his daughter's tuition violated both the terms of the Trust and the fiduciary duties he owed to the Trust and its beneficiaries.

In late 2020, Respondent determined the Trust would benefit from investing in real estate, given the volatility in the stock market at the time. Respondent began

identifying potential investment properties and invited his son to join him in looking at several properties in the Charleston area. On October 28, 2020, Respondent, on behalf of the Trust, entered a contract to purchase a townhome (Townhome). Respondent subsequently assigned the real estate contract to his son and agreed to loan his son $270,000 from the Trust to fund the purchase of the Townhome. On December 3, 2020, Respondent's son granted a mortgage to the Trust and signed a promissory note in the amount of $270,000, which represented the full purchase price for the Townhome, along with interest at 3.00%. Respondent admits his son would not have qualified for 100% financing from a traditional mortgage lender. Respondent served as the closing attorney for the purchase transaction for the Townhome, representing both his son and the Trust. Respondent did not advise his son of the desirability of seeking independent counsel concerning the terms of the loan from the trust or obtain informed consent from his son regarding the existence of a concurrent conflict of interest. Respondent did not accept attorney's fees for handling the closing transaction, but he did accept a commission in the amount of $6,750 for serving as the real estate broker.[1] Respondent admits he directly benefitted from this transaction involving the Trust's assets and that his use of Trust funds to finance his son's purchase of the Townhome constituted a breach of his fiduciary duty owed to the Trust and its beneficiaries.

After closing the transaction on the Townhome, Respondent did not monitor the loan to ensure his son was making timely payments. In December 2021, Respondent learned his son had missed two monthly loan payments and gave his son money towards the outstanding balance. Respondent considered having his son refinance the loan on the Townhome so the Trust would no longer serve as the mortgagee; however, due to a rise in interest rates, Respondent's son was unable to afford monthly payments on a new loan, and Respondent's son decided to sell the Townhome. In April 2023, Respondent's son sold the Townhome for $375,000—a total of $105,000 more than the Townhome's initial purchase price. Respondent's son repaid the Trust from the proceeds of this sale.

During the summer of 2021, Respondent's real estate paralegal confronted him about the payments the Trust had made to the School for his daughter's tuition and

[1] Respondent is the sole owner of a real estate brokerage company, North Inlet Realty, LLC. The commission check was issued to this entity. The commission was paid from the seller's closing proceeds.

the propriety of the Trust loaning money to Respondent's son to purchase the Townhome. The paralegal was particularly concerned that she could get in trouble for assisting with the closing on the Townhome. Respondent informed the paralegal he knew he had to repay the money and that he was taking steps to do so. In October 2021, the paralegal advised Respondent that she intended to resign and that her primary concern was that she believed Respondent's use of Trust funds was inappropriate and she was concerned she might get in trouble because she had some knowledge of Respondent's actions. Soon thereafter, Respondent disclosed his conduct to his law partners and self-reported his conduct to ODC on November 30, 2021. Respondent's paralegal retained her position with the law firm.

Prior to submitting his self-report, Respondent executed individual promissory notes for each of the six disbursements he made to the School for his daughter's tuition, charging himself 3.25% interest, which he admits was below market rate. Respondent subsequently repaid the Trust a total of $54,136.28 on the $52,000 he misappropriated. Respondent also discovered that he overbilled the Trust a total of $1,060 for his services as Trustee, and this amount was reimbursed by Respondent's law firm.[2] By order dated December 13, 2021, Respondent was placed on interim suspension following his self-report. *In re Gundling*, 436 S.C. 200, 871 S.E.2d 882 (2021).

Matter B

Prior to 2008, Respondent represented Wife and Husband in several legal matters. As a result of the economic recession in 2008, Wife and Husband, who owned several investment properties, began experiencing financial hardship, and creditors obtained adverse judgments in various debt collection actions. Several of the couple's properties, including their personal residence, went into foreclosure, and Respondent represented Wife and Husband in many of the foreclosures and other actions. Respondent failed to timely serve and file an answer on behalf of Wife and Husband in a 2014 foreclosure action.

On several occasions in the fall of 2015, Wife approached Respondent for money

[2] Respondent explains that he billed his time at his regular hourly rate of $300 instead of the $200 hourly rate permitted by the terms of the Trust Agreement. Respondent maintains this was inadvertent and a result of the default settings in the law firm's billing software.

claiming she and her husband did not have enough money to buy food. Respondent initially refused the requests because he did not have the money to lend, and he did not want to loan the couple money as they owed him approximately $45,000 in legal fees that had remained unpaid for some time. However, Wife continued to approach Respondent for financial assistance. Wife advised that her husband, who was a physician, was leaving his practice and would have access to funds in January 2016. Based on Wife's representations, Respondent encouraged his daughter to loan Wife money from settlement proceeds his daughter had recovered in connection with a motor vehicle accident. Respondent's daughter agreed to make two separate loans to Wife and Husband in the amounts of $5,000 and $9,000, with specified amounts of interest and late payment fees set forth in the promissory notes. Respondent represented his daughter in both loan transactions and failed to obtain informed consent, confirmed in writing from Wife, Husband, or Respondent's daughter concerning the concurrent conflict of interest. In January 2016, Respondent had Wife and Husband sign a third promissory note in the amount of $1,600 to Respondent's law firm. Respondent did not advise Wife and Husband in writing of the desirability of seeking the advice of independent legal counsel concerning the transaction, nor did Respondent give Wife and Husband a reasonable opportunity to seek the advice of independent legal counsel concerning the transaction. Respondent also did not disclose in writing his role in the transaction, including whether he represented Wife and Husband.

Wife and Husband failed to repay any of the loans in full. After several unsuccessful attempts to collect on the notes, Respondent retained another attorney to bring two separate lawsuits against Wife and Husband, one on behalf of his law firm and the other on behalf of his daughter. Wife and Husband filed a third-party complaint against Respondent in his daughter's lawsuit, alleging, among other things, that Respondent engaged in legal malpractice by having his clients execute a promissory note in favor of his law firm. Respondent filed notices of appearance in both lawsuits and took an active role in litigating both actions as the attorney for himself, his law firm, and his daughter. The cases were eventually settled with Wife and Husband paying a total of $5,000, which was disbursed to Respondent's daughter.

II.

As to Matter A, Respondent admits that, as Trustee, he provided "law related

services" to the Trust pursuant to Rule 5.7(a), RPC, Rule 407, SCACR (providing a lawyer is subject to the Rules of Professional Conduct with respect to the provision of law-related services). Respondent also admits that he violated subsections (a) and (g) of Rule 1.15, RPC, in failing to safekeep the Trust's funds in his trust account and by making unauthorized distributions to fund his daughter's tuition payments. Respondent admits he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(d), RPC, by: (1) misrepresenting to the School that he received a grant from a trust to pay his daughter's tuition; (2) having his paralegal prepare invoices that misrepresented the purpose for which Trust funds would be used; and (3) misrepresenting to the Trust's investment advisor that he was using the $270,000 to invest in real estate rather than as a mortgage loan to his son. Respondent admits that he violated Rule 1.7, RPC, by representing both the Trust and his son in the mortgage loan transaction without obtaining informed consent, confirmed in writing, from each client. Respondent also admits that, through his admitted breaches of fiduciary duty as Trustee of the Trust, he violated the following provisions of the Rules for Professional Conduct, Rule 407, SCACR: Rule 8.4(a) (prohibiting violations of the Rules of Professional Conduct); Rule 8.4(d) (prohibiting conduct involving dishonesty fraud, deceit, or misrepresentation); and Rule 8.4(e) (prohibiting conduct prejudicial to the administration of justice).

As to Matter B, Respondent admits that by failing to timely serve and file an answer on behalf of Wife and Husband in the 2014 foreclosure action, he violated Rule 1.1, RPC (requiring competence) and Rule 1.3, RPC (requiring diligence). Respondent also admits he violated Rule 1.7, RPC, by representing his daughter in the two loan transactions with Wife and Husband without obtaining informed consent, confirmed in writing, from each client concerning the concurrent conflict of interest. Respondent admits he violated subsections (a) and (e) Rule 1.8, RPC (prohibiting certain business transactions with clients and prohibiting a lawyer from providing financial assistance to a client) by having his law firm make a loan to Wife and Husband while Respondent represented the couple in ongoing litigation. Respondent also admits that by having his daughter make loans to Wife and Husband while Respondent represented the couple in ongoing litigation, he violated subsections (a) and (e) of Rule 8.4, RPC (prohibiting violations of the Rules of Professional Conduct and conduct prejudicial to the administration of justice).

Respondent admits his conduct is grounds for discipline under the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (providing a violation of the Rules of Professional Conduct is a ground for discipline); and Rule 7(a)(5) (providing conduct tending to bring the legal profession into disrepute or conduct demonstrating unfitness to practice law is a ground for discipline). Respondent agrees to the imposition of any sanction set forth in Rule 7(b), RLDE, agrees to pay costs, and agrees to complete the Legal Ethics and Practice Program Ethics School prior to seeking reinstatement.

In his affidavit in mitigation, Respondent takes responsibility for his misconduct and expresses remorse for his actions. He also emphasizes: (1) he self-reported his misconduct; (2) he has no prior disciplinary history; (3) the trust corpus increased in value from $2.1 million to $3.1 million during his tenure as trustee; (4) the severity and treatment-resistance of his teenage daughter's longstanding mental health and behavioral issues[3] and his stress-related heart attack in July 2021 underlying his "lapse in judgment"; (5) his belief that the mortgage loan to his son was a good investment for the trust; (6) his resignation as trustee; (7) his payment of restitution; and (8) his good reputation in the community as demonstrated through seventeen letters submitted on his behalf by friends, clients, and colleagues. In light of these factors, Respondent requests that the Court consider imposing a three-year definite suspension retroactive to the date of his interim suspension as a sanction for his admitted misconduct.

III.

We find Respondent's conduct warrants disbarment. *See In re Wern*, 431 S.C. 643, 649, 849 S.E.2d 898, 901 (2020) (disbarring an attorney for misappropriation of client funds and observing "[t]his Court has never regarded financial misconduct lightly, particularly when such misconduct concerns expenditure of client funds or other improper use of trust funds" (citation and quotations omitted)). We therefore accept the Agreement and disbar Respondent from the practice of law in this state retroactive to December 13, 2021—the date Respondent was placed on interim suspension.

[3] Respondent and his wife adopted twin daughters as infants, and one of the twins has experienced severe physical, mental, and emotional issues throughout her life.

Within fifteen (15) days of the date of this opinion, Respondent shall surrender his Certificate of Admission to the Practice of Law to the Clerk of Court. Within thirty days of the date of this opinion, Respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct. Prior to filing any petition seeking reinstatement, Respondent shall complete the Legal Ethics and Practice Program Ethics School.

DISBARRED.

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Thomas Contreras, Employee, Appellant,

v.

St. John's Fire District Commission, Employer, and State Accident Fund, Carrier, Respondents.

Appellate Case No. 2021-000683

Appeal From The Workers' Compensation Commission

Opinion No. 6052
Heard September 14, 2023 – Filed March 13, 2024

AFFIRMED

Stephen Benjamin Samuels, of Samuels Reynolds Law Firm LLC, of Columbia, and Gary Christmas, of Christmas Injury Lawyers, LLC, of Mount Pleasant, for Appellant.

Margaret Mary Urbanic, of Clawson & Staubes, LLC, of Charleston, and Erin Farrell Farthing, of Lexington, for Respondents.

KONDUROS, J.: Thomas Contreras appeals an order from the Appellate Panel of the South Carolina Workers' Compensation Commission (the Appellate Panel) that awarded him permanent partial disability (PPD) compensation for a single member

as a result of an injury to his right shoulder. On appeal, Contreras contends the Appellate Panel erred in making a single member disability award when the evidence showed his disability should have been awarded under the loss of earnings capacity statute.[1] He argues the Appellate Panel erred in limiting compensation to injury for the shoulder, despite overwhelming evidence of injury to multiple scheduled body parts. Additionally, he asserts that on remand, the Appellate Panel erroneously substituted its judgment for the previous Appellate Panel. We affirm.

FACTS/PROCEDURAL HISTORY

St. John's Fire District Commission (St. John's) employed Contreras as a firefighter for over twenty-two years. On October 8, 2008, Contreras sustained an injury in the course and scope of his employment. The incident report indicated "Contreras felt something pull in his right shoulder" while lifting weights. He went to the emergency room, where his chief complaint was a soft tissue injury to the posterior right shoulder.

Following Contreras's injury, he made numerous doctors' visits, ultimately resulting in four separate surgeries. A December 12, 2008 MRI showed supraspinatus tendinitis, a probable superior labral tear, and moderate acromioclavicular (AC) joint arthrosis. Dr. David Jaskwhich diagnosed Contreras with right shoulder pain and a superior labral tear with bursitis. On January 29, 2009, Dr. Jaskwhich performed a "[r]ight shoulder arthroscopy with extensive debridement of bursa, synovium, labrum[,] and bone" and an "[a]rthroscopic repair of the superior labrum anterior-posterior (SLAP) tear." In August 2009, Contreras returned to Dr. Jaskwhich with continued pain. An MRI of his right shoulder revealed "mild tendinopathy of the supraspinatus and infraspinatus tendons" as well as "the intra-articular portion of the biceps tendons." After reviewing the MRI results, Dr. Jaskwhich noted Contreras had a "possible persistent labrum tear." Before performing a second surgery, Dr. Jaskwhich diagnosed Contreras with "[r]ight shoulder pain and impingement status post labral repair." Around October 1, 2009, Dr. Jaskwhich performed a second surgery: a "[r]ight shoulder arthroscopy with extensive debridement of suture, labrum, bursa[,] and bone." At a May 5, 2010 follow-up visit, Dr. Jaskwhich indicated Contreras continued to have pain in his right shoulder and "tenderness over the anterior biceps tendon"

[1] S.C. Code Ann. § 42-9-20 (2015).

and treated him with injections along the biceps tendon. On July 14, 2010, Dr. Jaskwhich released Contreras at maximum medical improvement (MMI), assigning a 10% impairment rating to the right shoulder.

On September 24, 2010, Contreras reported to Dr. James R. DeMarco, who indicated Contreras's chief complaints included "[r]ight shoulder loss of internal rotation," "[l]ong head of the biceps tendinopathy," and "[s]ignificant impingement syndrome." Dr. DeMarco performed Contreras's third surgery on October 11, 2010, completing a "[r]ight shoulder major debridement of a superior labrum anterior to posterior tear," a "[r]ight shoulder subacromial decompression and bursectomy," and a "[r]ight shoulder [AC] joint resection." Dr. DeMarco also performed "a distal clavicle resection" at that time.

On January 21, 2011, Dr. DeMarco stated in a medical report Contreras had a 7% permanent partial impairment of the right upper extremity, which converted to an 11% impairment of the right shoulder. In an addendum dated that same day, Dr. DeMarco opined Contreras had an 11% permanent impairment to the shoulder and a 7% impairment to the right upper extremity, which converted to a 4% impairment to the whole person. On May 16, 2011, Dr. DeMarco completed a Form 14B "Physician's Statement," indicating Contreras had an 11% impairment to the right shoulder, was unable to return to work, and would not need future medical care.

Dr. Charles H. Hughes Jr. conducted an independent medical evaluation (IME) of Contreras on October 6, 2011. Dr. Hughes completed a "check-box" form[2] that same day, checking "YES" to whether "Contreras'[s] injuries to his right shoulder, right upper extremity, right biceps[,] and clavicle [were] caused by and/or aggravated by the injuries he sustained in his" work accident. Dr. Hughes assigned a 14% permanent impairment rating to the right shoulder and 10% permanent

[2] A few similar terms—such as "check-box" or "check-the-box" forms, reports, or questionnaires—are used throughout the record. These terms all refer to forms sent by Contreras's attorneys to doctors asking questions about his condition. The forms provided a place to check for yes or no and also several lines of space with the preface, "Explain, if necessary." One form also had a list of physical restrictions that could be checked. That form also included a question concerning Contreras's impairment rating that listed several body parts with corresponding blanks to be filled in with a percent sign next to each blank.

impairment rating to the clavicle, writing in AC joint next to the word clavicle and upper extremity next to the rating.[3]

Contreras also underwent a vocational assessment with Jean R. Hutchinson, a vocational consultant, in October 2011. Hutchinson reported that Contreras complained of right shoulder pain "with 'sharp' pain radiating up to the top of his shoulder." She opined Contreras was unable to perform the duties of his former position as a fire department chief, "would be in jeopardy with regard to locating suitable employment[,] and would incur a loss of future earning capacity." Hutchinson stated she anticipated Contreras earning minimum wage in the future.

In October 2011, Contreras filed a Form 50 asserting, "injuries to his right shoulder, right upper extremity, right glenohumeral ligament, right clavicle, right scapula, right lateral deltoid, right bicep[,] and right distal clavicle." St. John's and its workers' compensation insurance carrier, the State Accident Fund, (collectively, Respondents) filed a Form 51, admitting Contreras sustained an injury to his right shoulder only.

On November 22, 2011, Dr. DeMarco reported Contreras continued to feel pain along the "long head of the biceps and bicipital groove." Dr. DeMarco stated "the [one] thing about him is that he has been completely consistent with where his pain is, directly over the bicipital groove." Dr. DeMarco explained the previous surgeries helped Contreras with some pain but he was "left with biceps pain which now needs to be addressed." Dr. DeMarco recommended another surgery, stating that after completing "a tenodesis, a coracoid decompression," "[t]his [wa]s absolutely the last thing that can be done in the shoulder."

In March 2012, the parties entered into a consent order indicating Contreras sustained "an admitted injury to his right shoulder" and could return to Dr. DeMarco for additional treatment.

On March 29, 2012, Dr. DeMarco reported that Contreras's diagnoses prior to his fourth surgery included "[r]ight shoulder coracoid impingement," "[r]ight shoulder intra-articular synovitis and adhesions," "[r]ight shoulder subacromial impingement with adhesions," and "[r]ight shoulder long head of biceps

[3] The same question contained blanks to fill in for right upper extremity and right biceps but Dr. Hughes did not fill in those blanks.

tendinopathy." Dr. DeMarco performed Contreras's fourth and final surgery that day: a "[r]ight shoulder major debridement of the intra-articular synovitis with coracoid decompression," a "[r]ight shoulder subacromial decompression and bursectomy," and a "[r]ight shoulder long head of the biceps tenodesis." On June 26, 2012, Dr. DeMarco reported Contreras's pain at that time was minimal but he had been experiencing spasms around his biceps.

On August 7, 2012, Dr. DeMarco released Contreras at MMI, indicated he had restrictions of less than forty pounds for overhead lifting with both hands and no more than twenty pounds with his right arm, reported he could perform "a light to medium level job," and assigned a permanent partial impairment rating of 9%, specifying "3% for biceps atrophy, 3% for loss of internal rotation, 2% for loss of forward flexion[,] and 1% for pain and muscle spasm."

On September 4, 2012, Dr. DeMarco completed a Form 14B, opining Contreras had a 15% impairment to the right shoulder. He noted the impairment rating was a conversion from the right upper extremity to the right shoulder. On October 8 and 24, 2012, Dr. DeMarco completed "check-box" questionnaire forms. On both forms, Dr. DeMarco checked "YES" next to the statement: "Contreras'[s] injuries to his right shoulder and right upper extremity, (right biceps) are caused by and/or aggravated by the injuries he sustained in his" work accident. He also marked "YES" on both forms next to the statement that Contreras's right shoulder injuries affected "his right upper extremity by way of radiating pain and tenderness into his right biceps as a result of" the work accident.

In February 2013, Contreras filed a second Form 50, alleging the same injuries as his previous Form 50, which included his right shoulder, right upper extremity, right clavicle, right bicep, and right distal clavicle. By Form 51, Respondents again admitted injury to only the right shoulder. Respondents denied injury to "all other body parts."

In August 2013, following a hearing, the single commissioner found (1) Contreras injured his right shoulder and right upper extremity, (2) Contreras could not return to his job as a firefighter, and (3) Contreras suffered a permanent partial wage loss under section 42-9-20. Respondents appealed to the Appellate Panel, which affirmed in part, reversed in part, and remanded to the single commissioner. The Appellate Panel found Contreras's injury was "limited to the right shoulder" and remanded "for a determination of an award to [Contreras's] right shoulder under"

section 42-9-30 of the South Carolina Code (2015). Contreras appealed the remand to this court, which dismissed the appeal as interlocutory and not immediately appealable, citing *Bone v. United States Food Service*, 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013).

On remand, the single commissioner determined Contreras sustained a 35% PPD to his right shoulder. Contreras appealed to the Appellate Panel, which affirmed the single commissioner's decision. Contreras appealed to this court, which found the Appellate Panel failed to make sufficiently detailed findings of fact and conclusions of law in order for this court to determine whether the decision was erroneous.[4] *Contreras v. St. John's Fire Dist. Comm'n*, Op. No. 2019-UP-040 (S.C. Ct. App. filed Jan. 23, 2019). This court "vacate[d] the Appellate Panel's order and remand[ed] the case to the Commission to make specific findings of fact regarding Contreras's right arm, right shoulder, and right clavicle."[5] *Id.* at 3.

In the order after remand from this court, the Appellate Panel made additional findings of fact, awarded Contreras 35% PPD to the right shoulder, and found the "award encompasse[d] and include[d] any incidental effect on [his] right clavicle, right bicep, and/or right bicep tendon."[6] It stated Contreras was not entitled to a separate award for "the right arm or right clavicle." This appeal followed.

---

[4] This court found, "Although the Appellate Panel's order stated there was 'no separate impairment rating to the upper extremity,' its order failed to clearly set forth the underlying facts upon which it relied to support its conclusion that Contreras's injury was limited to the right shoulder." *Contreras*, Op. No. 2019-UP-040 at 2. This court determined, "Contreras presented evidence that he injured his right arm and right clavicle in addition to his right shoulder. This issue impacts the ultimate liability in the case and determines whether compensation falls under section 42-9-20 . . . or section 42-9-30 . . . ." *Id.*

[5] This court, in light of the insufficiency of the Appellate Panel's order, declined to "address whether Contreras should have received an award under section 42-9-20 rather than section 42-9-30." *Contreras*, Op. No. 2019-UP-040 at 3 n.1.

[6] It also found the issue of an injury to the right clavicle was unpreserved for review because Contreras had not appealed from the single commissioner's first order, which did not make an award for the clavicle. However, the Appellate Panel made substantive findings of fact as to the compensability of the right clavicle out of an abundance of caution.

LAW/ANALYSIS

I. Alleged Inconsistency in Appellate Panel Orders

In this current appeal, Contreras argues that upon remand from this court, "the Appellate Panel issued an *entirely* new [o]rder," "making new findings of fact *wholly contradictory* to its previous findings." He asserts that in the new order, the Appellate Panel erroneously substituted its judgment for that of the 2014 Appellate Panel.[7] He contends the Appellate Panel erred "by completely reversing its own previous findings." He maintains the Appellate Panel "did not have [the] authority to dispense with the original findings" and "could not reverse itself by" changing its view of the check-box forms. He posits this court instructed the Appellate Panel "to add to its previous findings to explain its reasoning," not to "ignore what it ha[d] already established." We disagree.

The Appellate Panel's first order indicated it "g[a]ve more weight to the opinions" provided in Dr. DeMarco's October 2012 check-box forms instead of his 2011 Form 14B, regarding future medical treatment Contreras needed, because the check-box forms were closer in time to the hearing and thus, "more accurately reflect[ed] [Contreras's] current condition." Specifically, the Appellate Panel stated:

> [A]uthorized orthopedic surgeon, Dr. James DeMarco, opined on "check the box" forms dated October 8, 2012, and October 24, 2012, that [Contreras] is in need of future medical care and treatment in the form of medications, pain management clinic, injections, tens unit, repeat diagnostic imaging, physical therapy[,] and follow up office visits as a result of his August 8, 2008[] accident at work. He further opined that said medical treatment would tend to lessen [Contreras's] period of disability. Dr. DeMarco, does not opine on his 14[]B issued on May 16, 2011, that [Contreras] will need future

[7] Throughout the proceedings of this case, the Appellate Panel has been composed of the same three commissioners. The first and third Appellate Panel had the same commissioner designated as chair; a different commissioner was the chair for the second Appellate Panel.

> medical care and treatment; however, he opines differently on his October 8, 2012[] and October 24, 2012[] *check the box reports[,] and we give more weight to the opinions given in said reports given that they were provided at a later date than the 14[]B, were provided closer to [Contreras's] hearing date[,] and more accurately reflect [Contreras's] current condition and need for future medical care and treatment*.

(emphasis added).

The Appellate Panel's third and final order, issued upon remand from this court, noted the check-box forms Contreras sent to Dr. DeMarco "were not part of or in response to" a clinical treatment visit. The Appellate Panel noted that although the check-box forms stated Contreras had an injury or aggravation to the right biceps, the forms qualified the statement by indicating "the [e]ffect is radiating pain and tenderness 'into' the right biceps." The Appellate Panel found "this check-off response inconsistent with [Contreras's] subjective complaint to his vocational expert, whose 2011 report states that [Contreras] reported that his pain radiates upwards." The Appellate Panel found the check-box forms were also inconsistent with Dr. DeMarco's Forms 14B, to which it gave great weight.

The Appellate Panel further provided:

> As to both the right arm and right clavicle, we give the greatest weight to the <u>treatment</u> records accompanied by a clinical visit, rather than to check-the-box questionnaires sent by [Contreras] and for which there was no accompanying clinical visit and/or narrative treatment note. For instance, in the last narrative treatment note from Dr. DeMarco of August 7, 2012 (the date of [MMI]), Dr. DeMarco's "Assessment" was "Shoulder pain" (under this particular heading), and the "Treatment" heading lists only "Shoulder Pain" as well. As part of the impairment rating to the right shoulder, Dr. DeMarco assigned 3% for biceps atrophy and **1% for pain/spasm** [emphasis added]. This appears to the Appellate Panel to be the extent of any incidental

> involvement regarding the arm with nothing specifically regarding the clavicle . . . .

The Appellate Panel further stated it considered Dr. Hughes's IME but noted it was created prior to Contreras's final surgery and evaluated the right shoulder. However, the Appellate Panel affirmed the single commissioner's prior order with regard to future medical care.

"The findings of fact of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence." *Parsons v. Georgetown Steel*, 318 S.C. 63, 66, 456 S.E.2d 366, 368 (1995). An appellate court must affirm the Commission's findings of fact if substantial evidence supports them. *Bartley v. Allendale Cnty. Sch. Dist.*, 392 S.C. 300, 306, 709 S.E.2d 619, 622 (2011). "A court may reverse or modify the Commission's decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions[,] or decisions are affected by other error of law." *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 282-83, 519 S.E.2d 583, 591 (Ct. App. 1999).

"The final determination of witness credibility and the weight assigned to the evidence is reserved to the [A]ppellate [P]anel." *Houston v. Deloach & Deloach*, 378 S.C. 543, 551, 663 S.E.2d 85, 89 (Ct. App. 2008); *see also Shealy v. Aiken County*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) (noting the Appellate Panel is tasked with finding facts, evaluating the credibility of the witnesses, and assigning weight to the evidence). "In an appeal from the Commission, this [c]ourt may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact . . . ." *Corbin v. Kohler Co.*, 351 S.C. 613, 617, 571 S.E.2d 92, 95 (Ct. App. 2002); *see also Etheredge v. Monsanto Co.*, 349 S.C. 451, 456, 562 S.E.2d 679, 681 (Ct. App. 2002) ("A court 'may not substitute its judgment for that of any agency as to the weight of the evidence on questions of fact unless the agency's findings are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.'" (quoting *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999))).

"The weight to be ascribed to particular testimony is for the commission to determine and not . . . [an appellate c]ourt." *Tobey v. L & P Constr. Co.*, 296 S.C. 122, 125, 370 S.E.2d 897, 899 (Ct. App. 1988). "The credibility and weight of the doctor's testimony is for the trier of fact." *Parsons*, 318 S.C. at 67, 456 S.E.2d at

368. "Regardless of conflict in the evidence, either of different witnesses or of the same witness, a finding of fact by the Commission is conclusive." *Stokes v. First Nat'l Bank*, 306 S.C. 46, 50, 410 S.E.2d 248, 251 (1991). However, "[t]he commission may not . . . give artificial importance to a credibility determination when credibility is not a reasonable and meaningful basis on which to decide a question of fact." *Crane v. Raber's Disc. Tire Rack*, 429 S.C. 636, 639, 842 S.E.2d 349, 350 (2020).

In *Fragosa v. Kade Construction, LLC*, this court found "the Appellate Panel made inconsistent findings with regard to the existence of a physical brain injury." 407 S.C. 424, 430, 755 S.E.2d 462, 466 (Ct. App. 2013). This court "remand[ed] to the Appellate Panel for clarification" because of the inconsistency. *Id.* at 431, 755 S.E.2d at 466. This court also remanded for clarification in *Baker v. Hilton Hotels Corp.*, when the Appellate Panel had stated it agreed with a doctor's conclusion, but this court found the Appellate Panel's finding was inconsistent with the doctor's actual report. 406 S.C. 395, 402, 752 S.E.2d 279, 282-83 (Ct. App. 2013).

In this case, this court previously instructed the Appellate Panel "to make specific findings of fact regarding Contreras's right arm, right shoulder, and right clavicle." *Contreras*, Op. No. 2019-UP-040 at 3. The Appellate Panel did this.

The first order from the Appellate Panel did not find Dr. DeMarco's Forms 14B unreliable, but simply gave the check-box forms more weight because they were more recent.[8] The order did this in determining whether or not Contreras needed future medical care; the Appellate Panel found that he would. *See* S.C. Code Ann. § 42-15-60(A) (2015) (stating the commission can award future medical treatment when it believes the treatment "will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty"); *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 574, 583, 514 S.E.2d 593, 598 (Ct. App. 1999) ("[A]n employer may be liable for a claimant's future medical treatment if it tends to lessen the claimant's period of disability despite the

[8] We note the Appellate Panel's first order initially references Dr. Marco's Forms 14B from both 2011 and 2012 in finding (5), but the finding Contreras alleges is inconsistent with the findings in the new order, finding (29), only mentions the Form 14B from 2011. The 2012 Form 14B was completed in September 2012, only one month before the check box forms. Both Forms 14B stated Contreras did not need future medical care.

fact the claimant has returned to work and has reached [MMI]."). That finding was the basis for determining Contreras would need future medical care and that determination is no longer disputed. Because the parties were no longer litigating that issue, the Appellate Panel had no reason to restate this finding in its third order.

In its first order, the Appellate Panel found the check-box forms deserved more weight because the time at which they were completed was closer in time to the hearing and thus, those forms more accurately reflected Contreras's condition at the time of the hearing. The third Appellate Panel order gave Dr. DeMarco's Forms 14B more weight in deciding if any of Contreras's body parts other than his shoulder were injured because they were completed as a part of Contreras's medical treatment accompanying doctor's visits, whereas the check-box forms were completed as a result of Contreras's attorneys sending the forms to the doctors to be completed for use in this litigation. We find the Appellate Panel's findings were not inconsistent because the Appellate Panel relied on different forms to make different decisions. The Appellate Panel explained why it relied on which forms for each decision. Accordingly, the Appellate Panel's third order was not inconsistent with its first order.

II. Substantial Evidence

Contreras argues the Appellate Panel erred by "making a single member disability award" under section 42-9-30 "when the evidence showed his disability should have been awarded under the loss of earnings capacity statute," section 42-9-20. He contends the Appellate Panel erred when it denied compensation for the arm and clavicle, either as an award for lost earnings under section 42-9-20 or separate awards for loss of use under section 42-9-30. He asserts the Appellate Panel must apply the statute that provides the greatest benefits for a claimant. He argues he sustained injuries to his right shoulder and his right arm—specifically, the biceps. He contends his arm injury "require[d] a separate surgery, resulted in definable impairment ratings, and left him with permanent pain, weakness, muscle atrophy[,] and restrictions." Contreras asserts Dr. DeMarco gave him a 3% permanent impairment rating for "biceps atrophy." Contreras contends his own testimony was

consistent with the medical evidence because he stated he had pain in the front and back of his biceps.[9] We disagree.

"The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers' Compensation Commission." *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 288, 599 S.E.2d 604, 610 (Ct. App. 2004). "This [c]ourt's review is limited to deciding whether the [Appellate Panel's] decision is unsupported by substantial evidence or is controlled by some error of law." *Id.* at 289, 599 S.E.2d at 610-11. "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." *Id*. at 289, 599 S.E.2d at 611. "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the [Appellate Panel's] finding from being supported by substantial evidence." *Hill v. Eagle Motor Lines*, 373 S.C. 422, 436, 645 S.E.2d 424, 431 (2007).

"The burden is on the claimant to prove such facts as will render the injury compensable, and such an award must not be based on surmise, conjecture[,] or speculation." *Crosby v. Wal-Mart Store, Inc.*, 330 S.C. 489, 496, 499 S.E.2d 253, 257 (Ct. App. 1998). "The extent of an injured workman's disability is a question of fact for determination by the Appellate Panel and will not be reversed if it is supported by competent evidence." *Fishburne v. ATI Sys. Int'l*, 384 S.C. 76, 86, 681 S.E.2d 595, 600 (Ct. App. 2009). "The final determination of witness credibility and the weight assigned to the evidence is reserved to the [A]ppellate [P]anel." *Houston*, 378 S.C. at 551, 663 S.E.2d at 89. "Where there are conflicts in the evidence over a factual issue, the findings of the Appellate Panel are conclusive." *Hargrove*, 360 S.C. at 290, 599 S.E.2d at 611. "Thus, while medical testimony is entitled to great respect, the fact finder may disregard it if other competent evidence is presented." *Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17,

[9] In his reply brief, Contreras requests for the first time that this court "correct a scrivener's error" that occurred when the Appellate Panel decreased his average weekly wage from $1,174.20 to $1,134.72. At oral arguments, Respondents disputed that this was an error. Because Contreras did not raise this until his reply brief, we cannot address this issue. *See Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989) ("An appellant may not use . . . the reply brief as a vehicle to argue issues not argued in the appellant's brief.").

23, 716 S.E.2d 123, 126 (Ct. App. 2011). When conflicting medical evidence has been presented, "the findings of fact of the commission are conclusive." *Nettles v. Spartanburg Sch. Dist. # 7*, 341 S.C. 580, 592, 535 S.E.2d 146, 152 (Ct. App. 2000).

In South Carolina workers' compensation proceedings, an injured employee has three ways to obtain compensation: (1) total disability under section 42-9-10 of the South Carolina Code (2015); (2) partial disability under section 42-9-20; and (3) scheduled disability under section 42-9-30. *Wigfall v. Tideland Utils., Inc.*, 354 S.C. 100, 105, 580 S.E.2d 100, 102 (2003). "The first two methods are premised on the economic model, in most instances, while the third method conclusively relies upon the medical model with its presumption of lost earning capacity." *Id.* "[A] claimant with one scheduled injury is limited to the recovery under [section] 42-9-30 alone." *Id.* at 106, 580 S.E.2d at 103. "[A]n individual is not limited to scheduled benefits under [section] 42-9-30 if he can show additional injuries beyond a lone scheduled injury." *Id.* "Generally, an injured employee may proceed under either the general disability sections 42-9-10 and 42-9-20 or under the scheduled member section 42-9-30 in order to maximize recovery . . . ." *Lee v. Harborside Café*, 350 S.C. 74, 78, 564 S.E.2d 354, 356 (Ct. App. 2002). "Only where a scheduled loss is not accompanied by additional complications affecting another part of the body is the scheduled recovery exclusive." *Id.*

> The policy behind allowing a claimant to proceed under the general disability [section] 42-9-10 and [section] 42-9-20 allows for a claimant whose injury, while falling under the scheduled member section, nevertheless affects other parts of the body and warrants providing the claimant with the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section.

Brown v. Owen Steel Co., 316 S.C. 278, 280, 450 S.E.2d 57, 58 (Ct. App. 1994).

When an injury is confined to a scheduled member and the injury has not impaired any other part of the body, the employee can receive compensation only for the scheduled member under section 42-9-30. *Colonna v. Marlboro Park Hosp.*, 404 S.C. 537, 545, 745 S.E.2d 128, 132-33 (Ct. App. 2013). In order to receive compensation in addition to that scheduled for the injured member, the claimant

must show the injury affects some other part of his body. *Id.* at 545, 745 S.E.2d at 133. "[A] claimant must prove not only that another body part was *affected* by an injury to a scheduled member, but that another body part was *impaired or injured* for section 42-9-10 to apply." *Dent v. E. Richland Cnty. Pub. Serv. Dist.*, 423 S.C. 193, 202, 813 S.E.2d 886, 890-91 (Ct. App. 2018).

In *Dent*, this court found the claimant "presented sufficient evidence to support his claims that his back injury has caused additional injury or impairment to his leg" as he "complained of persistent pain, numbness, and weakness in his . . . leg to his doctors, and" two doctors diagnosed him with lumbar radiculopathy. *Id.* at 202, 813 S.E.2d at 891. However, in that case the Appellate Panel found the claimant's back injury affected his leg. *Id.* This court found the evidence of the claimant's leg pain in the record was substantial evidence of an injury affecting his leg and thus, claimant could proceed under section 42-9-10. *Id.* at 202-03, 813 S.E.2d at 891.

Contreras argues the primary issue on appeal here is "virtually the same" as the one this court decided in *Hutson v. S.C. State Ports Authority*, when it found a claimant may have been entitled to additional compensation under section 42-9-30 because he suffered radicular symptoms from his back into his leg. 390 S.C. 108, 700 S.E.2d 462 (Ct. App. 2010), *rev'd on other grounds*, 399 S.C. 381, 732 S.E.2d 500 (2012).

In *Hutson*, the claimant appealed the Appellate Panel's decision limiting his recovery to a 30% loss of use to his back. *Id.* at 110, 700 S.E.2d at 463. On appeal, the claimant pointed to the single commissioner's statements made both at the hearing as well as in the "order that he had intended to take into account his belief that [the claimant's] injury affected his right leg as well as his back and the combination of the two injuries would enable [the claimant] to recover under section 42-9-20 as well as section 42-9-30." *Id.* at 116, 700 S.E.2d at 467. The single commissioner's order found the claimant "suffered radicular symptoms in his right leg that affected the functioning of the limb." *Id.* at 117, 700 S.E.2d at 467. The single commissioner "reiterated this finding when, in commenting on [the claimant's] assurances that he was capable of running a restaurant, he indicated that but for this testimony, he would have found claimant to be permanently and totally disabled 'with [e]ffects to the right leg.'" *Id.* Neither the employer nor the carrier appealed that finding. *Id.* Accordingly, this court held the claimant had "established at least a prima facie case for compensation for the injury to his leg

pursuant to section 42-9-30 and remanded." *Id.* No party sought a writ of certiorari from the supreme court as to this court's determination regarding claimant's leg injuries. *Hutson v. S.C. State Ports Auth.*, 399 S.C. 381, 386 n.1, 732 S.E.2d 500, 502 n.1 (2012). The supreme court reversed this court's "decision that [the claimant] did not show a wage loss within the meaning of section 42-9-20" and remanded the matter. *Id.* at 390, 732 S.E.2d at 504.

Because the employer and carrier in *Hutson* did not appeal the single commissioner's finding regarding the claimant's leg, we disagree the case requires us to reverse the Appellate Panel.

Substantial evidence supports the Appellate Panel's determination that Contreras sustained an injury to his right shoulder only. The Appellate Panel concluded Contreras did not sustain an injury to his right clavicle, noting no medical diagnostics were completed on the clavicle, the treatment records referenced the clavicle only once, and Contreras did not complain of pain or injury to the clavicle in his deposition or at the hearing. The Appellate Panel also determined Contreras did not sustain an injury to his right arm. After the first two shoulder surgeries, Dr. Jaskwhich assigned a 10% impairment rating to the right shoulder in 2010. Contreras then reported to Dr. DeMarco, who indicated his chief complaints were "[r]ight shoulder loss of internal rotation," "[l]ong head of the biceps tendinopathy," and "[s]ignificant impingement syndrome." After Dr. DeMarco completed the third surgery, he completed a Form 14B, assigning Contreras an 11% impairment rating to the right shoulder in 2011. When Dr. DeMarco recommended a fourth surgery for Contreras, he provided "[t]his [wa]s absolutely the last thing that can be done in the shoulder." Finally, Dr. DeMarco completed another Form 14B, opining that Contreras had a 15% impairment to the right shoulder and that this was a conversion from the right upper extremity to the right shoulder. Furthermore, the Appellate Panel noted none of Contreras's doctors performed diagnostic testing on his right arm.

We acknowledge the record contains some evidence that supports Contreras's argument his right arm was affected, including his hearing testimony about pain in his biceps, complaints of long head of the biceps tendinopathy, Dr. DeMarco's assignment at one point of 3% impairment for biceps atrophy, and Dr. Hughes's IME opinion Contreras had a 14% impairment to the right shoulder and 10% to the right upper extremity. "However, when faced with conflicting testimony, we are constrained by our limited standard of review." *Colonna*, 404 S.C. at 547, 745

S.E.2d at 134. The record contains numerous references in Contreras's medical records to a shoulder injury with no mention of a bicep injury. Although Dr. DeMarco checked yes as to whether Contreras's right shoulder affected his right upper extremity on the check-box forms, the Appellate Panel had the authority to weigh all of the evidence in the record to determine the extent of Contreras's disability. Accordingly, the Appellate Panel did not err by limiting Contreras's disability award to his right shoulder under section 42-9-30. *See, e.g.*, *Brown*, 316 S.C. at 280, 450 S.E.2d at 58 (holding the Appellate Panel properly required an employee to proceed under the scheduled member section when the employee failed to prove his back injury affected another body part or contributed to an impairment beyond a single scheduled member).

CONCLUSION

Based on the foregoing, the Appellate Panel's final order limiting Contreras's disability award to his shoulder is

AFFIRMED.

THOMAS and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Kaci May and Kaci May as guardian ad litem for A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., Appellants,

v.

Dorchester School District Two, South Carolina Department of Social Services, Michael Leach, and Jasmine Flemister, Respondents.

Appellate Case No. 2020-001352

Appeal From Dorchester County
Maite Murphy, Circuit Court Judge

Opinion No. 6053
Heard June 7, 2023 – Filed March 13, 2024

AFFIRMED

Deborah J. Butcher and Robert J. Butcher, both of The Camden Law Firm, PA, of Camden, for Appellant.

Kenneth P. Woodington and William H. Davidson, II, both of Davidson, Wren & DeMasters, of Columbia, for Respondents South Carolina Department of Social Services, Michael Leach, and Jasmine Flemister; and Thomas Kennedy Barlow, Susan Marie Fittipaldi, and Dwayne Traynor Mazyck, all of Halligan, Mahoney, &

Williams, of Columbia, for Respondent Dorchester School District Two.

MCDONALD, J.: Kaci May filed this circuit court action seeking to enjoin the South Carolina Department of Social Services (DSS) from interviewing her children at school and to prevent Dorchester School District Two (School District) from facilitating such interviews without a court order, warrant, subpoena, or new allegation of abuse or neglect. May appeals the order denying injunctive relief and challenges the circuit court's finding that because Respondents acted within their express statutory authority, their efforts to interview the children did not implicate the Fourth Amendment. We affirm the well-reasoned order of the circuit court.

Facts and Procedural History

Kaci and Warren May (collectively, the Mays)[1] were the parents of seven children: four biological children (J.T.M., C.B.M., A.R.M., and J.W.M.) and an adopted sibling group (J.H.M., J.R.M., and L.C.M.).[2] One or more of the adopted children suffered severe sexual abuse while with their biological family.

On March 27, 2017, the Mays attended a daylong meeting with School District personnel at Sand Hill Elementary School to discuss four of the children. At this meeting, May alleged in graphic detail that one of the adopted children had brutally raped one or more children in the May home. May called this child, who was present at the meeting, a rapist and made other concerning statements.

The School District reported May's statements to DSS, which opened an investigation. As a part of the investigation, DSS conducted—or attempted to conduct—interviews with the five school-aged children at Sand Hill Elementary School on March 29 and March 30. On March 31, two DSS caseworkers went to the family home in an effort to contact May and see the children they were unable

---

[1] Warren May passed away in 2020.

[2] The Mays adopted J.H.M., J.R.M., and L.C.M. from foster care in June 2015. At the time of the circuit court's bench trial, the three adopted children had been moved from the May home to residential facilities.

to interview at school, but May would not allow the caseworkers to enter the home and did not allow them to interview the children. DSS continued to investigate, and caseworkers conducted a combined school interview of three of the children on May 12.[3] Later that day, DSS indicated a case of physical neglect against May; the Mays subsequently filed an administrative appeal of that determination.

On June 15, 2017, Dorchester County DSS Director John Dunne advised the Mays that he had conducted an interim review of the case and "concluded that the decision to indicate the case for Neglect is supported by a preponderance of the evidence." Dunne also informed the Mays that DSS would seek intervention in family court. On June 23, DSS stayed the administrative appeal pending the outcome of the family court case.

Despite the serious safety concerns she had raised, May resisted all DSS efforts to contact the children or visit their home during June, July, and August 2017. Instead, she referred the caseworkers to her attorney.[4] At the start of the new school year, May instructed the School District that no further interviews with her children were to occur without someone first contacting May or her counsel.[5] On September 13 and 14, 2017, May withdrew J.H.M. and J.R.M. (two of the adopted children) from Sand Hill Elementary and Gregg Middle School and transferred them to Connections Academy, South Carolina's virtual charter school.

---

[3] DSS was later able to interview two of the children on May 25. May conceded she did not object to DSS interviewing the children at school while the case was still within the investigative period.

[4] DSS's concerns are reflected in the caseworker's September 22, 2017 notes: "Kaci and Warren May have not allowed the department in their home. No assessments have been made for this family. The [Mays] have not been in direct contact with the department. The family's attorney is not responding to emails to schedule visits. . . . The department is concerned about the allegations and the inability to get in the home. The department is unable to properly assess for the safety and wellbeing of the minor children."

[5] The Sand Hill Elementary principal disregarded these instructions because the School District needed "a court order signed by a judge to make this happen."

DSS filed a family court case seeking non-emergency removal of the children from the May home on September 14, 2017. May counterclaimed, seeking, among other things, an order restraining DSS caseworkers from speaking with the Mays about legal issues in the case. She also filed a motion seeking an order restraining DSS from "interrogating [her] children at school."
DSS conducted additional in-school interviews in the fall of 2017. Three of the children were interviewed on September 18, one child was interviewed on September 22, and DSS conducted a brief, combined interview with three of the children on November 20.[6]

On December 7, 2017, May, individually and as guardian ad litem for the seven children, filed this circuit court action seeking preliminary and permanent injunctive relief to prevent DSS from interviewing her children at school. She also sought to enjoin the School District from facilitating such interviews unless DSS presented a court order, warrant, subpoena, or new allegation of abuse or neglect.

On June 14, 2018, the family court action was dismissed by voluntary stipulation. DSS agreed the "investigation beginning on or about March 28, 2017[,] resulting in a finding of abuse and/or neglect on or about May 12, 2017[,] is hereby overturned." DSS closed its case on June 21.

Following a hearing, the circuit court denied May's motion for a temporary restraining order, finding May failed to establish irreparable harm or the lack of an adequate remedy at law. The School District and DSS then moved to dismiss. The circuit court granted these motions in part and dismissed the individual School District defendants. The remaining governmental defendants answered May's complaint and denied she was entitled to permanent injunctive relief. At the subsequent August 2020 bench trial, the circuit court directed a verdict for the School District and DSS. May timely appealed.

Analysis

"To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." *Richland County v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018) (quoting *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470

[6] DSS did not seek to interview the May children after November 20, 2017.

(2010)). "An injunction is a drastic equitable remedy courts may use in their discretion in order to prevent irreparable harm to a party . . . . and only where no adequate remedy exists at law." *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013). Although an order granting or denying a request for injunctive relief is generally reviewed for abuse of discretion, "where the decision turns on statutory interpretation . . . this presents a question of law." *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 8, 760 S.E.2d 785, 788 (2014). An appellate court "reviews questions of law de novo." *Id*. at 7, 760 S.E.2d at 788 (quoting *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)).

I. Irreparable Harm

May argues the circuit court erred in finding she failed to demonstrate irreparable harm. We disagree.

Initially, we note it is undisputed that DSS's last interview with any of the May children occurred in November 2017, and DSS closed its family court case in June 2018. Before both the family and circuit courts, May failed to offer any evidence of threatened or pending DSS investigations or of further DSS plans to interview her children at a school. The three adopted children no longer live with the biological May family.

Significantly, May has not identified any injury aside from inconvenience or mild upset at the prospect of DSS returning to interview her children. The children testified that they knew they did not have talk to DSS, and some exercised their right not to answer questions. There is no evidence in the record that any of the children's grades suffered or that any of the children were harmed, much less to an extent that might have outweighed DSS's need to interview them regarding May's own report that one or more of her children had suffered sexual abuse by another child in the May home. Although May testified the children were upset by the DSS interviews, there is simply no evidence to support a claim that any of the May children have been harmed or would suffer harm in the absence of injunctive relief.

The adopted children had significant prior physical and psychological challenges, including but not limited to the horrific sexual abuse they suffered while with their biological family. These prior experiences caused stress and emotional harm far beyond any issue raised in the current matter. Thus, it is difficult to comprehend

how the emotional difficulty alleged could be attributed to the DSS interviews which, as discussed below, were appropriate and authorized by statute. Notably, May failed to demonstrate that DSS returning to a school to interview her children was anything more than a hypothetical possibility insufficient to support her claim for injunctive relief.[7] Accordingly, the circuit court properly found May failed to show the required irreparable harm.

II. Likelihood of Success on the Merits

May next argues the circuit court erred in finding she failed to establish a likelihood of success on the merits and in ruling section 63-7-920 of the South Carolina Code (2010) "was not limited by her constitutional protections." But the circuit court made no such ruling. As to May's constitutional claims, the circuit court recognized the United States Supreme Court "has never held that a social worker's warrantless in-school interview of a child pursuant to a child abuse investigation violates the Fourth Amendment." *See*, *e.g.*, *Camreta v. Greene*, 563 U.S. 692, 710–14 (2011) (examining in-school interviews in Fourth Amendment context but ultimately leaving the issue undecided and disposing of the case on mootness grounds). The circuit court then noted the DSS interviews here were authorized by statute and that May failed to show either DSS or the School District acted unreasonably by interviewing the children or permitting the interviews.[8] We agree with the circuit court.

---

[7] We decline to dismiss May's appeal as moot because her case presents an issue that is capable of repetition but usually becomes moot before it may be reviewed. *See Wardlaw v. S.C. Dep't of Soc. Servs.*, 427 S.C. 197, 204, 829 S.E.2d 718, 721 (Ct. App. 2019) (finding that an appellate court may address a matter despite mootness where it raises an issue capable of repetition that "usually becomes moot before it may be reviewed" (citing *S.C. Dep't of Mental Health v. State*, 301 S.C. 75, 76, 390 S.E.2d 185, 185 (1990)). The interviews May challenges occur early in the process of abuse and neglect investigations, and a family court's review in such cases would be complete before any related civil action could be considered. *See*, *e.g.*, *Rainey v. S.C. Dep't of Soc. Servs.*, 434 S.C. 342, 351, 863 S.E.2d 470, 475 (Ct. App. 2021) (noting statutorily mandated timelines for investigation once DSS receives a report of possible abuse or neglect).

[8] The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against

Within twenty-four hours of receiving a report of suspected child abuse or neglect, DSS "must begin an appropriate and thorough investigation to decide whether the report should be 'indicated' or 'unfounded.'" *See* S.C. Code Ann. § 63-7-920(A)(1) (2010); *see also Jensen v. S.C. Dep't of Soc. Servs.*, 297 S.C. 323, 331–32, 377 S.E.2d 102, 106–07 (Ct. App. 1988) (holding South Carolina Child Protection Act mandating "an 'appropriate and thorough' investigation," of an allegation of child abuse imposed a ministerial duty of care on county officials). Regarding investigations and case determinations, section 63-7-920(C) provides:

> The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child must be accommodated in making arrangements for interviews, including time, place, method of obtaining the child's presence, and conduct of the interview. The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing child welfare intervention into a child's life should coordinate their services to minimize the number of interviews of the child to reduce potential emotional trauma to the child.

---

unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend IV. The Fourteenth Amendment extends this constitutional guarantee to searches and seizures by state officers, *Elkins v. United States*, 364 U.S. 206, 223–24 (1960), including public school officials, *New Jersey v. T.L.O.*, 469 U.S. 325, 336–37 (1985).

In our view, the language of § 63-7-920(C) establishes the circuit court correctly found May failed to demonstrate a likelihood of success on the merits. However, we must also address May's arguments that (1) the probable cause standard for warrants issued under § 63-7-920(B) applies to interviews conducted pursuant to § 63-7-920(C) and (2) the interviews here violated the Fourth Amendment.

Section 63-7-920(B) provides:

> The department may file with the family court an affidavit and a petition to support issuance of a warrant at any time after receipt of a report. The family court must issue the warrant if the affidavit and petition establish probable cause to believe the child is an abused or neglected child and that the investigation cannot be completed without issuance of the warrant. The warrant may authorize the department to interview the child, to inspect the condition of the child, to inspect the premises where the child may be located or may reside, and to obtain copies of medical, school, or other records concerning the child.

May's assertion that the probable cause standard for warrants issued under subsection (B) applies to interviews conducted under subsection (C) is foreclosed by the plain language of subsection (C), pursuant to which DSS conducted the in-school interviews of the May children. While subsection (B) does contain a warrant provision, its terms apply only when "the investigation cannot be completed without issuance of the warrant." § 63-7-920(B). Among other things, subsection (B) authorizes DSS to inspect the premises where an abused or neglected child may be located or may reside. *Id.* In other words, DSS *may* seek a warrant when other authorized means, such as in-school interviews, are unavailable.[9] Moreover, subsection (C) states DSS "may interview the child alleged to have been abused or neglected and any other child in the household during the investigation" and such interviews "may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents." § 63-7-920(C).

[9] In practice, and as referenced by May's counsel at trial, such warrants are referred to as "inspection warrants."

In her appellate brief, May arguably concedes subsection (B) is inapplicable to in-school interviews conducted under subsection (C) by stating "schools are often the only places SCDSS and/or law enforcement may have contact with a child without the undue influence of an abusive or neglectful caregiver." In either case, we find the plain language of subsection (C) permits DSS to interview children at school and—in the discretion of DSS or law enforcement—such interviews may be conducted "outside the presence of the parents." § 63-7-920(C).[10]

With respect to May's Fourth Amendment argument, "[i]n determining whether a search and seizure is reasonable, we must balance the government's need to search with the invasion endured by the plaintiff." *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir. 1993); *see also*, *State v. Houey*, 375 S.C. 106, 111, 651 S.E.2d 314, 316–17 (2007) (finding "the State's need to search must be balanced against the invasion occasioned by the search, and the search will be reasonable if the State's interest outweighs the interest of the individual" in cases involving the "health and safety of victims."). Like the circuit court, we have found no case in which our supreme court has determined a social worker's warrantless in-school interview of a child for purposes of a statutorily mandated investigation following a report of abuse or neglect violates the Fourth Amendment.

In sum, May failed to show either that DSS acted unreasonably by interviewing her children at school or that the School District unreasonably permitted the in-school interviews expressly authorized by statute.[11] Based on the largely undisputed testimony, we agree with the circuit court that the interviews here were reasonable in inception and scope following May's own report of sexual abuse; her subsequent refusal to allow DSS to interview the children in their home necessitated that they be interviewed at school. And, May admits legitimate circumstances may exist in some cases for DSS to interview a child at school without a court order or a

---

[10] This might be a different case had the governmental defendants even arguably abused their statutory discretion in investigating the actions May reported at her initial meeting with the School District. There simply are no facts here to support such a claim.

[11] Although May's appellate brief cites several cases containing broad statements of general legal principles, she fails to cite any case actually finding the kind of interviews DSS conducted here might violate a child's (or parent's) Fourth Amendment rights.

warrant. Concessions aside, we find § 63-7-920(C) expressly authorizes DSS to interview children at school without a warrant when conducting an investigation mandated by § 63-7-920(A)(1). Additionally, we find meritless May's claim that the either the School District or DSS unreasonably "seized" her children, or otherwise violated their constitutional rights by calling them from class and asking limited, basic questions for a short period of time. In light of the state's significant interest in interviewing the children following May's report, the circuit court properly found the in-school interviews did not violate the family's constitutional rights. It follows that the circuit court correctly denied May's request for injunctive relief in light of her inability to show a likelihood of success on the merits.

III. Adequate Remedy at Law

May next argues the circuit court erred in finding she would have an adequate remedy at law to address any harm she or the children might suffer from future "interrogations." Again, we disagree.

Although May was required to offer evidence demonstrating that at some point in the future, DSS is likely to again interview her children at school in direct contravention of her wishes, she failed to do so. While it is always possible that future events could lead to another DSS investigation, it is speculative to assume such will actually take place. In the event another DSS investigation does take place, May agreed she would "not [be] opposed to DSS interviewing the children that may be subject to a report of abuse and neglect. . . ." Nor would she object to additional interviews in a case "still in the investigation period." However, May would object to interviews conducted after the conclusion of an investigation resulting in an indication.

We find May has failed to establish the lack of an adequate remedy at law to address future harm that might result from subsequent DSS interviews. May's decision to forgo a state law damages claim and pursue only injunctive relief does not render the remedy at law inadequate for a case that might merit relief. Here, the circuit court properly found May failed to show she lacked an adequate remedy at law for harm that might result from "future interrogations."

Conclusion

Certainly, there may be—and have been—situations in which state actors overreach or otherwise act in a manner requiring constitutional scrutiny. There may be—and have been—cases in which the actions of DSS caseworkers or other agents or employees rise to the level necessary for injunctive relief in the constitutional context. This is not such a case. For these reasons, the circuit court's order denying injunctive relief is

AFFIRMED.[12]

THOMAS and HEWITT, JJ., concur.

[12] As our findings here are dispositive, we decline to address Respondents' additional sustaining grounds. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address remaining issues when a prior issue was dispositive).