The Supreme Court of South Carolina

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CLERK OF COURT

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DEPUTY CLERK

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N O T I C E

IN THE MATTER OF CHARLES E. JOHNSON, PETITIONER

Charles E. Johnson, who was definitely suspended from the practice of law for a period of two (2) years, has petitioned for reinstatement as a member of the Bar pursuant to the provisions of Rule 33 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR.

The Committee on Character and Fitness has scheduled a hearing in this regard on Thursday, May 12, 2011, beginning at 9:30 a.m., in the Court Room of the Supreme Court Building, 1231 Gervais Street, Columbia, South Carolina.[1]

Any individual may appear before the Committee in support of, or in opposition to, the petition.

Richard B. Ness, Chairman
Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

Columbia, South Carolina
April 6, 2011

[1] The date and time for the hearing are subject to change. Please contact the Bar Admissions Office at the Supreme Court to confirm the scheduled time and date.

The Supreme Court of South Carolina

RE: Administrative Suspensions for Failure to Pay South Carolina Bar License Fees and Assessments

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O R D E R

The South Carolina Bar has furnished the attached list of lawyers who were administratively suspended from the practice of law on February 1, 2011, under Rule 419(b)(1), SCACR, and remain suspended as of April 1, 2011. Pursuant to Rule 419(e)(1), SCACR, these lawyers are hereby suspended from the practice of law by this Court. They shall surrender their certificates to practice law in this State to the Clerk of this Court by May 1, 2011.

Any petition for reinstatement must be made in the manner specified by Rule 419(f), SCACR. If a lawyer suspended by this order does not seek reinstatement within three (3) years of the date this order, the lawyer's membership in the South Carolina Bar shall be terminated

and the lawyer's name will be removed from the roll of attorneys in this State. Rule 419(g), SCACR.

These lawyers are warned that any continuation of the practice of law in this State after being suspended by the provisions of Rule 419, SCACR, or this order is the unauthorized practice of law, and will subject them to disciplinary action under Rule 413, SCACR, and could result in a finding of criminal or civil contempt by this Court. Further, any lawyer who is aware of any violation of this suspension shall report the matter to the Office of Disciplinary Counsel. Rule 8.3, Rules of Professional Conduct for Lawyers, Rule 407, SCACR.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

April 8, 2011

Attorneys Suspended for Nonpayment of 2011 License Fees

As of April 1, 2011

Baylor B. Banks
Thompson Law, LLC.
3050 Peachtree Rd. Ste. 355
Atlanta, GA 30305

Gerald Archie Beard
Michelin North America, Inc.
P.O. Box 19001
Greenville, SC 29602

Ryan Thomas Gardner
Locke Lord Bissell & Liddell LLP
600 Travis St., Ste. 3400
Houston, TX 77002

Gwendolyn S. Hailey
P.O. Box 3447
Durham, NC 27702

Eric Paul Kelley
101 Saluda Pointe Dr., Unit 718
Lexington, SC 29072

G. Clint Parker
109 Fairoaks Dr.
Greenville, SC 29615

Shawn M. Pellow
6 Pequot Sq.
Mansfield Center, CT 06250

Barrett Owen Poppler
Wiseman & Poppler, PA
P.O. Box 74
Concord, NC 28026

John J. Rearer
621 NW 102nd Ave.
Coral Springs, FL 33071-8800

Marc W. Richardson
EPA-CID
432 Freedom Trail
Brunswick, GA 31525

Garth D. Richmond
Harrity & Harrity, L.L.P.
11350 Random Hills Ste.600
Fairfax, VA 22030

Eugene E. Stoker
4422 Westminster Place
St. Louis, MO 63108

The Supreme Court of South Carolina

In the Matter of Thomas N. Steenburg, Petitioner.

ORDER

The records in the office of the Clerk of the Supreme Court show that on May 11, 2010, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the Clerk of the Supreme Court of South Carolina, dated March 5, 2011, Petitioner submitted his resignation from the South Carolina Bar. We accept Petitioner's resignation.

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

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

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

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

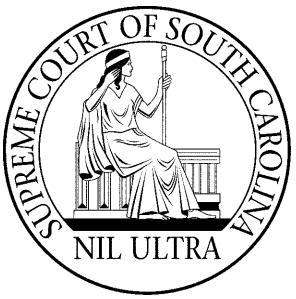
s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

April 7, 2011



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 13
April 11, 2011
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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The Supreme Court of South Carolina

In the Matter of J. Cameron Halford, Respondent.

ORDER

The attached opinion is hereby substituted for the opinion previously filed in this matter.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

April 11, 2011

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of J. Cameron Halford, Respondent.

Opinion No. 26924
Submitted January 7, 2011 – Re-Filed April 11, 2011

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, and Barbara M. Seymour, Deputy Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

J. Cameron Halford, of Fort Mill, pro se.

PER CURIAM: The Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR, in which respondent admits misconduct and consents to the imposition of a letter of caution, admonition, or a public reprimand. We accept the agreement and issue a public reprimand. The facts, as set forth in the agreement, are as follows.

FACTS

In a two day period in May 2008, twenty-two checks were presented on respondent's real estate trust account on insufficient funds. Upon notice from his bank, respondent immediately reviewed his most recent transactions and discovered that the mistake was due to user error in submitting an electronic bank deposit. At the time, respondent used a scanner provided by the bank that was linked through an internet connection to the bank's computer. The device allowed the depositor to scan a deposit item in his office without having to physically go to the bank. Respondent failed to properly transmit the scanned image of a deposit before disbursing the funds at closing. Respondent acknowledges his failure to insure funds were available prior to disbursement violated Rule 1.15, Rule 407, SCACR.

In October 2008, four checks were presented on insufficient funds in respondent's litigation trust account. The bank honored two of the checks and returned two of the checks. The overdrafts were the result of two errors by respondent which related to the acceptance of fee payments by credit card. The first error occurred when respondent accidently refunded a payment to a client's credit card account rather than charging the payment to the account. The second error was respondent's failure to account for individual clients' credit card transactions fees assessed by the credit card companies. Respondent did not realize that credit card transaction fees varied depending on the amount of the transactions and the account type. Instead, respondent assumed that the credit card transaction fees were the same for each transaction. As a result, respondent overpaid several client accounts in the amount of $814.12. Respondent acknowledges his repeated mathematical errors in calculating credit card transaction fees and his failure to closely examine his monthly financial records violated Rule 1.15, RPC.

In December 2008, eleven checks written on respondent's real estate trust account were presented on insufficient funds. These overdrafts occurred as the result of a real estate closing in which

respondent electronically deposited the lender's check, but did not wait for the check to clear the bank before issuing checks on the account. After disbursing the funds, respondent learned that the lender had stopped payment on the loan check due to a recording defect. Respondent acknowledges that the lender's check did not constitute "good funds" and that Rule 1.15, RPC, required he wait to disburse the funds until after the lender's check had been collected by his bank.

Although respondent ensured his trust accounts were reconciled with his monthly bank statements, he did not reconcile his client ledger balances. Review of his records for 2008 and 2009 reveal numerous negative client ledger balances. These negative ledge balances resulted from errors, not from any misappropriation. Some negative ledger balances were the result of a failure to account for the correct credit card transaction fees as discussed above. In those instances, respondent withdrew his legal fees without accounting for the actual credit card transaction fee amounts, resulting in shortages to those particular client ledgers. Respondent has restored those funds to his trust account and corrected the ledgers.

Other negative ledger balances occurred when respondent collected "flat fees" or payments toward "flat fees" and deposited them directly to his operating account. When respondent learned he was required to deposit all fees, including flat fees, into his trust account until the fees were actually earned, he converted his system to create client ledgers for his flat fee clients. Respondent's bookkeeper, however, did not transfer the previous fee payments to the new ledgers, resulting in negative client ledger balances. Respondent has now made the ledger corrections.[1]

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[1] Respondent stipulates that the deposit of "flat fees" into his operating account was a violation of the Rules of Professional Conduct. We accept the stipulation here for purposes of honoring the Agreement for Discipline by Consent. The handling of "flat fees" is a complex matter, and we do not intend in this opinion to set forth a categorical rule addressing "flat fees."

Respondent admits his conduct in failing to accurately document transactions with and on behalf of clients and his failure to conduct complete monthly reconciliations violated the requirements of Rule 417, SCACR. Respondent has now completed the Legal Ethics and Practice Program Trust Account School. Further, he has retained an outside accounting service to conduct his monthly reconciliations and has ensured that the service is familiar with Rule 417, SCACR.

LAW

Respondent admits that, by his misconduct, he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.15(c) (lawyer shall deposit into a client trust account unearned legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred) and Rule 1.15(f)(1)(A) (lawyer shall not disburse funds from an account containing the funds of more than one client or third person unless the funds to be disbursed have been deposited in the account and are collected funds). Respondent further admits that he did not comply with the financial recordkeeping provisions of Rule 417, SCACR. Respondent acknowledges his misconduct constitutes grounds for discipline under Rule 413, RLDE, specifically Rule 7(a)(1) (lawyer shall not violate Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers).

CONCLUSION

We find that respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his misconduct.

PUBLIC REPRIMAND.

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Sandra Bartley, Claimant, Petitioner,

v.

Allendale County School District, Employer, and S.C. School Boards Insurance Trust, Carrier, Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Allendale County
J. Ernest Kinard, Jr., Circuit Court Judge

Opinion No. 26960
Heard March 1, 2011 – Filed April 11, 2011

REVERSED AND REMANDED

Jonathan R. Hendrix, of Williams, Hendrix, Steigner & Brink, of Lexington, for Petitioner.

Kirsten Leslie Barr, of Trask & Howell, of Mt. Pleasant, for Respondents.

JUSTICE BEATTY: We granted a petition for a writ of certiorari to review Bartley v. Allendale County School District, 381 S.C. 262, 672 S.E.2d 809 (Ct. App. 2009), in which the Court of Appeals held Sandra Bartley was entitled to benefits for an injury to her neck that resulted in a thirty percent permanent disability to her back, but denied all other benefits. On appeal, Bartley contends her physical injury combined with her pre-existing impairments[1] resulted in a substantially greater disability that is compensable pursuant to Ellison v. Frigidaire Home Products, 371 S.C. 159, 638 S.E.2d 664 (2006). We reverse and remand.

I. FACTS

On September 26, 2002, Bartley was working as a special needs teacher with the Allendale County School District when a child accidently collided with her during recess and knocked her down while trying to give her a hug. Bartley fell onto a chain link fence and landed on the ground on top of some tree roots, and the child fell on top of her.

Bartley sought medical treatment and was thereafter referred to an orthopedic medical practice. Bartley told the orthopedic physician that she could not lift her arm and that she had pain in her right shoulder and her arm muscles, as those were the problems that most concerned her. The orthopedic physician noted in early April 2003 that Bartley's original physician had unfortunately misdiagnosed Bartley as having tendonitis bursitis of the shoulder and had referred her for physical therapy, which worsened the condition.[2] However, the orthopedic physician stated an MRI

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[1] Bartley has a complex medical history of physical ailments along with psychological conditions such as panic attacks and depression that have affected her for much of her adult life.

[2] When Bartley reported pain throughout her body, the original physician also opined that she had fibromyalgia, which she had experienced previously.

confirmed Bartley had "severe foraminal stenosis at C5-6"[3] and that this was a "cervical radiculopathy type process rather than shoulder pathology" that was "clearly . . . related to her original injury at work."

On May 14, 2003, Bartley underwent surgery for a cervical fusion. After that, Bartley seemed to be doing better and believed that she could return to teaching. Bartley filed a Form 50 on July 18, 2003 noting injuries to her neck, right arm, right hand, and left knee, as well as the occurrence of migraine headaches.

In August 2003 Bartley began a new job teaching for Richland County School District One in Columbia. From August to October of 2003, Bartley began having more pain. Bartley attributed this to her teaching duties, which required her to work long hours and to lift a lot of equipment and other items. In October 2003, a student picked up a desk and threatened to throw it at Bartley. She was not physically harmed, but according to Bartley, the threat brought back memories of being injured in 2002 and made her fearful that she could be injured again.

Bartley's physician prescribed a medical leave of absence after October 2003, stating her "neuropathic parascapular pain" was "definitely related to the incident on September 26, 2002" and was "most likely going to result in

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[3] "Foraminal stenosis" refers to a narrowing (stenosis) of the foramen (opening), i.e., the hole in a bone through which a spinal nerve passes as it exits the spine. A foramen is at each level of the spine, with one on each side. When the nerve becomes compressed, it can cause pain and numbness, tingling, and sensory abnormalities on the affected side. See generally http://www.nervous-system-diseases.com/foraminal-stenosis.html. Depending on the location of the nerve being compressed, stenosis can result in a variety of problems, including pain that travels to the buttocks, leg, calf, and foot, or to the shoulder, arm, and hand. See, e.g., http://www.laserspineinstitute.com/back_problems/foraminal_stenosis/symptoms.

temporary or total disability to perform her work as she did prior to these injuries." Bartley returned to work briefly in January 2004 before her physician again prescribed a medical leave of absence.[4]

On December 10, 2004, Bartley filed a second Form 50 seeking a hearing. Bartley noted injuries to her cervical spine that resulted in pain, tingling and numbness down the right side of her body (including the neck/shoulder/arm/hand/buttocks/leg); dizziness; headaches; ringing in her ears; and emotional/mental problems (post-traumatic stress disorder).

A hearing was held in August 2005 before a commissioner of the South Carolina Workers' Compensation Commission. Bartley submitted a "Psychological Discharge Summary" dated January 4, 2005 from Dr. Clay Drummond, a clinical psychologist, who diagnosed her as having a pain disorder associated with both psychological factors and a general medical condition, post-traumatic stress disorder, chronic intractable pain, and cognitive degradation. Dr. Drummond stated: "It is most psychologically probable that her disorders were either caused by or exacerbated by her at work accident." Dr. Drummond found the "combination of [Bartley's] physical and emotional difficulties precludes her from doing any type of meaningful work" and that "[s]he will continue to need maintenance psychiatric medications and likely need periodic maintenance visits with a mental health professional."

Bartley also submitted a February 28, 2005 assessment from Joel D. Leonard, a Vocational Consultant, who reported that Bartley's "work-related injury from September 26, 2002 has had a severe and adverse effect on her ability to perform gainful work activity" and that she "is . . . totally disabled . . . due to the combined implications of her physio-vocational and psycho-vocational status." Leonard concluded "Bartley's work-related accident has

[4] Bartley thereafter suffered several other conditions requiring medical treatment. In September 2004, she had fusion surgery in her lower back at levels four and five due to the discovery of a facet cyst. Bartley did not believe this lower back condition was related to her injury. In May 2005, she had surgery on her right ankle.

had a catastrophic effect on her ability to access the open labor market and her ability to garner a weekly wage."

The commissioner found Bartley had suffered an injury to her neck in the 2002 accident and a resulting thirty percent loss of use of her back, but that Bartley had failed to prove "that she suffered an injury to any body part other than her neck or that her psychological condition has worsened as a result of this injury." The commissioner denied Bartley's "claims for benefits for the buttocks, low back, right leg, dizziness, ringing in the ears or psychological disorder" on the basis they were barred by the statute of limitations and "these conditions were not caused by [Bartley's] injury at work." The commissioner stated that he "d[id] not doubt that the Claimant's future prospects of employment will be limited," but that he was "not allowed to stack her personal ailments with her work injury to make a finding of disability," citing Ellison v. Frigidaire Home Products, 360 S.C. 236, 600 S.E.2d 120 (Ct. App. 2004) (Ellison I). The commissioner observed, "It appears that Dr. Drummond and Joel Leonard have done exactly that in making their assessments of employability."

The Appellate Panel affirmed the commissioner's order with certain amendments and adopted the commissioner's findings of fact and conclusions of law. Specifically, the Appellate Panel affirmed the commissioner's finding that Bartley suffered a thirty percent permanent loss of use of her back as a result of her neck injury that occurred on September 26, 2002. The Appellate Panel found the claims for benefits for the buttocks, low back, right leg, dizziness, ringing in the ears, and psychological overlay were not barred by the statute of limitations in S.C. Code Ann. § 42-15-40, although it agreed with the commissioner's finding that these conditions were not caused by Bartley's work injury.[5] The Appellate Panel found Bartley was not disabled from work because of her neck injury "since she began work with Richland School District One in August 2003." The circuit court and the Court of Appeals affirmed.

[5] This Court denied certiorari on the question whether the statute of limitations would preclude Bartley's claims. Consequently, no issue is before the Court in this regard.

II. STANDARD OF REVIEW

The Administrative Procedures Act ("APA") provides the standard for judicial review of workers' compensation decisions. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010); Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). Under the APA, this Court can reverse or modify the decision of the Workers' Compensation Commission if the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Transp. Ins. Co. v. South Carolina Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689-90 (2010) (citing S.C. Code Ann. § 1-23-380(5)(d), (e) (Supp. 2009)).

The Commission is the ultimate fact finder in workers' compensation cases. Jordan v. Kelly Co., 381 S.C. 483, 674 S.E.2d 166 (2009); Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000). As a general rule, this Court must affirm the findings of fact made by the Commission if they are supported by substantial evidence. Pierre, 386 S.C. at 541, 689 S.E.2d at 618. "Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached." Hill v. Eagle Motor Lines, 373 S.C. 422, 436, 645 S.E.2d 424, 431 (2007). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence." Id.

III. LAW/ANALYSIS

Bartley contends the Court of Appeals erred in failing to reverse and remand her case to the Commission in light of this Court's decision in Ellison v. Frigidaire Home Products, 371 S.C. 159, 638 S.E.2d 664 (2006) (Ellison II), which reversed the Ellison I case relied upon by the single commissioner and the Appellate Panel. Bartley contends she has suffered a greater disability than the specific injury to her neck. The Court of Appeals found Ellison II to be inapplicable.

Ellison fractured his leg while operating a forklift for Frigidaire and sustained a twenty percent impairment to his leg. Ellison v. Frigidaire, 360 S.C. 236, 238, 600 S.E.2d 120, 121 (Ct. App. 2004). At the time of his accident, Ellison had been suffering for several years from hypertension and prostate cancer. Id. After his accident, Ellison was also diagnosed with sleep apnea, diabetes, and congestive heart failure. Id.

Ellison argued the combination of his accidental leg injury and his other medical ailments rendered him totally and permanently disabled. Id. Frigidaire, in contrast, argued Ellison was limited to the scheduled member benefits of a twenty percent impairment for his leg because only his leg was injured in his workplace accident. Id.

The commissioner and the Appellate Panel concluded the combination of Ellison's workplace injury and his other ailments rendered him totally disabled, and the circuit court affirmed. Id. at 238-39, 600 S.E.2d at 121. The Court of Appeals reversed, finding S.C. Code Ann. § 42-9-400 (relied upon by Ellison) was inapplicable and that he was limited to benefits for a scheduled member (the leg) because there was no evidence that his workplace injury affected any body part other than his leg. Id. at 241, 600 S.E.2d at 122.

This Court reversed in Ellison v. Frigidaire Home Products, 371 S.C. 159, 638 S.E.2d 664 (2006). The Court held that Ellison's workplace injury, combined with his pre-existing physical conditions (including hypertension, sleep apnea, prostate cancer, diabetes, and congestive cardiac disease), rendered him physically unable to return to work and left him permanently and totally disabled. This Court interpreted section 42-9-400, which provided in relevant part as follows:

> (a) If an employee who has **a permanent physical impairment from any cause or origin** incurs a subsequent disability from injury by accident arising out of and in the course of his employment, resulting in compensation and medical

> payments liability or **either,** *for disability that is substantially greater, by reason of the* ***combined effects*** *of the preexisting impairment and subsequent injury* **or** by reason of the aggravation of the preexisting impairment, than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall in the first instance pay all awards of compensation and medical benefits provided by this Title; but such employer or his insurance carrier shall be reimbursed from the Second Injury Fund. . . .
>
> . . . .
>
> (d) As used in this section, "**permanent physical impairment**" means any permanent condition, *whether congenital or due to injury or disease,* of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed.

Id. at 161-62, 638 S.E.2d at 665.

This Court held there is no requirement that the pre-existing condition aggravated the work injury or that the work injury aggravated the pre-existing condition; rather, the question to be considered was whether the combined effects of the condition and the workplace injury resulted in a greater disability than would otherwise have existed:

> The language of § 42-9-400(a) and (d) indicates the legislature clearly envisioned that a claimant may recover for greater disability than that incurred from a single injury to a particular body part if the combination with any pre-existing condition hinders reemployment. There is no requirement that the pre-existing condition aggravated the injury, or that the injury aggravated the pre-existing condition, so long as there is a greater disability simply from the "combined effects" of the injury and the pre-existing condition.

Id. at 164, 638 S.E.2d at 666 (emphasis added).[6]

In the current appeal, the Court of Appeals affirmed the determination of the Appellate Panel that Bartley was limited to benefits for an injury to her neck and a resulting thirty percent impairment to her back. Bartley v. Allendale County Sch. Dist., 381 S.C. 262, 672 S.E.2d 809 (Ct. App. 2009).

The Court of Appeals rejected Bartley's argument that she is totally disabled and that her psychological and physical problems affect more than just her back and hinder her employment, entitling her to additional benefits. The Court of Appeals ruled there was substantial evidence to support the Appellate Panel's determination that the 2002 accident did not cause or aggravate Bartley's other conditions. Id. at 274-75, 672 S.E.2d at 815. The Court of Appeals further observed that this Court's decision in Ellison II was not applicable to Bartley:

> Although Bartley presented some evidence the Allendale incident [when she was accidently knocked down by a student on September 26, 2002] aggravated Bartley's pre-existing conditions, the record also contains substantial evidence the Allendale incident did not cause or aggravate her conditions. Substantial evidence may support finding either the Richland incident aggravated her pre-existing conditions or that her pre-existing conditions were not aggravated at all because she was experiencing the same problems before the accident. Accordingly, *Ellison II* does not apply. The Appellate Panel is the ultimate fact finder and when the facts conflict, as they do

[6] Section 42-9-400(a) was later amended to refer to a "disability that is substantially greater and is caused by aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone," and it has omitted the "combined effects" language. Act No. 111, Pt. II, § 3, 2007 S.C. Acts 599 (emphasis added). However, this change is applicable only to injuries that occur on or after July 1, 2007 and the parties do not argue the new version applies here.

> here, its findings are conclusive. The record contains substantial evidence supporting the Appellate Panel's decision.

Id. at 275, 672 S.E.2d at 815 (emphasis added). The "Richland incident" referred to above by the Court of Appeals occurred when a student threatened to throw a desk at Bartley.

In Bartley it appears the Court of Appeals focused on whether Bartley's 2002 accident caused her other medical conditions or whether it aggravated her pre-existing conditions. However, in Ellison II this Court held that aggravation was not a requirement but an alternative analysis: "There is no requirement that the pre-existing condition aggravated the injury, or that the injury aggravated the pre-existing condition, so long as there is a greater disability simply from the 'combined effects' of the injury and the pre-existing condition." Ellison II, 371 S.C. at 164, 638 S.E.2d at 666.

The Court of Appeals recited the Ellison II standard in Bartley and noted that "the statute provides for the aggravation of a pre-existing condition *as an alternative* to the combined effects provision." Bartley, 381 S.C. at 273 n.4, 672 S.E.2d at 814 n.4. However, the Court of Appeals stated Bartley "has a long history of suffering from depression and migraine headaches" as well as other ailments, and her problems could have been caused by circumstances that were unrelated to her 2002 workplace injury.[7] Id. at 275, 672 S.E.2d at 815. Thus, it seems to rely upon the absence of proof of aggravation or causation.

It is not the province of this Court or the Court of Appeals to engage in fact-finding, as that is solely the function of the Commission. The orders of both the commissioner and the Appellate Panel (which incorporated much of the commissioner's order) were affected by an error of law. The commissioner stated that he "d[id] not doubt that the Claimant's future

[7] To the extent Bartley contends her pre-existing conditions included a psychological disorder, this Court has previously held that a claimant is entitled to benefits for aggravation of a pre-existing condition of depression. See Anderson v. Baptist Med. Ctr., 343 S.C. 487, 541 S.E.2d 526 (2001).

prospects of employment will be limited," but that he "is not allowed to stack her personal ailments with her work related injury to make a finding of disability," citing Ellison I. The Appellate Panel incorporated this finding into its order. Thus, the Commission has not considered Bartley's claims applying the proper legal standard and has not made specific factual findings as to Bartley's other conditions because it made an initial determination that they could not be considered.

The Court of Appeals did not remand this case to the Commission but instead concluded Ellison II was not applicable. In doing so, it arguably made findings of fact (such as the effect of the "Richland incident") that were not made by the Commission and it also did not properly apply the legal standard in Ellison II because it focused on an aggravation analysis instead of a combined effects analysis, although it recited the language in Ellison II that indicated aggravation was not required.

The Commission, had it considered the application of the law in Ellison II, would have made additional findings of fact pertinent to this analysis that are missing from the record. Thus, a remand to the Commission is necessary to allow it to make the necessary factual findings and legal conclusions to resolve Bartley's claims. See, e.g., Fox v. Newberry County Mem'l Hosp., 319 S.C. 278, 280, 461 S.E.2d 392, 394 (1995) ("The duty to determine facts is placed solely on the Commission and the court reviewing the decision of the Commission has no authority to determine factual issues but must remand the matter to the Commission for further proceedings. The reviewing court may not make findings of fact as to basic issues of liability for compensation, where, to do so, would impose upon the court the function of determining such facts from conflicting evidence." (internal citation omitted)); cf. Smith v. NCCI, Inc., 369 S.C. 236, 252, 631 S.E.2d 268, 276-77 (Ct. App. 2006) ("When an administrative agency acts without first making the proper factual findings required by law, the proper procedure is to remand the case and allow the agency the opportunity to make those findings.").[8]

[8] We note that many of the symptoms Bartley suffered (such as the pain radiating down to her buttocks, leg, and foot, and her complaints of numbness and tingling) have been reported to be associated with a diagnosis of

IV. CONCLUSION

Bartley has a long and complicated history of medical problems, and determining the extent, cause, and effects of her conditions has been the subject of debate among her treating physicians. The commissioner expressly applied the holding in Ellison I in finding Bartley was not allowed to "stack" her ailments in order to determine her overall disability, and this finding was adopted by the Appellate Panel. The commissioner made no additional findings after making the initial determination that other conditions could not be considered. The Commission's decision was affected by an error of law; therefore, we reverse the decision of the Court of Appeals and remand the matter to the Commission for consideration of Bartley's claims in light of this Court's decision in Ellison II.

REVERSED AND REMANDED.

TOAL, C.J., KITTREDGE and HEARN, JJ., concur.
PLEICONES, J., concurring in result only.

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foraminal stenosis, but this is a question of fact that should be evaluated by the Commission in the first instance, along with her arguments concerning the combined effects of her conditions.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Roger Bostick, Petitioner.

Appeal From Jasper County
Steven H. John, Circuit Court Judge

Opinion No. 26961
Heard March 16, 2011 – Filed April 11, 2011

REVERSED

Chief Appellate Defender Robert M. Dudek and Appellate Defender Kathrine H. Hudgins, both of South Carolina Commission on Indigent Defense, of Columbia, for Respondent-Appellant.

Attorney General Alan M. Wilson, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Senior Assistant Attorney General William Edgar Salter, III, all of Columbia and Solicitor I. McDuffie Stone, of Bluffton, for Petitioner-Respondent.

JUSTICE HEARN: In this belated direct appeal, we are asked to determine whether the State produced enough evidence to survive a directed verdict motion by Roger Bostick during his murder trial for the death of Sarah Polite. Because we find the State's evidence only raised a suspicion of guilt, we reverse.

FACTS

Polite was an older woman who served as the treasurer and secretary of her church. Her son, Rudy, lived with her in her house in Pineland, South Carolina, but her other son, Carl, lived two miles away. Typically, Polite would bring home a briefcase containing money from the church on Sunday for deposit at the bank on Monday.

The fire department was called to Polite's house on a Sunday afternoon after her house caught on fire. As the fire department attempted to extinguish the fire, Polite's body was found in the kitchen and removed by firefighters. She had been struck in the head with a blunt force object, but a subsequent autopsy revealed that she actually died as a result of carbon monoxide from the fire. Rudy testified he had left the house earlier that day to go to an auto parts store to purchase a part for his mother's car. When he returned approximately an hour later, the house was engulfed in flames and it appeared ransacked when he looked through the window. He was present when the fire department kicked in the back door and found his mother's body in the kitchen. Arson investigators determined the fire originated in Rudy's bedroom, and gasoline was used as an accelerant.

Two days after the fire, investigators discovered the following items belonging to Polite in a burn pile at a neighboring house belonging to Bostick's mother: two sets of car keys, toenail clippers, pens, burned paper, a metal clapsed ring of a purse, and a watch.[1] It was later determined that a heavy petroleum product, such as kerosene or diesel fuel, was used as an

[1] The burn pile was in the Bostick family's immediate back yard, which was approximately a quarter of a mile from Polite's home.

accelerant in the burn pile. Bostick's mother, Louise, testified that she did not use kerosene or diesel fuel in the burn pile because she was afraid of those accelerants. The investigators also found a blood-spattered briefcase under Polite's kitchen table.[2]

After interviewing Roger Bostick, the investigators asked for his clothing and shoes, which Bostick willingly delivered to them. Blood was found on his jeans, and a DNA analysis was performed and cross-referenced with a standard from Polite.[3] The DNA analysis came back inconclusive, and the agent who reviewed the DNA analysis findings, Nancy Skraba, testified that while ninety-nine percent of the population could be excluded as contributing to the sample, she was unable to determine whether the blood sample actually came from Polite. The chemical analysis of the shoes revealed a relatively fresh pattern that matched gasoline. At the close of the State's case-in-chief, Bostick moved for a directed verdict, which was denied.

Bostick testified in his own defense, telling the jury he drank at a cookout before the fire and returned to his mother's house to take a nap before the fire engine sirens woke him up. Bostick's second witness, his sister Gladys, recounted the events of the night of the fire, and testified specifically about Rudy Polite's demeanor. She stated she observed Rudy entering Polite's house on the day of the fire at around six o'clock as she was leaving her mother's house. When Polite's body was carried out of the house and placed on the ground, Gladys told the jury that after Rudy looked at his mother, he started to smoke a cigarette and "didn't express any emotion or feeling." Gladys also said she could not tell whether the house was ransacked because there was too much smoke.

Bostick's final witness was his oldest sister, Sarah Howell. Sarah recounted an argument she overheard between Rudy and Polite on the day of the fire, wherein Polite was allegedly upset that Rudy fixed everyone's car except hers, threw her keys at him, and then went inside the house. According to Sarah, Rudy drove off in a truck a few moments later. After

[2] No evidence was introduced concerning the contents of the briefcase.
[3] No blood standard was taken from Bostick.

Bostick closed his case, he moved for a directed verdict, which was also denied.

The jury found Bostick guilty of Polite's murder, and the circuit court sentenced him to thirty years imprisonment. Bostick did not file a direct appeal. Bostick filed a *pro se* petition for post-conviction relief (PCR), claiming his counsel was ineffective for failing to advise him about his appeal rights. The PCR judge denied his request, and this Court denied certiorari. Bostick filed a federal habeas corpus petition against the warden of Broad River Correctional Institution in the federal district court. Judge Joseph F. Anderson granted summary judgment in favor of the warden, and Bostick appealed to the Fourth Circuit Court of Appeals. The Fourth Circuit reversed Judge Anderson's order, finding Bostick was denied effective assistance of counsel because his counsel did not file a direct appeal following Bostick's conviction. Judge Anderson subsequently filed an order directing that Bostick be released from prison unless the State of South Carolina granted him a direct appeal within a reasonable time. This Court issued a writ of certiorari so that it could review Bostick's direct appeal issues.

LAW/ANALYSIS

Bostick argues that the evidence submitted did not rise to the level of substantial circumstantial evidence necessary to submit the case to the jury.[4] The State submits that more than sufficient evidence was presented to submit the murder charge to the jury, and Bostick's arguments go more to the weight the jury should have accorded the State's evidence. We disagree.

[4] Because of our disposition of this issue, we decline to address Bostick's remaining evidentiary issue relating to improper character evidence. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that if an appellate court's ruling on a particular issue is dispositive of an appeal, rulings on remaining issues are unnecessary).

A case should be submitted to the jury when the evidence is circumstantial "if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced." *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000); *see also State v. Williams*, 321 S.C. 327, 332, 468 S.E.2d 626, 629 (1996). "The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict . . . ." *State v. Schrock*, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. *Id.* at 133, 322 S.E.2d 452 (citing *State v. Manis*, 214 S.C. 99, 51 S.E.2d 370 (1949)). "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." *State v. Irvin*, 270 S.C. 539, 543, 243 S.E.2d 195, 197 (1978) (citing *State v. Massey*, 267 S.C. 432, 229 S.E.2d 332 (1976)). On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the State. *State v. Martin*, 340 S.C. 597, 602, 533 S.E.2d 572, 574 (2000).

We begin our analysis with three seminal cases from our jurisprudence analyzing the proof necessary in cases with circumstantial evidence. In *Schrock*, the sheriff's department responded to the report of a fire at the home of Mr. and Mrs. Strickland. *Schrock*, 283 S.C. at 130, 322 S.E.2d at 451. Mr. Strickland's body was found amid the remains of the burned home, and Mrs. Strickland's body was floating in a small pond 200 feet from the residence. *Id.* at 131, 322 S.E.2d at 451. Cigarette butts, an empty oil can, and a rolled-up newspaper were found on the premises. *Id.* Between the house and the garage, a footprint was found and photographed, and a plaster cast was made. *Id.* Schrock was eventually indicted and tried for the murders. *Id.* at 130, 322 S.E.2d at 451.

As here, the evidence against Schrock produced at trial was exclusively circumstantial. Nothing placed Schrock at the scene of the crime, and experts could not definitively testify that the footprint was made by shoes belonging to Schrock. *Id.* at 132, 322 S.E.2d at 452. Additionally, while witnesses could testify that Schrock was wearing tennis shoes the afternoon before the

fire and the next morning, they could not place him less than three or four miles away from the Strickland home, and the shoes presented as evidence were not identified by any witness who had seen Schrock wearing tennis shoes. *Id.* Although Schrock admitted to smoking the same Marlboro brand cigarettes located at the scene, tests run by the FBI did not indicate that Schrock had smoked the butts found. *Id.* at 131-32, 322 S.E.2d at 451. This Court found that the State had not been able to muster substantial circumstantial evidence warranting submission of the case to the jury; therefore, a directed verdict in favor of Schrock should have been granted by the circuit court. *Id.* at 134, 322 S.E.2d at 453.

In *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), the victim, Jennings Cox, was shot, and his body was found off a dirt road in Colleton County. 361 S.C. at 388, 605 S.E.2d at 530. On the last day Cox was seen alive, he borrowed a friend's BMW Z3 to go to a dentist's appointment. *Id.* at 388, 605 S.E.2d at 530. Evidence showed he withdrew money from an ATM on that day, but he was not seen again until his body was discovered. *Id.* The car driven by Cox was found in a parking lot in Johnson City, Tennessee, and one of the State's witness testified that Arnold called him from his father's home phone ten miles from where the car was found. *Id.* at 389, 605 S.E.2d at 530. While no blood was found in the car, the car had some unspecified scratches on it, and a coffee cup lid containing Arnold's fingerprint was found in the center console. *Id.* The court of appeals found there was no substantial evidence to submit the case to the jury and held a directed verdict of acquittal should have been granted. *Id.* at 390, 605 S.E.2d at 531.

This Court held that Arnold's fingerprint on the lid established only that he was in the borrowed BMW on the same day Cox was last seen alive. *Id.* Additionally, there was no evidence that Arnold was at the scene of the crime, which presumably was in Colleton County. *Id.* Even though both Arnold and the BMW were found in Tennessee, we held the evidence only raised a suspicion of guilt and was not sufficient to show that Arnold killed Cox. *Id.* Therefore, we affirmed the decision of the court of appeals.

Finally, in *Mitchell*, Hugh Mathis's home was burglarized and two guns were stolen. *Mitchell*, 341 S.C. at 408, 535 S.E.2d at 127. Mitchell had been a guest at Mathis's home on several occasions. *Id.* The day after the burglary was reported, investigators found a fingerprint on a screen leaning up against the house which matched Mitchell. *Id.* Mitchell was arrested and convicted of burglary; during his trial, Mitchell moved for a directed verdict, which was denied by the circuit court. *Id.*

The fingerprint was the only evidence linking Mitchell to the burglary. *Id.* at 409, 535 S.E.2d 126. After first commenting that the evidence presented was entirely circumstantial, this Court determined "the fact that [Mitchell's] fingerprint was on a screen that was propped up against the house does not prove entry where [Mitchell] had been in and around [Mathis's] house at least three times prior to the burglary." *Id.* The State did not produce any evidence concerning whether the screen was on the window when the window was broken or when the screen had been removed. *Id.* We accordingly affirmed the court of appeals' ruling that Mitchell was entitled to a directed verdict. *Id.*

Analyzing the evidence presented by the State in the light most favorable to it, we believe the State's evidence here raised only a suspicion of guilt by Bostick. No direct evidence linked Bostick to the crime scene or the items found in the burn pile. Moreover, there was no testimony tending to establish that Bostick had control over the burn pile. When the State closed its case against Bostick, the following pieces of circumstantial evidence of his guilt had been presented: (1) Polite's car keys, calculator, and other items from her home were found in the Bostick family's burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick's mother did not use those accelerants when she burned things in the pile; (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood found on Bostick's jeans excluded about ninety-nine percent of the population, the blood could not be matched to Polite's DNA. In addition, the weapon used to beat Polite in the head was never introduced into evidence. Finally, no evidence was introduced concerning Bostick's

knowledge that Polite may have had money in the briefcase or if indeed any money was in the briefcase on that particular Sunday. The evidence presented by the State raised, at most, a mere suspicion that Bostick committed this crime. Under settled principles, the trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt. *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). Therefore, we find the circuit court erred in failing to direct a verdict in favor of Bostick.

CONCLUSION

Therefore, we reverse the circuit court and remand it back with instructions to issue a judgment consistent with our ruling.

REVERSED.

TOAL, C.J., PLEICONES, BEATTY and KITTREDGE, JJ., concur.

The Supreme Court of South Carolina

In the Matter of Joseph W. Ginn, III, Petitioner.

ORDER

On August 9, 2010, petitioner was suspended from the practice of law for nine months, retroactive to the date of his interim suspension,[1] with certain conditions.[2] In the Matter of Ginn, 388 S.C. 436, 697 S.E.2d 572 (2010). On August 13, 2010, petitioner filed a petition for reinstatement. The petition was referred to the Committee on Character and Fitness pursuant to Rule 33(d), RLDE, Rule 413, SCACR. A hearing was held before the Committee on December 3, 2010. The Committee has issued a Report and

[1] By order dated October 1, 2009, respondent was placed on interim suspension. In the Matter of Ginn, 385 S.C. 240, 684 S.E.2d 176 (2009).

[2] Petitioner was required to complete the Trust Account School and Ethics School portions of the South Carolina Bar's Legal Ethics and Practice Program within one year of the date of the Court's opinion, which he has done. Following reinstatement, petitioner must renew his monitoring contract with Lawyers Helping Lawyers for two years from the date of reinstatement and on a quarterly basis file with the Commission on Lawyer Conduct (1) an affidavit confirming his compliance with the monitoring contract and a statement from his monitor confirming his compliance with the contract; (2) a statement from his primary treating physician setting forth his diagnosis, treatment plan, compliance, and prognosis; and (3) copies of his law office bank statements, checks, records of deposits, monthly reconciliations, and a statement from his compliance that he is in compliance with Rule 417, SCACR.

Recommendation in which it concludes petitioner "is of such moral character to practice law in South Carolina." The Committee recommends petitioner be required to adhere to the post-reinstatement conditions set forth in this Court's opinion suspending petitioner and in footnote 2 above. No exceptions were filed following the issuance of the Report and Recommendation. We grant the petition, subject to the post-reinstatement conditions, and reinstate petitioner to the practice of law in South Carolina.

IT IS SO ORDERED.

s/ Jean H. Toal C. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

April 7, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SunTrust Bank s/b/m National Bank of Commerce, including its Division, Central Carolina Bank, Appellant,

v.

Brandy K. Bryant a/k/a Brandy K. McGarthy, Arnold L. Bryant, Phyllis W. Davis and Stephen Ford, as Spartanburg County Tax Collector, Defendants,

Of whom Phyllis W. Davis is the Respondent.

Appeal From Spartanburg County
Gordon G. Cooper, Master-in-Equity

Opinion No. 4815
Submitted March 1, 2011 – Filed April 6, 2011

REVERSED

Dean A. Hayes, of Columbia, for Appellant.

Daniel R. Hughes and John B. Duggan, both of Greenville, for Respondent.

LOCKEMY, J.: In this appeal, SunTrust Bank s/b/m National Bank of Commerce, including its division, Central Carolina Bank (SunTrust) argues the master-in-equity erred in finding Phyllis Davis's judgment lien was entitled to priority over its purchase money mortgage in the distribution of the overage from a tax sale of the real property subject to the purchase money mortgage. We reverse.

FACTS

On February 12, 2001, Davis obtained a judgment against Arnold Bryant in the amount of $5,205.46. On April 27, 2001, Arnold Bryant and Brandy Bryant purchased real property located at 10 20th Street in Greer, South Carolina (the Property) using the proceeds of a loan given by Central Carolina Bank (Central Carolina). During the loan closing, Arnold Bryant and William Edwards executed and delivered to Central Carolina a promissory note in the amount of $27,846.76. The note was secured by a mortgage executed by the Bryants on April 27, 2001, and recorded on May 1, 2001. SunTrust is the successor in interest to Central Carolina.

On November 5, 2006, Stephen Ford, as Spartanburg County Tax Collector, sold the Property at a public tax sale to Equifunding, Inc. (Equifunding) for non-payment of the 2005 taxes. On March 8, 2008, a tax deed was issued conveying the Property to Equifunding. The tax sale of the Property resulted in an overage of $8,832.87.

On August 26, 2008, SunTrust filed a complaint against the Bryants, Davis, and Ford seeking the entire overage amount from the tax sale. SunTrust alleged it held a purchase money mortgage executed by the Bryants, and the principal balance owed on the note to SunTrust was in excess of $13,000. SunTrust maintained it was entitled to the overage under either the contractual language of the mortgage or an equitable lien theory.

Neither the Bryants nor Ford answered the complaint. Davis answered SunTrust's complaint and denied SunTrust's purchase money mortgage was entitled to priority over her judgment.

On December 16, 2008, SunTrust filed a motion for summary judgment. On December 17, 2008, the case was referred to the master-in-equity by consent order of reference. At the hearing on SunTrust's summary judgment motion, the master determined SunTrust's purchase money mortgage was not entitled to priority over Davis's judgment. The master found, however, that because Davis's judgment was only against Arnold Bryant and the Property was owned by Arnold Bryant and Brandy Bryant as joint tenants with the right of survivorship, the $8,832.87 overage should be divided equally between SunTrust and Davis. In the final order filed on May 5, 2009, the master ordered the overage be divided between SunTrust and Davis and found SunTrust "had the opportunity to foreclose its mortgage on the [P]roperty but chose not do so" and "thus, after the [P]roperty was sold . . . SunTrust lost any security interest therein."[1] In July 2009, the master denied SunTrust's motion to alter or amend. This appeal followed.

STANDARD OF REVIEW

An action to establish lien priorities is an action in equity. Fibkins v. Fibkins, 303 S.C. 112, 115, 399 S.E.2d 158, 160 (Ct. App. 1990). The appellate court's standard of review in equitable matters is our own view of the preponderance of the evidence. Williams v. Wilson, 349 S.C. 336, 339-40, 563 S.E.2d 320, 322 (2002).

LAW/ANALYSIS

SunTrust argues the master erred in finding Davis's judgment was entitled to priority over its purchase money mortgage. We agree.

[1] The final order does not mention the master's reasoning from the hearing that Davis was only entitled to priority on Arnold Bryant's one-half interest in the Property.

"A purchase money mortgage is recognized at common law and in equity where a purchaser of land, contemporaneous with the acquisition of the legal title or afterward, but as a part of the same transaction, executes a mortgage to secure the purchase money." Hursey v. Hursey, 284 S.C. 323, 327, 326 S.E.2d 178, 180 (Ct. App. 1985). "It is accorded priority over all other claims or liens arising through the mortgagor although they are prior in time to the execution of the purchase money mortgage." Id. "The rationale for this special priority is that the mortgagor's interest in the property is made possible by the purchase money loan, so that the mortgage should come ahead of other interests that attach merely because the mortgagor acquires the property." South Carolina Federal Sav. Bank v. San-A-Bel Corp., 307 S.C. 76, 80, 413 S.E.2d 852, 855 (Ct. App. 1992).

SunTrust contends that although Davis's judgment was filed first, its mortgage is entitled to priority by virtue of its purchase money status. Davis argues SunTrust was not entitled to the same priority as to the proceeds from the sale of the Property as to the Property itself. Davis maintains SunTrust failed to assert its right to redeem and therefore lost its right to assert priority over Davis's previously recorded judgment.[2]

First, we note neither party cites case law in their briefs addressing the issue before this court. While SunTrust cites Knapp v. Victory Corp., 279 S.C. 80, 302 S.E.2d 330 (1983), Twin City Power Co. v. Savannah River Elec. Co., 163 S.C. 438, 161 S.E. 750 (1930), and FCX, Inc. v. Long Meadow Farms, Inc., 269 S.C. 202, 237 S.E.2d 50 (1977), in support of its argument that purchase money mortgages are entitled to priority over previously filed judgment liens with regard to proceeds from a tax sale, we find these cases do not support SunTrust's contention. None of the cases relied upon by SunTrust involve tax sales or purchase money mortgages.

[2] Davis failed to cite any authority to support this argument. Therefore, Davis abandoned this issue on appeal, and we decline to consider the argument. See Bennett v. Investors Title Ins. Co., 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006) (holding that issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal).

We find SunTrust's mortgage is entitled to priority over Davis's judgment. Although Davis's judgment was filed prior to the execution of SunTrust's mortgage, purchase money mortgages are accorded priority over all other liens arising through the mortgagor. See Hursey, 284 S.C. at 327, 326 S.E.2d at 180. Furthermore, SunTrust's purchase money mortgage made the Bryants' interest in the Property possible. See San-A-Bel, 307 S.C. at 80, 413 S.E.2d at 855 (holding the rationale for granting purchase money mortgages priority over all other liens is that the mortgagor's interest in the property is made possible by the purchase money loan). If SunTrust had not given the purchase money loan to the Bryants, there would have been no property to be sold at the tax sale, and therefore, no overage. Accordingly, we find SunTrust is entitled to the entire tax sale overage.

CONCLUSION

We reverse the master's determination that SunTrust and Davis are each entitled to one-half of the tax sale overage. We find SunTrust's purchase money mortgage has priority over Davis's judgment, and thus, SunTrust is entitled to the entire overage.

REVERSED.

WILLIAMS and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Denise Murphy, Appellant,

v.

The State, Respondent.

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

Opinion No. 4816
Submitted January 4, 2011 – Filed April 6, 2011

AFFIRMED

John A. O'Leary, of Columbia, for Appellant.

Rachel Donald Erwin, of Blythewood, for Respondent.

THOMAS, J.: Denise Murphy appeals her conviction for driving under the influence (DUI). We affirm.[1]

FACTS

On April 4, 2007, Officer Jerry Rothell stopped Murphy's vehicle after noticing her swerving and weaving. Rothell conducted three field sobriety tests and arrested Murphy for DUI. A subsequent Datamaster breath test revealed Murphy had a blood alcohol level of 0.13. A dashboard video camera in Rothell's vehicle recorded the traffic stop.

During the traffic stop Murphy was made to walk a straight line. However, during this sobriety test, the videotape only recorded her from essentially the knees up, and in portions only displayed half her body as she walked to the limit of the camera's field of view. In addition, a horizontal gaze nastagmus test was conducted, in which Murphy was made to follow the movement of a pen with only her eyes. However, Rothell conducted this test in the spot where Murphy stood after completing the straight line test, with her back to the car, on the fringe of the dashboard camera's field of view.[2] On cross-examination, Rothell explained:

> I could have done it completely in front of the car and you wouldn't have seen it. The reason for it is it's checking for an involuntary twitching of the eye. I turned around and pointed her back toward the car to do that because the blue [light] is going to flash in and out and create problems with her eyes focusing. That's the reason I moved her to the side and had her turn her back to the car and made sure that she didn't feel like the blue lights were bothering her at all.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

[2] Contrary to Murphy's allegation, upon review of the videorecording produced by the dashboard camera, Rothell does not appear to affirmatively removing Murphy from the view of the camera.

Pre-trial, Murphy unsuccessfully moved to suppress the videotape of the traffic stop and sobriety tests because (1) two of the field sobriety tests were not conducted in full view of the camera and (2) the video camera continued recording after she was placed in Rothell's police vehicle.

Additionally, Murphy's unsuccessfully moved to suppress the results of her Datamaster breath alcohol test because the Datamaster device used in her case required repairs sixteen days after her test was conducted. At trial, Murphy cross-examined Rothell in detail about SLED's repair records for the Datamaster breath alcohol test device, which Murphy acquired from SLED's website.

The jury found Murphy guilty of DUI. Murphy appealed to the circuit court, and the circuit court affirmed. This appeal followed.

ISSUES ON APPEAL

I. Did the circuit court err in failing to suppress the incident site videotape of Murphy's traffic stop?

II. Did the circuit court err in failing to suppress Murphy's breath alcohol test results?

STANDARD OF REVIEW

"[O]ur scope of review is limited to correcting the circuit court's order for errors of law." City of Rock Hill v. Suchenski, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007).

LAW/ANALYSIS

I. Videotape

Section 56-5-2953 of the South Carolina Code provides:

> (A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the breath test site videotaped.
>
> (1) The videotaping at the incident site must:
> (a) begin not later than the activation of the officer's blue lights and conclude after the arrest of the person for a violation of Section 56-5-2930, 56-5-2933, or a probable cause determination that the person violated Section 56-5-2945; and
> (b) include the person being advised of his Miranda rights before any field sobriety tests are administered, if the tests are administered.

S.C. Code Ann. § 56-5-2953(A) (2006).[3]

a. Remedy available under Section 56-5-2953

Initially, although not raised by either party, we must note that throughout the course of this matter, Murphy is inconsistent as to the remedy she seeks. Before the magistrate, Murphy argued for "suppression" of the videotape, on appeal to the circuit court Murphy argued the magistrate erred in failing to "dismiss" the charge, and now on appeal to this court Murphy argues the trial court erred in failing to "suppress" the video.

Under subsection (A) of the statute, "[t]he videotapes of the incident site and of the breath test site are admissible pursuant to the South Carolina Rules of Evidence in a criminal, administrative, or civil proceeding by any party to the action." S.C. Code Ann. § 56-5-2953(A). However, the remedy for noncompliance with the statute is dismissal. See City of Rock Hill v. Suchenski, 374 S.C. 12, 17, 646 S.E.2d 879, 881 (2007) ("[D]ismissal of the DU[I] charge is an appropriate remedy provided by § 56-5-2953 where a violation of subsection (A) is not mitigated by subsection (B) exceptions."); S.C. Code Ann. § 56-5-2953(B) (stating that "[f]ailure . . . to produce the

[3] Section 56-5-2953 was amended effective Feb. 10, 2009. See Act No. 201, 2008 S.C. Acts 1682-85. Thus, the amended statute is not applicable to this case.

videotapes required by [subsection (A)] is not alone a ground for dismissal. . . if [certain exceptions are met]"). However, regardless of the fact that Murphy asked to suppress the videotape for noncompliance, we find the issue of the trial court's interpretation of the statute is properly before this court. Further, in light of our holding *infra* – that the statutory requirements of subsection (A) were met – the inconsistencies in the remedy sought are not of consequence to this appeal.

b. Failure to record a full view of all field sobriety tests

Murphy alleges the videotape of the incident cite does not comply with the statute because it fails to "record most of the field sobriety tests." We disagree.

"All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used." State v. Gaines, 380 S.C. 23, 32-33, 667 S.E.2d 728, 733 (2008).

Here, the statute provides a person "must have his conduct at the incident site and breath test site videotaped." The videotaping at the incident site must "(a) begin not later than the activation of . . . blue lights and conclude after the arrest . . . " and "(b) include the person being advised of his Miranda rights before any field sobriety tests are administered, if the tests are administered." S.C. Code Ann. § 56-5-2953(A)(1)(a)-(b).

Therefore, in regard to what must be recorded, the plain language of the statute is not violated as long as the recording captures (1) the accused's conduct and (2) Miranda warnings prior to field sobriety tests, if such tests occur. Murphy does not allege the video fails to capture her being advised of Miranda, but only that the statute requires that she remain in full view and record all field sobriety tests. However, nothing in the plain language of the statute indicates that an accused remain in full view of the camera for the duration of the encounter. Rather, the statute only requires her "conduct" be recorded. Conduct is generally defined as one's behavior, action, or demeanor. The Oxford Dictionary 158 (2d ed. 2001). Failure of the video to maintain a full view of the accused for the duration of a field sobriety test in

which she is made to walk a line, for instance, does not fail to display her behavior, demeanor, and general state. Thus, an accused need not remain in full view of the camera at all times in order for the recording to capture her conduct.

The statute speaks to the sobriety tests by stating the video must "include the person being advised of his Miranda rights before any field sobriety tests are administered, if the tests are administered." S.C. Code Ann. § 56-5-2953(A)(1)(b). While certainly an individual's performance on such tests would be part and parcel of his or her "conduct" at the incident site, as mentioned, an unbroken recording of the tests is not necessary to capture conduct. Therefore, the recording need not display all field sobriety tests provided it captures the accused's conduct.[4]

Accordingly, we find the plain language of the statute does not require that the recording capture a continuous full view of the accused, or capture *all* field sobriety tests. Rather, provided all other requirements are met, the video need only record the accused's conduct. For this reason we find the trial court did not err in finding the video complied with section 56-5-2953(A).

c. Terminating the video upon arrest

Next, Murphy argues the statute was violated when Rothell failed to stop the videotape when she was placed in the police cruiser. We disagree.

The statute provides: "The videotaping at the incident site must (a) begin not later than the activation of . . . blue lights and conclude *after the*

[4] As amended in 2009, the current version of section 56-5-2953 expressly requires the recording of field sobriety tests. See S.C. Code Ann. § 56-5-2953(A)(1)(a)(ii) (Supp. 2010) ("The video recording at the incident site must: . . . include any field sobriety tests administered."). We note that the legislature's amendment of the plain language of the statute to require the recording of field sobriety tests further bolsters our position that the plain language of the prior version, in effect at the time of this action, did not require recording of all tests.

arrest of the person . . . ." S.C. Code Ann. § 56-5-2953(A)(1)(a) (emphasis added).

Murphy alleges the provision that the recording "must . . . conclude after the arrest" required Rothell to end the recording when she was placed in the police cruiser. However, in State v. Dowd, the supreme court affirmed a defendant's resisting arrest conviction, holding the arrest did not conclude until the defendant was locked in his jail cell. 306 S.C. 268, 270, 411 S.E.2d 428, 429 (1991). In rejecting the argument that the arrest ended upon being taken into custody, the court defined arrest as "an ongoing process, finalized only when the defendant is properly confined." Id.

Accordingly, we find the statute did not require the video be terminated upon Murphy being placed in the police cruiser. Thus, the trial court did not err in finding the video recording complied with the statute.

II. Suppression of the breath test

Finally, Murphy argues the trial court erred in failing to suppress the results of her Datamaster breath test in light of documents from the SLED website that the machine was repaired sixteen days after her test. We disagree.

Section 56-5-2954 of the South Carolina Code requires:

> The State Law Enforcement Division and each law enforcement agency with a breath testing site is required to maintain a detailed record of malfunctions, repairs, complaints, or other problems regarding breath testing devices at each site. These records must be electronically recorded. These records, including any and all remarks, must be entered into a breath testing device and subsequently made available on the State Law Enforcement Division web site.

S.C. Code Ann. § 56-5-2954 (Supp. 2010).

First Murphy argues "there are no local records as required [and] the SLED records are erroneous and misleading." However, in State v. Landon, our supreme court found that section 56-5-2954 "is satisfied by the fact that SLED's internet records are available at the testing site itself." 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006). Moreover, Murphy has failed to include the SLED records in the record on appeal.

Next, Murphy argues, "[d]espite . . . finding that the [a]ppellant had made a prima facie showing of prejudice as required in Landon, the result [was] not suppressed . . . ."

In Landon, the supreme court held:

> We are aware, however, that information regarding the DataMaster is exclusively within the State's control. Because SLED's failure to provide a detailed record significantly hampers the defendant's ability to show prejudice in this situation, we hold that once a defendant makes a prima facie showing of prejudice, the burden must shift to the State to prove the defendant was not prejudiced, either by providing records to show the machine was working properly at the time of testing or by some other contemporaneous evidence.

Id. at 109, 634 S.E.2d at 663.

In this case, Murphy argues only that she made a prima facie showing of prejudice. Interestingly, it appears that the trial court agreed as in response to Murphy's pre-trial motion to suppress the test results, the trial court stated:

> I'm going to deny your motion . . . . It's something that can be cross-examined and I guess I'm basing it on the number of tests that were conducted between the subject test, . . . and the date that there was some repair made on this datamaster. Anyway, *I feel like*

> *the State has satisfied the requirement of* Landon but it still I guess is a jury issue as to how they want to treat the weight of the datamaster.

(emphasis added).

First, we are compelled to state that a prima facie showing of prejudice does not render the test results inadmissible per se but simply shifts the burden to the State to show the machine was working properly at the time of the test. See Landon, 370 S.C. at 109, 634 S.E.2d at 663. Therefore, even if we were to accept Murphy's contention that she made a prima facie showing of prejudice, because she does not allege the trial court erred in finding the State satisfied its burden under Landon, she offers this court no basis on which to reverse the ruling of the trial court.

However, notwithstanding that Murphy does not allege the trial court erred in finding the State met its burden under Landon, we find the evidence supports the trial court's conclusion that it did. The State presented evidence that the Datamaster conducts a series of self-diagnosing checks to insure that it is operating correctly both prior to and subsequent to any actual breath testing. In this regard evidence exists to demonstrate that the Datamaster in question conducted this series of checks at least twenty-five times after Murphy's test without indicating a malfunction or need for repair.

Accordingly, even if we were to accept Murphy's claim that she presented a prima facie showing of prejudice, we find the evidence supports the determination that the State met its burden under Landon and that the issue was one proper for the jury.

CONCLUSION

For the reasons stated above, the ruling is

AFFIRMED.

GEATHERS, J., concurs.

PIEPER, J., concurring.

I concur in the resulting decision to affirm. However, I would resolve the videotape issue on preservation grounds.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). When the circuit court is acting in an appellate capacity, the appellant must raise an issue to the circuit court in order to preserve the issue. Rogers v. State, 358 S.C. 266, 270, 594 S.E.2d 278, 280 (Ct. App. 2004). Moreover, to preserve an issue an appellant must argue the same grounds at trial as those he argues on appeal. State v. Smith, 337 S.C. 27, 34, 522 S.E.2d 598, 601 (1999).

During pretrial motions before the magistrate, Murphy moved to suppress the videotape because of a violation of section 56-5-2953 of the South Carolina Code (2006) by not recording all of the field sobriety tests, and Murphy also asked that the case be dismissed. On appeal to the circuit court, Murphy argued his charges should be dismissed based on a violation of the same statute; however, the remedy of suppression on the ground of not recording all of the field sobriety tests was never addressed by the circuit court. The circuit court did address Murphy's issue about allowing a post-arrest video of the defendant into evidence, as well as the issue about the datamaster records. Murphy subsequently appealed to this court, basing all the issues on appeal on the court's failure to suppress the videotape. Because some of Murphy's arguments changed in part, the issue of suppression of the video for not fully taping the field sobriety tests, as opposed to dismissal of the case, does not appear to be properly before us. Just as a motion to strike evidence does not automatically preserve a request for a mistrial, a request for suppression does not automatically preserve a request for dismissal, and vice versa. Thus, I would not reach the merits of Murphy's suppression issue on the field sobriety tests because the circuit court only addressed the issue using the perspective of whether dismissal was appropriate.

As to the remaining portions of the majority opinion on the post-arrest taping issue and the datamaster records issue, I concur with the majority.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina Department of Revenue, Appellant,

v.

Club Rio, d/b/a Club Level, Respondent.

Appeal From the Administrative Law Court
Marvin F. Kittrell, Judge

Opinion No. 4817
Submitted March 1, 2011 – Filed April 6, 2011

REVERSED AND REMANDED

Andrew L. Richardson, Caroline H. Raines, Milton G. Kimpson, and Ronald W. Urban, all of Columbia, for Appellant.

PER CURIAM: The Department of Revenue (Department) moved the Administrative Law Court (ALC) to revoke the liquor by the drink license

and beer and wine permit (collectively, the License) of Club Rio, d/b/a Club Level (the Club). After the Club surrendered the License, the ALC dismissed the action, finding it lacked subject matter jurisdiction and the revocation issue was moot. We reverse[1] and remand for consideration of the Department's motion for revocation.

FACTS

Beginning in 2007, the Club operated a hip-hop dance/night club in Richland County. Located in a mixed business and residential district, the Club was the only business in the immediate vicinity that possessed both a permit to sell beer and wine and a license to sell liquor by the drink on the premises. In August 2008, shortly before the expiration of its License, the Club filed an application with the Department to renew its License.

On September 2, 2008, the Department sent the Club a "Letter to Operate" recognizing the Club had timely filed requests to renew its License and, on the condition that the Club timely requested a contested case hearing, expressly permitting the Club to continue to operate under the License during the pendency of the administrative process. The letter limited the extension of the License to thirty days after the date of the ALC's decision or ninety days after the date of the letter, whichever occurred first, but explained the Club could request additional extensions.

On September 24, 2008, after reviewing protests from the Club's neighbors who opposed renewal of the License, the Department denied the Club's request for renewal. Four days later, the Department advised the Club it had ninety days within which to file a written protest with the Department contesting the denial. On November 26, 2008, the Club requested that the Department extend the provisional License an additional sixty days and filed with the ALC a request for a contested case hearing. The Department responded by issuing a second Letter to Operate.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

On February 2, 2009, the Department moved to dismiss the contested case on the basis that the Club had failed to file its contested-case request with the ALC within thirty days of learning of the Department's decision.[2] Although the Club filed a response on February 18, 2009, asking for its delay to be excused for good cause, the ALC granted the Department's motion. Shortly thereafter, the Club requested an extension of the License and requested the ALC stay the effect of its order dismissing the case during the pendency of the Club's appeal to this court.[3] When the Department did not object, the ALC granted the Club's motion, permitting the Club to operate under the License until March 31, 2009.

On March 20, 2009, the Department moved the ALC to enter an emergency suspension of the Club's License because the Club posed a threat to "the public's health, safety, or welfare." The motion indicated the Department sought the suspension "pending a hearing on the merits for the permanent revocation" of the Club's License. The ALC granted the motion and suspended the License. On March 25, 2009, the Department took

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[2] Because copies of relevant documents were omitted from the record, the majority of the procedural history recited herein comes from the ALC's final order dated May 6, 2009. The License, the first Letter to Operate, and the documents the Club filed to protest or initiate the contested case do not appear in the record. Consequently, it is impossible to determine whether the Club filed a protest with the Department, as it was instructed to do in the Department's letter of September 28, 2008, or proceeded to seek a contested case hearing before the ALC. However, if the Club failed to file its timely protest with the Department, the Department's denial became a final decision. See S.C. Code Ann. §§ 12-60-420(A) & -450(D)(2) (Supp. 2010) (outlining procedure for protest of Department decision and providing failure to protest renders decision final). When a protest is not filed with the Department, the ALC must make a finding of good cause for the failure to protest before it can reverse the Department's decision. S.C. Code Ann. § 12-60-510(A)(2) (Supp. 2010).

[3] It does not appear the Club appealed the ALC's dismissal of its contested case.

possession of the Club's copy of its Letter to Operate.[4] The next day, the Club surrendered to the Department its original Letter to Operate, along with a letter from the Club's president stating he did thereby "turn in, release, relinquish, any and all rights and privileges" conferred by its beer and wine permit, its liquor license, and the Letters to Operate.

At the March 31, 2009 hearing on the Department's motion to revoke the Club's License, the Club orally moved the ALC to dismiss the case based upon lack of subject matter jurisdiction and mootness. The ALC entertained arguments on all three motions. After the Club presented its motions, the Department presented evidence that the Club posed a danger to the public health, safety, and welfare as a result of fighting and shooting incidents that occurred both before and after the stay was granted. Several witnesses and members of local law enforcement testified that similar incidents and other criminal activity were commonplace at the Club and that the Club unduly burdened the local police.

On May 6, 2009, the ALC issued its final order granting both of the Club's motions to dismiss. Despite its initial determination that it lacked subject matter jurisdiction, the ALC "out of an abundance of caution" also found the matter was moot, found no exception to the Mootness Doctrine applied, and granted dismissal on that basis as well. The Department appealed. The Club, which was represented by counsel before the ALC but is not represented on appeal, did not file a respondent's brief in this matter.

[4] The record does not indicate when the Department took possession of the License. However, licenses are "the property of the [D]epartment." S.C. Code Ann. § 61-2-140(B) (2009). Because neither party contends that the Club retained the License after the Department retrieved the Letter to Operate, we presume the Department retrieved the License on March 25, 2009, as well.

STANDARD OF REVIEW

Appellate review of an order by the ALC "must be confined to the record." S.C. Code Ann. § 1-23-610(B) (Supp. 2010). Furthermore:

> The court may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
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> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Id.

LAW/ANALYSIS

I. Subject Matter Jurisdiction

The Department first asserts the ALC erred in granting the Club's motion to dismiss based upon lack of subject matter jurisdiction. We agree.

"Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.'" Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994) (quoting Bank of Babylon v. Quirk, 472 A.2d 21, 22 (Conn. 1984)).

The ALC "shall preside over all hearings of contested cases . . . involving the departments of the executive branch of government . . . ." S.C. Code Ann. § 1-23-600(A) (Supp. 2010). In particular, the ALC has jurisdiction over contested case hearings involving alcoholic beverages. S.C. Code Ann. § 61-2-260 (2009). Furthermore, the Administrative Procedures Act (APA) permits the Department to seek summary suspension of a license pending revocation proceedings "[i]f the [Department] finds that public health, safety or welfare imperatively requires emergency action[] and incorporates a finding to that effect in its order . . . ." S.C. Code Ann. § 1-23-370(c) (2005). When a license is suspended or revoked, the holder must surrender it to the Department immediately. S.C. Code Ann. § 61-4-600 (2009).

We reverse the ALC's decision dismissing this matter for lack of subject matter jurisdiction. This matter originated as a contested case filed pursuant to sections 1-23-600 and 61-2-260. However, the ALC dismissed the Club's contested case in its February 18, 2009 order and confirmed in a subsequent order that the February dismissal ended the contested case. The record does not indicate the contested case was in any way revived. Subsequently, the Department commenced an action for summary suspension and revocation of the License under section 1-23-370(c). The Department appealed from the order dismissing the revocation issue.

We find the ALC has subject matter jurisdiction over a petition for revocation initiated by the Department even if the license or permit at issue is surrendered after commencement of the revocation proceedings. Subject matter jurisdiction requires only the authority to adjudicate "'cases of the general class to which the proceedings in question belong.'" Dove, 314 S.C. at 237-38, 442 S.E.2d at 600 (emphasis supplied). Under Title 61 of the South Carolina Code, which covers Alcohol and Alcoholic Beverages, the Department has the authority to suspend or revoke alcoholic beverage licenses and permits after investigation. S.C. Code Ann. § 61-4-590 (2009). Both Title 61 and the APA agree the ALC has subject matter jurisdiction over contested cases involving the Department. See § 1-23-600(A); § 61-2-260. The APA applies the rules for contested cases to license grant, denial, and renewal issues requiring notice and hearing. S.C. Code Ann. § 1-23-370(a) (2005). In another subsection of the same statute, the APA specifies the Department may seek summary suspension of a permit or license. § 1-23-370(c). Consequently, although not articulated in these statutes, it appears the General Assembly intended to empower the ALC to decide disputes relating to the issuance and validity of alcoholic beverage licenses.

In the case at bar, the ALC found that the Club's surrender of its rights under the License effectively deprived the ALC of subject matter jurisdiction over the previously filed revocation proceedings. This reasoning ignores the provisions above. The statutory scheme confers on the ALC subject matter jurisdiction over the Department's contested cases. § 1-23-600(A); § 61-2-260. Furthermore, no provision assigns subject matter jurisdiction over revocation proceedings elsewhere. Accordingly, the ALC erred in dismissing the Department's revocation proceeding for lack of subject matter jurisdiction.

II. Mootness

Next, the Department asserts the ALC erred in granting the Club's motion to dismiss based upon mootness. We agree.

A. Mootness Doctrine

This court recently examined the Mootness Doctrine:

> The court does not concern itself with moot or speculative questions. An appellate court will not pass judgment on moot and academic questions; it will not adjudicate a matter when no actual controversy capable of specific relief exists. A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.

Sloan v. Greenville Cnty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (internal citations and quotation marks omitted).

B. Revocation of Alcoholic Beverage License

The Department "has sole and exclusive power to issue all licenses, permits, and certificates" authorizing the sale of beer, wine, or liquor. S.C. Code Ann. § 61-2-70 (2009). In addition:

> The [D]epartment has jurisdiction to revoke or suspend permits authorizing the sale of beer or wine. The [D]epartment may, on its own initiative . . . , revoke or suspend the permit pursuant to the South Carolina Revenue Procedures Act. The decision of the [ALC] is not automatically superseded or stayed by the filing of a petition for judicial review.

S.C. Code Ann. § 61-4-590(A) (2009). However, the Department may not order suspension or revocation until after the South Carolina Law

Enforcement Division "has conducted and completed an investigation, and the [D]epartment has made a departmental determination" supporting suspension or revocation. S.C. Code Ann. § 61-4-590(B) (2009).

Statutory grounds for revocation or suspension of a permit authorizing the sale of beer or wine include the permit holder's knowing allowance of "any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State . . . ." S.C. Code Ann. § 61-4-580 (2009). If, following suspension or revocation, a permit holder either fails to surrender his permit to the Department immediately or continues to offer beer or wine for sale, he is guilty of a misdemeanor and "must be fined not less than twenty dollars nor more than one hundred dollars or imprisoned for not less than ten days nor more than thirty days, or both, in the discretion of the court." S.C. Code Ann. 61-4-600 & -610 (2009).

A person seeking authorization to sell beer or wine must submit an application to the Department stating, under oath, "whether [he] or an owner of the business has been involved in the sale of alcoholic liquors, beer, or wine in this or another state and whether he has had a license or permit suspended or revoked." S.C. Code Ann. § 61-2-90(4) (2009). Suspension or revocation of a license affects the ability of the holder and his immediate family to secure a new license or permit or maintain other existing permits:

> (D) When a license or permit is suspended or revoked, no partner or person with a financial interest in the business may be issued a license or permit for the premises concerned. No person within the second degree of kinship to a person whose license or permit is suspended or revoked may be issued a license or permit for the premises concerned for a period of one year after the date of suspension or revocation.
>
> (E) A person whose license or permit has been suspended or revoked for a particular premises is not eligible to receive an additional new license or permit

> at another location during the period the suspension or revocation is in effect, and the [D]epartment may suspend or revoke all other licenses or permits held by the person if the suspended or revoked premises is within close proximity.

S.C. Code Ann. § 61-2-140 (2009).

We reverse the ALC's finding of mootness because the Club's surrender of the License prior to the hearing did not moot the revocation issue. See Sloan, 380 S.C. at 535, 670 S.E.2d at 667 (holding an issue is moot "when judgment, if rendered, will have no practical legal effect upon the existing controversy . . . [or] when some event occurs making it impossible for the reviewing court to grant effectual relief"). The Department sought to revoke the Club's License because the Club's continued operation threatened "the public's health, safety, or welfare." After the ALC granted the Department's motion for temporary suspension, section 61-4-600 required the Club to surrender its License to the Department. Accordingly, the Club's surrender of the License prior to the hearing merely amounted to compliance with the statute.

This issue was not moot because a judgment in the revocation action would have had a practical, long-term legal effect on the existing controversy between the Department and the Club. In ruling otherwise, the ALC considered only the short-term differences in consequences between suspension, which was already in effect, and revocation. Suspension of a license is effective for a predetermined period of time, after which, absent an intervening event like revocation, the licensee may resume operating under his license. S.C. Code Ann. § 1-23-370(c) (2005) (providing for summary suspension "pending proceedings for revocation or other action"). As long as it is in effect, suspension carries many of the same consequences as revocation. Whether the license is suspended or revoked, the holder must surrender it to the Department immediately and cease selling the products covered by it. § 61-4-600 & -610. Furthermore, both suspension and revocation affect the Department's ability to issue a new license to the holder

of a suspended or revoked license, as well as to his close relatives and business associates. § 61-2-140(D) & (E). To the extent the ALC's revocation of the License would have protected the health, safety, or welfare of the public immediately by preventing the Club from selling alcoholic beverages, the temporary suspension of the License achieved the same result.[5]

Nevertheless, revocation carries some consequences suspension does not, and it is these consequences the ALC overlooked. Each license authorizes alcoholic beverage sales at a specific location and is not transferable to another location. S.C. Code Ann. § 61-2-140(C) (2009). When a license is suspended, the owner and his close relatives and business associates are ineligible to receive a new license for that location for a period

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[5] However, it appears neither the License's expiration nor the Club's relinquishment affected the validity of the License for the purposes of suspension:

> [T]here is some question as to whether the period of a license suspension can extend beyond the expiration of forfeiture of the suspended license. When faced with similar issues in licensing matter, courts have generally held that a license suspension is not restricted to the duration of the license itself, but rather extends to the licensee so as to preclude him from exercising the privilege in question for the duration of the suspension period, regardless of his particular licensure status. Therefore, it would appear that a suspension imposed upon a licensee by the Department extends for the full duration of the suspension and may not be cut short by the expiration or surrender of the underlying license.

John D. Geathers & Justin R. Werner, The Regulation of Alcoholic Beverages in South Carolina 274 (S.C. Bar 2007).

of one year after suspension. § 61-2-140(D). The owner is ineligible to receive a new license for a different location only during the period the suspension is in effect. § 61-2-140(E). By contrast, when a license is revoked, the Department is prohibited from issuing the owner[6] a new beer and wine license for two years from the date of revocation. S.C. Code Ann. § 61-4-520(3) (2009). For liquor by the drink, the prohibition period lasts five years. S.C. Code Ann. § 61-6-110 (2009).

The ALC's dismissal of this matter improperly allowed the Club's owner to avoid being banned from receiving a new beer and wine permit for two years and a new liquor license for five years. Under section 61-2-140(D), suspension of the License prevented the Club's owner and his close relatives and business associates from receiving a new license for the Club Level location for one year. However, under section 61-2-140(E), the owner could secure a new license for another location as soon as the suspension period ended. Revocation of the License would have prohibited the Department from issuing another license or permit to the owner of the Club for a period of two years for beer and wine and five years for liquor by the drink. See § 61-4-520(3) (beer and wine); § 61-6-110 (liquor by the drink). For this reason, revocation of the License would have had a practical effect on the controversy between the Club and the Department by protecting the public's future health, safety, or welfare in a way relinquishment did not. Consequently, the ALC erred in finding this issue was moot.

Furthermore, we are concerned about the ramifications of allowing the holder of a license or permit subject to revocation to avoid consequences merely by surrendering his license. As discussed at length above, the Department not only evaluates applications for alcoholic beverage licenses and permits, but it also monitors times and locations of suspended and revoked licenses. Under the ALC's reasoning, a licenseholder whose actions otherwise merit revocation may evade the two- and five-year prohibitions on new licenses by surrendering his current license while revocation proceedings

[6] The provisions of Title 61, Chapter 6, apply only to the owner of the license and not to his close relatives or business associates.

are pending. By forcing the revocation proceedings to end before an adjudication on their merits, he may then apply to the Department for a new license without disclosing a revocation on his application. His success invites others in similar situations to do the same, thereby complicating the Department's efforts to ensure it issues new licenses and permits only to applicants who will be good stewards of their authority.

CONCLUSION

We find that when the Department has timely moved for revocation of an alcoholic beverage license, the surrender of that license does not deprive the ALC of subject matter jurisdiction over the revocation proceedings. We reverse the ALC's finding that it lacked subject matter jurisdiction.

In addition, we find the prospective collateral consequences of revocation prevented the Club's relinquishment of its License from mooting the revocation issue. Therefore, we also reverse the ALC's finding of mootness. For the foregoing reasons, we remand this matter to the ALC for consideration of the Department's revocation action.

Accordingly, this matter is

REVERSED AND REMANDED.

FEW, C.J., THOMAS, J., and CURETON, A.J., concur.