OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 44

November 21, 2005

Daniel E. Shearouse, Clerk
Columbia, South Carolina
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CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

PETITIONS - UNITED STATES SUPREME COURT

PETITIONS FOR REHEARING

THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

2005-UP-582-The State v. Charles Donnell Dublin
(Aiken, Judge James R. Barber)
2005-UP-583-The State v. Rodriques Montez Pickens
(Anderson, Judge J. C. Buddy Nicholson, Jr.)

2005-UP-584-Responsible Economic Development et al. v. The Florence Consolidated Municipal Planning Commission et al.
(Florence, Judge James E. Brogdon, Jr.)

2005-UP-585-Newberry Electric Cooperative v. City of Newberry
(Newberry, Judge James W. Johnson, Jr.)

2005-UP-586-The State v. Thomas Andrew Pate
(Cherokee, Judge J. Mark Hayes, II)

2005-UP-587-Waymon Hendrix, Employee v. J. D. Hollingsworth, Employer and Hartford Underwriters Insurance Company, Carrier
(Greenville, Judge G. Edward Welmaker)

PETITIONS FOR REHEARING

4011-State v. Nicholson	Pending
4018-Wellman v. Square D	Denied 11/17/05
4025-Blind Tiger v. City of Charleston	Denied 11/17/05
4026-Wogan v. Kunze	Pending
4027-Mishoe v. QHG of Lake City	Denied 11/17/05
4028-Armstrong v. Collins	Denied 11/17/05
4038-State v. Mekler	Pending
4032-A&I, Inc. v. Gore	Denied 11/17/05
4034-Brown v. Greenwood Mills Inc.	Pending
4036-State v. Pichardo & Reyes	Pending

4037-Eagle Cont. v. County of Newberry et al.	Pending
4039-Shuler v. Gregory Electric et al.	Pending
2005-UP-481-Stanley v. City of Columbia	Denied 11/17/05
2005-UP-496-Wilson v. Snelgrove	Denied 11/17/05
2005-UP-517-Turbeville v. Wilson	Denied 11/17/05
2005-UP-520-State v. E. Adams	Denied 11/17/05
2005-UP-530-Moseley v. Oswald	Denied 11/17/05
2005-UP-534-State v. M. Brown	Denied 11/17/05
2005-UP-535-Tindall v. H&S Homes	Pending
2005-UP-539-Tharington v. Votor	Pending
2005-UP-540-Fair et al. v. Gary Realty et al.	Pending
2005-UP-541-State v. S. Cunningham	Denied 11/17/05
2005-UP-543-Jamrok v. Rogers et al.	Pending
2005-UP-549-Jacobs v. Jackson	Pending
2005-UP-556-Russell v. Gregg	Denied 11/17/05

PETITIONS - SOUTH CAROLINA SUPREME COURT

3745-Henson v. International (H. Hunt)	Granted 11/04/05
3776-Boyd v. Southern Bell	Granted 10/19/05
3777-State v. Childers	Granted 10/19/05
3780-Pope v. Gordon	Pending
3787-State v. Horton	Pending

3808-Wynn v. Wynn	Denied 11/02/05
3809-State v. Belviso	Pending
3813-Bursey v. SCDHEC & SCE&G	Granted 10/19/05
3820-Camden v. Hilton	Denied 11/02/05
3821-Venture Engineering v. Tishman	Pending
3825-Messer v. Messer	Pending
3830-State v. Robinson	Denied 11/02/05
3832-Carter v. USC	Pending
3833-Ellison v. Frigidaire Home Products	Granted 10/19/05
3835-State v. Bowie	Granted 11/07/05
3836-State v. Gillian	Pending
3841-Stone v. Traylor Brothers	Denied 11/02/05
3842-State v. Gonzales	Pending
3843-Therrell v. Jerry's Inc.	Granted 10/19/05
3847-Sponar v. SCDPS	Pending
3848-Steffenson v. Olsen	Denied 11/02/05
3849-Clear Channel Outdoor v. City of Myrtle Beach	Pending
3850-SC Uninsured Employer's v. House	Denied 11/02/05
3852-Holroyd v. Requa	Pending
3853-McClain v. Pactiv Corp.	Pending
3855-State v. Slater	Pending

3857-Key Corporate v. County of Beaufort	Pending
3858-O'Braitis v. O'Braitis	Pending
3860-State v. Lee	Pending
3861-Grant v. Grant Textiles et al.	Pending
3863-Burgess v. Nationwide	Pending
3864-State v. Weaver	Pending
3865-DuRant v. SCDHEC et al	Pending
3866-State v. Dunbar	Pending
3871-Cannon v. SCDPPPS	Pending
3877-B&A Development v. Georgetown Cty.	Pending
3879-Doe v. Marion (Graf)	Pending
3883-Shadwell v. Craigie	Pending
3884-Windsor Green v. Allied Signal et al.	Withdrawn 10/21/05
3890-State v. Broaddus	Pending
3900-State v. Wood	Pending
3903-Montgomery v. CSX Transportation	Pending
3906-State v. James	Pending
3910-State v. Guillebeaux	Pending
3911-Stoddard v. Riddle	Pending
3912-State v. Brown	Pending
3914-Knox v. Greenville Hospital	Pending

3917-State v. Hubner	Pending
3918-State v. N. Mitchell	Pending
3919-Mulherin et al. v. Cl. Timeshare et al.	Pending
3926-Brenco v. SCDOT	Pending
3928-Cowden Enterprises v. East Coast	Pending
3929-Coakley v. Horace Mann	Pending
3935-Collins Entertainment v. White	Pending
3936-Rife v. Hitachi Construction et al.	Pending
3938-State v. E. Yarborough	Pending
3939-State v. R. Johnson	Pending
3940-State v. H. Fletcher	Pending
3943-Arnal v. Arnal	Pending
3947-Chassereau v. Global-Sun Pools	Pending
3949-Liberty Mutual v. S.C. Second Injury Fund	Pending
3950-State v. Passmore	Pending
3952-State v. K. Miller	Pending
3954-Nationwide Mutual Ins. v. Erwood	Pending
3963-McMillan v. SC Dep't of Agriculture	Pending
3965-State v. McCall	Pending
3966-Lanier v. Lanier	Pending
3968-Abu-Shawareb v. S.C. State University	Pending

3970-State v. C. Davis	Pending
3971-State v. Wallace	Pending
3976-Mackela v. Bentley	Pending
3977-Ex parte: USAA In Re: Smith v. Moore)	Pending
3978-State v. K. Roach	Pending
3981-Doe v. SCDDSN et al.	Pending
3984-Martasin v. Hilton Head	Pending
3985-Brewer v. Stokes Kia	Pending
3988-Murphy v. Jefferson Pilot	Pending
3989-State v. Tuffour	Pending
3993-Thomas v. Lutch (Stevens)	Pending
3994-Huffines Co. v. Lockhart	Pending
3995-Cole v. Raut	Pending
3996-Bass v. Isochem	Pending
3998-Anderson v. Buonforte	Pending
4000-Alexander v. Forklifts Unlimited	Pending
4004-Historic Charleston v. Mallon	Pending
4005-Waters v. Southern Farm Bureau	Pending
4014-State v. D. Wharton	Pending
4015-Collins Music Co. v. IGT	Pending
4020-Englert, Inc. v. LeafGuard USA, Inc.	Pending

2003-UP-642-State v. Moyers	Pending
2003-UP-716-State v. Perkins	Pending
2003-UP-757-State v. Johnson	Pending
2004-UP-219-State v. Brewer	Pending
2004-UP-251-State v. Davis	Denied 10/19/05
2004-UP-271-Hilton Head v. Bergman	Pending
2004-UP-289-E. Hathaway Const. v. Eli	Denied 11/03/05
2004-UP-344-Dunham v. Coffey	Granted 10/17/05
2004-UP-359-State v. Hart	Denied 10/19/05
2004-UP-366-Armstong v. Food Lion	Pending
2004-UP-381-Crawford v. Crawford	Pending
2004-UP-394-State v. Daniels	Pending
2004-UP-397-Foster v. Greenville Memorial	Denied 11/02/05
2004-UP-407-Small v. Piper	Denied 11/02/05
2004-UP-409-State v. Moyers	Pending
2004-UP-422-State v. Durant	Pending
2004-UP-427-State v. Rogers	Pending
2004-UP-430-Johnson v. S.C. Dep't of Probation	Pending
2004-UP-439-State v. Bennett	Pending
2004-UP-460-State v. Meggs	Pending
2004-UP-482-Wachovia Bank v. Winona Grain Co.	Pending

2004-UP-485-State v. Rayfield	Pending
2004-UP-487-State v. Burnett	Pending
2004-UP-496-Skinner v. Trident Medical	Pending
2004-UP-500-Dunbar v. Johnson	Pending
2004-UP-504-Browning v. Bi-Lo, Inc.	Pending
2004-UP-505-Calhoun v. Marlboro Cty. School	Pending
2004-UP-513-BB&T v. Taylor	Pending
2004-UP-517-State v. Grant	Pending
2004-UP-520-Babb v. Thompson et al (5)	Pending
2004-UP-521-Davis et al. v. Dacus	Pending
2004-UP-537-Reliford v. Mitsubishi Motors	Pending
2004-UP-540-SCDSS v. Martin	Pending
2004-UP-542-Geathers v. 3V, Inc.	Pending
2004-UP-550-Lee v. Bunch	Pending
2004-UP-554-Fici v. Koon	Pending
2004-UP-555-Rogers v. Griffith	Pending
2004-UP-556-Mims v. Meyers	Pending
2004-UP-560-State v. Garrard	Pending
2004-UP-596-State v. Anderson	Pending
2004-UP-598-Anchor Bank v. Babb	Pending
2004-UP-600-McKinney v. McKinney	Pending

2004-UP-605-Moring v. Moring	Pending
2004-UP-606-Walker Investment v. Carolina First	Pending
2004-UP-607-State v. Randolph	Pending
2004-UP-609-Davis v. Nationwide Mutual	Pending
2004-UP-610-Owenby v. Kiesau et al.	Pending
2004-UP-613-Flanary v. Flanary	Pending
2004-UP-617-Raysor v. State	Pending
2004-UP-632-State v. Ford	Pending
2004-UP-635-Simpson v. Omnova Solutions	Pending
2004-UP-650-Garrett v. Est. of Jerry Marsh	Pending
2004-UP-653-State v. R. Blanding	Pending
2004-UP-654-State v. Chancy	Pending
2004-UP-657-SCDSS v. Cannon	Pending
2004-UP-658-State v. Young	Pending
2005-UP-001-Hill v. Marsh et al.	Pending
2005-UP-002-Lowe v. Lowe	Pending
2005-UP-014-Dodd v. Exide Battery Corp. et al.	Pending
2005-UP-016-Averette v. Browning	Pending
2005-UP-018-State v. Byers	Pending
2005-UP-022-Ex parte Dunagin	Pending
2005-UP-023-Cantrell v. SCDPS	Pending

2005-UP-039-Keels v. Poston	Pending
2005-UP-046-CCDSS v. Grant	Pending
2005-UP-054-Reliford v. Sussman	Pending
2005-UP-058-Johnson v. Fort Mill Chrysler	Pending
2005-UP-113-McCallum v. Beaufort Co. Sch. Dt.	Pending
2005-UP-115-Toner v. SC Employment Sec. Comm'n	Pending
2005-UP-116-S.C. Farm Bureau v. Hawkins	Pending
2005-UP-122-State v. K. Sowell	Pending
2005-UP-124-Norris v. Allstate Ins. Co.	Pending
2005-UP-128-Discount Auto Center v. Jonas	Pending
2005-UP-130-Gadson v. ECO Services	Pending
2005-UP-138-N. Charleston Sewer v. Berkeley County	Pending
2005-UP-139-Smith v. Dockside Association	Pending
2005-UP-149-Kosich v. Decker Industries, Inc.	Pending
2005-UP-152-State v. T. Davis	Pending
2005-UP-155-CCDSS v. King	Pending
2005-UP-160-Smiley v. SCDHEC/OCRM	Pending
2005-UP-165-Long v. Long	Pending
2005-UP-170-State v. Wilbanks	Pending
2005-UP-171-GB&S Corp. v. Cnty. of Florence et al.	Pending
2005-UP-173-DiMarco v. DiMarco	Pending

2005-UP-174-Suber v. Suber	Pending
2005-UP-192-Mathias v. Rural Comm. Ins. Co.	Pending
2005-UP-195-Babb v. Floyd	Pending
2005-UP-200-Cooper v. Permanent General	Pending
2005-UP-216-Hiott v. Kelly et al.	Pending
2005-UP-219-Ralphs v. Trexler (Nordstrom)	Pending
2005-UP-224-Dallas et al. v. Todd et al.	Pending
2005-UP-296-State v. B. Jewell	Pending
2005-UP-297-Shamrock Ent. v. The Beach Market	Pending
2005-UP-298-Rosenblum v. Carbone et al.	Pending
2005-UP-303-Bowen v. Bowen	Pending
2005-UP-305-State v. Boseman	Pending
2005-UP-319-Powers v. Graham	Pending
2005-UP-337-Griffin v. White Oak Prop.	Pending
2005-UP-340-Hansson v. Scalise	Pending
2005-UP-345-State v. B. Cantrell	Pending
2005-UP-348-State v. L. Stokes	Pending
2005-UP-354-Fleshman v. Trilogy & CarOrder	Pending
2005-UP-365-Maxwell v. SCDOT	Pending
2005-UP-373-State v. Summersett	Pending
2005-UP-375-State v. V. Mathis	Pending

2005-UP-422-Zepsa v. Randazzo	Pending
2005-UP-425-Reid v. Maytag Corp.	Pending
2005-UP-460-State v. McHam	Pending
2005-UP-471-Whitworth v. Window World et al.	Pending
2005-UP-472-Roddey v. NationsWaste et al.	Pending
2005-UP-483-State v. A. Collins	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Damon Eugene Cook, Respondent.

Opinion No. 26067
Submitted September 27, 2005 - Filed November 21, 2005

DEFINITE SUSPENSION

Henry B. Richardson, Jr., Disciplinary Counsel, and Robert E. Bogan, Assistant Deputy Attorney General, both of Columbia, for Office of Disciplinary Counsel.

Andrew J. Savage, III, of Charleston, for respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of a definite suspension not to exceed two years. We accept the agreement and impose a one year definite suspension from the practice of law. The facts, as set forth in the agreement, are as follows.

FACTS

Respondent was employed as an Assistant Solicitor for the Ninth Circuit Solicitor's Office and assigned as a prosecutor for the Charleston

"Metro Narcotics Unit." On May 18, 2004, respondent was indicted by the State Grand Jury for the offense of distribution of cocaine by conspiracy in violation of South Carolina Code Ann. § 44-53-370(b)(2002). On February 18, 2005, he pled guilty and was sentenced to five years imprisonment and fined $12,500.00, suspended upon payment of $2,000.00 and three years probation with certain conditions.[1]

ODC is informed respondent cooperated with the South Carolina Law Enforcement Division and the State Grand Jury. To the best of its knowledge, ODC states respondent has cooperated with its investigation.

LAW

Respondent admits that, by his misconduct, he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 8.4(a) (it is professional misconduct for lawyer to violate Rules of Professional Conduct); Rule 8.4(b) (it is professional misconduct for lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); Rule 8.4(c) (it is professional misconduct for lawyer to engage in conduct involving moral turpitude); and Rule 8.4(d) (it is professional misconduct for lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).[2]

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[1] As indicated during the plea proceeding, sometime around January 2003, respondent began purchasing or receiving cocaine from attorney Todd Anthony Strich and others in increments ranging from one-quarter gram to three or four grams at a time. Respondent used most of the cocaine himself, but would occasionally provide it to Strich, attorney Tara Anderson Thompson, and others. Respondent represented that, on several occasions, he and others pooled their money to purchase cocaine; he stated he did not profit from the transactions. Respondent estimated that, during the period from approximately January 2003 until April 2004, he received approximately twenty to thirty grams of cocaine from his sources.

[2] Respondent's misconduct occurred before the effective date of the Amendments to the Rules of Professional Conduct. See Court Order

Respondent further admits that his misconduct constitutes grounds for discipline under the following provisions of Rule 7, RLDE, Rule 413, SCACR: Rule 7(a)(1) (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct); Rule 7(a)(4) (it shall be ground for discipline for a lawyer to be convicted of a serious crime or crime of moral turpitude); and Rule 7(a)(5) (it shall be a ground for discipline for a lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute).

CONCLUSION

We accept the Agreement for Discipline by Consent and suspend respondent from the practice of law for one year. Respondent's request that the suspension be applied retroactively to the date of his interim suspension is denied.[3] Within fifteen days of the filing of this opinion, respondent shall file an affidavit demonstrating he has complied with the requirements of Rule 30 of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

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dated June 20, 2005. The Rules cited in this opinion are those which were in effect at the time of respondent's misconduct.

[3] On May 24, 2004, respondent was placed on interim suspension. In the Matter of Cook, 359 S.C. 81, 597 S.E.2d 141 (2004).

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Todd Anthony Strich, Respondent.

Opinion No. 26068
Submitted September 27, 2005 - Filed November 21, 2005

DEFINITE SUSPENSION

Henry B. Richardson, Jr., Disciplinary Counsel, and Robert E. Bogan, Assistant Deputy Attorney General, both of Columbia, for Office of Disciplinary Counsel.

Todd Anthony Strich, of Charleston, pro se.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of a one year definite suspension from the practice of law. We accept the agreement and impose a one year suspension. The facts, as set forth in the agreement, are as follows.

FACTS

On May 18, 2004, respondent was indicted by the State Grand Jury for the offense of distribution of cocaine by conspiracy in violation of

South Carolina Code Ann. § 44-53-370(b)(2002). On February 18, 2005, he pled guilty and was sentenced to three years imprisonment and fined $12,500.00, suspended upon payment of $1,000.00 and two years probation with certain conditions.[1]

ODC is informed respondent cooperated with the South Carolina Law Enforcement Division and the State Grand Jury. To the best of its knowledge, ODC states respondent has cooperated with its investigation.

LAW

Respondent admits that, by his misconduct, he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 8.4(a) (it is professional misconduct for lawyer to violate Rules of Professional Conduct); Rule 8.4(b) (it is professional misconduct for lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); Rule 8.4(c) (it is professional misconduct for lawyer to engage in conduct involving moral turpitude); and Rule 8.4(d) (it is professional misconduct for lawyer to

[1] As indicated during the plea proceeding, on February 24, 2004, respondent sold 2.25 grams of cocaine to an undercover operative working for the South Carolina Law Enforcement Division (SLED) for $160.00. This transaction occurred near the Indigo Creek apartment complex in Charleston. On March 11, 2004, respondent sold 2.26 grams of cocaine to an undercover operative working for SLED in the parking lot of a "Chuck E. Cheese" restaurant located on Sam Rittenburg Boulevard in Charleston.

On March 29, 2004, SLED agents approached respondent and, after waiving his rights, respondent admitted receiving a total of approximately 25 grams of cocaine from one of his cocaine sources during the period of March 2003 through approximately August 2003. Although respondent used some of the cocaine himself, he distributed the majority to others, including attorneys Tara Anderson and Damon Cook, who often provided respondent with money to purchase the cocaine.

engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).[2] Respondent further admits that his misconduct constitutes grounds for discipline under the following provisions of Rule 7, RLDE, Rule 413, SCACR: Rule 7(a)(1) (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct); Rule 7(a)(4) (it shall be ground for discipline for a lawyer to be convicted of a serious crime or crime of moral turpitude); and Rule 7(a)(5) (it shall be a ground for discipline for a lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute).

CONCLUSION

We accept the Agreement for Discipline by Consent and suspend respondent from the practice of law for one year. Respondent's request that the suspension be applied retroactively to the date of his interim suspension is denied.[3] Within fifteen days of the filing of this opinion, respondent shall file an affidavit demonstrating he has complied with the requirements of Rule 30 of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

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[2] Respondent's misconduct occurred before the effective date of the Amendments to the Rules of Professional Conduct. See Court Order dated June 20, 2005. The Rules cited in this opinion are those which were in effect at the time of respondent's misconduct.

[3] On May 24, 2004, respondent was placed on interim suspension. In the Matter of Strich, 359 S.C. 83, 597 S.E.2d 781 (2004).

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Tara Anderson Thompson, Respondent.

Opinion No. 26069
Submitted September 27, 2005 - Filed November 21, 2005

DISBARRED

Henry B. Richardson, Jr., Disciplinary Counsel, and Robert E. Bogan, Assistant Deputy Attorney General, both of Columbia, for Office of Disciplinary Counsel.

Tara Anderson Thompson, of Charleston, pro se.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of any sanction set forth in Rule 7(b), RLDE, Rule 413, SCACR. We accept the agreement and disbar respondent. The facts, as set forth in the agreement, are as follows.

FACTS

Matter I

On May 18, 2004, respondent was indicted by the State Grand Jury for the offense of distribution of cocaine by conspiracy in violation of

South Carolina Code Ann. § 44-53-370(b)(2002). On February 18, 2005, she pled guilty and was sentenced to seven years imprisonment and fined $12,500.00, suspended upon payment of $2,000.00 and three years probation with certain conditions.[1]

Matter II

Respondent represented Client A, a defendant who was in arrears on child support payments. Client A's mother made a partial payment of $1,000.00 on behalf of Client A and respondent arranged for the plaintiff to execute an affidavit that she had received the payment. The plaintiff executed the affidavit.

Thereafter, respondent altered the affidavit by "whitening out" the $1,000.00 figure and entering the full amount of Client A's arrearage. At the hearing, respondent represented to the court that full payment had been made by or on behalf of Client A and offered the affidavit in support of that representation. The court did not accept the affidavit and required the plaintiff to be present to testify.

[1] As indicated during the plea proceeding, respondent "hired" attorney Todd Anthony Strich sometime around April 2003 to work in her law office in Charleston County. (ODC asserts Strich did not actually work for respondent but that respondent shared her office space at no cost in exchange for Strich attending some hearings for respondent and rendering other legal assistance when necessary). Sometime after this arrangement began, respondent began purchasing cocaine from Strich in amounts ranging from one to three and one-half grams. From April 2003 to April 2004, respondent received approximately eight grams of cocaine a month from Strich and others. The cocaine was used by respondent and others. Although respondent never accompanied Strich or others to buy cocaine, on approximately twenty occasions she pooled her money with him and with others so that cocaine could be purchased.

At a subsequent hearing, the plaintiff testified that $1,000.00 had been the amount shown on the affidavit when she signed it. It was discovered during this hearing that the original amount had been "whited out" and that a different amount had been written in.

Respondent denied having altered the affidavit in her response to ODC's Notice of Full Investigation and, again, during her Rule 19(c)(4) interview, but now acknowledges that she did alter the affidavit and her representations to the contrary were not correct.

Matter III

Respondent was scheduled to appear in magistrate's court for a trial at 2:00 p.m. Respondent's secretary telephoned the magistrate's office at approximately 12:15 p.m. and said she was unsure respondent would be able to attend the trial. Respondent's secretary was instructed to call back after 1:00 to speak with a certain member of the judge's staff. Respondent's secretary called as instructed and reported that respondent would not be able to attend due to a sick child.

The magistrate was informed of respondent's secretary's call and called the secretary. The judge denied a continuance because this was the third time respondent had called requesting a continuance just prior to the hearing.

After swearing the jury, the judge was notified that respondent wanted to speak with him by telephone. The judge informed respondent that the continuance was denied and gave his reasons for the ruling. The judge reported respondent became upset and began using profane language toward him and continued to do so despite five or six requests to refrain from such conduct. The judge eventually ended the conversation by hanging up the telephone. Respondent acknowledges being upset with the judge's denial of the continuance and to using obscenities in her conversation with the judge.

Matter IV

After receiving an unfavorable ruling in court, respondent raised her voice while being addressed by the judge. The judge admonished respondent to lower her voice or be held in contempt. Shortly after respondent left the courtroom, a loud thumping noise was heard along the wall bordering the jury box. The noise startled the entire court, including the jury.

Upon hearing the commotion, the judge ordered a bailiff to bring the person causing the disturbance into the courtroom. Respondent was brought in and gave the explanation that she stomped her foot in an attempt to reseat the heel on her shoe and denied intentionally disrupting the court. A sheriff's deputy who was present in the hallway gave a written statement that he saw respondent kick the wall in the hallway and heard respondent call the judge a "god damn asshole."

In response to ODC, respondent denied using the term "god damn" but acknowledged calling the judge an "asshole" under her breath. Respondent further explained her heel came loose so she stamped the heel of her shoe back against the wall twice.

Matter V

Respondent represented Client B on a probation revocation matter. On the day before the scheduled hearing, respondent requested a continuance on the grounds that she was required to be in federal court, but did not confirm whether the continuance was granted. The hearing went forward and Client B's probation was revoked.

Matter VI

Respondent represented Client C on a charge of driving under the influence. Client C alleges court was scheduled on four occasions, that he appeared as required, but that respondent did not appear at any time. He further alleges respondent did not inform him that she was not able to appear.

Respondent acknowledges that Client C's matter had been scheduled for court on a number of occasions but that she was required to be in a court of higher jurisdiction and that, in any event, the delays were ultimately in Client C's best interest. Respondent further represents that she thought Client C had been notified of the conflicts but acknowledges that, in the press of business, such notification may not have been sent.

Matter VII

Respondent represented Client D on various traffic charges pending in Charleston Municipal Court. Respondent made inconsistent statements to the prosecutor concerning receipt of notice of certain court proceedings and requests for continuances. Client D's case was removed from the jury roster after it became apparent respondent failed to appear.

Matter VIII

Respondent ordered a transcript from a court reporter. She failed to pay for the transcript.

LAW

Respondent admits that, by her misconduct, she has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.4 (lawyer shall keep client reasonably informed about status of a matter and promptly comply with reasonable requests for information); Rule 3.1 (lawyer shall not assert an issue unless there is a basis for doing so that is not frivolous); Rule 3.2 (lawyer shall make reasonable efforts to expedite litigation consistent with interests of client); Rule 3.3 (lawyer shall not make false statement of fact to tribunal); Rule 3.4 (lawyer shall not unlawfully alter a document having potential evidentiary value; lawyer shall not falsify evidence); Rule 3.5 (lawyer shall not engage in conduct intended to disrupt a tribunal); Rule 4.1 (in the course of representing a client, lawyer shall not knowingly make a

false statement of material fact or law to a third person); Rule 8.4(a) (it is professional misconduct for lawyer to violate Rules of Professional Conduct); Rule 8.4(b) (it is professional misconduct for lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); Rule 8.4(c) (it is professional misconduct for lawyer to engage in conduct involving moral turpitude); Rule 8.4(d) (it is professional misconduct for lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and 8.4(e) (it is professional misconduct for lawyer to engage in conduct that is prejudicial to the administration of justice).[2] Respondent further admits that her misconduct constitutes grounds for discipline under the following provisions of Rule 7, RLDE, Rule 413, SCACR: Rule 7(a)(1) (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct); Rule 7(a)(4) (it shall be ground for discipline for a lawyer to be convicted of a serious crime or crime of moral turpitude); and Rule 7(a)(5) (it shall be a ground for discipline for a lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute).

CONCLUSION

We accept the Agreement for Discipline by Consent and disbar respondent. Respondent's request that the disbarment be made retroactive to the date she was placed on interim suspension is denied.[3]

Within fifteen (15) days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that she has complied with Rule 30 of Rule 413, SCACR, and shall also surrender her Certificate of Admission to the Practice of Law to the Clerk of Court.

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[2] Respondent's misconduct occurred before the effective date of the Amendments to the Rules of Professional Conduct. See Court Order dated June 20, 2005. The Rules cited in this opinion are those which were in effect at the time of respondent's misconduct.

[3] On May 24, 2004, respondent was placed on interim suspension. In the Matter of Thompson, 359 S.C. 82, 597 S.E.2d 141 (2004).

DISBARRED.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Charles E. Gordon, as Personal Representative of the Estate of Clara Gordon Burch, Appellant,

v.

Jacqueline F. Busbee, Individually and as Personal Representative of the Estate of George E. Burch; Dennis E. Burch; and Laurie E. Burch, Respondents.

In the matter of: The Estate of Clara Gordon Burch

Appeal From Aiken County
James C. Williams, Jr., Circuit Court Judge

Opinion No. 4044
Heard October 11, 2005 – Filed November 21, 2005

REVERSED AND REMANDED

Adele Jeffords Pope, of Columbia and Thomas H. Pope, III, of Newberry, for Appellant.

B. Michael Brackett, Carlos W. Gibbons, Jr. and Deborah Harrison Sheffield, all of Columbia, for Respondents.

STILWELL, J.: Charles Gordon appeals the dismissal of his civil action against Jacqueline Busbee, individually and as personal representative of the estate of George Burch, and Dennis and Laura Burch, as devisees of the estate of George Burch. The circuit court dismissed the action because Gordon did not file his claim on a specific probate court form.[1] We reverse and remand.

FACTS

On July 30, 1984, Clara Gordon Burch married George Burch. At the time, Clara Burch was seventy-five years old, and George Burch was almost seventy. The couple remained married for nearly sixteen years, until the death of Clara Burch on April 19, 2000. In her will, Clara appointed George personal representative of her estate. She also named Charles Gordon alternate personal representative.

George served as personal representative until his death on January 18, 2003. A month after George's death, Gordon assumed the duties of the personal representative of Clara's estate. Gordon claims that after his appointment he discovered various improprieties related to distributions from Clara's estate. Gordon asserts these distributions were made not only from her estate while George acted as its personal representative, but also from her financial holdings during the time George acted as Clara's attorney in fact from 1994 until her death in 2000.

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[1] We are unable to determine if the order under appeal purports to dismiss the claim against Jacqueline Busbee in her individual capacity. However, because the order is grounded on the failure to comply with a provision relating solely to a claim against an estate, this action appears to have survived the dismissal.

Gordon then brought this lawsuit against Jacqueline Busbee, an Aiken County attorney, individually and in her capacity as personal representative of the estate of George Burch, and Dennis and Laura Burch, as devisees under George Burch's will (collectively Busbee). The summons and verified complaint were filed with the probate court on April 15, 2003. The complaint stated amounts claimed from the estate of George Burch as well as the basis for claiming them. Soon after Gordon filed the complaint, the case was removed from probate court to circuit court, and Busbee answered.

Later that year, Busbee moved the circuit court to dismiss Gordon's action against the estate of George Burch for failure to present his claim within the proper time and on the proper form. Busbee contended that pursuant to S.C. Code Ann. § 62-3-804(2) Gordon had until the end of the claim period on October 4, 2003 to submit his claim to the personal representative of the estate of George Burch. Busbee argued that because Gordon did not file South Carolina Probate Court Form 371 before the claim period expired, Gordon did not properly present his claim against the estate, and his claim was barred. The circuit court agreed and granted Busbee's motion to dismiss.

DISCUSSION

Gordon raises the following four issues on appeal: (1) whether the trial court erred when it concluded Gordon's claim against the estate of George Burch was barred because Gordon did not use a particular probate court form to submit his claim; (2) whether the trial court erred when it considered the affidavit of attorney James Verenes; (3) whether Busbee is estopped from asserting Gordon's claim is barred; and (4) whether Busbee has waived the right to claim Gordon's claim is barred.

Probate Court Form 371 is tailored to assist creditors of a probate estate, often unrepresented by legal counsel, when they submit their claims to the personal representative of the estate. The form asks for the name and address of the claimant, the amount claimed, and the basis for each claim. Gordon asserts that the use of Form 371 is not mandatory. We agree.

The cardinal rule of statutory interpretation is to determine the intent of the legislature. Miller v. Aiken, 364 S.C. 303, 307, 613 S.E.2d. 364, 366 (2005). The intent of the legislature should be ascertained primarily from the plain language of the statute. State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004). "The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose." Mun. Ass'n of South Carolina v. AT&T Communications of S. States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005). The court will reject a statutory interpretation that would "lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

Section 62-3-804 outlines two ways in which a claimant may present a claim against a decedent's estate. S.C. Code Ann. § 62-3-804 (1987 & Supp. 2004). Section 62-3-804(1) provides that a claim may be presented by delivering to the personal representative a "written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed," and the claimant "must file a written statement of the claim, in the form prescribed by rule, with the clerk of the probate court." S.C. Code Ann. § 62-3-804(1) (Supp. 2004) (emphasis added). Another method of presentation, the one elected by Gordon in this case, is for the claimant to "commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction." S.C. Code Ann. § 62-3-804(2) (1987). This action "must occur within the time limited for presenting the claim, and the claimant must file a written statement of the claim as in (1) above, with the clerk of the probate court." § 62-3-804(2).

The standard form frequently filed with the probate court in relation to section 62-3-804 is Form 371. The trial court determined that the language of section 62-3-804 required Gordon to use Form 371—and only Form 371—because section one, and by reference section two, states that the written

statement must be "in the form prescribed by rule." This interpretation of the statute is too narrow. Section 62-3-804 does not mention Form 371, let alone require the use of Form 371 as the only way to satisfy the requirements of the statute. The phrase "[i]n the form prescribed by rule" refers to the manner or "procedure as determined or governed by regulation," not to a specific "document with blanks for the insertion of . . . information." The American Heritage Dictionary of The English Language 690 (4th ed. 2000). If the legislature intended to require claimants to use Form 371, it could have easily provided that the claim be brought on the form prescribed by rule, not "in the form prescribed by rule." § 62-3-804(1) (emphasis added); see also S.C. Code Ann. § 62-3-603(B)(2) (Supp. 2004) ("Where a bond is required of the personal representative . . . by law or by the will, it may be waived . . . [if] all known beneficiaries and other persons having an interest in the estate execute a written statement on a form prescribed by the court . . . .") (emphasis added).

Consequently, "in the form prescribed by rule" means in the basic manner set forth in section 62-3-804(1). The purpose of requiring the information set forth in section 62-3-804(1) is to provide notice of claims to the probate court as well as to any party who may have an interest in the estate. While Form 371 certainly provides this information, nothing in section 62-3-804 mandates that Form 371 is the only way this information can be provided.

Here, the verified complaint satisfies the requirements of section 62-3-804. First, the complaint contains all the information mandated. The complaint identifies the plaintiff/claimant and provides the address of his attorney as his representative in the matter. It further identifies the amounts claimed and the basis for each claim. Furthermore, although the case was removed to the circuit court, the complaint remains on file in the probate court. Because the filed complaint provides notice of claims against the estate to the probate court and any interested parties, making Form 371 mandatory would be duplicative and serve to elevate form over substance.

Form 371 may be necessary when the claimant intends to submit a claim to the personal representative but does not intend to commence an

action against the personal representative—for example, when the claimant expects the personal representative to allow the claim. Form 371 may also be necessary when the claimant intends to commence a proceeding against the personal representative in a court other than probate court. In that case, Form 371 would put the probate court on notice of the proceeding, which would insure that the estate is not distributed before the claim is handled. In this case, however, the complaint accomplishes precisely what Form 371 is intended to accomplish. Therefore, the trial court erred when it held the requirements of section 62-3-804(2) can be satisfied only by filing Form 371 with the probate court.

CONCLUSION

Accordingly, under these circumstances, and in light of the obligation that the probate code be "liberally construed," we hold that Form 371 was not mandatory.[2] See In re Estate of Tollison, 320 S.C. 132, 136, 463 S.E.2d 611, 614 (Ct. App. 1995) (construing section 62-3-804 liberally to promote the probate code's underlying purposes). It is not necessary for us to address Gordon's remaining issues in light of our disposition of the case. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (citing Whiteside v. Cherokee County Sch. Dist. No. One, 311 S.C. 335, 428 S.E.2d 886 (1993) (stating the court need not address remaining issues when determination of prior issue is dispositive)).

REVERSED AND REMANDED.

HEARN, C.J., and KITTREDGE, J., concur.

[2] Because we determine Form 371 was not mandatory, we do not reach the issue of whether the failure to file it has jurisdictional implications.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, **Respondent,**

v.

Earnetta Marie King, **Appellant.**

Appeal From Greenville County
J. Mark Hayes, II, Circuit Court Judge

Opinion No. 4045
Heard November 8, 2005 – Filed November 21, 2005

REVERSED and REMANDED

Assistant Appellate Defender Robert M. Dudek, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, and Assistant Attorney General Derrick K. McFarland, all of Columbia; and Solicitor Robert M. Ariail, of Greenville, for Respondent.

ANDERSON, J.: Earnetta Marie King and her boyfriend, Patrick Walker, were jointly tried for the murder of her son, Rodrekus King. King appeals her conviction for murder. We reverse and remand.

FACTUAL/PROCEDURAL BACKGROUND

Early March 22, 2002, paramedics responded to a call from Patrick Walker. The call concerned the condition of Rodrekus King, Earnetta Marie King's thirteen-year-old son. When the paramedics arrived, King met them outside and told them her son was not breathing. She escorted them into the house. Once inside, the paramedics found Rodrekus lying on the kitchen floor. He was naked, unresponsive, and pulseless. The paramedics saw Walker attempting to administer artificial respiration to Rodrekus. Rodrekus was transported to Greenville Memorial Hospital, where he later died.

At the time of death, Rodrekus was covered with bruises, small cuts, and "avulsed skin." An extensive hematoma covered half of Rodrekus's head. Dr. Michael Ward, a forensic pathologist and the medical examiner for Greenville County, performed the autopsy. Dr. Ward determined Rodrekus died "as the result of multiple blunt force injuries."

At trial, King blamed Walker for the murder of Rodrekus, and Walker blamed King. King testified Walker was solely responsible for the physical abuse that led to Rodrekus's death. She claimed she did not hit or in any way assault Rodrekus. King professed Walker repeatedly punched, kicked, and struck Rodrekus with a mop handle and broom.

In support of her assertion that Walker acted alone, King attempted to admit a handwritten letter from Walker to Mesha Thomason, Walker's former girlfriend. King's counsel, Walker's counsel, and the Solicitor believed the letter to be a confession of the crime by Walker. Because the letter was not divulged to Walker's attorney until the day the Solicitor sought to put Thomason on the stand, the trial judge held the State violated Rule 5, SCRCrimP, and excluded the letter. The judge nevertheless allowed

Thomason to testify, so long as she did not discuss the statements Walker made in the letter.

King's attorney inquired about his ability to put Thomason on the stand as a defense witness. The following colloquy occurred:

> **[King's Attorney]:** Well, your Honor, I would just – in regard to Mesha Thomason, obviously, we didn't know [your position] in regard to the State's case. But when the time comes that we have to make a decision whether to put up any evidence, at that point I think what Ms. Thomason has to say is relevant to our case. And while she did not appear on my witness list, because frankly I assumed she was being called by the Solicitor's office, I would like to have her available to call as a witness in my case.
>
> **The Court:** Any objection from the State?
>
> **[The State]:** No objection from the State.
>
> **The Court:** [Walker's counsel]?
>
> **[Walker's Counsel]:** Certainly I would object to any testimony about the substance of the alleged letter of confession.
>
> **The Court:** All right. If that happens, the Court will issue its ruling.

The next day, the State rested without Thomason's testimony. Because Thomason was unavailable, King attempted to admit the handwritten letter in her absence. The judge excluded the letter based on the State's violation of Rule 5, SCRCrimP, as well as the unavailability of Thomason.

The following day, however, Thomason was available to testify. Before King's counsel rested, he requested Thomason be allowed to testify to the statements made by Walker in his letter to her. King argued:

> Your Honor, as we discussed off the record, the witness I intended to call that I indicated to the Court yesterday was not available has now become available. That is . . . Mesha Thomason. She is the witness who earlier in the trial the solicitor had sought to offer because she received a letter from Patrick Walker which was essentially a confession and under ordinary circumstances would be admissible as a confession by him. The solicitor's office was not able to offer it because the court ruled they didn't comply with the discovery rules. We don't believe those rules would apply to us since we're not the State, and it was certainly not in our control. At this time I would, before closing my case, . . . call Mesha Thomason as a witness and introduce that confession through her.

The judge refused to allow Thomason to testify based on his previous ruling that the State failed to turn the letter over to Walker in contravention of Rule 5, SCRCrimP. The judge concluded Thomason had not "shown up in a timely fashion," and, even if she had, her testimony would not be allowed under State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999). King countered that because the letter was a confession by Walker, it was by its very nature exculpatory to King, who would be severely prejudiced if the letter was not allowed to be presented. The trial court refused to admit the letter into evidence.

King was found guilty of murder and sentenced to life imprisonment. She appeals the decision by the trial court to exclude Thomason's testimony.

STANDARD OF REVIEW

The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002); State v. Staten, 364 S.C. 7, 610 S.E.2d 823 (Ct. App. 2005). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant. State v. Preslar, 364 S.C. 466, 613 S.E.2d 381 (Ct. App. 2005);

State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004). Error without prejudice does not warrant reversal. State v. Locklair, 341 S.C. 352, 535 S.E.2d 420 (2000).

The decision by the trial judge to exclude evidence for failure to comply with disclosure rules will not be reversed absent an abuse of discretion. See State v. Kerr, 330 S.C. 132, 498 S.E.2d 212 (Ct. App. 1998); see also State v. Davis, 309 S.C. 56, 63, 419 S.E.2d 820, 825 (Ct. App. 1992) ("Sanctions for noncompliance with disclosure rules are within the discretion of the trial judge and will not be disturbed absent an abuse of discretion."). An abuse of discretion occurs when the decision by the trial judge is based on an error of law. State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003).

LAW/ANALYSIS

King argues the trial judge abused his discretion when he refused to allow Thomason, an available witness, to testify.

Initially, we note King did not proffer Thomason's testimony. Generally, a proffer of testimony is required to preserve the issue of whether that testimony was properly excluded by the trial court. It is well settled that a reviewing court may not consider error alleged in the exclusion of testimony unless the record on appeal shows fairly what the rejected testimony would have been. State v. Roper, 274 S.C. 14, 260 S.E.2d 705 (1979); see also State v. Cabbagestalk, 281 S.C. 35, 314 S.E.2d 10 (1984) (stating that failure to make offer of proof prevents appellate court from determining whether exclusion of testimony is prejudicial and thus precludes appellant from raising the issue on appeal). However, when it is clear from the record that prejudice exists, the issue will be preserved on appeal despite the absence of a proffer. See State v. Myers, 301 S.C. 251, 391 S.E.2d 551 (1990). The reason for the rule requiring a proffer of excluded evidence is to enable the reviewing court to discern prejudice. Id. That rule has been relaxed where the record clearly demonstrates prejudice. Id.

The record reflects Thomason was going to testify to the statements Walker made in his letter to her. The record clearly indicates King would be prejudiced by the exclusion of Thomason's testimony. Therefore, the issue of whether Thomason's testimony was properly excluded is preserved for review despite the lack of a proffer.

Rule 601(a) of the South Carolina Rules of Evidence provides: "Every person is competent to be a witness except as otherwise provided by statute or these rules." Rule 601(a), SCRE. Generally, "[a]ll witnesses are presumed competent to testify." Sellers v. State, 362 S.C. 182, 190, 607 S.E.2d 82, 86 (2005). Courts presume a witness to be competent because bias or other defects in a witness's testimony—revealed primarily through cross-examination—affect a witness's credibility and may be weighed by the finder of fact. State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998).

In the instant case, Thomason was available and "presumed competent to testify." See Sellers, 362 S.C. at 190, 607 S.E.2d at 86. Concomitantly, unless a statute or other rule of evidence prevented her from testifying, Thomason should have been allowed to take the stand.

The trial judge determined Thomason could not testify because (1) the State violated Rule 5, SCRCrimP; and (2) her testimony was inadmissible under State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999).

I. Rule 5, SCRCrimP

"The requirements of Rule 5 . . . are judicially created discovery mechanisms for use in criminal proceedings." State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998), aff'd, 337 S.C. 617, 524 S.E.2d 837 (1999). Under Rule 5, the State should disclose to the defendant "any relevant written or recorded statements made by the defendant . . . within the possession, custody or control of the prosecution . . . ." Rule 5(a)(1)(A), SCRCrimP. If the trial judge determines the State has violated Rule 5, the judge has the discretion to fashion a proper remedy. See State v. Salisbury, 330 S.C. 250, 498 S.E.2d 655 (Ct. App. 1998), aff'd as modified, 343 S.C. 520, 541 S.E.2d 247 (2001). The judge may "prohibit the party from

introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances." Rule 5(d)(2), SCRCrimP.

The trial judge determined that pursuant to Rule 5 the State should have disclosed to Walker's attorney the letter from Walker to Thomason. The judge excluded the letter as well as any "alleged or purported statements" made by Walker because the State violated Rule 5. While this exclusion was beneficial to Walker, it was detrimental to King. The State's violation of Rule 5, and the judge's remedy, deprived King of the opportunity to admit into evidence an alleged statement from Walker that he alone physically assaulted Rodrekus. The judge, in effect, sanctioned King for the inappropriate conduct of the State. Consequently, King was denied the chance to present exculpatory evidence from an available witness.

A trial judge presiding over a joint trial is charged with the difficult task of maintaining the delicate balance between the interests of the State and the interests of each co-defendant. However, each defendant is entitled to call witnesses whose testimony may exculpate or exonerate them. Therefore, the decision to exclude King's witness because **the State** violated Rule 5 was an improper and unjust remedy under the circumstances.

On appeal, the State contends the trial court properly sanctioned it for violating Rule 5. The State noted: "[I]t would have been unjust to allow the State to benefit from the violation, regardless of who introduced the letter into evidence." The State's argument that Thomason should not be allowed to take the stand because the State would benefit from its own Rule 5 violation is unpersuasive. King claims Thomason's testimony would benefit her defense.

Thomason should have been allowed to testify for King even though the State failed to disclose the letter to Walker's attorney. The trial judge abused his discretion when he refused to allow Thomason to testify based on the fact he had previously sanctioned the State for a Rule 5 violation.

II. State v. Fuller

The trial judge refused to allow Thomason to testify because of the South Carolina Supreme Court's decision in State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999). Fuller was convicted of murder and conspiracy, and sentenced to life imprisonment without parole for murder and five years, consecutive, for conspiracy. The State presented a statement from a co-conspirator, Holmes, to a third-party, McKinney. The statement was an admission by Holmes that he and Fuller committed the murder. Because the State could not put Holmes on the stand, as he was killed while committing another crime, it put McKinney on the stand and elicited the statement from him. The trial court held the statement was admissible under Rule 804(b)(3), SCRE, which governs hearsay exceptions when the declarant is unavailable. The Supreme Court reversed, holding:

> The hearsay statements recounted by McKinney essentially amounted to statements by a deceased third-party that inculpated [Fuller] and subjected the declarant to criminal liability. Thus, the issue before this Court is whether a non-self-inculpatory statement, which is collateral to a self-inculpatory statement, may nonetheless come in under Rule 804(b)(3), SCRE, as a statement made by an unavailable declarant against his penal interest. We conclude that such statements are inadmissible.

Id. at 243-44, 523 S.E.2d at 172.

Fuller is distinguishable from the case sub judice. First, unlike the declarant in Fuller, the declarant in this case, Walker, is available to testify—Walker is not unavailable under Rule 804, SCRE, simply because he invoked his fifth amendment privilege against self-incrimination. See State v. Terry, 339 S.C. 352, 529 S.E.2d 274 (2000). Second, Walker, the declarant in this case, does not make incriminating statements about himself and a co-defendant. Rather, the declarant makes incriminating statements about himself only. Walker states in the letter to Thomason that he was solely responsible for the murder of Rodrekus. Thomason can testify to the statements made in Walker's letter without violating Fuller because Walker's

statements are "self-inculpatory" only. This is not a Fuller case because Walker does not inculpate King.

Bruton v. United States, 391 U.S. 123 (1968), is not implicated. A Bruton violation occurs when two defendants, A and B, are tried jointly, and defendant A makes a confession that inculpates defendant B. If defendant A does not testify, then A's statement against B is inadmissible because B will be unable to exercise his right under the Confrontation Clause to cross-examine A. Here, Walker made a confession to Thomason, but **did not** inculpate King. Thus, Bruton has not been violated.

The trial judge committed an error of law by refusing to allow Thomason to testify based on Rule 804(b)(3), SCRE, and State v. Fuller.

CONCLUSION

We conclude the trial judge abused his discretion when he refused to allow Thomason to testify. Neither Rule 5, SCRCrimP, nor State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999), prevented Thomason from testifying for King. Pellucidly, the error committed by the circuit judge is coupled with prejudice as a matter of law. Accordingly, the decision of the trial court is

REVERSED and REMANDED.

GOOLSBY and SHORT, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

John Bass, Jr., Employee, Respondent,

v.

Kenco Group, Employer, and Zurich American Insurance Company, Carrier, Appellants.

Appeal From Richland County
J. Mark Hayes, II, Circuit Court Judge

Opinion No. 4046
Heard November 8, 2005 – Filed November 21, 2005

AFFIRMED

Darryl D. Smalls, of Columbia, for Appellants.

Hyman S. Rubin, Jr., of Columbia, for Respondent.

ANDERSON, J.: In this Workers' Compensation case, Kenco appeals the circuit court's order affirming an award of benefits to John Bass.

FACTUAL/PROCEDURAL BACKGROUND

In July of 2000, Bass began driving a truck, delivering and installing appliances for Kenco. Bass injured his left shoulder on January 24, 2001 while he and a co-worker attempted to move an 800-pound refrigerator down the ramp of a tractor-trailer. After returning to work, Bass re-injured his left shoulder on March 2, 2001 while unloading a double oven.

Dr. Fulton began treating Bass after the March 2 injury. He placed Bass on light-duty restrictions of no overhead lifting with the left arm, and no lifting of greater than ten pounds. Bass underwent a six-week pain management program. He was eventually released by Dr. Midcap to return to work on a permanent light-duty status. Bass was able to perform office work, but could no longer drive a truck. Due to the sedentary work restrictions, Bass earned only one-third to one-half the salary he made as a truck driver.

In addition to his physical indisposition, Bass experienced anxiety and depression. Dr. Drummond performed a psychological evaluation and declared Bass "dysfunctional." Dr. Drummond concluded:

> the Claimant's chronic pain was interfering with his life more than normal, that he was suffering from affective distress and feeling of diminished control over his life, and . . . he was evidencing lower overall general activity including social activity, activities away from home, outdoor work, household chores, and a lower repertoire of distracting responses to help him cope with the pain.

Bass was referred to a psychologist, who determined he would be unable to return to work until his symptoms subsided. Bass saw Dr. Estefano, a psychiatrist, who opined Bass had developed severe depression

and panic attacks as a consequence of his work-related injury. According to Dr. Estefano, Bass would "not be able to return to work for an indefinite amount of time due to his mental and physical condition."

Bass filed a Form 50 seeking an award for (1) permanent partial general disability as a result of injuries to his left shoulder and mental and emotional injuries; (2) past and future medical examination and treatment for psychological and psychiatric conditions induced by the accident; (3) a determination of average weekly wage and compensation rate; and (4) other appropriate benefits under the Workers' Compensation Act.

The single commissioner concluded:

> Pursuant to S.C. Code Ann. § 42-9-20 John Bass, Jr. has sustained permanent partial disability which has permanently altered his earning capacity from a pre-accident average weekly wage of $1,211.52 to a current weekly expectation of $280, which results in a weekly wage loss of $931.52. Multiplying this figure by .667 equals $621.77 for an accident occurring in 2001. I conclude that the Claimant has suffered this wage loss for the maximum period of 340 weeks for permanent partial disability pursuant to S.C. Code Ann. § 42-9-20. I further find that the Claimant's partial disability began after a period of total disability and therefore pursuant to said section the amounts paid for temporary total disability shall not be deducted from the maximum of 340 weeks allowed for permanent partial disability.

Additionally, the commissioner ordered Kenco to pay for past psychiatric and psychological treatment and medications, and "any continuing causally related treatment and medications for those conditions . . . which tend to lessen the Claimant's period of disability resulting from his accident-related psychiatric or psychological conditions. Dodge v. Bruccoli, Clark, Layman, Inc., 514 S.E.2d 593 (Ct. App. 1999)."

The appellate panel and the circuit court affirmed.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the workers' compensation commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Bass v. Isochem, 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005); Hargrove v. Titan Textile Co., 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004). A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Bursey v. South Carolina Dep't of Health & Envtl. Control, 360 S.C. 135, 141, 600 S.E.2d 80, 84 (Ct. App. 2004); S.C. Code Ann. § 1-23-380(A)(6)(e) (2005). Under the scope of review established in the APA, this Court may not substitute its judgment for that of the appellate panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005); Frame v. Resort Servs., Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); Stephen v. Avins Constr. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996); S.C. Code Ann. § 1-23-380(A)(6)(d) (2005).

The substantial evidence rule of the APA governs the standard of review in a workers' compensation decision. Frame, 357 S.C. at 527, 593 S.E.2d at 494; Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 92 (Ct. App. 2002); see also Lockridge v. Santens of America, Inc., 344 S.C. 511, 515, 544 S.E.2d 842, 844 (Ct. App. 2001) ("Any review of the commission's factual findings is governed by the substantial evidence standard."). Pursuant to the APA, this Court's review is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law. See Rodriguez v. Romero, 363 S.C. 80, 610 S.E.2d 488 (2005); Gibson v. Spartanburg Sch. Dist. # 3, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000); S.C. Code Ann. § 1-23-380(A)(6) (2005); see also Grant v. Grant Textiles, 361 S.C. 188, 191, 603 S.E.2d 858, 859 (Ct. App. 2004) ("A reviewing court will not overturn a decision by the workers' compensation commission unless the determination is unsupported by substantial evidence

or is affected by an error of law."); Lyles v. Quantum Chem. Co. (Emery), 315 S.C. 440, 434 S.E.2d 292 (Ct. App. 1993) (noting that in reviewing decision of workers' compensation commission, court of appeals will not set aside its findings unless they are not supported by substantial evidence or they are controlled by error of law). Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. Pratt v. Morris Roofing, Inc., 357 S.C. 619, 594 S.E.2d 272 (2004); Jones v. Georgia-Pacific Corp., 355 S.C. 413, 586 S.E.2d 111 (2003); Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002); Broughton v. South of the Border, 336 S.C. 488, 520 S.E.2d 634 (Ct. App. 1999).

The appellate panel is the ultimate fact finder in workers' compensation cases and is not bound by the single commissioner's findings of fact. Gibson, 338 S.C. at 517, 526 S.E.2d at 729; Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). The final determination of witness credibility and the weight to be accorded evidence is reserved to the appellate panel. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000); Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E.2d 366 (1995); Frame, 357 S.C. at 528, 593 S.E.2d at 495; Gibson, 338 S.C. at 517, 526 S.E.2d at 729. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999); DuRant v. South Carolina Dep't of Health & Envtl. Control, 361 S.C. 416, 604 S.E.2d 704 (Ct. App. 2004); Corbin, 351 S.C. at 618, 571 S.E.2d at 95; Muir, 336 S.C. at 282, 519 S.E.2d at 591. Where there are conflicts in the evidence over a factual issue, the findings of the appellate panel are conclusive. Hargrove, 360 S.C. at 290, 599 S.E.2d at 611; Etheredge, 349 S.C. at 455, 562 S.E.2d at 681.

The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 541 S.E.2d 526 (2001); Hicks v. Piedmont Cold Storage, Inc., 335 S.C. 46, 515 S.E.2d 532 (1999); Frame, 357 S.C. at 528,

593 S.E.2d at 495. It is not within our province to reverse findings of the appellate panel which are supported by substantial evidence. Pratt, 357 S.C. at 622, 594 S.E.2d at 274-75; Broughton, 336 S.C. at 496, 520 S.E.2d at 637.

LAW/ANALYSIS

I. Efficacy of Kenco's Assignments of Error

As a threshold issue, Bass argues Kenco's appeal should be dismissed because (1) its assignments of error "fail to meet the standard of specificity required for judicial review," and (2) Kenco asserts an erroneous standard of review.

The circuit court noted that Kenco's assignments of error all contend the commission's findings were "'not supported by the greater weight of credible evidence nor . . . by existing South Carolina statutory or case law.'" The assignments, according to the circuit court, "fail to meet the standard of specificity required for judicial review under the Administrative Procedures Act." Furthermore, Kenco erroneously substitutes a preponderance or greater weight of the evidence standard for the appropriate substantial evidence standard.

Smith v. South Carolina Department of Social Services, 284 S.C. 469, 327 S.E.2d 348 (1985), sets forth the specificity requirement for appeals under the APA:

> [A] petition which will suffice legally must be one which will direct the court's attention to the abuse or abuses allegedly committed below through a distinct and specific statement of the rulings complained of. In short, the petition must include all that is necessary to enable the appellate court to decide whether the ruling complained of was erroneous.

Id. at 470-71, 327 S.E.2d at 349. In Smith, the petition for review was "broad and unspecific," and contained "no allegation which would explain why [the appellant] believe[d] the agency decision was wrong." Id. The Smith court

stated, "In essence, the petition merely represents a statement by her that she is dissatisfied with the decision that she received from the agency below." Id.

Unlike the court in Smith, Kenco's assignments of error are not so opaque or laconic as to hinder our review. Moreover, Kenco's framing of the alleged errors in terms of "the greater weight of evidence" is likely an inadvertent scrivener's error. This Court is fully cognizant of the proper standard of review to be employed in Workers' Compensation cases. South Carolina jurisprudence exuberates with precedent extant on the proper standard of review. Accordingly, we decline to dismiss this appeal based on Kenco's assignments of error.

II. Award of Benefits

A. The Award Under Section 42-9-20

Kenco maintains the court erred in affirming the commission's award of benefits under S.C. Code Ann. § 42-9-20 (1985) because "the facts of this case do not support a loss of earning capacity, since the claimant never was physically fit to drive a truck."

Section 42-9-20 provides:

> Except as otherwise provided in § 42-9-30, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during such disability a weekly compensation equal to sixty-six and two-thirds percent of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than the average weekly wage in this State for the preceding fiscal year. In no case shall the period covered by such compensation be greater than three hundred forty weeks from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall not be deducted from a maximum period allowed in this section for partial disability.

S.C. Code Ann. § 42-9-20 (1985).

"Under our Worker's Compensation Act, a claimant may proceed under § 42-9-10 or § 42-9-20 to prove a general disability; alternatively, he or she may proceed under § 42-9-30 to prove a loss, or loss of use of, a member, organ, or part of the body for which specific awards are listed in the statute." Fields v. Owens Corning Fiberglas, 301 S.C. 554, 555, 393 S.E.2d 172, 173 (1990) (footnote omitted). "[A]n award under the general disability statutes must be predicated upon a showing of a loss of earning capacity, whereas an award under the scheduled loss statute does not require such a showing." Id. (citing Roper v. Kimbrell's of Greenville, Inc., 231 S.C. 453, 99 S.E.2d 52 (1957)). "A claimant may obtain partial permanent disability under S.C. Code Ann. § 42-9-20 (1976). To do so a claimant must show an injury and a loss of earning capacity." Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 105 n.3, 580 S.E.2d 100, 102 n.3 (2003) (citing Roper, 231 S.C. 453, 99 S.E.2d 52).

Kenco asserts that Bass was insulin dependent while employed as a truck driver, and therefore, he was driving a truck in violation of federal law. Under its theory, if Bass could not legally drive a truck while working for Kenco, he should not be given credit for the salary he enjoyed while doing so.

There is no evidence in the record suggesting Bass drove a truck while insulin dependent. Approximately one month before starting his job with Kenco, a doctor gave Bass insulin shots. Bass testified "the blood sugars kept dropping with the insulin, so I discontinued the insulin and went back to diet and exercise." On a Kenco medical history questionnaire filled out prior to being hired, Bass indicated that he did not have diabetes. At the hearing, Bass explained he checked "No" "[b]ecause it wasn't a major problem, it wasn't a problem at that time." Further, Bass discussed his diabetic incident with Kenco manager Steve McIntire and with the Kenco doctor who performed a physical on him:

I told [McIntire] that I had problems with sugar diabetes before. That recently I had had it back in June, a flare up, my wife got sick. When I took the physical I spoke with that doctor and told them the same thing.

. . . .

Q: So what did Mr. McIntire tell you about that?

A: As long as I passed the physical he did not have a problem with that.

Q: What was the problem that they had with diabetes in general, according to Mr. McIntire, what was the problem with them?

A: Only if I had to go back on insulin would I not be able or be allowed to drive tractor-trailers.

Tests conducted as a part of Bass's physical came back negative for diabetes.

Bass averred he was not insulin dependent at any time while driving a truck for Kenco:

Q: Did you go on insulin at any time when you were driving their trucks?

A: Not when I was driving their trucks.

Q: No time?

A: No time.

Q: So at no time were you insulin dependant when you were doing the job for which you were hired?

A: That's right. . . .

The federal regulation pled by Kenco provides:

(a) A person shall not drive a commercial motor vehicle unless he/she is physically qualified to do so . . . .

(b) A person is physically qualified to drive a commercial motor vehicle if that person—

. . . .

(3) Has no established medical history or clinical diagnosis of diabetes mellitus **currently requiring insulin for control[.]**

49 C.F.R. § 391.41 (emphasis added).

In essence, Kenco attempts to apply the phrase "able to earn" in section 42-9-20 to the average weekly wages Bass was earning prior to the injury, and then argue that he should be deemed unable to earn $1,211.52 because of the diabetes. Yet, according to Bass's uncontroverted testimony, he was **NOT** insulin dependant at any time while driving a truck for Kenco. Thus, even if Kenco's legal theory were sound, it would fail because it is unsupported by the evidence. We reject Kenco's position that the facts of this case do not support Bass's loss of earning capacity because he was not actually able to legally earn the income.

B. Award Under 42-9-30 Not Mandated

Indubitably, the record supports an award under section 42-9-20. Consequently, we disagree with Kenco's argument on appeal that the commission should have entered an award pursuant to section 42-9-30.

In Lee v. Harborside Cafe, 350 S.C. 74, 564 S.E.2d 354 (Ct. App. 2002), this Court explained:

> Generally, an injured employee may proceed under either the general disability sections 42-9-10 and 42-9-20 or under the scheduled member section 42-9-30 in order to maximize recovery under the South Carolina Workers' Compensation Act. See Brown v. Owen Steel Co., 316 S.C. 278, 280, 450 S.E.2d 57, 58 (Ct. App. 1994) (proceeding under the general disability sections for an injury to a scheduled member gives the claimant "the opportunity to establish a disability greater than the presumptive

> disability provided for under the scheduled member section."). Only where a scheduled loss is not accompanied by additional complications affecting another part of the body is the scheduled recovery exclusive. Id. (citing Singleton v. Young Lumber Co., 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960)).

Lee at 78, 564 S.E.2d at 356.

In Stokes v. First National Bank, 298 S.C. 13, 21, 377 S.E.2d 922, 926 (Ct. App. 1988), aff'd by 306 S.C. 46, 410 S.E.2d 248 (1991), we held that "mental injuries are compensable if, as in heart attack cases, the mental injury is induced either by physical injury as in Kennedy or by unusual or extraordinary conditions of employment." Here, the commission found Bass incurred a mental injury as a result of the physical injury he sustained to his shoulder. As found by the circuit court, the commission's rulings concerning Bass's psychological and psychiatric problems

> are supported by the unrefuted opinions of the Employee's regular physician, his psychiatrist, his psychologist, his vocational expert, and the Palmetto Health Alliance psychologist that the Employee suffered post-traumatic syndrome disorder, that he had an adjustment disorder with depressed mood, that his pain profile classification was "Dysfunctional," and that these problems were directly induced by the injuries sustained in the accident. The Single Commissioner's order, adopted in full by the Hearing Panel, quoted liberally and convincingly from the records of those individuals and cited overwhelming support for the ultimate findings of the Commission in regard thereto. Conversely, the Defendants proffered no contradictory evidence whatsoever either by way of APA submissions, cross-questioning of those experts, or deposition evidence. Thus, not only was there substantial evidence to support the commission's conclusions but in fact all of the evidence proffered on these points clearly and convincingly supported the Employee's contentions.

Dr. Estefano stated: "It is from this [shoulder] injury that Mr. Bass has developed severe depression and panic attack." He observed that Bass had "developed severe anxiety, severe depression, and excessive amount of pain on his shoulder due to his injury at work." Psychologist Patricia Feigley opined Bass's "emotional problems have developed as a result of being injured and unable to work at his previous level." In addition, Dr. Stuck declared: "I do sincerely believe that the anxiety and stress of his permanent disability and treatment through Workers' Comp has contributed to his emotional problems that he's now having." These uncontroverted opinions adequately support the commission's conclusion that Bass's post-traumatic syndrome disorder, panic disorder, and adjustment disorder with depressed mood were directly induced by the shoulder injury.

The record fully supports the commission's finding that Bass suffered mental problems as a result of a physical injury. Bass incurred two injuries; therefore, the award under section 42-9-20 was appropriate.

C. Origin of Bass's Psychological and Emotional Problems

In light of the overwhelming evidence in the record, we reject Kenco's contention that the commission improperly awarded benefits to Bass for psychological and emotional problems.

"A mental-mental injury is a purely mental injury resulting from emotional stimuli." Doe v. S.C. Dep't of Disabilities & Special Needs, 364 S.C. 411, 418, 613 S.E.2d 785, 788 (Ct. App. 2005) (citation omitted). In order to receive benefits for a mental-mental injury unaccompanied by a physical injury, a claimant must demonstrate the "stressful employment conditions causing the mental injury were extraordinary and unusual in comparison to the normal conditions of the employment." S.C. Code Ann. § 42-1-160 (Supp. 2004); Doe at 418, 613 S.E.2d at 788.

However, where "the mental injury is induced by physical injury, it is not necessary that it result from unusual or extraordinary conditions of employment." Getsinger v. Owens-Corning Fiberglas Corp., 335 S.C. 77, 80, 515 S.E.2d 104, 105-06 (Ct. App. 1999) (internal quotation marks omitted)

(emphasis in original) (quoting Estridge v. Joslyn Clark Controls, Inc., 325 S.C. 532, 482 S.E.2d 577 (Ct. App. 1997)). Thus, a mental injury induced by a physical injury is compensable. Doe at 420, 613 S.E.2d at 790; see also Stokes v. First Nat'l Bank, 298 S.C. 13, 377 S.E.2d 922 (Ct. App. 1988). "A condition, which is induced by a physical injury, is thereby causally related to that injury." Doe at 420, 613 S.E.2d at 790.

Kenco asserts that Bass's emotional injuries were not a result of his shoulder injury. However, Kenco's contention is not a legal argument, but a factual one. The evidence of record overwhelmingly supports the commission's conclusion that Bass's mental problems were born out of his shoulder injury. The opinions of Dr. Stuck, Psychologist Feigley, and Dr. Estefano all unequivocally link Bass's psychological issues directly to his physical injury. The commission is the finder of fact. Substantial evidence supports the commission's finding.

III. Credit for Temporary Benefits

The commissioner's order stated:

> I conclude that the Claimant has suffered this wage loss for the maximum period of 340 weeks for permanent partial disability pursuant to S.C. Code Ann. § 42-9-20. I further find that the Claimant's partial disability began after a period of total disability and therefore pursuant to said section the amounts paid for temporary total disability shall not be deducted from the maximum of 340 weeks allowed for permanent partial disability.

(Emphasis added.) Kenco argues the commission should have given it credit for the temporary total benefits paid after maximum medical improvement.

The pertinent sentence in section 42-9-20 provides: "In case the partial disability begins after a period of total disability, the latter period shall not be deducted from a maximum period allowed in this section for partial disability." S.C. Code Ann. § 42-9-20 (1985).

Dr. Midcap released Bass on June 19, 2001 with a 10% permanent impairment to the left upper extremity and placed him on permanent work restrictions. Bass's depression began as a result of and after this period of temporary total disability. The period of total disability of the shoulder is separate and distinct from the subsequent period of permanent partial general disability stemming from psychological issues. Thus, Bass was paid total temporary benefits only for the uncontested period of his physical disability. Accordingly, the commissioner correctly applied section 42-9-20 and declined to give Kenco a credit for temporary benefits paid.

IV. Maximum Medical Improvement

The commissioner found "Claimant has a) reached maximum medical improvement as to his physical injuries; b) has not reached maximum medical improvement with respect to his psychiatric and psychological complications; and c) is in need of ongoing psychiatric and psychological treatment including prescription medications under the direction of Dr. Estefano."

Kenco argues that "[p]rior to reaching MMI, the claimant is not entitled to permanent benefits." At the hearing before the circuit judge, counsel for Kenco surmised: "You cannot have an order saying that he is partially at MMI and partially not at MMI." We disagree.

Kenco has proffered no precedent or rationale demonstrating error in the commissioner's finding that Bass had reached maximum medical improvement for his shoulder injury but not for his psychological problems. Furthermore, we disagree with Kenco's statement that Bass should not have been awarded permanent benefits if he was not at maximum medical improvement. A declaration of maximum medical improvement is irrelevant to the award of permanent partial disability in this case. "'Maximum medical improvement' is a distinctly different concept from 'disability.'" Dodge v. Bruccoli, 334 S.C. 574, 581, 514 S.E.2d 593, 596 (Ct. App. 1999).

"Maximum medical improvement is a term used to indicate that a person has reached such a plateau that in the physician's opinion there is no further medical care or treatment which will lessen the degree of impairment." O'Banner v. Westinghouse Elec. Corp., 319 S.C. 24, 28, 459 S.E.2d 324, 327 (Ct. App. 1995). It is true that when a claimant receiving temporary benefits reaches maximum medical improvement and is still disabled, temporary benefits are terminated and the claimant is awarded permanent benefits. Smith v. S.C. Dep't of Mental Health, 335 S.C. 396, 399, 517 S.E.2d 694, 696 (1999) ("The rationale for ceasing temporary benefits upon a finding of MMI is to permit entry of a permanent award. Clearly, if an employee has reached MMI and remains disabled, then his injury is permanent. This is precisely the reason to terminate temporary benefits in favor of permanent benefits upon a finding of MMI."). It does not follow, however, that a claimant who has not reached maximum medical improvement is precluded from an award of permanent benefits.

The commissioner's order documents Dr. Estefano's prognosis that "'as long as Mr. Bass suffers from his work-related injury, he will continue to suffer mentally, emotionally, and financially.'" There is no evidence in the record rebutting or contradicting Dr. Estefano's conclusion. Therefore, the only evidence in the record indicates Bass's condition is permanent. The award of permanent partial disability was proper. The evidence supports the finding that Bass had reached maximum medical improvement with respect to his shoulder, but not his mental injuries. Therefore, we find the circuit court properly refused to remand the case.

CONCLUSION

The order of the circuit court is hereby

AFFIRMED.

GOOLSBY and SHORT, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Civil Action No.: 2001-CP-32-0711 Carolina Water Service, Inc., Appellant,

v.

Lexington County Joint Municipal Water and Sewer Commission, Respondent.

Civil Action No.: 2001-CP-32-0819 Town of Lexington, Appellant,

v.

Lexington County Joint Municipal Water and Sewer Commission, Respondent.

Civil Action No.: 2001-CP-32-1527 Carolina Water Service, Inc., Appellant,

v.

Lexington County Joint Municipal Water and Sewer Commission, Respondent.

Civil Action No.: 2001-CP-32-1534 Town of Lexington, Appellant,

v.

Lexington County Joint Municipal Water and Sewer Commission, Respondent.

Civil Action No.: 2002-CP-32-0036 Town of Lexington, Appellant,

v.

Lexington County Joint Municipal Water and Sewer Commission, Respondent.

Civil Action No.: 2002-CP-32-0078 Lexington County Joint Municipal Water and Sewer Commission, Condemnor, Respondent,

v.

Carolina Water Service, Inc., Utilities, Inc., Landowners, Appellants,

Town of Lexington, Other Condemnee, Appellants.

Unknown Claimants Civil Action No.: 2002-CP-32-0083 Carolina Water Service, Inc., Appellant,

v.

Lexington County Joint Municipal Water and Sewer Commission, Respondent.

Appeal From Lexington County
Marc H. Westbrook, Circuit Court Judge

Opinion No. 4047
Heard September 13, 2005 – Filed November 21, 2005

AFFIRMED

Clifford O. Koon, Jr., K. Chad Burgess, Paige J. Gossett, John M.S. Hoefer, all of Columbia and Timothy E. Madden, of Greenville, for Appellants.

Joel W. Collins, Jr. and William A. Bryan, Jr., both of Columbia and Nikki G. Setzler, of West Columbia, for Respondents.

PER CURIAM: This case arises out of a condemnation action initiated by Lexington County Joint Municipal Water and Sewer Commission (Joint Commission) to acquire certain facilities owned by Carolina Water Service (Carolina Water) and Utilities, Inc. (Utilities). In response, Carolina Water, Utilities and the Town of Lexington (Town) filed actions challenging the Joint Commission's right to condemn these systems (Challenge Actions). Carolina Water then sought to stay the condemnation proceeding pursuant to section 28-2-470 of the South Carolina Code (1991). The circuit court issued an order staying both the condemnation proceeding and the Challenge Actions until the resolution of a related case then pending before the South Carolina Administrative Law Court.[1] At issue in this appeal is the authority

[1] By Act No. 202, effective April 26, 2004, the name of the South Carolina Administrative Law Judge Division was changed to the South Carolina Administrative Law Court.

of the circuit court to lift that portion of the stay relating to the Challenge Actions. We affirm.

FACTS

This case relates to an ongoing dispute concerning water service in Lexington County. Carolina Water is a private wastewater utility company that owns and operates several wastewater treatment facilities, including the I-20 facility and the Watergate facility, which are the subjects of this litigation. Carolina Water is a voting member on the Central Midlands Council of Governments (Council), which is a regional council of county and municipal governments with various planning responsibilities for the Central Midlands region. The Town is also a voting member on the Council.

Section 208 of the federal Clean Water Act provides a framework for states, through local and regional governmental authorities, to create and implement area-wide waste treatment management plans to control water pollution. Pursuant to federal law, the Governor has designated the Council as the area-wide waste treatment-planning agency for the Central Midlands region. Under state law, the South Carolina Department of Health and Environmental Control (DHEC) has been designated the state agency authorized to implement South Carolina's Continuing Planning Process, which must be submitted to the Environmental Protection Agency (EPA) under the Clean Water Act. The Council is responsible for creating and updating a Section 208 Plan for the Central Midlands region. DHEC is responsible for certifying the Section 208 Plan with the EPA.

In 1993, the Section 208 Plan for the Central Midlands region was amended to require the closure of Carolina Water's I-20 and Watergate facilities. A 1997 amendment called for the removal of all domestic wastewater discharges into the lower Saluda River and also provided that the I-20 and Watergate facilities be replaced by connection to the Town's regional sewer system.

A dispute erupted between Carolina Water and the Town concerning the financial terms under which Carolina Water would connect the I-20 and Watergate facilities to the Town's regional sewer line. In 2000, Carolina Water and the Town entered into a compromise agreement which would allow the I-20 plant to continue discharging wastewater into the Saluda River on a permanent basis after expanding the plant to handle 990,000 gallons per day. This agreement was submitted to the Council, which adopted the proposed amendment to the Section 208 Plan and transmitted it to DHEC for certification.

DHEC rejected the proposed amendment. Among the reasons for the rejection was the amendment's inconsistency with the existing 208 Plan's focus on providing more cost-effective water service by consolidating small, public or private domestic wastewater facilities into larger public, regional facilities. Additionally, the proposed amendment authorized continued discharges into the lower Saluda River, which has been designated as a unique natural resource qualifying for special protections under the South Carolina Scenic Rivers Act, S.C. Code Ann. § 49-29-230(3) (Supp. 2004). Finally, the proposed amendment did not consider alternative proposals that would allow for implementation of the aims of the existing 208 Plan. One such proposal cited was an effort by the Joint Commission to acquire the I-20 facility through its eminent domain power and then to connect it to the Town's regional sewer line.

An appeal was filed with the Administrative Law Court challenging DHEC's authority to nonconcur in the amendment to the Section 208 Plan. On March 6, 2001, however, before the Council adopted the amendment to the Section 208 Plan, the Joint Commission initiated the instant condemnation action to acquire the I-20 and Watergate facilities. Carolina Water, Utilities, and the Town filed the Challenge Actions and moved for enforcement of the automatic stay pursuant to section 28-2-470 of the South Carolina Code.

On October 3, 2002, after the DHEC case had been heard before the Administrative Law Judge (ALJ), but before the ALJ issued an opinion, the circuit court issued an order staying all proceedings relating to the

condemnation action pending resolution of the matter before the ALJ. The circuit court found that the matter before the ALJ, involving the validity of the Section 208 Plan, would control the future use of the wastewater treatment facility at issue in the instant case, and would therefore have a direct impact on the issue of the Joint Commission's right to condemn Carolina Water's facility.

The ALJ subsequently issued an opinion reversing DHEC's decision. The ALJ found that DHEC had no authority to refuse certification of the plan once it was adopted by the Council. DHEC was therefore ordered to certify the Section 208 amendment allowing Carolina Water's facility to remain in operation. The ALJ's decision was appealed to the Full Board of DHEC.

In the interim, the Joint Commission filed a Rule 59(e) motion requesting that the circuit court reconsider its order imposing the stay in the instant matter. In this motion, the Joint Commission argued that the stay order exceeded the bounds of the automatic stay under section 28-2-470 in that it stayed not only the condemnation action, but the Challenge Actions as well. The Joint Commission maintained that the court's action was improper because it violated the statutory priority given to eminent domain actions under section 28-2-310(C) of the South Carolina Code (1991), in that final resolution of the Section 208 Plan matter before the ALJ would have no bearing on the Joint Commission's condemnation action.

In June of 2003, a status conference was held, and during this conference, the propriety of lifting the stay was discussed. Following the status conference, the circuit court decided to dissolve the stay. On February 4, 2004, the circuit court issued an order lifting the stay and allowing the Challenge Actions to go forward. The automatic stay of the condemnation action pursuant to section 28-2-470 remained intact, however. The circuit court also issued a scheduling order on the same date.

Carolina Water filed a motion to alter or amend requesting the circuit court reconsider its ruling. A motion for restoration of the stay or, in the alternative, for supersedeas was also filed. While these motions were pending, the DHEC Board issued an order reversing the decision of the ALJ.

The circuit court then denied Carolina Water's motions. Carolina Water, Utilities, and the Town (Appellants) have appealed from the order lifting the stay.

STANDARD OF REVIEW

The circuit court has discretion whether to grant a stay of a matter pending before the court. Talley v. John-Mansville Sales Corp., 285 S.C. 117, 119, 328 S.E.2d 621, 623 (1985); City of Spartanburg v. Belk's Dep't Store of Clinton, 199 S.C. 458, 480, 20 S.E.2d 157, 167 (1942). Accordingly, the appropriate standard of review is abuse of discretion. "An abuse of discretion arises where the [circuit] court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support." Steinke v. South Carolina Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 398, 520 S.E.2d 142, 155 (1999).

LAW/ANALYSIS

The primary issue in this case is whether the circuit court erred in lifting the stay as to the Challenge Actions. However, the Joint Commission raises several preliminary issues relating to the appealability of the stay order. We address each in turn.

I. Appealability of the Stay Order

A. Failure to Provide a Complete Record

The Joint Commission first argues that Appellants' arguments have not been preserved for appeal because they failed to provide an adequate record. However, the Joint Commission fails to explain how the record is deficient. Conclusory arguments constitute an abandonment of the issue on appeal. See Solomon v. City Realty Co., 262 S.C. 198, 201, 203 S.E.2d 435, 436 (1974). A reference to supporting authority without any discussion of its applicability is conclusory and constitutes an abandonment of the party's reliance on those

cases. State v. Tyndall, 336 S.C. 8, 16, 518 S.E.2d 278, 282 (Ct. App. 1999). Therefore, this argument is deemed abandoned.

B. Appellants Lack Standing Because They Are Not Aggrieved Parties

The Joint Commission next argues that Appellants lack standing to bring the appeal because they are not aggrieved parties. We disagree.

Rule 201, SCACR, provides that only parties aggrieved by an order may appeal. "A party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest." Beaufort Realty Co. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001).

The Joint Commission maintains that Appellants have not been aggrieved by the lifting of the stay because the circuit court lifted only that portion of the stay relating to the Challenge Actions, but left the statutory automatic stay of the condemnation action intact. This argument is without merit because it is the actions instituted by each of the Appellants that the lifting of the stay allows to go forward. In the original stay order, the circuit court found that the matter pending before the ALJ would have a direct impact on the issue of the Joint Commission's right to condemn the facility, a matter central to their cases. The resolution of this case in favor of the Joint Commission and the resulting condemnation of the property would preclude Carolina Water from being able to repurchase the property should the DHEC case be decided in its favor. See Indigo Realty Co., Ltd. v. City of Charleston, 281 S.C. 234, 237, 314 S.E.2d 601, 603 (1984) (holding that there is no equitable right of repurchase once property has been taken through the exercise of the eminent domain power). Accordingly, we find each of the Appellants had standing to appeal as aggrieved parties under Rule 201.

C. Standing of the Town and Utilities to Appeal the Order

The Joint Commission further argues that Appellants lack standing to appeal the order lifting the stay because Appellants do not have a property

interest in the subject property of the condemnation action. This argument is not appropriate for review because it has not been raised as an issue in the order which was appealed. The condemnation notice named Carolina Water and Utilities as landowners and the Town as an "Other Condemnee." The circuit court determined in a separate order that the Town had standing to challenge the condemnation action. No appeal of this order was filed. Therefore, this ruling is the law of the case and may not be challenged in this appeal.

D. Interlocutory Nature of the Order

The Joint Commission also argues the order is not appealable because it is an interlocutory order and does not involve the merits. See S.C. Code Ann. § 14-3-330 (1976 & Supp. 2004). In Hiott v. Contracting Services, 276 S.C. 632, 633, 281 S.E.2d 224, 225 (1981), the supreme court found that an order granting a stay was immediately appealable, stating "[i]n this State, a stay is appealable." By inference, an order lifting a stay is also appealable. We therefore proceed to the merits.

II. Merits of the Appeal

Appellants argue that the order lifting the stay was an abuse of discretion because it was not supported by adequate facts and was controlled by an error of law. We disagree.

Section 28-2-470 of the South Carolina Code (1991) authorizes a landowner to bring a separate action challenging a condemnor's right to condemn the subject property. That section also provides that "[a]ll proceedings under the Condemnation Notice are automatically stayed until the disposition of the action . . . ." Id. Consequently, when the Challenge Actions were filed, the Joint Commission's condemnation proceeding was automatically stayed by operation of law. However, the circuit court went further in its stay order and also stayed the Challenge Actions pending resolution of the related DHEC case then before the ALJ.

The order lifting the stay in this case did not purport to disturb the statutory stay on the condemnation proceeding, but dissolved the stay only as to the Challenge Actions. Therefore, section 28-2-470 is not implicated, and the only question is whether the order lifting the stay prejudiced Appellants in some manner so as to constitute an abuse of discretion.

Appellants first argue the circuit court abused its discretion in lifting the stay because the only thing that happened subsequent to the order granting the stay was the reversal of the ALJ's decision by the DHEC Board. The circuit court cited two pertinent factors in reaching its decision to lift the stay: (1) the long delay in waiting for resolution of the appeals in the DHEC case; and (2) provisions in the South Carolina Eminent Domain Act which assign priority to condemnation cases.

A long delay in waiting for resolution of a related case is not a sufficient reason for refusing to grant a stay when conclusion of the proceeding before the court could act as a bar to relief in the related case. Talley v. John-Mansville Sales Corp., 285 S.C. 117, 118-19 n.2, 328 S.E.2d 621, 622-23 n.2 (1985). The Talley court stressed, however, that such a stay is proper only under the most exceptional circumstances. Id. A stay was also found appropriate before the merger of law and equity when the same parties and the same subject matter were involved in both an action at law and a suit in equity. Rush v. Thompson, 203 S.C. 106, 112, 26 S.E.2d 411, 413 (1943). The court held that the equitable suit should be stayed to prevent deprivation of the right to a jury trial on the legal issues. Id. at 112, 26 S.E.2d at 414. It is therefore appropriate to consider whether resolution of the DHEC case will finally determine some aspect of Appellants' case.

Appellants argue that resolution of the DHEC case will have a direct bearing on this case, and therefore, the circuit court abused its discretion by lifting its stay. However, as the Joint Commission argued at the hearing, and continues to argue, it plans to condemn the property regardless of the resolution in the DHEC case. The only issue in the DHEC case is whether DHEC has authority to withhold consent to a proposed amendment to section 208 of the Clean Water Act. In the case at bar, the Joint Commission asserts numerous reasons for exercising its eminent domain power, some of which

have nothing to do with section 208 of the Clean Water Act. Thus, even if the DHEC case were resolved in Appellants' favor, the Joint Commission's condemnation action would not be resolved.

Furthermore, section 28-2-310(C) of the South Carolina Code (1991) provides that an eminent domain proceeding must be given precedence over other civil cases for trial if either the condemnor or the landowner so demands. Because the Joint Commission is seeking to expedite the process, the circuit court was within its discretion to consider the need to dissolve the stay to avoid unnecessarily delaying the condemnation action.

Appellants further contend that the stay is justifiable because of the rule announced in Indigo Realty Co., Ltd. v. City of Charleston, 281 S.C. 234, 314 S.E.2d 601 (1984). In Indigo Realty the property owner sold a building to the city after being threatened with condemnation. Id. at 235, 314 S.E.2d at 602. Six months later the city decided not to widen the street, thus negating the public purpose for which the property was sold. Id. The property owner sought an injunction ordering the City to reconvey the property. Id. at 235, 314 S.E.2d at 602. The court refused to do so, holding that creating an equitable right of repurchase would place an unnecessary cloud on the title of property taken through eminent domain. Id. at 237, 314 S.E.2d at 603.

Appellants maintain that under the Indigo Realty rule, if the condemnation action proceeds to a conclusion and the property is taken, they will be deprived of the benefit of a decision in their favor in the DHEC case because they would be unable to repurchase the property. However, because we have found that the Joint Commission's condemnation action would proceed even if the DHEC case is resolved in Appellants' favor, the Indigo Realty rule is inapplicable.

We therefore find that this case does not involve the type of "most exceptional circumstances" which would justify a stay that could delay resolution of this case for years. See Talley, 285 S.C. at 119 n.2, 328 S.E.2d

621, 623 n.2. The circuit court's reasons for its decision were sufficient to preclude a finding of abuse of discretion.[2]

CONCLUSION

We find the order lifting the stay is immediately appealable. On the merits, we find the circuit court did not abuse its discretion in lifting the stay and allowing the Challenge Actions to go forward. Accordingly, the order is hereby

AFFIRMED.

HEARN, C.J., STILWELL, J., and CURETON, A.J., concur.

[2] We further note that the lifting of the stay can be sustained as an act of discretion within the circuit court's authority to control its docket. Courts have inherent power to stay proceedings in actions pending before them as part of their power to control their own docket. 1A C.J.S. Actions § 244 (2004). The granting or refusing of a stay is discretionary and should be exercised with caution after balancing competing interests. Id.