The Supreme Court of South Carolina

RE: Administrative Suspensions for Failure to Pay License Fees Required by Rule 410 of the South Carolina Appellate Court Rules (SCACR)

O R D E R

The South Carolina Bar has furnished the attached list of lawyers (including those holding a limited certificate to practice law) who have failed to pay their license fees for 2015. Pursuant to Rule 419(d)(1), SCACR, these lawyers are hereby suspended from the practice of law. They shall surrender their certificate of admission to practice law to the Clerk of this Court by April 6, 2015.

Any petition for reinstatement must be made in the manner specified by Rule 419(e), SCACR. Additionally, if they have not verified their information in the Attorney Information System, they shall do so prior to seeking reinstatement.

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

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina
March 4, 2015

Members Who Have Not Paid 2015 License Fees

Candice Leah Armstrong
59 Cross Pointe
Greenville, SC 29607

Roberts Joseph Bradford Jr.
817 West Walnut Street, Suite 12
Johnson City, TN 37604

D. Allen Calhoun
1801 S. Bell St.
Arlington, VA 22202

Stephen Edward Carter
19 Shelter Cove Ln., Ste. 100
Hilton Head Island, SC 29928-3574

Kevin Peter Corrigan
12 Larnes Street
Apt. D
Charleston, SC 29403

W. Richard Cox
5320 Bridgers Road Ext, Ste 4
Shallotte, NC 28470

Jacob Alexander Crawford
1304A Grove St.
Charlottesville, VA 22903

D. Kerry Crenshaw
500 Woodward Ave., Ste. 3500
Detroit, MI 48226-3435

Joanmarie Ilaria Davoli
8787 Bay Pine Rd.
Jacksonville, FL 32256

Kimberlee Joanne De Biase
2260 NE 52nd Street
Ft. Lauderdale, FL 33308

Roberta Lynn Diamond
PO Box 35763
Brighton, MA 02135

Susan Johnsen Flynn
1401 Canal Point Rd
Longwood, FL 32750-4550

Kristin Leigh Gatter
932 Burnley Rd.
Charlotte, NC 28210

Joel F. Geer
330 E. Coffee Street
Suite 1047
Greenville, SC 29601

Christopher Matthews Glenn
3232 Danfield Drive
Columbia, SC 29204

Susan Moody Gritton
2212 Shannon Dr
Murfreesboro, TN 37129-1312

Robert J. Hermeston
215 Green Valley Rd
Anderson, SC 29621

Elizabeth Council Hogue
49 Fisher Crse
Ocklawaha, FL 32179-5722

Robert L. Joga
100 Kingsley Park Drive
Fort Mill, SC 29715

S. Matthew Lilly Jr.
131 N. Market St.
Washington, NC 27889

James Andrew Lund
1401 Hampton Street
Columbia, SC 29201

Riche' Terrance McKnight
200 Park Avenue
New York, NY 10166

Misti Karlene Meyers
309 S Third St
PO Box 552610
Las Vegas, NV 89155

Emily Jackson Miller
PO Box 8294
Ann Arbor, MI 48107

Thomas Edward O'Neill
151 Westpark Blvd.
Columbia, SC 29210

William A. Pollard Sr.
104 Catawba Circle
Columbia, SC 29201

Shannon Marie Postell
16 Ashmore Place Drive
Columbia, SC 29229

Rebecca D. Ramos
115 State Street
Montpelier, VT 05633-5401

Christopher R. Richmond
40 W. Cayuga St.
Oswego, NY 13126

Gretchen Aynsley Rogers
1803 Hampton Street, 2nd Floor
Columbia, SC 29201

Timothy Wayne Ryan
555 Poyntz Ave., Ste. 290
Manhattan, KS 66502

Harriett Jean Twiggs Smalls
PO Box 14391
Greensboro, NC 27415

Jason Bailey Sprenkle
437 Captains Cir.
Destin, FL 32541

Gene Stockholm
1031 Center Street
West Columbia, SC 29169

Virginia C. Tate
1550 Peachtree St.
Atlanta, GA 30309

Susan Hill Terry
61 Forsyth Street Suite 20T10
Atlanta, GA 30303

Julian H. Toporek
221 W. York St.
Savannah, GA 31401

Karen Marie Utter
412 Ivy Green Lane
Lexington, SC 29072

Nicole Vouvalis
0175 Old Main Hill
Logan, UT 84322

Jonathan Pellett Weitz
38 Center Street
PO Box 302
Folly Beach, SC 29439

John Paul Wilkins
6 Arbor Way Drive
Decatur, GA 30030

Lee Ann M. Williams
3 Windlass Court
Savannah, GA 31411

The Supreme Court of South Carolina

In the Matter of Andrea Hall Duenas, Petitioner

Appellate Case No. 2015-000335

ORDER

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

By way of a letter addressed to the South Carolina Supreme Court, dated February 19, 2015, Petitioner submitted her resignation from the South Carolina Bar. We accept Petitioner's resignation.

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

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

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

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

February 25, 2015

The Supreme Court of South Carolina

In the Matter of Elizabeth P. Paul, Petitioner

Appellate Case No. 2015-000307

ORDER

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

By way of a letter addressed to the South Carolina Supreme Court, dated February 19, 2015, Petitioner submitted her resignation from the South Carolina Bar. We accept Petitioner's resignation.

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

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

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

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

February 25, 2015

The Supreme Court of South Carolina

In the Matter of Patricia A. Small, Petitioner

Appellate Case No. 2015-000314

ORDER

The records in the office of the Clerk of the Supreme Court show that on May 10, 1999, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the Supreme Court of South Carolina, dated February 19, 2015, Petitioner submitted her resignation from the South Carolina Bar. We accept Petitioner's resignation.

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

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

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

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

February 25, 2015

The Supreme Court of South Carolina

In the Matter of Keith Robert Thornburg, Petitioner

Appellate Case No. 2015-000298

ORDER

The records in the office of the Clerk of the Supreme Court show that on November 13, 2007, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to Supreme Court of South Carolina, dated February 19, 2015, Petitioner submitted his resignation from the South Carolina Bar. We accept Petitioner's resignation.

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

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

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

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

February 25, 2015

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

N O T I C E

IN THE MATTER OF DAVID ROSS CLARKE, PETITIONER

Appellate Case No. 2015-000268

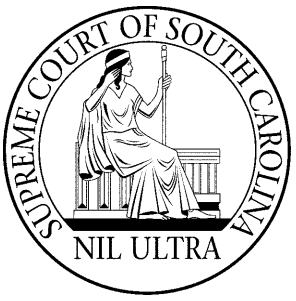
Petitioner was disbarred from the practice of law. *In the Matter of Clarke*, 290 S.C. 494, 351 S.E.2d 573 (1986). Petitioner has now filed a petition seeking to be readmitted.

Pursuant to Rule 33(e)(2) of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413 of the South Carolina Appellate Court Rules, notice is hereby given that members of the bar and the public may file a notice of their opposition to or concurrence with the petition. Comments should be mailed to:

Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

These comments should be received within sixty (60) days of the date of this notice.

Columbia, South Carolina
March 2, 2015



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OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 9
March 4, 2015
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Jeffrey D. Allen, on behalf of Jane Doe, Appellant,

v.

South Carolina Public Employee Benefit Authority, Employee Insurance Program, Respondents.

Appellate Case No. 2012-212988

Appeal from the Administrative Law Court
Shirley C. Robinson, Administrative Law Judge

Opinion No. 27504
Heard December 5, 2013 – Filed March 4, 2015

REVERSED

Terry E. Richardson, Jr., of Richardson, Patrick, Westbrook & Brickman, LLC, of Barnwell, and John A. Massalon, of Wills Massalon & Allen, LLC, of Charleston, for Appellant.

Theodore D. Willard, Jr., of Montgomery Willard, LLC, and Stephen Van Camp, both of Columbia, for Respondent.

CHIEF JUSTICE TOAL: Jeffrey D. Allen (Appellant), on behalf of his daughter, appeals the Administrative Law Court's (ALC) order affirming the Appeals Committee of the South Carolina Budget and Control Board Employee Insurance Program's (EIP Appeals Committee) decision to deny Appellant's

insurance claim for his daughter's diabetes educational training session. We reverse.

FACTS/PROCEDURAL BACKGROUND

Appellant, a South Carolina public school district employee, is insured under the Group Health Benefits Plan of the Employees of the State of South Carolina, the public school districts, and participating entities (the State Health Plan).[1] The State Health Plan is offered through EIP.[2]

In November 2007, Appellant's daughter was diagnosed with Type 1 diabetes at the age of two years old.[3] Appellant's daughter's doctor prescribed her an insulin pump to regulate her insulin levels. In August 2008—two weeks prior to attaching the pump to Appellant's daughter's body—her family and two school nurses attended a two-hour training session at the Medical University of South Carolina, during which a diabetic educator taught the caregivers how to operate the insulin pump.

Appellant submitted a $560 claim for the educational training session.[4] Blue

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[1] The State Health Plan was created by the South Carolina Budget and Control Board (SCBCB) pursuant to section 1-11-710 of the South Carolina Code, which requires the board to "make available to active and retired employees of this State and its public school districts and their eligible dependents group health, dental, life, accidental death and dismemberment, and disability insurance plans and benefits in an equitable manner and of maximum benefit to those covered within the available resources." S.C. Code Ann. § 1-11-710(A)(1) (Supp. 2013).

[2] SCBCB created EIP to administer the State Health Plan. Recently, a newly created agency, the South Carolina Public Employee Benefit Authority (PEBA), assumed administration of EIP pursuant to Act No. 278, 2012 S.C. Acts 2278, 2319.

[3] Appellant's daughter is insured as a dependent under Appellant's State Health Plan policy.

[4] Appellant also submitted a claim for his daughter's insulin pump, which was covered by his policy.

Cross Blue Shield of South Carolina (Blue Cross) denied the claim on the grounds that the "benefit plan does not cover education and/or training for this condition."[5] Appellant appealed the denial through Blue Cross's appeals process. Ultimately, Blue Cross's Appeals Review Committee upheld the denial of benefits on the basis that diabetes educational training is excluded under the State Health Plan, and that section 38-71-46 of the South Carolina Code,[6] which mandates coverage for diabetes educational training in certain health insurance policies, does not apply to the State Health Plan.

Appellant appealed to the EIP Appeals Committee. The EIP Appeals Committee denied Appellant's claim, concluding that Appellant's State Health Plan policy expressly excluded diabetes educational training and that section 38-71-46 did not apply to the State Health Plan.

Appellant appealed to the ALC. In the ALC, Appellant argued that diabetes educational training is covered under the State Health Plan,[7] and in the alternative, the State Health Plan should be reformed to comply with section 38-71-46. Additionally, Appellant requested that the ALC allow the matter to proceed as a class action lawsuit. On August 13, 2012, the ALC issued an order affirming the EIP Appeals Committee's decision that the terms of the State Health Plan do not cover diabetes educational training because the State Health Plan does not qualify as "health insurance coverage" as defined by the South Carolina Code.[8] In light of the ALC's disposition of the case, the ALC declined to address whether it had the authority to permit the case to proceed as a class action.

Appellant appealed the ALC's order to the court of appeals. This Court certified the appeal pursuant to Rule 204(b), SCACR.

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[5] Blue Cross is the third-party claims administrator for the State Health Plan. As such, Blue Cross processes and pays claims under the State Health Plan and thus, provides the first level of review for coverage requests.

[6] S.C. Code Ann. § 38-71-46 (2002).

[7] Appellant has now abandoned this argument.

[8] For a health insurance policy to be subject to section 38-71-46, it must provide "health insurance coverage" as defined by section 38-71-840(14) of the South Carolina Code. S.C. Code Ann. §§ 38-71-46, -840(14) (2002).

ISSUES

I. Whether the ALC erred in concluding that section 38-71-46 does not apply to the State Health Plan?

II. Whether the ALC erred in failing to address the availability of class action relief?

STANDARD OF REVIEW

A party who has exhausted all administrative remedies available within an agency and who is aggrieved by an ALC's final decision is entitled to judicial review. S.C. Code Ann. § 1-23-380 (Supp. 2012). In an appeal from a decision by the ALC, the Administrative Procedures Act (APA) provides the appropriate standard of review. *See* S.C. Code Ann. § 1-23-610(B) (Supp. 2012). Under the APA, this Court will reverse an ALC's decision if it is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

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

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

Id. A question of statutory interpretation is one of law for this Court to decide. *CFRE, L.L.C. v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." (citing *City of Rock Hill v. Harris*, 391 S.C. 149, 152, 705 S.E.2d 53, 54 (2011))).

LAW/ANALYSIS

I. Applicability of Section 38-71-46 to the State Health Plan

Appellant argues that the ALC erred in concluding that section 38-71-46 of the South Carolina Code does not apply to the State Health Plan. We agree.

"All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (citing *Bohlen v. Allen*, 228 S.C. 135, 141, 89 S.E.2d 99, 102 (1955)). "'What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.'" *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000) (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)). When interpreting a statute, the Court must read the language in a sense which harmonizes with its subject matter and accords with its general purpose. *Eagle Container Co., L.L.C. v. Cnty. of Newberry*, 379 S.C. 564, 570, 666 S.E.2d 892, 896 (2008) (quoting *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)).

Section 38-71-46 of the South Carolina Code mandates coverage for diabetes education in "*every* health maintenance organization, individual and group health insurance policy, or contract issued or renewed in this State . . . ." S.C. Code Ann. § 38-71-46(A) (emphasis added). For purposes of the mandate, group policy "health insurance coverage" is defined as:

> benefits consisting of medical care provided directly, through insurance or reimbursement, or otherwise *and including* items and services paid for as medical care under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer . . . .

S.C. Code Ann. § 38-71-840(14) (2002) (emphasis added).[9]

We do not read "health care issuer" as modifying all preceding clauses in

[9] The statute further provides a list of exceptions. S.C. Code Ann. § 38-71-840(14). None of the exceptions are applicable here.

subsection (14). Benefits need not be provided by a "health care issuer" to qualify as "health insurance coverage" under section 38-71-840(14). Therefore, based on the plain language of section 38-71-840(14), the ALC erred in finding that the State Health Plan does not provide "health insurance coverage."

Instead, the words "and including" in section 38-71-840(14) indicate that the General Assembly intended the statute's definition to be read in two parts, notwithstanding the list of exclusions. The first part of the definition provides that health insurance coverage is defined as benefits consisting of medical care provided: (1) directly through insurance; (2) directly through reimbursement; or (3) provided otherwise. S.C. Code Ann. § 38-71-840(14). After "and included," the definition is expanded to include "items and services paid for as medical care under:" (1) any hospital or medical service policy or certificate; (2) any hospital or medical service plan contract; or (3) any health maintenance contract offered by a health insurance issuer. *Id.* Therefore, the plain language of the statute does not require health insurance coverage to be offered by a "health insurance issuer." To conclude otherwise results in a tortured and illogical reading of the statute. *See Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992) ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.").

Section 38-71-46 is entitled "Diabetes Mellitus coverage in health insurance policies; diabetes education." We find that the General Assembly's choice of title and use of the word "every" in section 38-71-46(A) indicates that, indeed, it intended to mandate coverage for "*every* health maintenance organization, individual and group health insurance policy, or contract issued or renewed in this State . . . ." *See* S.C. Code Ann. § 38-71-46(A) (emphasis added). Nowhere in the plain language of section 38-71-46 does the General Assembly exclude—explicitly or implicitly—the State Health Plan from the mandate provided for by this statute.[10]

Moreover, we must read the language of section 38-71-46 in accordance with the statute's general purpose. *See Eagle Container Co.*, 379 S.C. at 570, 666

[10] Although section 38-71-46 indicates that the General Assembly intended for the diabetes mandate to apply to the State Health Plan, we do not conclude that the canon of construction "*expression unius est exclusion alterius*" applies here, or that the State Health Plan is governed by *every* general insurance statute where the General Assembly failed to expressly exclude the State Health Plan.

S.E.2d at 896. South Carolina is cursed by diabetes. According to the South Carolina Department of Health and Environmental Control's most recently published statistics, South Carolina ranks seventh highest in the nation for the percentage of its adult population with diabetes. S.C Dep't of Health & Envtl. Control, *Fact Sheet: Diabetes in South Carolina*, SCDHEC.gov, 1 (Nov. 1, 2013), *available at* http://www.scdhec.gov/administration/library/ML-025328.pdf. Diabetes particularly plagues our state's African-American population, as one in seven African-Americans in South Carolina suffers from diabetes. *Id.* Uncontrolled diabetes can lead to serious complications, and is the seventh leading cause of death in South Carolina. *Id.* However, when diabetes is properly managed, people suffering from the disease often live long, healthy lives. *Id.* at 2. With these statistics in mind, we find that the General Assembly sought to alleviate and prevent diabetes' potentially devastating effects on those South Carolinians suffering from the disease by mandating coverage for the equipment, supplies, medication, and education for the treatment of diabetes.

Thus, given the prevalence of diabetes in South Carolina, coupled with the General Assembly's purpose behind enacting section 38-71-46, we find it inconceivable that the General Assembly intended to exclude South Carolinians insured by the State Health Plan from receiving the benefits of section 38-71-46's mandate. This result is especially unlikely in a case such as this one, where if the policy is interpreted as Respondents argue, it would cover an insulin pump, but not the education on how to use it. Therefore, we believe our reading comports with the general purpose and the plain language of section 38-71-46.

Assuming *arguendo* that section 38-71-840(14) is ambiguous, and that it is necessary to look beyond the plain language of that section, we still do not find that the General Assembly intended to exclude the State Health Plan from section 38-71-46's mandate. According to the ALC, the General Assembly developed a "method" for identifying whether a general insurance statute governs the State Health Plan by choosing whether or not to expressly reference the State Health Plan in each general insurance statute. However, the sections that include an express reference to the State Health Plan were enacted years *after* section 38-71-46, which was enacted in 1999. *See* S.C. Code Ann. §§ 38-71-243, -280, -785 (Supp. 2013).[11] Because these provisions should be viewed in light of when they

[11] Section 38-71-280 was enacted in 2007. Act No. 65, 2007 S.C. Acts 284, 284. Sections 38-71-243 and 38-71-785 were both enacted in 2010. Act. No. 143, 2010 S.C. Acts 1162, 1162–63; Act No. 217, 2010 S.C. Acts 1545, 1549–50.

were enacted, they do not support the ALC's conclusion that the General Assembly did not intend for section 38-71-46's mandate to apply to the State Health Plan.

Likewise, the distinction between Title 1 and Title 38 of the South Carolina Code cannot be relied upon as evidence that the General Assembly intended to exclude the State Health Plan from section 38-71-46's mandate. Title 1, Chapter 11, of the South Carolina Code defines the State Health Plan and sets forth procedures for its administration. *See* S.C. Code Ann. §§ 1-11-10 to -780 (2002 & Supp. 2013). We find that the General Assembly's decision to place the definitions and procedures in Title 1, instead of in Title 38, does not indicate its intent to exclude the State Health Plan from any insurance mandate included in Title 38 where it is not otherwise mentioned. Therefore, the General Assembly's decision to *define* the State Health Plan in Title 1 provides no indication of legislative intent here.

Finally, we find that the ALC erred in distinguishing self-insured plans for purposes of state insurance mandates and in finding that section 38-71-46 has no application to the State Health Plan because it is self-funded. In support of this proposition, the ALC cites *FMC Corp. v. Holliday*, 498 U.S. 52 (1990). However, in *Holliday*, the United States Supreme Court's inquiry was limited to health plans under the Employee Retirement Income Security Act of 1974 (ERISA), as the Court determined whether ERISA preempted the application of a Pennsylvania statute to a self-funded health care plan. *Id.* at 54. *Holliday* has no application to this case. We do not distinguish self-insurers for purposes of insurance mandates, and as discussed, *supra*, section 38-71-46's mandate applies to the State Health Plan.

Therefore, we hold, as a matter of law, that section 38-71-46 applies to the State Health Plan.

II. Failure to Address Class Action Relief

The ALC's disposition of this case permitted it to decline to address the issue of whether class action relief is available in this case. *See Futch v. McAllister Towing of Georgetown, Inc.* 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding that a court need not address remaining issues when resolution of a prior issue is dispositive). Based on our holding that section 38-71-46 applies to the State Health Plan, the availability of class action relief in this case is an issue that must be addressed, and a remand to the ALC to consider the class action issue would normally be appropriate. However, because this issue can be resolved as a

matter of law, we choose to address this issue.

Appellant argues that he is entitled to pursue this case as a class action before the ALC based on Rule 23 of the South Carolina Rules of Civil Procedure (SCRCP). He asserts that the SCRCP is applicable pursuant to Rule 68 of the South Carolina Rules of Procedure for the Administrative Law Court (SCRPALC). We disagree.

While this case was pending before the ALC, Rule 68, SCRPALC, and the notes to that rule, stated:

> **Applicability of South Carolina Rules of Civil Procedure and South Carolina Appellate Court Rules.** The South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by these rules.
>
> **2009 Revised Notes**
>
> The South Carolina Appellate Court Rules may, in the discretion of the presiding administrative law judge, be applied in appellate proceedings before the Court to resolve questions which are not addressed by the Court's
> appellate rules.

Based on the language of the rule and the accompanying notes, we find that the intent of the ALC in promulgating Rule 68 was to allow the SCRCP to be used to fill in the gaps in the SCRPALC in a contested case before the ALC, and to allow the South Carolina Appellate Court Rules to be used to fill in the gaps in the SCRPALC in an appeal before the ALC.

The present case was an appeal before the ALC. Therefore, the SCRCP, including Rule 23 relating to class actions, is simply inapplicable. Neither the SCRPALC nor the South Carolina Appellate Court Rules provide for a class action to be commenced during an appeal. Therefore, Appellant's request for a class action proceeding before the ALC fails as a matter of law.

Further, since the filing of the appeal with this Court, the ALC has amended Rule 68, SCRPALC, and its notes to read:

> **Applicability of South Carolina Rules of Civil Procedure and South Carolina Appellate Court Rules.** The South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules, in contested cases and appeals respectively, may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules.
>
> **2014 Revised Notes**
>
> In contested cases only, the South Carolina Rules of Civil Procedure may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these Rules. Furthermore, the South Carolina Appellate Court Rules may be applied in like manner in appellate proceedings only.

The revised rule contains even a more direct statement that the SCRCP is inapplicable to appeals before the ALC. Since this amendment relates to procedure, it is fully applicable to any further proceedings before the ALC, including any remand by this Court. *Fairchild v. S.C.Dept. of Transp*., 398 S.C. 90, 727 S.E.2d 407 (same rules of construction are used to interpret rules as are used to interpret statutes); *State v. Davis*, 309 S.C. 326, 422 S.E.2d 133 (1992), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999) ("When a statute is procedural, it ordinarily will be accorded a retroactive application in the sense that it will be applied to pending actions and proceedings.").[12]

[12] Appellant also argues that the EIP Appeals Committee erred in failing to consider his request for class certification. We find that this issue is not preserved for appellate review.

In the document seeking review from the EIP Appeals Committee, Appellant attached and incorporated the allegations of the complaint and other documents filed in a circuit court civil action that he had brought. While these documents were sufficient to put the EIP Appeals Committee on notice that Appellant was seeking class certification in the circuit court action, nothing in these documents was sufficient to place the EIP Appeals Committee on notice that Appellant was seeking to pursue a class action in the proceeding before the Committee. Therefore, any issue regarding the denial of a class action before the EIP Appeals

CONCLUSION

For the foregoing reasons, we reverse the ALC's decision that section 38-71-46 of the South Carolina Code does not apply to this matter. The EIP shall promptly determine and pay the benefits that are due for Appellant's daughter under the State Health Plan.

REVERSED.

BEATTY, KITTREDGE and HEARN, JJ., concur. PLEICONES, J., dissenting in a separate opinion.

Committee is not preserved for appellate review. *Carson v. S.C. Dept. of Natural Res.*, 371 S.C. 114, 638 S.E.2d 45 (2002) (issue not raised to agency is not preserved for appellate review); *Hubbard v. Rowe*, 192 S.C. 12, 5 S.E.2d 187 (1939) (issues presented for appellate review must have been fairly and properly raised to the lower court).

Further, in the statement of the issues on appeal before the ALC, the sole issue relating to class action stated: "Does the ALC have the authority to certify a class action pursuant [SCRPALC] Rule 68 and SCRCP 23?" This issue did not raise any allegation of error by the EIP Appeals Committee. Therefore, any allegation of error on the part of the EIP Appeals Committee is not before this Court because it was not properly raised to the ALC. *Linda Mc Co. Inc. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010); Rule 37(B)(1), SCRPALC (The brief of a party shall contain "[a] statement of each of the issues presented for review. The statement shall be concise and direct as to each issue and may be stated in question form. Broad general statements may be disregarded by the Court. Ordinarily, no point will be considered that is not set forth in the statement of issues on appeal.").

JUSTICE PLEICONES: I respectfully dissent. I disagree with the majority that S.C. Code Ann. § 38-71-46 (2002) applies to the State Health Plan (Plan).

This case is controlled by section 38-71-46(D), which defines what "health insurance polic[ies]" are covered under the diabetes education mandate in section 38-71-46(A).[13] Since the Plan is a group health plan, section 38-71-46(D) requires the use of S.C. Code Ann. § 38-71-840(14) (2002) to determine whether the Plan provides "health insurance coverage," so as to be a "health insurance policy" covered by this diabetes education mandate. In my opinion, it does not.

Section 38-71-840(14) provides:

> "Health insurance coverage" means benefits consisting of medical care provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer….

Ultimately, whether the Plan qualifies as "health insurance coverage" depends onwhat the phrase "offered by a health insurance issuer" modifies in S.C. Code Ann. § 38-71-840(14) (2002).

I read section 38-71-840(14) differently than does the majority. I read "benefits consisting of medical care provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care" as describing what types of provided benefits qualify as "health insurance coverage." I read the next section "under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer" as describing what types of insuring agreements offer "health insurance coverage." The term "offered by health insurance issuer" modifies the three types of insurance agreements in the statute,

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[13] While section 38-71-46(A) states that "every health maintenance organization, individual and group health insurance policy" is covered under this mandate, section 38-71-46(D) requires that these policies provide "health insurance coverage" before this mandate is to apply. *See* § 38-71-46(D) ("For purposes of this section: “Health insurance policy” means a health benefit plan, contract, or evidence of coverage providing health insurance coverage as defined in Section 38-71-670(6) and Section 38-71-840(14).").

that is, (1) a hospital or medical service policy or certificate, (2) a hospital or medical service plan contract, or (3) a health maintenance organization contract. Accordingly, to qualify as "health insurance coverage" the policy, certificate, or contract must be issued by a "health insurance issuer."

The next step is to determine whether the EIP is a "health insurance issuer." This term is defined in S.C. Code Ann. § 38-71-840(16) (2002):

> "Health insurance issuer" or "issuer" means any entity that provides health insurance coverage in this State. For purposes of this section, "issuer" includes an insurance company, a health maintenance organization, and any other entity providing health insurance coverage which is licensed to engage in the business of insurance in this State and which is subject to state insurance regulation.

I agree with the ALC's conclusion that the EIP is not a "health insurance issuer" because the EIP is not licensed to engage in the business of insurance in this State and not subject to State insurance regulation. *See* S.C. Code Ann. § 1-11-780 (Supp. 2013) ("[t]he State Employee Insurance Program. . . is not under the jurisdiction of the Department of Insurance"). Since the EIP is not a "health insurance issuer" under section 38-71-840(16), the Plan does not provide "health insurance coverage" as defined in section 38-71-840(14). Further, since section 38-71-46 only mandates diabetes education coverage for a "health insurance policy" that provides "health insurance coverage" as defined by section 38-71-840(14), I agree with the ALC that Appellant's claim was properly denied.

Assuming, however, that we must reach the issue of intent, I would reach the same result.[14] The General Assembly has chosen to separate the Plan from general insurance regulation by placing the Plan's governing statutes in Title 1, Chapter 11 of the S.C. Code, rather than in Title 38, Chapter 71 (General Insurance Statutes).[15] Since the General Assembly separated the Plan from the General Insurance

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[14] If the language of a statute gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the statute itself. *Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002).

[15] I reiterate that the General Assembly has specified that EIP, and correspondingly the Plan, is not subject to regulation by the South Carolina Department of Insurance. S.C. Code Ann. § 1-11-780 (Supp. 2013).

Statutes, it has included an express reference to the Plan in the General Insurance Statutes when those statutes are to apply to the Plan. *See* S.C. Code Ann. § 38-71-785(B) (Supp. 2013) ("This section applies. . .including the state health plan. . ."); S.C. Code Ann. § 38-71-243(B) (Supp. 2013) ("This section applies. . .including the state health plan. . ."). Furthermore, in the context of coverage mandates, the General Assembly has made a direct reference to the Plan when it intends for a mandate found in the General Insurance Statutes to apply to the Plan. *See* S.C. Code Ann. § 38-71-280 (Supp. 2013) (mandating coverage for autism spectrum disorder, "[i]t includes the State Health Plan. . . 'State Health Plan' means the employee and retirees insurance program provided for in Article 5, Chapter 11, Title 1"). The diabetes education mandate, however, contains no reference to the Plan either in the text or the enacting legislation. Accordingly, I find that the General Assembly did not intend for the diabetes education mandate in section 38-71-46 to apply to the Plan.

I also disagree with the majority that the separate treatment of the Plan does not evidence intent for the Plan to be treated differently. Further, I disagree with the majority's contention that because sections 38-71-243, 38-71-280, and 38-71-785 were enacted after section 38-71-46, they cannot support the proposition that when the General Assembly intends for a General Insurance Statute to apply to the Plan, it expressly references the Plan. If a General Insurance Statute applies to the Plan even when the Plan is not mentioned, then there would have been no reason to include the express reference to the Plan in any General Insurance Statute. In construing a statute, we are to assume the General Assembly was aware of past statutes, and we are to give effect to all the words in a statute. *Whitner v. State,* 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997) (noting the basic presumption that the legislature has knowledge of previous legislation); *Matter of Decker,* 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citing 82 C.J.S. *Statutes* § 346) (noting that courts are to give effect to all words in a statute). The majority's reading renders the references in the later statutes superfluous and leads to the absurd result that all General Insurance Statutes apply to the Plan unless the Plan is expressly excluded.

Finally, while I am not unsympathetic to the thousands of South Carolinians who suffer from the devastating effects of diabetes, the existence of this health scourge, while tragic, is, in my opinion, of no assistance in our task of statutory construction. Therefore, I disagree with the majority's reliance on the prevalence of a disease in determining whether a coverage mandate found in a General Insurance Statute applies to the Plan.

I would affirm the ALC's holding that section 38-71-46 does not apply to the Plan and uphold the denial of Appellant's claim.

The Supreme Court of South Carolina

In the Matter of Fred W. Auman, III, Respondent.

Appellate Case Nos. 2015-000353 and -000354

ORDER

This order is substituted for all orders issued in this matter on February 25, 2015, which are hereby vacated.

The Office of Disciplinary Counsel asks this Court to issue an order placing respondent on interim suspension pursuant to Rule 17, RLDE, Rule 413, SCACR, or in the alternative, transferring respondent to incapacity inactive status pursuant to Rule 28, RLDE, Rule 413, SCACR. The petition also seeks appointment of the Receiver or an attorney pursuant to Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients.

IT IS ORDERED that respondent's license to practice law in this state is suspended and respondent is transferred to incapacity inactive status until further order of this Court.

IT IS FURTHER ORDERED that Peyre Thomas Lumpkin, Esquire, Receiver, is hereby appointed to protect the interests of respondent's clients pursuant to Rule 31, RLDE.

Mr. Lumpkin shall assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain, and take action as required by Rule 31, RLDE, to protect the interests of respondent's clients. Mr. Lumpkin may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that the Receiver, Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that the Receiver, Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Lumpkin's office.

Mr. Lumpkin's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

s/ Jean H. Toal C.J.

Columbia, South Carolina

February 26, 2015

The Supreme Court of South Carolina

In the Matter of Stephen Edward Carter, Respondent.

Appellate Case Nos. 2015-000403 and -000404

ORDER

The Office of Disciplinary Counsel petitions this Court to place respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR, and/or transfer respondent to incapacity inactive status pursuant to Rule 28, RLDE, Rule 413, SCACR. The petition also seeks appointment of the Receiver to protect the interests of respondent's clients pursuant to Rule 31, RLDE, Rule 413, SCACR. Respondent consents to the petition.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of this Court.

IT IS FURTHER ORDERED that Peyre Thomas Lumpkin, Esquire, Receiver, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Lumpkin may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that the Receiver, Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that the Receiver, Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Lumpkin's office.

Mr. Lumpkin's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

s/ Jean H. Toal C.J.

Columbia, South Carolina
March 3, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina Public Interest Foundation and Edward D. Sloan, individually, and on behalf of all others similarly situated, Appellants,

v.

South Carolina Department of Transportation and John V. Walsh, Deputy Secretary of Transportation for Engineering, Respondents.

Appellate Case No. 2012-213599

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Opinion No. 5299
Heard December 9, 2014 – Filed March 4, 2015

AFFIRMED

James G. Carpenter and Jennifer J. Miller, both of Carpenter Law Firm, of Greenville, for Appellants.

Beacham O. Brooker, Jr., of Columbia, for Respondents.

SHORT, J.: South Carolina Public Interest Foundation and Edward D. Sloan, Jr., individually, and on behalf of all others similarly situated (collectively, Appellants), filed this declaratory judgment action against South Carolina

Department of Transportation (SCDOT), and John V. Walsh, Deputy Secretary of Transportation for Engineering at SCDOT. Appellants appeal, arguing the trial court erred in (1) failing to grant Appellants public importance standing, (2) failing to acknowledge taxpayer standing, (3) failing to apply exceptions to mootness, (4) ruling SCDOT was legitimately assisting a municipality, and (5) failing to find SCDOT used public funds for private purposes. We affirm.

FACTUAL BACKGROUND

Woodside Plantation (Woodside) is a gated housing development in the City of Aiken. As of July 2011, Woodside had approximately four thousand residents and was expected to grow to eight thousand residents. The City of Aiken refused to acquire the roads in Woodside unless the gates were removed.

Throughout 2010 and 2011, Woodside Plantation Property Owners' Association, Inc. and the City of Aiken[1] attempted to enlist SCDOT's assistance in inspecting three wooden bridges located in Woodside. Walsh emailed the Chief Engineer for Operations of SCDOT to discuss the issue, stating, "I need to get some bridges reviewed for safety/loading purposes." On August, 18, 2001, the Chief Engineer requested an inspection of the bridges in Woodside. A three-man SCDOT crew inspected the bridges on August 23, 2011. By affidavit, Walsh testified the estimated cost to SCDOT for the inspection was $1,400. Walsh also testified that in ten years, only one other private bridge had been inspected at the request of a local government–on Fripp Island in 2006. Walsh concluded the bridges were in good condition with minor problems. After the inspection, an employee reported improper use of SCDOT employees to SCDOT's Office of the Chief Internal Auditor (OCIA). OCIA investigated and determined "SCDOT has no obligation to inspect bridges on private property." OCIA notified the Secretary of SCDOT, Robert St. Onge, of its interpretation.

Appellants filed this declaratory judgment action seeking a declaration that SCDOT actions in inspecting the privately owned bridges in Woodside at the request of the City of Aiken violated Article X, sections 5 and 11 of the South Carolina Constitution. Appellants also sought costs and attorneys' fees under section 15-77-300 of the South Carolina Code. After receipt of cross-motions for

[1] A city councilman who lived in Woodside Plantation initiated the inquiries.

summary judgment and a hearing, the circuit court granted SCDOT's motion for summary judgment and dismissed the complaint. This appeal followed.

STANDARD OF REVIEW

This is an action in equity. *See Sloan v. Greenville Cnty.*, 356 S.C. 531, 544, 590 S.E.2d 338, 345-46 (Ct. App. 2003) (*Sloan 2003*) (finding a declaratory judgment action brought by a taxpayer citizen requesting declaratory relief is an action in equity). In an appeal from an action in equity tried by a judge, an appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775-76 (1976).

LAW/ANALYSIS

I. Public Importance Standing

Appellants argue the circuit court erred in failing to grant them standing based on public importance. We disagree.

"A plaintiff must have standing to institute an action. To have standing, one must have a personal stake in the subject matter of the lawsuit." *Sloan 2003*, 356 S.C. at 547, 590 S.E.2d at 347 (citation and internal quotation marks omitted). "Standing may be acquired: (1) by statute; (2) through the rubric of 'constitutional standing'; or (3) under the 'public importance' exception." *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). "The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." *Id.* at 199, 669 S.E.2d at 341. "For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." *Id.*

In this case, we find Appellants do not have standing based on public importance. SCDOT has conducted its own audit and concluded its own actions were improper. Thus, there is no "future guidance" to be provided by this court.

II. Taxpayer Standing

Appellants next argue the circuit court erred in failing to grant them taxpayer standing. We disagree.

"A taxpayer's standing to challenge unauthorized or illegal governmental acts has been repeatedly recognized in South Carolina." *Sloan v. Sch. Dist. of Greenville Cnty.*, 342 S.C. 515, 520, 537 S.E.2d 299, 301 (Ct. App. 2000) (*Sloan 2000*). "[A] court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance." *Baird v. Charleston Cnty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). "The general rule is that a taxpayer may not maintain a suit to enjoin the action of State officers when he has no special interest and his only standing is the exceedingly small interest of a general taxpayer." *Crews v. Beattie*, 197 S.C. 32, 49, 14 S.E.2d 351, 357-58 (1941). "The mere fact that the issue is one of public importance does not confer upon any citizen or taxpayer the right to invoke per se a judicial determination of the issue." *Sloan 2003*, 356 S.C. at 549, 590 S.E.2d at 347 (quoting *Crews*, 197 S.C. at 49, 14 S.E.2d at 357-58). "For a plaintiff to have taxpayer standing, the party must demonstrate some overriding public purpose or concern to confer standing to sue on behalf of her fellow taxpayers." *Id.*; *see also Baird*, 333 S.C. at 531, 511 S.E.2d at 75 (stating standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance).

For the same reasons we find Appellants do not meet the public importance basis for standing, we find they do not have taxpayer standing. In *Sloan 2000*, 342 S.C. at 522, 537 S.E.2d at 303, this court found a taxpayer had standing to challenge contracts entered into by the school district without following the prescribed competitive sealed bidding procedure. In *Sloan 2003*, 356 S.C. at 551, 590 S.E.2d at 349, this court again found a taxpayer had standing to challenge contracts entered into by the county without following the procurement procedures set out in the county code. The public interest involved was the prevention of the unlawful expenditure of money raised by taxation. *Id.* at 550, 590 S.E.2d at 348.

Unlike the *Sloan 2000* and *Sloan 2003* cases, we find Appellants do not have taxpayer standing here because there is not a public interest involved in preventing the unlawful expenditure of inspecting private bridges when SCDOT has already determined its own policy prohibits the action. *See Sloan v. Greenville Cnty.*, 361 S.C. 568, 571-72, 606 S.E.2d 464, 466 (2004) (*Sloan 2004)* (finding "no imperative or manifest urgency in obtaining an advisory opinion on the application

of an obsolete procurement ordinance" in a challenge to procurement methods when two prior court of appeals opinions provided judicial guidance to Greenville County regarding its written determinations under a procurement ordinance and when the county ordinance had been amended to address the concerns).

III. Mootness

Appellants also maintain the circuit court erred in failing to apply several exceptions to the mootness doctrine. We disagree.

Before any action can be maintained, a justiciable controversy must be present. *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). "A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract character." *Sloan 2003*, 356 S.C. at 546, 590 S.E.2d at 346. The court does not concern itself with moot or speculative questions. *Sloan v. Dep't of Transp.*, 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008) (*Ladson Road*). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." *Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (*Sloan 2009*). "Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief." *Id.* There are three exceptions to mootness. *Id.* at 535, 670 S.E.2d at 667.

> First, if the issue raised is capable of repetition but generally will evade review, the appellate court can take jurisdiction. Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. Application of the public interest exception requires the question at issue to be (1) of public importance, and (2) of imperative and manifest urgency. Third, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case. The utilization of an exception under the mootness doctrine is flexible and discretionary pursuant to South

> Carolina jurisprudence, not a mechanical rule that is automatically invoked.

Id.

Relying on *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005) (*Ravenel Bridge*), Appellants argue they meet the first exception to mootness because this matter is capable of repetition, yet evading review. We disagree.

In *Ravenel Bridge*, Sloan alleged SCDOT violated statutory bidding requirements for three construction projects. *Id.* at 302, 618 S.E.2d at 877-78. Our supreme court found the issue was not moot despite completion of the construction projects because the issue was capable of repetition yet usually evading review. *Id.* at 303, 618 S.E.2d at 878. Unlike the issue in *Ravenel Bridge*, we find the issue here is not capable of repetition yet evading review because SCDOT has independently determined its policy does not permit the inspection of private bridges. Accordingly, we find Appellants have failed to meet the first exception of mootness.

Appellants next argue they meet the second exception to mootness because the matter is of great public importance and of manifest urgency. We again find the matter does not support public importance standing and is not of manifest urgency because SCDOT has determined its own policy does not permit the action. *See Sloan 2004*, 361 S.C. at 571-72, 606 S.E.2d at 466 (reinstating the circuit court's dismissal of a challenge to procurement methods as moot based in part on the county's amendment to its ordinance).

Finally, Appellants argue they meet the third exception to mootness because the matter may "affect future events or have collateral consequences." Relying on *Ladson Road*, 379 S.C. at 160, 666 S.E.2d at 236, Appellants maintain this case will affect SCDOT and other State agencies in deciding questions involving the use of public funds for private purposes. We disagree.

In *Ladson Road*, Sloan filed a declaratory judgment action challenging SCDOT's decision to authorize an emergency procurement on a construction project in Charleston County. *Id.* at 166, 666 S.E.2d at 239. Our supreme court found the issue was not moot because "there [was] no case law specifically addressing the

DOT's authorization of an emergency procurement . . . and . . . this [was] a matter of public importance which could occur at any time . . . ." *Id.* at 169, 666 S.E.2d at 240. However, in the present case, SCDOT has determined the inspection of private bridges is against its own policy. Thus, we find the matter will neither "affect future events [n]or have collateral consequences."

IV. Remaining Issues

Finally, Appellants argue the circuit court erred in finding SCDOT was legitimately assisting a municipality and in failing to find SCDOT violated Article X, sections 5 and 11 of the South Carolina Constitution. Based on our resolution of the issues of standing and mootness, we need not reach this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when resolution of another issue disposes of the appeal).

CONCLUSION

For the foregoing reasons, the order on appeal is

AFFIRMED.

HUFF and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Joseph E. Mason, Jr., Appellant,

v.

Catherine L. Mason, Joseph E. Mason, Sr., Kathy St. Blanchard, Mason Holding Company, Inc., and Irwin Levine, Respondents.

Appellate Case No. 2012-212146

Appeal From Horry County
Ralph P. Stroman, Special Referee

Opinion No. 5300
Heard September 8, 2014 – Filed March 4, 2015

AFFIRMED

Robert Yates Knowlton, Sr. and Elizabeth Halligan Black, both of Haynsworth Sinkler Boyd, PA, of Columbia, for Appellant.

John M. Leiter, of Law Offices of John M. Leiter, PA, of Myrtle Beach, for Respondent Irwin Levine; Emma Ruth Brittain and J. Jackson Thomas, both of Thomas & Brittain, P.A., of Myrtle Beach, for Respondents Joseph E. Mason, Sr., Catherine L. Mason, Kathy St. Blanchard, and Mason Holding Company, Inc.

KONDUROS, J.: In this shareholder dispute case, Joseph E. Mason, Jr. (Son) appeals the special referee's decision granting judgment on his causes of action including breach of contract, breach of fiduciary duty, wrongful termination, and civil conspiracy in favor of Catherine L. Mason (Mother), Joseph E. Mason, Sr. (Father), Kathy St. Blanchard (Daughter) (collectively, the Masons), Mason Holding Company, Inc. (the Company), and Irwin Levine (Accountant) (collectively, Respondents). He also asserts the special referee erred in not ordering the repurchase of his shares of the Company. He further contends the special referee erred in finding for the Masons and the Company on their counterclaims. We affirm.

FACTS/PROCEDURAL HISTORY

The Company operates five tire and auto service stores in Horry and Georgetown Counties. It is a statutory close corporation without a board of directors. For many years, Father had operated eight retail stores for Goodyear Tire & Rubber Company and was a partner in a truck tire center in Miami, Florida, where he and Mother resided. In 1984, Father decided to start a tire and auto service business in the greater Myrtle Beach area. Son and Daughter wanted to be involved, and each contributed $10,000 for a ten percent interest in return. Son graduated from the University of Alabama with a degree in business administration and started working for Ryder Truck Rental in Florida in 1983. After the location was acquired for the first store, Son moved to Surfside Beach to open the first store and be the store manager. Daughter and her husband, Oswald St. Blanchard (Ozzie), also moved to the area to work at the store. Daughter did bookkeeping and sales. Mother and Father moved to the area in 1989 to work on expanding the business into commercial accounts. Around 1989, Accountant started working for the Company as its accountant. He had previously worked for Mother as an accountant in Florida. Accountant was not a certified public accountant, a CPA, but was a PA, a public accountant. He lived in Florida and did not have a license to practice accountancy in South Carolina. He had prepared the Company's tax returns since 1989 and also served as family members' personal accountant.

In 1989, the family opened a store in North Myrtle Beach. In 1995, they opened a store in Pawleys Island. In 1998, the Company was formed and ownership of the individual stores was transferred to the Company. At that time, Father owned 520 shares, Mother owned 160, Son owned 160, Daughter owned 90, and Ozzie owned 70. In 1999, the Company opened an additional store in Myrtle Beach. The

buildings and land where the Company's stores were located were owned by separate entities owned by members of the Company. By 2001, Son was president of the Company.

On December 18, 2004, Ozzie was severely injured in a motorcycle accident and as a result became a quadriplegic. The accident occurred on a Saturday while Ozzie was riding in a Toys for Tots ride. Ozzie was wearing his uniform and had represented the Company in this capacity before. Ozzie had appeared in commercials for the Company and was "the face" of the Company. Son believed Ozzie was not entitled to workers' compensation because he was not at work when the accident occurred and his claim would increase the Company's insurance premiums. The matter was litigated, and the single commissioner of the Workers' Compensation Commission determined Ozzie was acting within the course and scope of his employment when the accident occurred and found the claim compensable. The Appellate Panel reversed the single commissioner in a two to one decision. The matter was appealed to the circuit court, but before the circuit court reached a decision, the parties settled the claim.

Son testified Father had told him they needed to make sure Ozzie got workers' compensation benefits for the accident. Son believed Father was asking him to perjure himself and indicated he told Father he could not do that. Son felt the disagreement was the turning point in his relationship with the rest of the family. Father testified he did not ask Son to lie and Son only worried about it costing the Company a lot of money. Father believed Ozzie was working in the course and scope of employment. Father indicated Ozzie was not working at one of their stores that day but he was working for the company by appearing at the Toys for Tots event. The minutes from a stockholder meeting of the Company following the accident as well as Father's deposition during the workers' compensation proceeding state Father and other employees saw Ozzie at one of the stores on the day of the accident while he was picking up business cards and coupons. The special referee found Son's testimony on this matter to be uncredible.

Mother and Father began thinking about retirement and developed a retirement plan. Initially, they planned for Son and Daughter to purchase Mother's and Father's shares. However, the parties decided for tax purposes Mother and Father would incrementally give Son and Daughter shares in the Company with Son and Daughter each owning half the shares by December 31, 2011. Also as part of the retirement plan, on January 1, 2003, an LLC owned by Mother and Father, which

owned the property for one of the store's locations, executed a lease with the Company for $90,000 annually for a term of nineteen years. The lease was only for the building because a prior lease agreement was in effect for the land. Additionally, on December 31, 2002, Mother, Father, Daughter, and Son entered into an employment contract lasting until December 31, 2022, to pay Mother and Father a total of $10,400 per year as well as benefits including health insurance, a gasoline credit card, and a company car. Accountant testified they were trying to minimize the impact on social security income and self-employment taxes. Father testified the second lease was created in order to pay Father the same amount he had been receiving previously though salary. In 2003, Mother and Father began receiving the payments from the employment contract and through their LLC under the lease. By 2007, in keeping with the retirement plan, Son and Daughter each had a 30% share of stock in the Company. Father testified he stopped giving his and Mother's shares in the Company to Son when Son brought this lawsuit.

In 2006, Son wanted to open an additional location. He and a friend along with Daughter owned the store, called Mason Tire & Auto Service, through an entity called BCJ Tires, LLC. The Company owned the property and building and leased it to BCJ Tires. The Company had no ownership interest in BCJ Tires. On August 3, 2007, Son transferred $93,500 from the Company to BCJ Tires without Mother or Father's knowledge. When Father learned about the money, he had Son and Daughter transfer their interests in BCJ Tires to the Company. Accountant later acquired Son's friend's shares and some of the Company's shares, resulting Accountant owning a majority interest in BCJ Tires. The store operates at a loss.

An employee for the Company testified that at times, Son did not come to work and gave no explanation. Father testified Son had been absent from the business several times and no one knew where he was. Daughter also testified Son would sometimes "walk off the job" but he was always allowed to return. Father indicated he convened an emergency shareholder meeting because of Son's unexplained absences. Son testified he had sometimes worked from home but always had been in touch with the Company and never had stopped running the Company.

On August 18, 2007, Son offered to purchase all but 5% of Daughter's 25% interest in the Company for $625,000 or to sell 25% of his interest in the Company for $987,500. He testified they had numerous discussions about different options of shareholders being bought out because they were not getting along. He testified he

offered Daughter $1 million for her shares, but she turned it down. Son then requested Father buy his shares, but Father turned him down. Son indicated Father told him if he was unhappy he could quit. Daughter also offered Son $1 million for his shares, but according to Son, the offer later "evaporated."

On August 31, 2007, attorney Wayne Byrd sent a letter to the Masons advising them he had been retained by Son to represent his interests as an officer, director, and minority shareholder in the Company. On September 17, 2007, following a meeting with the parties, Byrd sent a letter to the Masons' attorney ordering them to stop paying for the members' personal expenses, reduce Daughter's salary, and terminate Ozzie. Byrd also sent a letter to Accountant indicating he had learned of "various serious financial and tax accounting irregularities which [he] ha[d] devised and fashioned." All of the shareholders except Son signed an agreement to repay the Company for personal expenses. Son testified he refused to sign it because previously, all the shareholders had approved those expenses. On September 28, 2007, Byrd's law firm refunded the Company for the Company's check Son had used to pay his fee because it was representing him individually. However, Son then transferred to himself from the Company the amount he owed Byrd, $17,301.66.

On October 24, 2007, a shareholders meeting was held, and Father was elected president and Son was elected vice president. Son was no longer in charge of the financial aspects of the Company but his salary and other responsibilities remained the same. Son continued working until July 2008.

On December 7, 2007, the Company held a shareholders meeting to sign the amended tax returns. Accountant testified Son insisted the amended tax returns not be filed and the Masons went along with it despite their unhappiness about it. Father testified that at the meeting Son stated that if they would not file those amended tax returns and instead handled it another way, he would stay with the Company and Father agreed. Son testified that at the meeting, the Masons were screaming at him and he said the Company should do whatever was necessary to fix the tax returns. Son testified Accountant stated the Company could fix the returns by doing something else with the revenue instead of amending the returns. Son testified he knew of the amended tax returns but did not see them before he brought the lawsuit.

In December 2007, Son told Father that Steve Allison offered to buy the Company for $3 million. Father testified he did not consider it a serious offer because he did not believe Allison knew any details about the Company. Father indicated he called Allison and informed him he was not interested in selling the Company at that time. Allison testified he was president of a company that owned car oil change shops and in December 2007 he was interested in buying the Company based on his observations of the Company over thirteen years. Allison offered $3 million because Son believed from prior conversations with Father he would accept that amount.

Sandra Adams worked as a bookkeeper for the Company. In July 2008, Son determined from some discrepancies in the monthly payments for an insurance policy Adams was stealing from the Company and informed Father and Daughter he was going to fire her. Father testified he and Daughter expressed concern that Son not fire her right away due to the workload it would place on Daughter until Adams could be replaced. Son stated that he was going to do the firing immediately, and Father said he would support him. Son fired Adams, but Father decided to rehire Adams because he thought they needed to look into the matter further. Father indicated that when he told Son, Son said, "I'll bury you." Father rehired Adams and put her on probation. He testified it was unproven whether Adams was stealing and she was still employed by the Company. The special referee found Father's testimony on the matter credible and determined Father's "actions were consistent with the Company's best interest and the decision was a valid business judgment."

On August 5, 2008, Son filed a complaint against the Masons and the Company, asserting causes of action for breach of contract, breach of fiduciary duty, civil conspiracy, relief pursuant to sections 33-14-300 to -330 of the South Carolina Code[1], wrongful termination of employment-constructive discharge, and wrongful termination-violation of public policy. On September 23, 2009, Son filed an amended complaint adding Accountant as a defendant and adding a cause of action against him for aiding and abetting breach of fiduciary duty. The Masons and the Company filed an answer asserting affirmative defenses and counterclaims against Son for breach of fiduciary duty and conversion.[2] The parties consented to the

[1] Under this cause of action, Son requested the court order a purchase of his shares in the Company at fair value.

[2] Accountant filed a separate answer.

case being referred to the special referee. The special referee conducted a five-day trial on the case.

The conversion counterclaim was based on an alleged casing[3] scheme. Son testified he would fabricate the name of a company, write a receipt for truck tires from that company, and take cash out of the drawer in that amount. He indicated he would later split that money with Daughter. He testified Accountant told him this was acceptable as long as he split the money with Daughter. Accountant testified he did not tell Son how to create fictitious invoices. An employee of the Company testified that between 2003 and 2007 he had noticed cash missing from the drawer and an invoice for casings but there were no casings. He testified he noticed Son taking money out of the cash drawer and would see the invoice audit at the end of the day.

In 2003 and 2006, Son made adjustments to the records for the Company that increased the inventory and created a corresponding credit note payable to Son and Daughter. The note for 2003 was $440,000 and for 2006 it was $300,000. Son and Ozzie signed the 2003 note and it was witnessed by Mother and Father. Daughter did not sign either note and testified she did not know about the notes until Son asked her in 2007 to sign two promissory notes and she refused. Son indicated the family all knew about the inventory adjustments and it was Accountant's idea to decrease the Company's tax liability. Accountant testified he told Son about both the proper way to fix the inventory problem and the way he ultimately handled it. Accountant testified Son decided to make the 2003 adjustment in order to decrease the Company's tax liability. Accountant testified that at the time, only Son and himself knew about the 2003 adjustment and Accountant did not know about the 2006 adjustment until after Son had made it. Son testified he had relied on Accountant's advice that the adjustments were proper and he did not know about the "severity" of the adjustments until Byrd informed him. Laura Durant, a CPA retained by the Masons and the Company for trial, testified the adjustments had no basis in reality and had a significant effect on the income tax returns. Son testified he signed the tax returns from 1984 until 2007, specifically in 2003 and 2006. Son testified he did not know the tax returns were fraudulent because he relied on Accountant and he did not think the Masons knew the returns were fraudulent until 2007. Accountant testified he did not tell the

[3] A casing is a used commercial tire that has the capability of being recapped for sale.

Masons the tax returns were fraudulent. He testified he accepted the way Son had handled the excess inventory and filed the tax returns because of his close relationship with the family. The special referee found Accountant's testimony regarding making inventory adjustments and creating fictitious notes substantially more credible than Son's despite the fact that his filing of the tax returns was professionally inappropriate.

David Timothy Duncan, an accountant hired by the Company, testified he was involved with reviewing amended tax returns for the Company in 2007. He decided to not file the amended returns and returned them to Accountant. Duncan testified that while he was considering the amended returns, Son talked to him about inventory adjustments and Duncan advised him against it.

Son testified no one fired him, told him not to come back, or cut his pay. He found working at the Company intolerable and thought the other shareholders wanted him to quit. He stated that although the Company did not reduce his pay or benefits, the Masons embarrassed him in front of other employees.

The special referee found for Respondents on all of Son's causes of action.[4] The special referee found "it is beyond dispute in my opinion that Son was aware of and actively engaged in and furthered the very practices about which his attorney['s] September 17, 2007 letter complains and which form the basis of some of the claims in this action." The special referee also determined nothing in the record indicated the Masons deviated from the appropriate standard of conduct. The special referee determined nothing indicated the Masons' conduct towards Son was oppressive or unfairly prejudicial and they had not breached their fiduciary duty. The referee further found because Son presented no evidence of a breach by the Masons, his claim for his shares to be repurchased must fail. He found,

> Son's dissatisfaction with his lack of employment by [the] Company, as well as with diminution of the value of his shares due to significant tax liability and the unfortunate business decision to expand the Company's operation . . . are matters that were principally due to and occasioned by the conduct and decisions of Son.

[4] The special referee issued one order for the actions regarding the Masons and the Company and another for the action against Accountant.

He noted that Son's request for his shares to be purchased was an equitable one and Son's unclean hands from his conduct prevented him from relying on an action for stockholder oppression or breach of fiduciary duty.

The special referee found "[t]he inaccuracies in the tax returns and any damages that flow from these falsities would affect the corporation in its entirety, not Son specifically. Therefore, Son's suit was improper in that it was not filed as a derivative action." The special referee also stated, "Contrary to the holding in *Brown v. Stewart*[5], Son has sued . . . Father, Mother[,] and [Daughter] under [sections 33-8-300 and -420 of the South Carolina Code (2006)]."

The special referee found for the Masons and the Company on their counterclaims for conversion regarding the casings scheme and Son's payment of his attorney's fees and awarded them $11,716.32 and $17,301.66 respectively. The special referee determined the cause of action for damages arising from the filing of false tax returns was not ripe for adjudication because the amount of damages was undetermined at the time.

Son filed a Rule 59(e), SCRCP, motion, requesting the special referee delete or clarify the portion of the order relating to the counterclaim regarding the tax obligations. The special referee denied the motion. This appeal followed.

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[5] *Brown v. Stewart*, 348 S.C. 33, 49, 557 S.E.2d 676, 684-85 (Ct. App. 2001) ("If misconduct by the management of a corporation has caused a particular loss to an individual stockholder, the liability for the mismanagement is an asset of the individual stockholder. Of course, a suit based on the misconduct can be brought by the individual stockholder. It becomes material, therefore, to inquire whether the acts of mismanagement charged to the directors affected the plaintiffs *directly*, or as their interests were submerged in the corporation whose assets were thus dissipated." (citation and internal quotations marks omitted)).

STANDARD OF REVIEW[6]

"[A]n appellate court must look to the main purpose of the proceeding in order to determine the standard of review to exact." *Wheeler v. Estate of Green*, 381 S.C. 548, 554, 673 S.E.2d 836, 839-40 (Ct. App. 2009). "The character of the action is generally ascertained from the body of the complaint, but when necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action." *Sloan v. Greenville Cnty.*, 380 S.C. 528, 534, 670 S.E.2d 663, 666-67 (Ct. App. 2009). "When legal and equitable actions are maintained in one suit, the court is presented with a divided scope of review, and each action retains its own identity as legal or equitable for purposes of review on appeal." *Wright v. Craft*, 372 S.C. 1, 17, 640 S.E.2d 486, 495 (Ct. App. 2006). "The proper analysis is to view the actions separately for the purpose of determining the appropriate standard of review." *Id.* at 17-18, 640 S.E.2d at 495.

LAW/ANALYSIS

I. Judicial Dissolution/Repurchase of Shares

Son argues the special referee erred in denying him relief under the judicial dissolution provisions governing South Carolina corporations. He asserts the special referee should have ordered a buyout of his shares. We disagree.

"Under the two[-]issue rule, whe[n] a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010).

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[6] Son urges this court to use caution in applying the standard of review because the orders from which this appeal is taken were prepared by Respondents. *See In re Luhr Bros.*, 157 F.3d 333, 338 (5th Cir. 1998) ("[I]n cases such as the instant one, where the district court's Findings of Fact and Conclusions of Law are near-verbatim recitals of the prevailing party's proposed findings and conclusions, with minimal revision, we should approach such findings with 'caution.'").

> It should be noted that although cases generally have discussed the two[-]issue rule in the context of the appellate treatment of general jury verdicts, the rule is applicable under other circumstances on appeal, including affirmance of orders of trial courts. For example, if a court directs a verdict for a defendant on the basis of the defenses of statute of limitations and contributory negligence, the order would be affirmed under the two[-]issue rule if the plaintiff failed to appeal both grounds or if one of the grounds required affirmance.

Id. at 346, 692 S.E.2d at 904 (internal quotation marks omitted). "[A]n unappealed ruling, right or wrong, is the law of the case." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012).

"A corporate dissolution is an action in equity." *Jordan v. Holt*, 362 S.C. 201, 205, 608 S.E.2d 129, 131 (2005). "A shareholders derivative action, as well as an action for stockholder oppression, is one in equity." *Ballard v. Roberson*, 399 S.C. 588, 593, 733 S.E.2d 107, 109 (2012) (internal quotation marks omitted). "In actions in equity referred to a special referee with finality, the appellate court may view the evidence to determine the facts in accordance with its own view of the preponderance of the evidence, though it is not required to disregard the findings of the special referee." *Florence Cnty. Sch. Dist. # 2 v. Interkal, Inc.*, 348 S.C. 446, 450, 559 S.E.2d 866, 868 (Ct. App. 2002); *see also First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 567, 511 S.E.2d 372, 379 (Ct. App. 1998) ("[W]e are not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility.").

Sections 33-18-400 to -430 of the South Carolina Code (2006) apply to close corporations.

> (a) Subject to satisfying the conditions of subsections (c) and (d), a shareholder of a statutory close corporation may petition the circuit court for any of the relief described in [s]ection 33-18-410, 33-18-420, or 33-18-430 if:

> (1) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in his capacity as shareholder, director, or officer of the corporation;
> . . . or
> (3) there exist grounds for judicial dissolution of the corporation under [s]ection 33-14-300[7].
> (b) A shareholder must commence a proceeding under subsection (a) in the circuit court of the county where the corporation's principal office or, if none in this State, its registered office is located. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.
> (c) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, he may not commence a proceeding under this section with respect to the matters until he has exhausted the nonjudicial remedy.

S.C. Code Ann. § 33-18-400 (2006).

> (a) If the court finds that any grounds for relief described in [s]ection 33-18-400(a) exist, it may order one or more of the following types of relief:
> (1) the performance, prohibition, alteration, or setting aside of any action of the corporation or of its shareholders, directors, or officers of or any other party to the proceeding;

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[7] Those grounds include "(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial either to the corporation or to any shareholder (whether in his capacity as a shareholder, director, or officer of the corporation)" and "(iv) the corporate assets are being misapplied or wasted." S.C. Code Ann. § 33-14-300(2) (2006),

(2) the cancelation or alteration of any provision in the corporation's articles of incorporation or bylaws;
(3) the removal from office of any director or officer;
(4) the appointment of any individual as a director or officer;
(5) an accounting with respect to any matter in dispute;
(6) the appointment of a custodian to manage the business and affairs of the corporation;
(7) the appointment of a provisional director who has all the rights, powers, and duties of an elected director to serve for the term and under the conditions prescribed by the court;
(8) the payment of dividends;
(9) the award of damages to any aggrieved party.
(b) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or otherwise not in good faith, it may award other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding.

S.C. Code Ann. § 33-18-410 (2006).

(a) If the court finds that the ordinary relief described in [s]ection 33-18-410(a) is or would be inadequate or inappropriate, it may order the corporation dissolved under [s]ection 33-18-430 unless the corporation or one or more of its shareholders purchase all the shares of the shareholder for their fair value and on terms determined under subsection (b).
(b) If the court orders a share purchase, it shall:
(1) determine the fair value of the shares, considering among other relevant evidence the going concern value of the corporation, any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose, the recommendations of any appraisers appointed by the court, and any legal constraints on the corporation's ability to purchase the shares;

(2) specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the corporation's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on the seller;
(3) require the seller to deliver all his shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price;
(4) provide that after the seller delivers his shares he has no further claim against the corporation, its directors, officers, or shareholders, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the corporation or the remaining shareholders that is not terminated by the court;
(5) provide that, if the purchase is not completed in accordance with the specified terms, the corporation is to be dissolved under [s]ection 33-18-430; and
(6) provide that the corporation or remaining shareholders release or enter into an agreement to indemnify the seller from any personal liability for obligations of the corporation the seller has personally guaranteed.

S.C. Code Ann. § 33-18-420 (2006).

(a) The court may dissolve the corporation if it finds:
(1) there are grounds for judicial dissolution under [s]ection 33-14-300; or
(2) all other relief ordered by the court under [s]ection 33-18-410 or 33-18-420 has failed to resolve the matters in dispute.
(b) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits.

S.C. Code Ann. § 33-18-430 (2006).

> In *Kiriakides v. Atlas Food Systems & Services, Inc.*, 343 S.C. 587, 541 S.E.2d 257 (2001), [the supreme court] established how a court should determine whether majority shareholders have acted oppressively within the meaning of section 33-14-300. . . . In establishing the proper considerations for finding oppression, [the court] observed that the terms oppressive and unfairly prejudicial are elastic terms whose meaning varies with the circumstances presented in a particular case. [The court] also noted this was a fact-sensitive review and should therefore be determined through a case-by-case analysis, supplemented by various factors which may be indicative of oppressive behavior. Although [the court] declined to set out specific factors in *Kiriakides*, [it] observed several commonly considered ones including: eliminating minority shareholders from directorate and excluding them from employment[,] . . . failure to enforce contracts for the benefit of the corporation[, and] withholding information from minority shareholders.

Ballard, 399 S.C. at 594, 733 S.E.2d at 110 (second omission by court) (citations and internal quotation marks omitted).

In *Ballard*, the court noted that the minority shareholder, "like [the minority shareholders] in *Kiriakides*, similarly faces prospects of exclusion from the business, a slim chance of seeing a return any time soon, and no market in which to otherwise unload his investment." *Id.* at 595, 733 S.E.2d at 110. The court noted, "This result is especially significant because returns on investment in close corporations often accrue incident to employment with the corporation as opposed to through dividends." *Id.* at 596-97, 733 S.E.2d at 111 (citing Douglas K. Moll, *Shareholder Oppression in Close Corporations: The Unanswered Question of Perspective*, 53 Vand. L. Rev. 749, 758 (Apr. 2000) (noting that "the close corporation investor typically looks to salary rather than dividends for a share of the business returns because the (e)arnings of a close corporation often are distributed in major part in salaries, bonuses and retirement benefits" (internal quotation marks omitted))).

> Common freeze out techniques include the termination of a minority shareholder's employment, the refusal to declare dividends, the removal of a minority shareholder from a position of management, and the siphoning off of corporate earnings through high compensation to the majority shareholder. Often, these tactics are used in combination. In a public corporation, the minority shareholder can escape such abuses by selling his shares; there is no such market, however, for the stock of a close corporation. The primary vulnerability of a minority shareholder is the specter of being locked in, that is, having a perpetual investment in an entity without any expectation of ever receiving a return on that investment.

Kiriakides, 343 S.C. at 604-05, 541 S.E.2d at 267 (footnotes, citations, and internal quotation marks omitted).

"The application of these grounds for dissolution to specific circumstances obviously involves judicial discretion in the application of a general standard to concrete circumstances." *Id.* at 598, 541 S.E.2d at 263 (internal quotation marks omitted). "The court should be cautious in the application of these grounds so as to limit them to genuine abuse rather than instances of acceptable tactics in a power struggle for control of a corporation." *Id.* (internal quotation marks omitted).

> Although the terms oppressive and unfairly prejudicial are not defined in section 33-14-300, the comment to [section] 33-18-400 [of the South Carolina Code] (1990), which allows shareholders in a statutory close corporation to petition for relief on the grounds of oppressive, fraudulent, or unfairly prejudicial conduct provides:
>
> No attempt has been made to define oppression, fraud, or unfairly prejudicial conduct. These are elastic terms whose meaning varies with the circumstances presented in a particular case, and it is felt that existing case law provides sufficient guidelines for courts and litigants.

Kiriakides, 343 S.C. at 598, 541 S.E.2d at 263-64 (internal quotation marks omitted). "[I]llegal or fraudulent conduct is not required under section 33-14-300(2)(ii) . . . . The concern and focus in shareholder oppression cases is that the minority faces a trapped investment and an indefinite exclusion [from] participation in business returns." *Ballard*, 399 S.C. at 595, 733 S.E.2d at 110 (last alteration by court) (internal quotation marks omitted). "Prior to 1963, dissolution could be based only upon illegal, fraudulent or oppressive conduct. In an attempt to afford minority shareholders greater protection, the legislature amended the statute in 1963 to include unfairly prejudicial conduct." *Kiriakides*, 343 S.C. at 597 n.17, 541 S.E.2d at 263 n.17 (internal quotation marks omitted). "The statute, as amended, broadens the scope of actionable conduct by providing the frozen-out minority shareholder a right of action based on conduct by the majority shareholders which might not rise to the level of fraud." *Id.* (internal quotation marks omitted).

The *Kiriakides* court found:

> [W]e do not believe the Legislature intended a court to judicially order a corporate dissolution *solely* upon the basis that a party's reasonable expectations have been frustrated by majority shareholders. To examine the reasonable expectations of minority shareholders would require the courts of this state to microscopically examine the dealings of closely held family corporations, the intentions of majority and minority stockholders in forming the corporation and thereafter, the history of family dealings, and the like. We do not believe the Legislature, in enacting section 33-14-300, intended such judicial interference in the business philosophies and day to day operating practices of family businesses.

Id. at 599, 541 S.E.2d at 264 (internal quotation marks omitted).

> [S]ection 33-14-300 does not place the focus upon the rights or interests of the complaining shareholder but, rather, specifically places the focus upon the *actions* of the majority, i.e., whether they have acted, are acting, or

> will act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial either to the corporation or to any shareholder. Given the language of our statute, a reasonable expectations approach is simply inconsistent with our statute.

Kiriakides, 343 S.C. at 600, 541 S.E.2d at 265 (internal quotation marks omitted).

"When this court is sitting in equity, and thus viewing evidence for its preponderance, we are to consider the equities of both sides, balancing the two to determine what, if any, relief to give." *Anderson v. Buonforte*, 365 S.C. 482, 493, 617 S.E.2d 750, 755 (Ct. App. 2005). "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *Soden*, 333 S.C. at 568, 511 S.E.2d at 379. "He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." *Emery v. Smith*, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004) (internal quotation marks omitted). "The decision to grant equitable relief is in the discretion of the trial judge." *Soden*, 333 S.C. at 568, 511 S.E.2d at 379. "[T]he equitable defense of unclean hands is available in a shareholder derivative action." *Straight v. Goss*, 383 S.C. 180, 207, 678 S.E.2d 443, 458 (Ct. App. 2009). In *Straight*, the court found the minority shareholder's "own inequitable conduct came directly to bear on the transactions of which [he] now complains." *Id.* at 208, 678 S.E.2d at 458. The court found "the special referee did not err in holding the doctrine of unclean hands precluded [the minority shareholder] from recovering against the [majority shareholders]." *Id.*

In this case, the special referee ruled that Son's suit was improper because it should have been filed as a derivative action.[8] The special referee's conclusions of law 6,

[8] Generally, suits to recover assets of the corporation must be brought as derivative actions. *See Brown v. Stewart*, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001). An individual shareholder may bring a direct suit against the corporation only when his or her "loss [is] personal and not a loss of the corporation." *Todd v. Zaldo*, 304 S.C. 275, 278, 403 S.E.2d 666, 668 (Ct. App. 1991). However, "[u]nder [sections 33-18-400 to -430 of the South Carolina Code (2006)], in closely held corporations, a minority stockholder can maintain an action for

7, and 8 all relate to this determination. The special referee does not specify to which causes of action this decision applies. The referee does specifically state "[t]he inaccuracies in the tax returns and any damages that flow from these falsities would affect the corporation in its entirety, not . . . Son specifically. Therefore, Son's suit was improper in that it was not filed as a derivative action." Son does not address the special referee's finding his suit should have been filed as a derivative action. Therefore, this ruling is the law of the case under the two-issue rule.

As to the merits, this court can make its own findings of fact while keeping in mind the special referee saw and heard the witnesses' testimonies. Based on the evidence in the record, Son seems to be the primary party who engaged in illegal activities and benefited from those activities. He received the benefits from his casing scheme. He was not re-elected as president of the Company, but was elected to serve as vice-president and receive the same salary. He chose to leave the Company and as a result to stop receiving a salary and other benefits he and the other the stockholders enjoyed, such as a company car and a gas credit card. He was the one stockholder who refused to repay the Company for personal expenses such as housekeeping services. Additionally, most of the testimony in the record indicates he had knowledge that adjusting the Company's inventory to diminish its tax liability was fraudulent. Based on all of this, the special referee did not err in finding he was not an oppressed shareholder. Accordingly, we affirm the special referee's decision to not order the Company buy Son's shares.[9]

II. Amount of Shares Owned

Son contends he has physical possession of thirty percent of the Company's shares and is entitled to another twenty percent, which Mother and Father have refused to deliver. He maintains the special referee erred in determining he was not entitled to the twenty percent of the stock because the agreement providing for such was "illegal and unenforceable." We disagree.

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managerial misconduct and other forms of oppression by majority stockholders." *Davis v. Hamm*, 300 S.C. 284, 291, 387 S.E.2d 676, 680 (Ct. App. 1989).

[9] Accordingly, we need not address Son's arguments regarding valuation. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

"An action for breach of contract is an action at law." *Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004). "An illegal contract is unenforceable. The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution." *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866-67 (Ct. App. 2002) (citation and internal quotation marks omitted). The court "will not lend its assistance to carry out the terms of a contract that violates statutory law or public policy." *Ward v. W. Oil Co.*, 387 S.C. 268, 274, 692 S.E.2d 516, 519 (2010) (internal quotation marks omitted).

Son's claim to the stock arises out of the retirement agreement and gift letter he had with Mother and Father. The special referee noted Son's claim was not included in his amended complaint. Further, it found the provisions of the document were not complied with as Father could not retire in light of Son's conduct and the additional rent payments were stopped. Additionally, the special referee determined it could not enforce "agreements which clearly, on their face, were illegal and unenforceable."

Son's argument on appeal does not address the special referee's ruling his claim was not pled. As to the agreement's illegality, he simply argues that the result is inequitable. Accordingly, we affirm this issue under the two-issue rule. See *Jones*, 387 S.C. at 346, 692 S.E.2d at 903 ("Under the two[-]issue rule, whe[n] a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case."). Further, the evidence supports the special referee's finding Son stopped complying with the terms of contract. Therefore, we affirm the special referee's decision.

III. Fiduciary Duty

Son alleges the special referee erred in concluding the Masons did not breach their fiduciary duty to him. We disagree.

"[A] claim of breach of fiduciary duty is an action at law . . . ." *Jordan*, 362 S.C. at 205, 608 S.E.2d at 131. "In an action at law, the appellate court will correct any error of law, but it must affirm the special referee's factual findings unless there is

no evidence that reasonably supports those findings." *Linda Mc Co. v. Shore*, 390 S.C. 543, 555, 703 S.E.2d 499, 505 (2010) (citation omitted).

Controlling shareholders owe a fiduciary duty to minority shareholders. *Clearwater Trust v. Bunting*, 367 S.C. 340, 347, 626 S.E.2d 334, 337 (2006). "The common law fiduciary duty, first recognized in 1913, owed to shareholders by corporate officers and directors has been codified by [sections] 33-8-300 and -420." *Id.* at 350, 626 S.E.2d at 339.

> (a) An officer with discretionary authority shall discharge his duties under that authority:
> (1) in good faith;
> (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
> (3) in a manner he reasonably believes to be in the best interests of the corporation and its shareholders.
> (b) In discharging his duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
> (1) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or
> (2) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

S.C. Code Ann. § 33-8-420 (2006).

"[U]nder South Carolina case law, a breach of this fiduciary duty must be pursued through a derivative, and not an individual, action." *Rivers v. Wachovia Corp.*, 665 F.3d 610, 617 (4th Cir. 2011).

"The fiduciary obligation of dominant or controlling stockholders or directors is ordinarily enforceable through a stockholder's derivative action . . . ." *Brown*, 348 S.C. at 49, 557 S.E.2d at 684 (omission by court) (internal quotation marks omitted). "A shareholder may maintain an individual action only if his loss is separate and distinct from that of the corporation. A shareholder's suit is derivative

if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder." *Id.* (internal quotation marks omitted). "If misconduct by the management of a corporation has caused a particular loss to an individual stockholder, the liability for the mismanagement is an asset of the individual stockholder. Of course, a suit based on the misconduct can be brought by the individual stockholder." *Id.* at 49, 557 S.E.2d at 684-85 (internal quotation marks omitted). "An individual action is also allowed if the alleged wrongdoers owe a fiduciary relationship to the stockholder and full relief to the stockholder cannot be had through a recovery by the corporation." *Id.* at 50, 557 S.E.2d at 685.

Because this is an issue of law, we must affirm the special referee's findings unless no evidence supports them. The record contains evidence Son perpetrated the fraudulent activities. Although Son testified he acted with Accountant's guidance and did not know his actions were not proper or legal, the special referee did not find Son's testimony credible in these matters. Several people, including others not named as parties in this suit, testified the Masons did not know Son was taking actions that were fraudulent. Further, because the fraudulent tax returns impact all of the shares equally, Son should have filed a derivative action. As the testimony supports the special referee's decision, we affirm this issue.

IV. Aiding and Abetting

Son contends the special referee erred in failing to find Accountant aided and abetted the Masons in breaching their fiduciary duties to the shareholders of the company. We disagree.

Initially, Accountant contends Son did not perfect his appeal as to Accountant because he did not name Accountant as a respondent or attach a copy of the order regarding his cause of action against Accountant to his notice of appeal. Although he added Accountant as a respondent when he filed his amended notice of appeal within thirty days of the order, he did not attach a copy of the order relating to Accountant until he filed his second amended notice of appeal, which was more than thirty days after the underlying order had been filed. We disagree.

"Service of the notice of intent to appeal is a jurisdictional requirement, and the [c]ourt has no authority to extend or expand the time in which the notice of intent to appeal must be served." *Conner v. City of Forest Acres*, 348 S.C. 454, 461, 560 S.E.2d 606, 609 (2002). "Clerical errors in a notice of appeal do not destroy the

appeal." *Charleston Lumber Co. v. Miller Hous. Corp.*, 318 S.C. 471, 478, 458 S.E.2d 431, 435 (Ct. App. 1995). In *Charleston Lumber Co.*, the court rejected the respondent's attempt to have the appeal dismissed on jurisdictional grounds when the appellant neglected to appeal one of a series of cases tried together. *Id.* at 477-78, 458 S.E.2d at 435-36. In *Weatherford v. Price*, 340 S.C. 572, 578, 532 S.E.2d 310, 313 (Ct. App. 2000), the court found that although the appellant "did not 'technically' appeal from the trial court's original order by referring to it in the Notice of Appeal, the [appellant] did attach a copy of the order to the Notice." The court found the appellant's omission was "of a clerical nature only and this [c]ourt has jurisdiction to hear the appeal." *Id.* In both *Weatherford*, 340 S.C. at 578, 532 S.E.2d at 313, and *Charleston Lumber*, 318 S.C. at 478, 458 S.E.2d at 436, the court noted the respondents were not prejudiced by the determination the court had jurisdiction over the appeal.

In *Conner*, 348 S.C. at 460-62, 560 S.E.2d at 609-10, the supreme court found the appellant's correction to her notice of appeal by adding two parties originally listed as defendants as respondents was not a clerical error; thus, the court determined notice to the two parties was untimely, requiring their dismissal from the appeal. The court noted the appellant waited nearly five months after filing the appeal to name the two parties as respondents and correspondence between the appellant and the court regarding the caption of the notice of appeal should have alerted her to the mistake much earlier. *Id.* at 462, 560 S.E.2d at 610.

In this case, Chief Judge Few issued an order on March 4, 2013, denying Accountant's motion to dismiss. However, in that order he stated, "[N]othing in this order prevents [Accountant] from raising this issue in his brief for the assigned panel to consider along with the merits of this appeal."

Unlike *Conner*, Son added Accountant as a respondent within the thirty days for filing an appeal. Although Son waited longer than thirty days to include the order relating the Accountant, he did add the order more timely than the appellant in *Conner*. We find the appeal was proper because Accountant at least had notice he was a party to the appeal within the time required to file an appeal from the special referee's decision.

> The elements for a cause of action of aiding and abetting a breach of fiduciary duty are[] (1) a breach of a fiduciary duty owed to the plaintiff; (2) the defendant's knowing

> participation in the breach; and (3) damages. The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach.

Gordon v. Busbee, 397 S.C. 119, 133, 723 S.E.2d 822, 830 (Ct. App. 2012) (citation and internal quotation marks omitted).

As discussed above, the special referee did not err in determining the Masons did not breach their fiduciary duty to Son. Accordingly, because no breach of fiduciary occurred, Accountant could not have knowingly participated in a breach of that duty. Therefore, we affirm this issue.

V. Civil Conspiracy

Son argues the special referee erred in failing to find the Masons engaged in a civil conspiracy to loot the Company at the expense of Son. We disagree.

An action for civil conspiracy is normally an action at law. *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). "However, the character of an action as legal or equitable depends on the relief sought. When equitable relief is sought in an action in tort[,] the action is one in equity." *Soden*, 333 S.C. at 574, 511 S.E.2d at 382.

"The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages." *Pye v. Estate of Fox*, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2006). "[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Id.* at 567, 633 S.E.2d at 511 (alteration by court) (internal quotation marks omitted).

> Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances. Civil conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence. . . . An action for civil conspiracy is an action

> at law; the trial judge's findings will be upheld on appeal unless they are without evidentiary support.

Id. (omission by court) (citations and internal quotation marks omitted).

> The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se. [A]n unlawful act is not a necessary element of the tort. Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action.

Id. at 567-68, 633 S.E.2d at 511 (alteration by court) (citations and internal quotation marks omitted).

The special referee found:

> If the value of Son's stock has indeed been impaired, Son need not look further than his own actions in filing false and inaccurate tax returns, diverting Company funds through the casing scheme, payment of personal expenses (including attorney[']s fees) from Company funds and working on an expansion of the Company business to include (for the first time) Company ownership of land and building from which the Conway Store is operated, and diverting Company funds for operation of a non-company owned entity (BCJ Tires).

The special referee also found Son did not establish "any special damages arising out of the alleged conspiracy." Son did not allege anything in his complaint distinct from his other causes of action in his claim for civil conspiracy. He did state the Masons had "conspired to cause special damages to [Son] in such a way that [Son] will not receive the fair value of his stock in the [Company] or the opportunity to effectively manage the business affairs of the [Company]."

Son requests actual and punitive damages for the civil conspiracy. Accordingly, this is an action at law, and this court should affirm if the evidence supports the special referee's findings. Because the evidence, including the testimony provided by the Masons, Accountant, and others, supports the special referee's findings, we affirm this issue.

VI. Constructive Discharge

Son argues the Masons violated public policy and wrongfully and constructively discharged Son from his employment with the Company. We disagree.

"An action for breach of contract is an action at law." *Electro-Lab of Aiken*, 357 S.C. at 367, 593 S.E.2d at 172. An action for damages for wrongful discharge is action at law. *Wallace v. Milliken & Co.*, 305 S.C. 118, 120, 406 S.E.2d 358, 359 (1991). *But see id.* ("An employee, discharged in retaliation for instituting a Workers' Compensation Claim, is entitled to lost wages and reinstatement. Reinstatement is equitable relief, payment of back wages being merely an integral part of the remedy. Moreover, lost wages are deemed restitution, itself an equitable remedy." (citations omitted)).

"Where the retaliatory discharge of an at-will employee constitutes violation of a clear mandate of public policy, a cause of action in tort for wrongful discharge arises." *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 225, 337 S.E.2d 213, 216 (1985). "Under the public policy exception to the at-will employment doctrine . . . an at-will employee has a cause of action in tort for wrongful termination where there is a retaliatory termination of the at-will employee in violation of a clear mandate of public policy." *McNeil v. S.C. Dep't of Corr.*, 404 S.C. 186, 191, 743 S.E.2d 843, 846 (Ct. App. 2013) (internal quotation marks omitted).

> [T]he public policy exception is invoked when an employer requires an at-will employee, as a condition of retaining employment, to violate the law. . . . In a nation of laws the mere encouragement that one violate the law is unsavory; the threat of retaliation for refusing to do so is intolerable and impermissible.

Ludwick, 287 S.C. at 225, 337 S.E.2d at 216.

Mother, Father, Sister, and other employees testified that Son stopped working voluntarily. The special referee found the evidence was uncontroverted that Son stopped working voluntarily. As an action for breach of contract is an action at law and evidence supports the special referee's findings, we affirm.

VII. Counterclaims

Son argues the special referee erred in awarding judgment to the Masons and the Company on their counterclaims. We disagree.

"An action for conversion is an action at law." *Moore v. Benson*, 390 S.C. 153, 162, 700 S.E.2d 273, 278 (Ct. App. 2010). "Therefore, we review the record to determine if any evidence supports the [special referee's] finding." *Id.*

> Conversion is defined as the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. Money may be the subject of conversion when it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified.

Moore v. Weinberg, 383 S.C. 583, 589, 681 S.E.2d 875, 878 (2009) (citation omitted).

We affirm the special referee's decision to award the Masons and the Company damages for their counterclaim for conversion for Son's paying his attorney with the Company's funds. Son retained the attorney to represent himself, not the Company. Additionally, the special referee did not err in finding for the Masons and the Company as to their counterclaim for Son's casing scheme. Based on the testimony, Son recorded fake inventory and then paid himself for it. Accordingly, the special referee did not err in finding for the Masons and the Company on their conversion claim for the casing scheme. As to the claims for damages as a result of Son's filing false tax returns, the special referee did not err in finding a claim for the damages from the filing of false returns could be brought later. The amount of damages could not be determined at the time because the Internal Revenue Service

had not yet made a determination as to how much the Company owed in back taxes and fees.

VIII. Attorney's Fees

Son contends he is entitled to attorney's fees and expenses. We disagree. Son argues because he should have won his action at trial, he is entitled to attorney's fees. Because we affirm the special referee's decisions, we have no reason to award Son attorney's fees.

CONCLUSION

We affirm the special referee's orders.

HUFF and SHORT, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Andrew T. Looper, Appellant.

Appellate Case No. 2012-208627

Appeal From Greenville County
Letitia H. Verdin, Circuit Court Judge

Opinion No. 5301
Heard December 8, 2014 – Filed March 4, 2015

DISMISSED

J. Falkner Wilkes, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson and Jennifer Ellis Roberts, both of Columbia, for Respondent.

SHORT, J.: Andrew T. Looper appeals the circuit court's order, which reversed the magistrate court's order dismissing a charge of driving under the influence (DUI). Because we find the order is not immediately appealable, we dismiss the appeal.

Looper moved to dismiss the DUI charge prior to his trial in the magistrate court,

arguing evidence, including a videotape of his traffic stop, should be suppressed. The magistrate court suppressed the evidence and dismissed the charge. The State appealed the magistrate court's order to the circuit court. In a Form Four order, the circuit court reversed the magistrate court's order, stating, "Magistrate's Order granting Defendant's Motion to Suppress was in error and accordingly Defendant's Motion to Suppress was in error. This decision is reversed and remanded for further proceedings." The circuit court denied Looper's motion to reconsider. This appeal followed.

Looper argues the circuit court's order is appealable because he was aggrieved by the order. We disagree.

"The right to appeal a criminal conviction is conferred by section 14-3-330 of the South Carolina Code [(1977 & Supp. 2014)]." *State v. Isaac*, 405 S.C. 177, 181, 747 S.E.2d 677, 679 (2013). Our supreme court "has held that, generally, a criminal defendant may not appeal until sentence is imposed." *Id.* at 183, 747 S.E.2d at 680. However, in *State v. Gregorie*, our supreme court found that once an appeal is properly before the circuit court and the circuit court "renders its final judgment, the right to further appellate review is controlled by statute: Any aggrieved party may appeal the circuit court's final judgment." 339 S.C. 2, 4, 528 S.E.2d 77, 78 (2000) (citing S.C. Code Ann. § 18-1-30 [(2014)] & S.C. Code Ann. § 18-9-10 [(2014)]). The court explained the test is whether the party appealing from the circuit court "is aggrieved." *Id.*

In *Gregorie*, the defendant was convicted in the magistrate court for speeding, and he appealed to the circuit court. *Id.* at 3, 528 S.E.2d at 78. The circuit court reversed the conviction and remanded to the magistrate court for a new trial, finding the State failed to offer evidence of the applicable speed limit. *Id.* In reviewing the defendant's right to appeal the circuit court's order, the supreme court held that the exception created by this court, "permitting a criminal defendant to appeal a circuit court order remanding his case to magistrate's court for further proceedings if the issue is whether such proceedings would violate the defendant's double jeopardy clause," was not the test in determining appealability. *Id.* Rather, the issue is "whether the party bringing the appeal is aggrieved." *Id.* at 4, 528 S.E.2d at 78. The court further stated:

> On the merits, the issue is simple. The circuit court found the State failed at trial to meet its burden of proof,

> and ordered a new trial. The State did not appeal the insufficient evidence finding, and therefore, whether correct or not, it is the law of this case. Petitioner contended, correctly, that under these circumstances a second trial in magistrate's court would violate his Double Jeopardy rights.

Id. (citation omitted). Thus, because a new trial would have violated Gregorie's double jeopardy rights, he was aggrieved. *Id.*

Looper has not been convicted and is not similarly aggrieved; therefore, we examine the definition of "aggrieved." In *Cisson v. McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970)(quoting *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970)), our supreme court stated:

> The issue of who is a party aggrieved is not one of first impression for our court . . . . "[W]e [have] held that an aggrieved party is one who is injured in a legal sense; one who has suffered an injury to person or property. A good definition of an aggrieved party is contained in the case of *Bowles v. Dannin*, 62 R.I. 36, 2 A.2d 892 [(1938)]. It is there stated that an aggrieved party within [the] statute relating to appeals is a person who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation."

We do not find Looper has suffered an injury; therefore, we find Looper is not aggrieved. We analogize the order in this case to an order denying a motion to suppress evidence, which is an interlocutory order that is not immediately appealable. *See State v. Hubbard*, 277 S.C. 568, 569, 290 S.E.2d 817, 817 (1982) (finding the appeal from the denial of a motion to suppress evidence is interlocutory); *see also State v. Isaac*, 405 S.C. 177, 184, 747 S.E.2d 677, 680 (2013) (analogizing the denial of a request for immunity under the Protection of Persons and Property Act to the denial of a motion to dismiss a criminal case on

the ground of double jeopardy and finding it not immediately appealable). Accordingly, Looper's appeal is

DISMISSED.

HUFF and KONDUROS, JJ., concur.