OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 33

August 21, 2006
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Justin Lamar Allen, Appellant.

Appeal From Greenwood County
J. Michael Baxley, Circuit Court Judge

Opinion No. 26204
Heard May 4, 2006 – Filed August 21, 2006

AFFIRMED

Robert M. Dudek of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, of Columbia, and E. Charles Grose, Jr., of Greenwood, for Appellant.

J. Benjamin Aplin of the South Carolina Department of Probation, Parole and Pardon Services, of Columbia, for Respondent.

ACTING JUSTICE MANNING: Justin L. Allen (Appellant) challenges the circuit court judge's decision to revoke his probationary sentence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was sentenced in 2002 to an aggregate term of seven years in prison on drug-related convictions, suspended on the service of one year and three years' probation. Appellant was released from prison on probation in 2003.

Police responded to a shooting in the early morning hours of January 5, 2004, at an apartment complex in Greenwood. An agent of the South Carolina Department of Probation, Parole and Pardon Services issued a warrant for Appellant's arrest based on his involvement in events immediately following the shooting. The agent charged Appellant with violating several conditions of his probation, including associating with a person who has a criminal record.

A police officer testified at the revocation hearing that a witness stated, soon after hearing gunshots, he saw two men help an apparent shooting victim get into a yellow Cadillac which then drove away. The witness did not identify the men. The officer testified a hospital security videotape showed Appellant getting out of the Cadillac at the emergency room entrance and entering the hospital. Appellant did not remain at the vehicle when he apparently heard or noticed approaching police, but entered the hospital's emergency room and departed through another door. Police caught the other suspect in the vehicle, Nicholas Sanders, who was armed with a handgun, when he tried to flee after speaking with an officer near the vehicle. The victim, Lawson Hawkins, died of his wounds at the hospital.

A SLED agent testified the fingerprints of Appellant and Sanders were found on the Cadillac's exterior. No fingerprints were found on the interior of the car. Police found over a half of an ounce of cocaine and a handgun inside the car while searching it.

Documents found in the vehicle contained Appellant's name. A police officer testified the vehicle was registered in the name of Appellant's

grandfather. The officer testified Appellant verbally admitted driving the vehicle that night and "thought he was there at the scene when [the victim] got shot." Appellant's probation officer testified that Appellant, when asked about associating with Sanders, stated "he just took [Sanders] to the hospital that night, or that was his brother got shot and he just took him to the hospital." Sanders was on probation at the time as a result of previous convictions for unlawful sale of a pistol and a drug-related offense.

Appellant did not testify at the revocation hearing, but invoked his Fifth Amendment right to remain silent because he had been charged with possession of cocaine with intent to distribute, unlawful possession of a firearm, and attempted armed robbery. The crimes allegedly occurred on the night of the shooting.[1]

The trial court ruled Appellant had violated several conditions of his probation, including associating with Sanders, who has a criminal record. The trial court noted Appellant had not offered any evidence contradicting the State's case, including any explanation of his actions in taking the shooting victim to the hospital or his furtive departure from the hospital. The trial court revoked Appellant's probation and activated the remaining six

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[1] The trial court declined to continue the revocation hearing until the criminal charges against Appellant were resolved. This ruling was permissible because the State did not attempt to revoke Appellant's probation based solely on those charges. See State v. Gleaton, 172 S.C. 300, 304-05, 174 S.E. 12, 14 (1934) (stating that, when issue is whether probationer has committed a later crime which should result in revocation of probation, trial court may determine probationer's guilt on the charge, or impanel a jury to decide the issue, or hold the revocation matter in abeyance until the probationer is tried on the charge in the usual course, with the final option as the preferred and safest course to pursue); State v. Williamson, 356 S.C. 507, 510-12, 589 S.E.2d 787, 788-89 (Ct. App. 2003) (applying same principles to hold that trial court properly revoked defendant's probation where, although defendant had not yet been tried on assault charge, record contained sufficient evidence that defendant committed criminal offense by assaulting his mother).

years of the 2002 sentence, with probation terminating upon service of the sentence.

We certified this case for review on the motion of the Court of Appeals pursuant to Rule 204(b), SCACR. Appellant raises several issues, but we find it necessary to address only one:

> Did the trial court abuse its discretion in revoking Appellant's probation because he associated with a person who has a criminal record, a condition which is so overly broad that it violates due process?

STANDARD OF REVIEW

The determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court. State v. Miller, 122 S.C. 468, 474-75, 115 S.E. 742, 745 (1923); State v. Proctor, 345 S.C. 299, 301, 546 S.E.2d 673, 674 (Ct. App. 2001); S.C. Code Ann. § 24-21-460 (1989). The trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation. State v. King, 221 S.C. 68, 73, 69 S.E.2d 123, 125 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950); State v. Hamilton, 333 S.C. 642, 648-49, 511 S.E.2d 94, 97 (Ct. App. 1999). "While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice." White, 218 S.C. at 136, 61 S.E.2d at 756.

An appellate court will not reverse the trial court's decision unless that court abused its discretion. White, 218 S.C. at 135, 61 S.E.2d at 756; Hamilton, 333 S.C. at 647, 511 S.E.2d at 96. An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and

capricious. Fontaine v. Peitz, 291 S.C. 536, 539, 354 S.E.2d 565, 566 (1987); S.E.C. v. TheStreet.Com, 273 F.3d 222, 229 n.6 (2d Cir. 2001).

LAW AND ANALYSIS

A condition of Appellant's probation, included on the standard probation form he signed, stated in pertinent part, "I shall not associate with any person who has a criminal record." Appellant argues the trial court erred by revoking his probation by finding he associated with Sanders, who has a criminal record. It was necessary for Appellant to associate with Sanders in order to help place a shooting victim in the Cadillac and drive him to the hospital. Furthermore, relying on Beckner v. State, 296 S.C. 365, 373 S.E.2d 469 (1988), Appellant contends this condition violates due process and is generally unenforceable because it is overly broad. Appellant asserts the condition would, for example, prohibit someone from associating with a spouse or relative who has a criminal record, or from working at a place which employed anyone with a criminal record.[2]

The State argues this condition is authorized by statute and reasonably furthers the goals of rehabilitating a probationer and protecting the public. The State relies on South Carolina Code Ann. § 24-21-430(3) (Supp. 2005), which provides that a probationer shall "avoid persons or places of disreputable or harmful character." The State does not address whether the condition is overly broad as a general rule, but asserts the trial court did not abuse its discretion in applying the condition under the facts of Appellant's case.

We have found no South Carolina authority directly on point and only two South Carolina cases discussing the validity of "no-association" probation conditions. In Beckner, a PCR petitioner challenged a condition

[2] Appellant does not explicitly cite the Due Process Clause or freedom of association principles based on the First Amendment, but his arguments implicitly are grounded in those provisions. See U.S. Const. amends. I and XIV, § 1; S.C. Const. art. I, §§ 2 and 3.

that he not "be in a place of business that sells alcohol." We struck down the condition as unreasonable, finding it would prohibit the petitioner from entering or working in practically every grocery or convenience store, as well as many restaurants. The burden imposed on the petitioner was greatly disproportionate to any rehabilitative function the condition might serve. Beckner, 296 S.C. at 366, 373 S.E.2d at 469-70.

In State v. White, 218 S.C. 130, 61 S.E.2d 754 (1950), this Court considered the validity of a condition that directed the probationer to "avoid persons or places of disreputable or harmful character." The probationer operated a restaurant at the state fairgrounds near Columbia, an establishment which sold beer and included a large room between the restaurant and kitchen where illegal gambling occurred. The evidence revealed the probationer was aware of illegal gambling on his premises, apparently tolerating the activity even if he was not an active participant. The Court rejected the probationer's argument he was not on notice of a potential violation because probation officers had not warned him to avoid that particular location, explaining the record showed the probationer knew he was required to avoid such sites and activities. The Court upheld the trial court's decision to revoke his probation. White, 218 S.C. at 136-41, 61 S.E.2d 757-59.

The Legislature has set forth certain conditions of probation which may be imposed by the court, and the court has the discretion to impose additional or specific restrictions within limits. S.C. Code Ann. § 24-21-430 (Supp. 2005) (listing thirteen conditions of probation and stating "[t]he court may impose by order duly entered and may at any time modify the conditions of probation and may include among them" the listed conditions or others not prohibited by this section); State v. Brown, 284 S.C. 407, 410, 326 S.E.2d 410, 411 (1985) (holding trial courts are "allowed a wide, but not unlimited, discretion in imposing conditions of suspension or probation and they cannot impose conditions which are illegal and void as against public policy"); Henry v. State, 276 S.C. 515, 280 S.E.2d 536 (1981) (holding trial court lacked authority to impose banishment from state if probation was revoked as a condition of probation, even though defendant appeared to agree to the sentence); State v. Brown, 349 S.C. 414, 563 S.E.2d 339 (Ct. App. 2002) (reversing trial court's revocation of probation where

vague probation condition requiring sex offender to "obtain treatment" resulted in confusion among the probationer and probation and mental health officials); State v. Archie, 322 S.C. 135, 470 S.E.2d 380 (Ct. App. 1996) (holding that only a court, and not a state probation agency, may exercise the judicial function of imposing or modifying conditions of probation).

The revocation of probation or parole is not a stage of criminal prosecution. However, a probationer or parolee has a constitutionally protected liberty interest and cannot be denied due process simply because probation has been described as an act of grace. Morrissey v. Brewer, 408 U.S. 471, 480-90, 92 S. Ct. 2593, 2600-05, 33 L. Ed. 2d 484 (1972) (holding that minimum requirements of due process in parole revocation proceeding include "(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole"); Gagnon v. Scarpelli, 411 U.S. 778, 782, 93 S. Ct. 1756, 1760, 36 L. Ed. 2d 656 (1973) (holding that "a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in Morrissey"); State v. Riddle, 277 S.C. 110, 282 S.E.2d 863 (1981) (reversing probation revocation and remanding for hearing consistent with guidelines set forth in Morrissey and Gagnon). "It is an essential component of due process that individuals be given fair warning of those acts which may lead to a loss of liberty. This is no less true whether the loss of liberty arises from a criminal conviction or the revocation of probation. . . . [W]here the proscribed acts are not criminal, due process mandates that [a probationer or parolee] cannot be subjected to forfeiture of his liberty for those acts unless he is given prior fair warning." U.S. v. Dane, 570 F.2d 840, 843-44 (9th Cir. 1977) (citing Tiitsman v. Black, 536 F.2d 678 (6th Cir. 1976)).

Various conditions of probation generally have been upheld unless (1) the condition is so unreasonable or overly broad that compliance is

virtually impossible and the burden imposed on the probationer is greatly disproportionate to any rehabilitative function the condition might serve; (2) the condition has no relationship to the crime of which the offender was convicted; (3) the condition requires or forbids conduct which is not reasonably related to future criminality; (4) the condition relates to conduct which is not in itself criminal unless the prohibited conduct is reasonably related to the crime of which the offender was convicted or to future criminality; (5) the condition violates due process because it is overly broad or void for vagueness; or (6) the condition unnecessarily or excessively tramples upon First Amendment rights of free association. See e.g. Beckner, 296 S.C. 365, 373 S.E.2d 469 (striking down an unreasonable and overly broad condition); U.S. v. Paul, 274 F.3d 155, 164-67 (5th Cir. 2001) (stating condition of supervised release under federal law will be deemed overly broad when it involves greater deprivation of liberty than is necessary to protect the public and prevent recidivism; thus, condition requiring child pornography offender to avoid both "direct or indirect" contact with minors was not overbroad because "indirect contact" would not be interpreted to encompass chance or incidental encounters with children); People v. Lent, 541 P.2d 545, 548 (Cal. 1975) (discussing analysis of probation conditions); State v. Donaldson, 666 P.2d 1258, 1266-67 (N.M. App. 1983) (discussing analysis of probation conditions); People v. Lopez, 78 Cal. Rptr. 2d 66, 74-75 (Cal. App. 5 Dist. 1998) (holding probation condition which prohibited defendant from involvement in gang activities, association with any gang members, or use of gang insignia, was unconstitutionally overbroad because it prohibited him from associating with persons not known to him to be gang members; but overbreadth was correctable by inserting a knowledge requirement in each prohibition); In re Justin S., 113 Cal. Rptr. 2d 466, 470-71 (Cal. App. 2 Dist. 2001) (prohibiting association with gang members without restricting the prohibition to known gang members is a classic case of vagueness; such a condition violates due process and is void for vagueness and overbreadth); Dawson v. State, 894 P.2d 672, 680-81 (Alaska App. 1995) (special condition of probation which forbade defendant from having any contact with his wife unless contact was approved by probation officer was unduly restrictive of liberty and could not withstand scrutiny; court made no effort to tailor scope of marital association restriction to specific circumstances of case); Huff v. State, 554 So. 2d 616 (Fla. App. 2 Dist. 1989)

(condition of probation that defendant not live with member of opposite sex was invalid as not relating to defendant's crime of burglary or reasonably tailored to prevent future criminal conduct); West's Digests, Sentencing and Punishment, Key Nos. 1960-1988 (collecting cases regarding validity of various conditions of probation).

With regard specifically to a probation condition prohibiting association with a person with a criminal record, courts generally have upheld such a condition on the ground it is related to the crime for which the offender was convicted, is intended to prevent future criminal conduct, or bears a reasonable relationship to an offender's rehabilitation. It is recognized that restrictions on the rights of association of probationers and parolees are a necessary part of the criminal justice process. The evidence must show, however, that the probationer knew about the person's criminal record during the period of association before the condition may be applied to revoke probation. E.g. White, 218 S.C. at 136-41, 61 S.E.2d at 757-59 (upholding application of condition which directed probationer to "avoid persons or places of disreputable or harmful character" where evidence revealed probationer was aware of the condition and potential violation); U.S. v. Furukawa, 596 F.2d 921, 922-23 (9th Cir. 1979) (upholding probation condition which allowed probationer to associate only with law-abiding persons); Birzon v. King, 469 F.2d 1241, 1242-43 (2d Cir. 1972) (upholding parole condition prohibiting contact with persons having a criminal record and rejecting argument the condition was so vague it violated due process); U.S. v. Albanese, 554 F.2d 543, 546-47 (2d Cir. 1977) (although probation conditions phrased in terms of "law-abiding persons" should be avoided, condition that defendant associate only with law-abiding persons was not unconstitutionally vague or overbroad as applied to defendant who was found to have continually and consistently associated over period of years on more than casual basis with large number of convicted criminals); Alessi v. Thomas, 620 F. Supp. 589, 593 (S.D.N.Y. 1985) (rejecting probationer's argument that he could not have known receipt of numerous telephone calls from felons violated condition forbidding association with persons with criminal record, a condition probationer unsuccessfully argued was void for vagueness); People v. Miller, 452 N.W.2d 890 (Mich. App. 1990) (holding probation condition which prohibited defendant from associating with man,

who was father of defendant's young child and who had criminal record, for the rest of defendant's life could not be enforced; however, condition could be amended so as to prohibit defendant from associating with the man until further order of the court); People v. Robinson, 245 Cal. Rptr. 50 (Cal. App. 1 Dist. 1988) (upholding probation condition which prohibited convicted drug offender from associating with persons with criminal record because condition was reasonably related to offender's rehabilitation and preventing future criminal conduct); Donaldson, 666 P.2d at 1266-67 (upholding probation condition which prohibited defendant from associating with co-defendant, who had a criminal record and with whom defendant had formed a close personal relationship; condition was intended to prevent future criminal conduct and was reasonably related to defendant's rehabilitation); Annot., Propriety of Conditioning Probation on Defendant's Not Associating with Particular Person, 99 A.L.R.3d 967 (1980).

A probationer's "association" with a person who has a criminal record must entail more than incidental or unknowing encounters before the probationer will be found in violation of the condition. "Association" generally has been interpreted to mean intentional, knowing and substantial contact, or the development of a significant or meaningful relationship, with a convicted criminal over a substantial period of time. E.g. Arciniega v. Freeman, 404 U.S. 4, 92 S. Ct. 22, 30 L. Ed. 2d 126 (1971) (holding a parole condition restricting association with persons with criminal record was not intended to apply to incidental contacts between ex-convicts while working on a legitimate job for a common employer); U.S. v. Bonanno, 452 F. Supp. 743, 752 (N.D. Cal. 1978) ("'association' within the context of parole or probation conditions must be more than an incidental contact"); Alessi v. Thomas, 620 F. Supp. at 593 (finding more than forty telephone calls with convicted felons over fifteen-month period, in which probationer accepted the collect charges, was sustained and extensive contact which constituted association with persons with criminal record).

In the present case, we reject Appellant's arguments and uphold the validity of the standard condition that Appellant not associate with persons with a criminal record. The condition is not so overly broad as a general rule that it violates due process in all cases; nor does application of

the condition under the facts and circumstances of this case violate due process.[3] The condition is reasonably related to the crime for which Appellant was convicted, is intended to prevent future criminal conduct, and should aid in Appellant's rehabilitation.

We further hold, as the trial court and other courts have recognized, that the no-association condition implicitly requires a finding that the probationer knew the person in question had a criminal record during the period of association, and that the association was not simply an unknowing or incidental encounter. Thus, in order to demonstrate a prima facie violation, the State must present sufficient evidence, which may be direct or circumstantial, that a probationer intentionally had knowing and substantial contact with a person who has a criminal record, or developed a significant or

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[3] In the present case, the totality of all the evidence produced supports the decision to uphold the rulings of the courts below. First, there was a witness who testified that after hearing gunshots, she saw two men carry a wounded man into the backseat of a yellow Cadillac. A short period later, a yellow Cadillac was found at the emergency room of the local hospital. That vehicle contained documents with Appellant's name on them, and was registered under the Appellant's grandfather. A hospital security camera showed the Appellant and another man getting out of the Cadillac at the emergency room drop off area.

Second, the Appellant abandoned his car and fled through the emergency room on foot after noticing police inquiry into the vehicle. Nicholas Sanders, the man accompanying the Appellant in the car, also tried to leave the scene after speaking with police. He was a convicted felon and was armed with a handgun.

Third, the Appellant was additionally charged with possession with intent to distribute cocaine, possession of a firearm, and attempted robbery. All of these crimes allegedly occurred during the night of the shooting.

Fourth, while Appellant was serving a probationary sentence for prior drug related convictions, there were 8.72 grams of cocaine and a .22 caliber handgun found in the yellow Cadillac.

Fifth, there was a body found oozing life in the backseat of the yellow Cadillac. That gentleman later died at the hospital from gunshot wounds.

meaningful relationship with that person over a substantial period of time. The probationer then has the opportunity to demonstrate a lack of knowledge of the person's criminal record, a lack of any association with the person or an association which amounts to no more than an unknowing or incidental contact, or offer an explanation for the forbidden contact sufficient to excuse it.

Appellant did not offer any testimony or evidence at the revocation hearing, leaving only the State's evidence for consideration on the extent of Appellant's association with Sanders as well Appellant's knowledge of Sanders' criminal record. The State's evidence, and inferences which may be reasonably drawn therefrom, reveals Appellant associated with Sanders while both were involved in an illicit drug transaction which ended in a fatal shooting. A yellow Cadillac belonging to Appellant, which was driven by Appellant that night to the hospital, arrived on the scene immediately after the shooting. The record reveals substantial and significant contact between Appellant and Sanders during a criminal transaction, not merely an unknowing or incidental encounter. Accordingly, we conclude sufficient evidence supports the trial court's decision to revoke Appellant's probation.

Appellant attempted to portray himself as a mere passerby who helped carry an injured person to the hospital. We find no evidence in the record supporting this position. We have little doubt the result in this case would have been different if the evidence showed Appellant merely happened to drive by a crime scene and, acting as a Good Samaritan, unknowingly ferried a felon or two to the hospital.

When the trial court's revocation decision is upheld on one ground, it ordinarily is immaterial whether probation was properly revoked on other grounds unless the entire proceeding was tainted by a given error. See State v. Williamson, 356 S.C. 507, 512, 589 S.E.2d 787, 789 (Ct. App. 2003) (declining to address probationer's arguments regarding other grounds for revocation after concluding trial court properly revoked probation on one ground); Deal v. State, 640 S.W.2d 664 (Tex. App. 14 Dist. 1982) (finding that any error in revoking probation on one ground will not result in reversal of the revocation where another legitimate ground for revocation exists and

was properly enforced); cf. Whiteside v. Cherokee County School Dist. No. One, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993) (appellate court need not address remaining issues when resolution of prior issue is dispositive). Therefore, we decline to address the remaining issues raised by Appellant.

CONCLUSION

We uphold the validity of the standard probation condition that a probationer not associate with a person with a criminal record. The condition is not so overly broad as a general rule that it violates due process in all cases. Application of the condition under the facts and circumstances of Appellant's case does not violate due process. We further hold that the no-association condition implicitly requires a finding that Appellant knew the person in question had a criminal record during the period of association, and that the association was not simply an unknowing or incidental encounter. We conclude the trial court did not abuse its discretion in revoking Appellant's probation because the record contains sufficient evidence that Appellant associated with a person with a criminal record.

AFFIRMED.

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

The Supreme Court of South Carolina

RE: Amendment to Rule 607, SCACR

ORDER

Pursuant to Article V, §4A, of the South Carolina Constitution, Rule 607(h), SCACR, is amended to read:

(h) Fees for Transcription and Other Services.

(1) By Judicial Department Court Reporter. A court reporter shall receive the following fees:

(A) A fee of Three Dollars and Twenty-Five Cents ($3.25) per page for producing an original transcript.

(B) A fee of Seventy-Five Cents ($.75) per page for furnishing a copy of a previously prepared transcript.

(C) A fee of One Dollar and Fifty Cents ($1.50) per page for each person receiving Real-time output when a Real-time Request is signed by the requestor.

(D) A fee of One Dollar and Fifty Cents ($1.50) per page for unedited (rough copy) ASCII Disks when no request for an original transcript has been made.

(E) A fee of Thirty-Five Dollars ($35) for edited ASCII disks. This service is only available to a requestor who has requested an original or a copy of the transcript.

(F) A fee of One Dollar ($1) per page for condensed transcripts, which contain no more than four pages of text. This service is only available to a requestor who has requested an original or a copy of the transcript.

(G) A fee of Fifty Cents ($.50) per page for Keyword Indexing. This service is only available to a requestor who has requested an original or a copy of the transcript.

(H) A fee of Thirty-Five Dollars ($35) for e-mailed transcripts. This service is only available to a requestor who has requested an original or a copy of the transcript.

(I) A fee of One Dollar and Fifty Cents ($1.50) per page for unedited (rough draft) e-mailed transcripts.

(2) By Private Court Reporter. In the event the court reporter is not an employee of the Judicial Department, the fees to be charged shall be that agreed upon by the court reporter and the parties. The transcript produced by the Judicial Department court reporter is the official transcript.

This amendment is effective September 1, 2006, and it shall be applicable to all requests received by a court reporter on or after that date.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ E. C. Burnett, III J.

s/ Costa M. Pleicones J.

Columbia, South Carolina

August 14, 2006

The Supreme Court of South Carolina

RE: Appeals from Administrative Decisions

ORDER

Until recently, all appeals from agency decisions, including decisions of the administrative law court, have been to the circuit court. Act No. 387 of 2006, effective July 1, 2006, now provides that appeals from decisions of the administrative law court and certain agencies will be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Since the South Carolina Appellate Court Rules contain no provisions regarding appeals from administrative decisions, we find that it is appropriate to promulgate the attached emergency amendments to the South Carolina Appellate Court Rules until this Court can submit amendments to the General Assembly as required by Article V, §4A, of the South Carolina Constitution. These emergency amendments shall be effective immediately.

Act No. 387 is not consistent regarding when the notice of appeal must be served and filed. Compare Section 2 (under S. C. Code Ann. §1-23-380(A)(1), notice of appeal must be served and filed within thirty days after the final agency decision, or if rehearing is filed, within thirty days after a decision is rendered) with Section 5 (under S.C. Code Ann. §1-23-610(B), the notice of appeal must be served and filed within thirty days of receipt of the decision of the administrative law judge). Since we have previously construed similar language in §1-23-380(A)(1) to mean that the time to appeal runs from receipt rather than issuance of the agency decision, Hamm v. South Carolina Public Service Commission, 287 S.C. 180, 336 S.E.2d 470 (1985), we find that the Legislature intended the time to appeal under the Act to run from receipt of the administrative decision, and the emergency rules reflect this construction.

s/Jean H. Toal C.J.

s/James E. Moore J.

s/John H. Waller, Jr. J.

s/E. C. Burnett, III J.

s/Costa M. Pleicones J.

Columbia, South Carolina
August 14, 2006

AMENDMENTS TO THE SOUTH CAROLINA APPELLATE COURT RULES

(1) Rule 201, SCACR, is amended to read:

RULE 201
RIGHT TO APPEAL

(a) Judgments, Orders and Decisions Subject to Appeal. Appeal may be taken, as provided by law, from any final judgment, appealable order or decision. The procedure for petitioning for a writ of certiorari to review final judgments in post-conviction relief cases is provided by Rule 227. Further, the review of decisions of the State Board of Canvassers in election cases shall be by petition for a writ of certiorari under S.C. Code Ann. §§ 7-17-250 and 7-17-270.

(b) Who May Appeal. Only a party aggrieved by an order, judgment, ~~or~~ sentence or decision may appeal.

(2) Rule 202, SCACR, is amended to read:

RULE 202
DESIGNATION OF PARTIES AND DEFINITIONS

(a) Designation of Parties. The party appealing shall be known as the appellant and the adverse party as the respondent.

(b) Definitions. For the purpose of Part II of the South Carolina Appellate Court Rules, the following definitions shall apply:

(1) Lower Court: the circuit court (including masters-in-equity), family court or probate court from which the appeal is taken.

(2) Administrative Tribunal: the administrative law court or agency from which the appeal is taken.

(3) Rule 203, SCACR, is amended to read:

RULE 203
NOTICE OF APPEAL

(a) Notice. A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 233.

(b) Time for Service.

(1) Appeals From the Court of Common Pleas. A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

(2) Appeals From the Court of General Sessions. After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. When a timely post-trial motion is made under Rule 29(a), SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion. In those cases in which the State is allowed to appeal a pre-trial order or ruling, the notice of appeal must be served within

ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.

(3) Appeals From the Family Court. A notice of appeal in a domestic relations action shall be served in the same manner as provided by Rule 203(b)(1). A notice of appeal in a juvenile action shall be served in the same manner as provided by Rule 203(b)(2).

(4) Appeals From Masters and Special Referees. The notice of appeal from an order or judgment issued by a master or special referee shall be served in the same manner as provided by Rule 203(b)(1).

(5) Appeals From Probate Court. When a direct appeal is authorized by S. C. Code Ann. §62-1-308 (g), the notice of appeal shall be served in the same manner as provided by Rule 203(b)(1).

(6) Appeals From Administrative Tribunals. When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the agency, the administrative law court (if it has been involved in the case) and all parties of record within thirty (30) days after receipt of the decision. If a timely petition for rehearing is filed with the administrative tribunal, the time to appeal for all parties shall be stayed and shall run from receipt of the decision granting or denying that motion.

(c) Cross-Appeals. A respondent may institute a cross-appeal by serving a notice of appeal on all adverse parties, or in the case of an appeal from the administrative tribunal, by serving a notice of appeal on the agency, the administrative law court (if it has been involved in the case) and all parties of record, within five (5) days after receipt of appellant's notice of appeal, or within the time prescribed by Rule 203(b), whichever period last expires.

(d) Filing.

(1) Appeals from the Circuit Court, Family Court and Probate Court.

(A) Where to File. The notice of appeal shall be filed with the clerk of the lower court and with the Clerk of the Supreme Court in the following cases:

(i) Any final judgment from the circuit court which includes a sentence of death;

(ii) Any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance; provided, however, in any case where the Supreme Court finds that the constitutional issue raised is not a significant one, the Supreme Court may transfer the case to the Court of Appeals.

(iii) Any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the State, its agencies, political subdivisions, public service districts, counties, and municipalities, or any other indebtedness now or hereafter authorized by Article X of the Constitution of this State.

(iv) Any final judgment from the circuit court pertaining to elections and election procedure.

(v) Any order limiting an investigation by a State Grand Jury under S.C. Code Ann. § 14-7-1630.

(vi) Any order of the family court relating to an abortion by a minor under S.C. Code Ann. § 44-41-33.

In all other cases, the notice of appeal shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals.

(B) When and What to File. The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served. The notice filed with the appellate court shall be accompanied by the following:

(i) Proof of service showing that the notice has been served on all respondents;

(ii) A copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing; and

(iii) A filing fee as set by order of the Supreme Court;[1] this fee is not required for criminal appeals or appeals by the State of South Carolina or its departments or agencies.

(C) Form and Content. The notice of appeal shall be substantially in the form designated in the Appendix to these Rules. It shall contain the following information:

(i) The name of the court, judge, and county from which the appeal is taken.

(ii) The docket number of the case in the lower court.

(iii) The date of the order, judgment, or sentence from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received notice of the order or judgment from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal.

(iv) The name of the party taking the appeal.

[1] By order dated April 17, 1990, this filing fee was set at one hundred ($100.00) dollars.

(v) The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.

(2) Appeals from Administrative Tribunals.

(A) Where to File. Appeals from a decision of the Public Service Commission setting public utility rates pursuant to Title 58 of the South Carolina Code of Laws shall be filed with the clerk of the Supreme Court. Unless otherwise required by statute, all other appeals from administrative tribunals shall be filed with the clerk of the Court of Appeals.

(B) When and What to File. The notice of appeal shall be filed with the clerk of the appellate court within the time required to serve the notice of appeal under Rule 203(b)(6). The notice filed with the appellate court shall be accompanied by the following:

(i) Proof of service showing that the notice has been served on the agency, the administrative law court (if it has been involved in the case), and all parties of record;

(ii) A copy of the decision(s) to be challenged on appeal; and

(iii) A filing fee as set by order of the Supreme Court;[2] this fee is not required for criminal appeals or appeals by the State of South Carolina or its departments or agencies.

(3) Effect of Failure to Timely File. If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 231.

(e) Form and Content. The notice of appeal shall be substantially in the form designated in the Appendix to these Rules.

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[2] By order dated April 17, 1990, this filing fee was set at one hundred ($100.00) dollars.

(1) Appeals from the Circuit Court, Family Court and Probate Court. In appeals from lower courts, the notice of appeal shall contain the following information:

(A) The name of the court, judge, and county from which the appeal is taken.

(B) The docket number of the case in the lower court.

(C) The date of the order, judgment, or sentence from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received notice of the order or judgment from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal.

(D) The name of the party taking the appeal.

(E) The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.

(2) Appeals from Administrative Tribunals. In appeals from administrative tribunals, the notice of appeal shall contain the following information:

(A) The name of the agency and the name of the administrative law judge (if applicable).

(B) The docket number of the case before the administrative law court, or if the appeal is from an agency, the docket number before the agency.

(C) The date of the decision from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received the decision from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal.

(D) The name of the party taking the appeal.

(E) The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.

(3) Rule 205, SCACR, is amended to read:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 225. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

(4) Rule 207, SCACR, is amended to read:

RULE 207
TRANSCRIPT OF PROCEEDING

(a) Appeals From a Lower Court.

(1) Ordering the Transcript. Where a transcript of the proceeding must be prepared by the court reporter, appellant shall, within the time provided for ordering the transcript, make satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript. In appeals from the court of common pleas, masters in equity, special referees or the family court in domestic actions, the transcript must be ordered within ten (10) days after the date of service of the notice of appeal. In appeals from the court of general sessions or the family court in juvenile actions, the transcript must be ordered within thirty (30) days of the date of service of the notice of appeal. Appellant shall contemporaneously furnish all counsel of record, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter. Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings below. If a party to the appeal unjustifiably refuses to agree to order less than the entire transcript, appellant may move to be awarded costs for having

unnecessary portions transcribed; this motion must be made no later than the time the final briefs are due under Rule 211.

(2) Delivery of Transcript. The court reporter shall transcribe and deliver the transcript to appellant no later than sixty (60) days after the date of the request. Records shall be transcribed by the court reporter in the order in which the requests for transcripts are made.

(3) Extension for Court Reporter. If a court reporter anticipates continuous engagement in the performance of other official duties which make it impossible to prepare a transcript in compliance with this Rule, the reporter shall promptly notify the Office of Court Administration in writing of the fact, setting forth the caption of the case involved, the length of time required to complete the transcript, and the nature and probable duration of the conflicting official duties. The Office of Court Administration may grant an extension of up to ninety (90) days. An extension in excess of ninety (90) days shall not be allowed except by order of the Chief Justice.

(4) Notice of Extension. Upon the granting of any extension of time for delivery of the transcript, the Office of Court Administration shall notify all parties and the clerk of the appellate court.

(5) Failure to Receive Transcript. If appellant has not received the transcript within the allotted time nor received notification of an extension within ten (10) days after the allotted time, appellant shall notify the Office of Court Administration, the clerk of the appellate court, and the court reporter in writing.

(6) Failure to Comply. The willful failure of a court reporter to comply with the provisions of this Rule shall constitute contempt of court enforceable by order of the Supreme Court.

(b) Appeals From an Administrative Tribunal.

(1) Ordering the Transcript. Within ten (10) days after the date of service of the notice of appeal, appellant shall, in writing, make satisfactory arrangements with the administrative law court or the agency (administrative tribunal) to obtain a transcript of the proceeding before that body. Appellant

shall contemporaneously furnish all counsel of record, and the clerk of the appellate court with copies of all correspondence with the administrative tribunal. Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings before the administrative tribunal. If a party to the appeal unjustifiably refuses to agree to order less than the entire transcript, appellant may move to be awarded costs for having unnecessary portions transcribed; this motion must be made no later than the time the final briefs are due under Rule 211. The administrative tribunal may establish reasonable rates for providing the transcript or a copy thereof.

(2) Delivery of Transcript. The administrative tribunal shall insure that the transcript is delivered to the appellant within (60) days after the date of the request.

(3) Extension. If the administrative tribunal cannot deliver the transcript in the time specified, it shall promptly seek an extension from the appellate court. The request for an extension shall be in writing and shall comply with Rule 224, SCACR.

(4) Failure to Receive Transcript. If appellant has not received the transcript within the allotted time nor received notification of an extension within ten (10) days after the allotted time, appellant shall notify the clerk of the appellate court, and the administrative tribunal in writing.

(c) Duty of Appellant. The transcript received from the court reporter or the administrative tribunal must be retained by appellant during the entire appeal and for a period of at least one (1) year after the remittitur (See Rule 221) is sent to the lower court or administrative tribunal.

(5) Rule 208(b)(1)(C), SCACR, is amended to read:

(C) Statement of the Case. The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters and shall contain, as a minimum, the following information: the date of the commencement of the action or matter; the nature of the action or matter; the nature of the defense or of the response; the action of the court, jury, master, or administrative

tribunal; the date(s) of trial or hearing; the mode of trial; the amount involved on appeal; the date and nature of the order, judgment or decision appealed from; the date of the service of the notice of appeal; the date of and description of such orders, judgments, decisions and proceedings of the lower court or administrative tribunal that may have affected the appeal, or may throw light upon the questions involved in the appeal; and any changes made in the parties by death, substitution, or otherwise. Any matters stated or alleged in appellant's statement shall be binding on appellant.

(6) Rule 210(c), SCACR, is amended to read

(c) Content. The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 238. The Record shall not, however, include matter which was not presented to the lower court or tribunal. Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s); provided, however, that the portion of a pleading showing verification or service shall not be included unless relevant to the appeal. If the original court reporter's numbering has been deleted, the Record on Appeal shall contain ellipses or other notation indicating when pages of the court reporter's transcript have been omitted.

(7) Rule 210(e), SCACR, is amended to read:

(e) Index. Every Record on Appeal shall contain an index to the principal matters therein to include orders, judgments, decisions, pleadings, pretrial matters, opening statements, testimony, motions, closing arguments, jury charges, post-trial motions and exhibits. For witness testimony, the index

shall show the pages on which direct, cross, redirect and recross examination begins.

(8) Rule 212(a), SCACR, is amended to read:

(a) By the Court. The appellate court may require copies of all or any part of the transcript of proceedings or other matter which was before the lower court or administrative tribunal to be sent up for its inspection and consideration. It may likewise require a report of the trial or hearing or of any matter relative thereto, to be made by the trial judge or administrative tribunal. These matters shall become part of the Record on Appeal.

(9) Rule 214, SCACR, is amended to read:

RULE 214
CONSOLIDATION

Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.

(10) Rule 220(c), SCACR, is amended to read:

(c) Affirmance on Any Ground Appearing in Record. The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.

(11) Rule 221(b), SCACR, is amended to read:

(b) Remittitur. The remittitur shall contain a copy of the judgment of the appellate court, shall be sealed with the seal and signed by the clerk of the court, and unless otherwise ordered by the court shall not be sent to the lower court or administrative tribunal until fifteen (15) days have elapsed (the day of filing being excluded) since the filing of the opinion, order, judgment, or decree of the court finally disposing of the appeal. If a petition for rehearing is received before the remittitur is sent, the remittitur shall not be sent

pending disposition of the petition by the court. Where a petition for rehearing has been denied, the Court of Appeals shall not send the remittitur to the lower court or administrative tribunal until the time to petition for a writ of certiorari under Rule 226(c) has expired. If a petition for writ of certiorari is filed, the Court of Appeals shall not send the remittitur until notified that the petition has been denied. If the writ is granted by the Supreme Court, the Court of Appeals shall not send the remittitur.

(12) Rule 225, SCACR, is amended to read:

RULE 225
STAY AND SUPERSEDEAS IN CIVIL ACTIONS

(a) General Rule. As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

(b) Exceptions. The exceptions to the general rule are found in statutes, court rules, and case law. Where specific conditions must be met before the exception applies, those conditions must be strictly complied with. A list of some, but not all, of the exceptions to the general rule is:

(1) Money judgments as provided in S.C. Code Ann. §18-9-130.

(2) Judgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. §18-9-150.

(3) Judgments directing the execution of conveyances or other instruments as provided in S.C. Code Ann. §18-9-160.

(4) Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. §18-9-170.

(5) Judgments directing the sale of perishable property as provided in S.C. Code Ann. §18-9-220.

(6) Family court orders regarding a child or requiring payment of support for a spouse or child as provided in S.C. Code Ann. §20-7-2220.

(7) Worker's compensation awards as provided in S.C. Code Ann. §42-17-60.

(8) An appeal from an order granting an injunction or temporary restraining order.

(9) Family court orders awarding temporary suit costs or attorney's fees as provided in S.C. Code Ann. §20-7-420(2).

(10) Ejectment orders as provided in S.C. Code Ann. §27-37-130 and S.C. Code Ann. §27-40-800.

(11) Appeals from administrative tribunals as provided in S.C. Code Ann. §1-23-380(A)(2) and §1-23-600(G)(5).

(c) Supersedeas or Lifting of Automatic Stay.

(1) After service of notice of appeal, any party may move for an order lifting the automatic stay in cases which involve the general rule. In a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal. The effect of the granting of a supersedeas is to suspend or stay the matters decided in the order, judgment, decree or decision on appeal and, where a prior order or decision was in effect at the time the appealed order, judgment, decree or decision was filed, to revive the terms of the prior order or decision.

(2) In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.

(3) The granting of supersedeas or the lifting of the automatic stay under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate. Further, where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief upon such terms as are deemed appropriate.

(4) If an order is issued pursuant to Rule 225(c)(1), the terms of that order continue in effect during the pendency of the appeal unless modified or revoked by the lower court, the administrative tribunal or the appellate court or judge or justice of the appellate court which issued it, or by a superior court. The granting of any relief pursuant to this Rule shall not be construed to affect the validity of the judgment, order, decree, decision and any liens until the judgment, order, decree or decision is reversed or modified by the appellate court.

(d) Procedure for Obtaining Lift of Stay or Supersedeas.

(1) Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal. The issuance of an ex parte order or decision, or an unnecessary delay by the lower court or administrative tribunal in ruling on this application shall constitute an extraordinary circumstance.

(2) After the lower court or administrative tribunal has ruled, any party may petition the appellate court where the appeal is pending or an individual judge or justice for review of this order. The individual judge or justice may grant or deny the relief on a temporary basis, and refer the matter to the full appellate court to hear and determine the matter, or he or she may issue a final order. Upon the issuance of a final order by an individual judge or justice, an aggrieved party may petition the full appellate court for review of that decision.

(3) A person seeking an order lifting an automatic stay or granting a writ of supersedeas must file a written petition verified by the client. The petition shall be captioned the same as the appeal. In addition to the petition and verification, the moving party must contemporaneously file a certified copy of the order, judgment, decree or decision of the lower court or administrative tribunal and a copy of the notice of appeal with its proof of service.

(4) The petition shall contain:

(A) the factual background necessary for an understanding of the petition. If the facts are subject to dispute, the petition shall be supported by affidavits or other sworn statements;

(B) the grounds for the petition, and legal arguments with supporting points and authority;

(C) a showing that an application for this relief was made to the lower court or administrative tribunal, and was unjustifiably denied or that the relief granted failed to afford the relief which the petitioner requested. A certified copy of the lower court's or administrative tribunal's ruling must be included. If no application was made to the lower court or administrative tribunal, then the petition shall state the extraordinary circumstances which made it impracticable to make such an application.

(5) The petition and accompanying documents shall be served on the opposing party(ies). Upon application to the full appellate court, one original and six copies, and a certificate of service shall be filed with the clerk of the appellate court. If the relief is sought from an individual judge or justice, the original and two copies must be filed with the judge or justice. The individual judge or justice shall forward the original documents, including a copy of any order issued by the judge or justice in the matter, to the clerk of the appellate court as soon as possible.

(6) A supersedeas or order lifting the automatic stay may be issued *ex parte* only where exigent circumstances require that action be taken before there is time for a hearing. An *ex parte* order shall issue only if:

(A) it clearly appears from specific facts shown by affidavits or included in the verified petition that immediate and irreparable injury, loss or damage will result before the opposing party can respond; and

(B) the moving party's attorney certifies in writing, as an officer of the court, the efforts which have been made to give notice, or the reasons supporting the claim that notice should not be required.

(7) Any party aggrieved by the decision of the lower court, the administrative tribunal, or an individual judge or justice may petition under this Rule for a review of that decision.

(13) Rule 231(a), SCACR, is amended to read:

(a) Involuntary Dismissal and Reinstatement. Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded).

(14) Rule 232(b), SCACR, is amended to read:

(b) Vacation of Prior Opinions, Orders or Judgments. As part of their agreement, parties may request vacation of previously rendered opinions, orders, decisions and judgments. However, an appellate court retains the authority to deny any request for vacation. If an agreement which includes a request for vacation is rejected, the parties are free, if they so choose, to resubmit their agreement absent the request for vacation.

(15) Rule 238(a), SCACR, is amended to read:

(a) Captions. All documents filed in the appellate court shall be headed by a caption. Except as provided below for appeals from administrative tribunals, the caption shall contain the name of the appellate court where the document is to be filed (i.e., Supreme Court or Court of Appeals); if the matter involves review of a lower court decision, the name of the county and judge from which the appeal is taken including the title of the judge (e.g., Circuit Court Judge, Family Court Judge, Master-in-Equity, Probate Judge, Special Referee, Special Circuit Court Judge); the title of the case (the party commencing the action in the lower court shall always appear first in the title regardless of whom is appellant or petitioner); the title of the document (e.g., RECORD ON APPEAL; APPENDIX; BRIEF OF APPELLANT; PETITION FOR WRIT OF CERTIORARI; MOTION TO DISMISS); and the name, address and phone number of the counsel submitting the document, or in the case of a Record on Appeal or Appendix, the names, addresses and phone numbers of all counsel in the case. The caption should be substantially in the form shown by this example:

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Howard S. Barnes, Circuit Court Judge

Paul L. Doe, ...Appellant (or Respondent),

v.

Mary M. Roe, ...Respondent (or Appellant).

RECORD ON APPEAL

John T. Smith, Esquire
P.O. Box 123
Columbia, SC 29000
(803) 000-0000
Attorney for Appellant

Wanda D. Jones, Esquire
P.O. Box 456
Columbia, SC 29000
(803) 000-0000
Attorney for Respondent

In appeals from administrative tribunals, the caption shall contain the name of the appellate court where the document is to be filed (i.e., Supreme Court or Court of Appeals); the name of the tribunal from which the appeal is taken (e.g., Administrative Law Court, Public Service Commission, etc.); the name of the administrative law judge (if applicable); the title of the case (the title shall remain the same as the title before the tribunal regardless of whom is the appellant); the title of the document (e.g., RECORD ON APPEAL; BRIEF OF APPELLANT; MOTION TO DISMISS); and the name, address and phone number of the counsel submitting the document, or in the case of a Record on Appeal, the names, addresses and phone numbers of all counsel in the case. The caption should be substantially in the form shown by this example:

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

_____

APPEAL FROM THE ADMINISTRATIVE LAW COURT [OR NAME OF AGENCY]

George E. Brown, Administrative Law Judge

Case No. 05-ALJ-00-0000-CC

South Carolina
Department of Revenue, Respondent,

v.

Jane C. Roe, Appellant.

BRIEF OF APPELLANT

John E. Smith
Post Office Box 123
Greenville, South Carolina 29000
(864) 000-0000
Attorney for Appellant

(16) Forms 6-19 of Appendix C to Part II are renumbered as Forms 7-20 and the attached is added as Form 6.

FORM 6
NOTICE OF APPEAL FROM ADMINISTRATIVE TRIBUNAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM THE ADMINISTRATIVE LAW COURT [OR NAME OF AGENCY]

George E. Brown, Administrative Law Judge

Case No. 05-ALJ-00-0000-CC

South Carolina Department of Revenue, Respondent,

v.

Jane C. Roe, Appellant.

NOTICE OF APPEAL

Jane C. Roe appeals the decision of the Honorable George E. Brown dated September 1, 2006. Appellant received a copy of this decision on September 3, 2006.

September 15, 2006

s/ John E. Smith
John E. Smith
Post Office Box 123
Greenville, South Carolina 29000
(864) 000-0000
Attorney for Appellant

Other Counsel of Record:
Mary P. Jones
Post Office Box 456
Greenville, South Carolina 29000
Attorney for Respondent

(864) 000-0000

The Supreme Court of South Carolina

In the Matter of Blaine T. Edwards, Respondent.

ORDER

The Office of Disciplinary Counsel has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR, and seeking the appointment of an attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR.

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

IT IS FURTHER ORDERED that James H. Cassidy, Esquire, 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 account(s) respondent may maintain. Mr. Cassidy shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Cassidy may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and

any other law office account(s) 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 accounts 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 James H. Cassidy, 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 James H. Cassidy, 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. Cassidy's office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina
August 16, 2006

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Alice Ruth L. Avery, Appellant/Respondent,

v.

Gerald W. Avery, Respondent/Appellant.

Appeal from Florence County
A. E. Morehead, III, Family Court Judge

Opinion No. 4147
Heard June 14, 2006 – Filed August 14, 2006

AFFIRMED IN PART, REVERSED IN PART, and REMANDED

James M. Saleeby, Sr., of Florence and Marian D. Nettles, of Lake City; for Appellant-Respondent.

Cheryl Turner Hopkins, of Florence and Stephanie Pendarvis McDonald, of Charleston; for Respondent-Appellant.

HEARN, C.J.: This is a cross-appeal from an order of the family court, granting Alice Ruth L. Avery and Gerald W. Avery a decree of separate

maintenance and support, declining to award alimony to Wife or attorney's fees to either party, and awarding Husband 62.5 percent of the $1.5 million marital estate. On appeal, Wife argues she is entitled to alimony, a larger portion of the marital estate, and attorney's fees. She also argues the family court's valuation of her jewelry and mink coat was inflated. Husband argues the family court failed to include certain funds in the marital estate and erred by including certain other funds. We affirm in part, reverse in part, and remand.

FACTS

After twenty-five years of marriage, Husband and Wife separated in February 2004. At the time of the final hearing, which took place on December 15, 2004, Husband was sixty-seven years old, and Wife was fifty-eight years old. The parties have no children together, though they have children from previous relationships. Husband has two adult daughters, both of whom have children. Wife has one forty-year-old daughter who is autistic and lives in a group home.

During the marriage, Husband worked as a chemical engineer and had management responsibilities. For much of his career he worked overseas in places such as Egypt, Pakistan, Saudi Arabia, China, and several countries in Europe. While he was out of the country, Husband sent his paychecks to Wife, and she was in charge of their financial affairs and maintaining the marital home. Wife has a business college degree, but with the consent of Husband, did not work outside the home for much of the marriage. In fact, her only job outside the home was working part-time for Husband's business, which she did only sporadically during the marriage. Together the parties amassed a large estate, totaling over $1.5 million.

In October of 2002, Husband had a heart attack, and he retired shortly thereafter. After Husband's retirement, the parties' relationship, which may already have had its difficulties, took a turn for the worse. Wife testified Husband belittled her family and was very controlling of her. In 2003, she suggested they get counseling, but Husband refused. Wife left the marital home because she "just couldn't take the constant bickering."

According to Husband, the couple's problems coincided with Wife's renewed friendship with an old friend, Gayle Britt. He testified that Wife spent more time with Gayle than she did with him. He also believed Wife's greed was a driving force behind the parties' separation. He testified that he wanted to reconcile with Wife, but when he suggested counseling, Wife would go only on the condition that Husband give her "half of the assets" in their vacation home in Beaufort, South Carolina.

On February 4, 2004, the parties had a serious argument, and Wife left the marital home. On February 9, Husband gave $89,000 to his children, purportedly to pay for his grandchildren's college education. Most of this money, $71,500, came from a money market account. On February 20, Wife filed a complaint seeking an order for separate maintenance and support.

At the final hearing, several issues were litigated. Wife sought alimony, a fifty percent division of the marital estate, and attorney's fees. She also argued that the money market account Husband divested just days before she filed her complaint should be included in the marital estate.

Husband argued Wife should not receive alimony because he was no longer earning an income. He also argued he was entitled to more than half of the marital estate because his contributions accounted for ninety-nine percent of the parties' assets. During the course of the litigation, Husband questioned how Wife had the money to add approximately $54,000 to a bank CD that was jointly titled between Wife and her aunt. Both Wife and her aunt testified that this deposit was made with the aunt's money. Husband, however, believed it was money Wife had siphoned off from the marital estate over the years, and he sought to have the money included in the marital estate. Husband also sought to include a checking account jointly titled to Wife and her aunt, which contained $64,000. Both Wife and her aunt testified this was also the aunt's money. The family court sided with Wife and her aunt as to both accounts, and declined to include the $54,000 bank CD or the $64,000 checking account in the marital estate.

As to the money market account with the $71,500 Husband gave to his children, Husband argued he inherited those funds when his mother died in 1999.[1] The family court, however, included the $71,500 in the marital estate.

The family court specifically found neither party was at fault for the marriage's deterioration, but declined to award Wife alimony because Husband no longer earned an income. The family court also awarded Husband 62.5 percent of the marital estate and ordered the parties to pay their own attorney's fees. Both parties filed Rule 59(e) motions. In its order addressing those motions, the family court clarified how certain funds held in escrow were to be disbursed and otherwise denied both motions to reconsider. Both parties appeal.

STANDARD OF REVIEW

When considering an appeal from the family court, appellate courts have the authority to find the facts in accordance with their view of the preponderance of the evidence. Ex parte Morris, 367 S.C. 56, 61, 624 S.E.2d 649, 652 (2006). However, appellate courts defer to the family court judge's determinations of witnesses' credibility because the family court judge had the opportunity to see and hear the witnesses testify. Scott v. Scott, 354 S.C. 118, 124, 579 S.E.2d 620, 623 (2003).

LAW/ANALYSIS

I. Wife's Appeal

Wife argues the family court erred in (1) awarding her a mere 37.5 percent of the marital estate; (2) failing to award her alimony, especially in light of the lopsided equitable distribution; (3) valuing her jewelry at $40,000; (4) valuing her twenty-year-old mink coat at $8,000; and (5) failing to award her attorney's fees and costs. We address these issues in turn below.

[1] With interest over the years, Husband testified that his $51,660 inheritance had grown to $71,500.

A. Equitable Distribution

Wife argues the family court erred in awarding her 37.5 percent of the marital estate when this was a long-term marriage throughout which she provided homemaker services, and neither party was found to be at fault for the marriage's breakup. We agree.

The division of marital property is in the family court's discretion and will not be disturbed on appeal absent an abuse of that discretion. Craig v. Craig, 365 S.C. 285, 290, 617 S.E.2d 359, 361 (2005). Section 20-7-472 of the South Carolina Code (Supp. 2005) provides fifteen factors for the family court to consider when apportioning marital property, and it is within the family court's discretion to determine how much weight to give each of these factors. On appeal, even if this court might have weighed specific factors differently, we will affirm the family court's apportionment so long as it is fair overall. Greene v. Greene, 351 S.C. 329, 340, 569 S.E.2d 393, 399 (Ct. App. 2002).

In making its decision to award Husband the bulk of the marital estate, the family court focused on the parties' financial contributions to the marriage. Specifically, the family court found:

> It appears Husband has contributed 99%, or thereabouts, of the funds into this marriage. On the other hand, without objection by Husband, Wife contributed through her services as a homemaker. She also, for a period of time, assisted Husband in one of his business ventures serving as his bookkeeper/secretary. Wife also assisted in overseeing the building and selling of several homes during the marriage. Wife did physical work in and around the home and houses built for resale during the marriage and, as mentioned, maintained the home. Wife was frugal, buying most items "on sale."

> Husband indicated he completely trusted Wife's handling of finances during the marriage.

Despite the family court's recognition of Wife's contributions as a homemaker, the family court divided the marital estate in such a way that Husband received over one-and-a-half times the amount of property Wife received. Because the court specifically found neither party to be at fault for the couple's separation, this uneven division must have been based almost exclusively on the parties' direct financial contributions to their accumulation of wealth.

In our recent case of Doe v. Doe, (S.C. Ct. App. filed July 3, 2006) (Shearouse Adv. Sh. No. 26 at 78), which involved a marriage of over thirty years, we found the family court abused its discretion by awarding Husband seventy percent of the marital estate, despite Husband having been the primary breadwinner in the family. We stated: "While there is certainly no recognized presumption in favor of a fifty-fifty division, we approve equal division as an appropriate starting point for a family court judge attempting to divide an estate of a long-term marriage." Id. at 83 (citing Roy T. Stuckey, Marital Litigation in South Carolina (3rd ed. 2001 and Supp. 2005)). A fifty-fifty starting point is appropriate, we went on to explain, because in many long-term marriages, the spouses have an agreed-upon arrangement whereby one spouse works outside the home and is the primary wage earner while the other spouse makes little or no money but provides a valuable service in maintaining the household. Under these circumstances, "it would be unfair to the spouse who undertook household duties for the family court to apportion the marital estate solely based on the parties' direct financial contributions." Id. at 84 (citing Walker v. Walker, 295 S.C. 286, 288, 368 S.E.2d 89, 90 (Ct. App. 1988) ("Equitable distribution is based on a recognition that marriage is, among other things, an economic partnership.")).

That is not to say that all long term marriages ending in divorce will necessarily have estates that are divided equally. The family court is charged with looking at all fifteen factors of section 20-7-472, and may give one party a larger portion of the estate based on the circumstances of each case. For instance, although we reversed the seventy-thirty split in Doe, we modified

the award to a sixty-forty division because Wife's adultery caused the marriage's dissolution.

In the case before us, however, we cannot discern any special circumstances tilting the equitable division scale in favor of one spouse. This was a lengthy marriage wherein the parties agreed to a traditional breadwinner/homemaker arrangement. With such an arrangement, both parties made significant, albeit different, contributions to the acquisition, preservation, depreciation, and appreciation in value of their marital property. Neither party was at fault for the separation, nor does either party earn a significant income.[2] Although Husband suffered a heart attack in October of 2002, he testified that most of his medical expenses are paid through Medicare. The parties are not likely to pursue careers for which they will need additional training or education, and neither party has significant non-marital property. Finally, neither party has support obligations, though Wife does provide clothing to her disabled daughter.

Considering the circumstances of this case, we find the family court abused its discretion by awarding twenty-five percent more of the marital estate to Husband. Accordingly, we reverse the 62.5-37.5 split and remand the case so that the marital estate can be divided equally between the spouses.

B. Alimony

Wife argues the family court erred in denying her alimony. We disagree.

The decision to award alimony rests within the sound discretion of the family court and will not be disturbed on appeal absent an abuse of discretion. Craig v. Craig, 365 S.C. 285, 292, 617 S.E.2d 359, 362 (2005). When awarding alimony, the family court considers the following thirteen factors set forth in section 20-3-130(C) (Supp. 2005) of the South Carolina

[2] According to Husband's financial declaration, he receives $2,040 per month from social security and other pensions. Wife's financial declaration indicates she receives $400 per month from social security.

Code: (1) duration of the marriage; (2) physical and emotional health of the parties; (3) educational background of the parties; (4) employment history and earning potential of the parties; (5) standard of living established during the marriage; (6) current and reasonably anticipated earnings of the parties; (7) current and reasonably anticipated expenses of the parties; (8) marital and nonmarital properties of the parties; (9) custody of children; (10) marital misconduct or fault; (11) tax consequences; (12) prior support obligations; and (13) other relevant factors the court considers relevant.

In its final order, the family court specifically stated it "considered all applicable factors in [§ 20-3-130]." After considering those factors, the family court declined to award Wife alimony because Husband had very little income to speak of and Wife would receive a substantial sum in the equitable division. In our opinion today, we increase the amount of property Wife receives in the equitable division. Considering this equal division of the marital estate and Husband's meager income, we find the family court did not abuse its discretion in denying Wife alimony.

C. Valuation of Jewelry and Mink Coat

Wife argues the family court erred in valuing her jewelry at $40,000. Specifically, she contends the family court (1) failed to specify which pieces of jewelry were included in the marital estate, and (2) erred by using the jewelry's insurance value to determine its fair market value. She further argues the family court erred in valuing her twenty-year-old mink coat at $8,000. We disagree.

When making an equitable distribution of marital property, the family court is charged with identifying the marital property and determining the property's fair market value. Cannon v. Cannon, 321 S.C. 44, 48, 467 S.E.2d 132, 134 (Ct. App. 1996). A family court's valuation determination will be affirmed on appeal if the valuation is within the range of values presented by the parties. Woodward v. Woodward, 294 S.C. 210, 215, 363 S.E.2d 412, 416 (Ct. App. 1987).

At trial, Wife submitted an appraisal, which listed seven pieces of jewelry valued at $2,900. Wife testified she had other, less expensive jewelry at home that was worth a total of $300. Husband, who claimed there were twelve pieces of jewelry purchased during the marriage, valued the jewelry at over $50,000. In support of his valuation, Husband submitted an insurance document, listing twelve pieces of jewelry that were insured for $40,305. Husband also submitted numerous appraisals from 1987 through 2001 that supported, and in some cases exceeded, the values listed on the insurance documents. Additionally, Husband testified that he purchased an Ebel watch for Wife during their marriage and that the watch was worth $4,000.

In its order, the family court valued Wife's jewelry at $40,000, explaining: "I have discounted the value of Wife's engagement ring and am using, essentially, the value the parties have utilized for insurance purpose for a number of years." In so ruling, it is clear the family court included all pieces of jewelry testified to, with the exception of Wife's engagement ring. Considering the evidence presented by the parties, we find the family court did not abuse its discretion in valuing the jewelry at $40,000, a figure within the range of values presented by the parties. See id.

As for the mink coat, Wife testified that its fair market value is $1,000. Husband testified its value was $8,000, and submitted into evidence a document showing that as the amount for which the coat was insured. While we recognize that an item's insurance value may be higher than its fair market value, the family court judge only had two values offered to him: one from Wife, which was unsupported by documentation, and one from Husband, which was supported by the parties' decision to insure the coat for $8,000. Under these circumstances, we find no error in the family court's decision to adopt Husband's estimation of the coat's fair market value. See id.; cf. Honea v. Honea, 292 S.C. 456, 458, 357 S.E.2d 191, 192 (Ct. App. 1987) ("[A] party cannot sit back at trial without offering proof, then come to this Court complaining of the insufficiency of the evidence to support the family court's findings.").

Next, Husband argues the family court erred by including in the marital estate a $71,500 money market account he claims contained the money he inherited when his mother died. We note the family court did not rule on whether these particular funds derived from Husband's inheritance. Rather, it found the money should be included in the marital estate because Husband divested himself of it while the parties were contemplating separation. Husband filed a Rule 59(e), SCRCP, motion, requesting a ruling on this issue, but again, the family court did not rule on it. Therefore, we remand the issue to the family court to make a finding as to whether the funds Husband divested to his children during the parties' separation were the funds he inherited after his mother passed away.

CONCLUSION

We find the family court erred in awarding Husband 62.5 percent of the marital estate; we modify the division to a fifty-fifty split; and, we remand the actual division of the property to the family court. We affirm the family court's valuation of Wife's jewelry and mink coat, its refusal to award Wife alimony and attorney's fees, and its refusal to include $54,000 from a CD and $64,000 from a checking account owned by Wife's aunt. Finally, we remand the issue of whether the $71,500 CD that Husband divested to his children during separation was non-marital, inherited funds. Accordingly, the family court's order is

AFFIRMED IN PART, REVERSED IN PART, and REMANDED.

GOOLSBY, J. and CURETON, A.J., concur.

jury on punitive damages and breach of trust with fraudulent intent, and failing to deny or reduce actual and punitive damages. We reverse.

FACTS

Church's operates a chicken restaurant on Taylor Street in Columbia. Guider worked as general manager of the restaurant in May 2003.

Shortly before closing on the night of May 25, 2003, someone entered the restaurant through an unlocked rear door and robbed it of approximately $860. The shift manager on duty, Selena Harrison, called Guider at home to inform her of the robbery. Guider went to the restaurant, where she found police investigating the incident. She contacted Church's area manager, Jimmy Bailey, to inform him of the incident. Bailey told Guider to let police continue their investigation and that he would discuss the matter with her later.

The next day, Bailey met with Guider and told her that leaving the back door of the restaurant unlocked violated company policy and that the employees who worked on the shift when the robbery occurred would be fired. Guider protested the decision to terminate the employees as unfair, arguing the policy had never been enforced. She also intervened on Harrison's behalf with Jerome York, the Vice President of Operations for Church's.

On June 4, 2003, Guider received a paycheck from which $430 had been deducted. Guider also received a document entitled "Deduction Contract" that Bailey drafted with York's approval. The document styled itself as a "contract" between Guider and Church's in which Guider agreed to have $859 deducted from two paychecks in installments of $430 and $429. According to Bailey and York, the document represented an agreement reached with Guider in which she would reimburse Church's for the money taken in the robbery. In return, Church's would not terminate Harrison.

Guider disputed reaching any such agreement, but nevertheless signed the Deduction Contract.[1]

Guider resigned the following morning. Later that day, she took $1,004 cash from the restaurant's sales proceeds to deposit in Church's bank account. She presented the bank with a deposit slip indicating $1,004 was being deposited. However, she only included $204 in cash with the deposit slip and intentionally kept the remaining $800.

Immediately after leaving the bank, Guider returned to the restaurant and told Bailey, "I need to speak to you about my money. I got my money back." She neither specified that she had kept $800 of the money she was supposed to deposit nor offered to return the money. Bailey told Guider he was busy with customers and did not have time to talk to her. Guider gathered her personal items and left. Later that evening, Guider again spoke to Bailey after she called and paged him throughout the day. She told him, "I did something that was wrong. I took money out of that $1,004 deposit." She added that she would like to meet and discuss returning the $800 to Church's and receiving the money it withheld from her paycheck. However, despite Guider's repeated attempts to meet with Bailey regarding the money, he either ignored her calls or claimed he was too busy to meet with her.

On June 11, 2003, Bailey asked police to issue an arrest warrant for Guider on breach of trust charges. Six days had passed since Guider informed him that she kept part of the money she was supposed to deposit. The arrest warrant affidavit provided by Bailey alleged Guider admittedly withheld the money she was entrusted to deposit for Church's. The affidavit further alleged Guider retained the money "for her own personal use."

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[1] Guider challenged Church's actions in a complaint she filed with the South Carolina Department of Labor, Licensing and Regulation (LLR) on June 11, 2003. LLR's Office of Wages and Child Labor eventually found the Deduction Contract invalid and ordered Church's to repay Guider the money it withheld from her paycheck.