

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2013-000217

RECEIVED
JUL 03 2013
SC Court of Appeals

IN THE MATTER OF THE CARE AND TREATMENT OF
RONALD OWEN,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

ARGUMENT.....6

CONCLUSION.....10

TABLE OF AUTHORITIES

Cases

<u>16 Jade Street, LLC v. R. Design Const. Co.</u> , 398 S.C. 338, 728 S.E 2d,448, 450-451 (2012).....	5,6
<u>CFRE, LLC v. Greenville Cnty, Assessor</u> , 395 S.C. 67, 716 S.E.2d 877, 881 (2011)	5
<u>Hembree v. One Thousand Eight Hundred Forty Seven Dollars (1.847.00)</u> <u>U.S. Currency</u> , 2013 WL 2601574, 2-3 (S.C. App. 2013)	5
<u>S.C. Ports Auth. v. Jasper Cnty.</u> 368 S.C. 388, 629 S.E. 2d 624, 629 (2006)	5
<u>Sloan v. Hardee</u> , 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).....	5

Statutes

S.C. Code Ann. §44-48-110 (Supp. 2012)	6
S.C. Code Ann. §44-48-130 (Supp. 2012)	passim

STATEMENT OF ISSUE ON APPEAL

The circuit court properly dismissed Owen's 2012 petition for release from the Sexually Violent Predator Treatment Program as frivolous under S.C. Code §44-48-130.

STATEMENT OF THE CASE

On February 3, 2010, Appellant Ronald Owen (“Owen”) voluntarily committed to the custody of the South Carolina Department of Mental Health (“DMH”) for long term control, care and treatment pursuant to the South Carolina Sexually Violent Predator Act (“SVP Act”). He petitioned for release in 2011 against the recommendation of DMH, and after an evidentiary hearing, the circuit court denied his petition by Order filed April 17, 2012.

Owen petitioned for release in December 2012, again against the recommendation of DMH. Respondent State of South Carolina (“State”) moved for summary dismissal of his petition for release as frivolous pursuant to Section 130 of the SVP Act, which was granted by Order filed January 9, 2013. Owen’s Motion for Reconsideration was denied by Order filed January 28, 2013. This appeal followed.

STATEMENT OF FACTS

On February 3, 2010, Owen voluntarily agreed to be committed to DMH's custody for long term control, care and treatment as a sexual violent predator. As required by the SVP Act, DMH reviewed Owen's mental status in 2011, and determined his mental status had not so changed he was safe to be at large.

Owen exercised his right to petition for release in connection with that annual review, and obtained an independent evaluation from an expert of his choice. The Honorable Eugene C. Griffith, Jr., Circuit Court Judge, held an evidentiary hearing on March 13, 2013. Based on testimony from the DMH evaluator and Owen's expert, by Order filed April 17, 2012, the circuit court determined there was no probable cause to believe Owen's mental status had so changed he was safe to be at large and not likely to commit future acts of sexual violence if released.¹ (Exhibit 1, Motion to Deny 2012 Petition for Release/Annual Review; Record on Appeal [R.], pp. ____).

Thereafter, DMH performed another annual review of Owen's mental status in November 2012, and again concluded Owen's mental status had not so changed he was safe to be at large. Owen petitioned for release in connection with that annual review. (Annual Review Packet, with cover letter to the Honorable Frank R. Addy, Jr., dated December 4, 2012; R., pp. ____).

On December 14, 2012, the State moved pursuant to S.C. Code §44-48-130 (Supp. 2012), for an order denying Owen's 2012 petition for release/annual review hearing as frivolous. (Motion to Deny 2012 Petition for Release/Annual Review, filed December 14, 2012; R., pp. ____). On January 9, 2013, Owen served a Reply to the

¹ Owen's appeal from that Order is pending.

State's Motion, contending he was obtaining another independent evaluation, and was entitled to a hearing. (Reply to Motion to Deny 2012 Petition for Release/Annual Review, served January 9, 2013; R., pp. ____).

By Order filed January 9, 2013, the Honorable Frank R. Addy, Jr., Circuit Court Judge, granted the State's motion, concluding Owen's 2012 petition for release was frivolous in light of his 2011 petition for release, the 2012 hearing on that petition, and the lack of any evidence before the court indicating progress in treatment since the hearing. (Order to Deny 2012 Petition for Release/Annual Review, filed January 9, 2013; R., pp. ____). On January 15, 2013, Owen moved for reconsideration of the court's decision, contending he was entitled to an evidentiary hearing on his petition for release. (Motion for Reconsideration dated January 15, 2013; R., pp. ____). The State opposed the Motion, contending the circuit court's dismissal was supported by the evidence. (Return to Motion for Reconsideration filed January 17, 2013; R., pp. ____).

By Order filed January 28, 2013, the circuit court denied Owen's Motion for Reconsideration. (Order filed January 28, 2013; R., pp. ____). This appeal followed.

ARGUMENT

The circuit court properly dismissed Owen's 2012 petition for release as frivolous pursuant to S.C. Code §44-48-130.

Owen contends the circuit court erred in failing to hold a hearing on his 2012 petition for release in connection with the 2012 annual review, because he was in the process of hiring an independent expert in preparation for a hearing on his petition, and he did not have sufficient time to obtain the independent evaluation before the circuit court dismissed his petition for release. Essentially, he asserts persons committed pursuant to the SVP Act have an absolute right to an independent evaluation and hearing in connection with every petition for release they file. His assertions completely ignore well established rules of statutory construction, and the applicability of §44-48-130.

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature.” Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In interpreting a statute, the court must give the words used their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. *Id.* Further, a statute must be read as a whole, and sections which are part of the same general statutory law must be construed together such that each one is given effect. S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 629 S.E.2d 624, 629 (2006) *See also* 16 Jade Street, LLC v. R. Design Const. Co., 398 S.C. 338, 728 S.E.2d 448, 450-451 (2012) (same); Hembree v. One Thousand Eight Hundred Forty-Seven Dollars (1,847.00). U.S. Currency, 2013 WL 2601574, 2 -3 (S.C.App.,2013) (same).

A statute must be construed such that no word, clause, sentence, provision or part is rendered surplusage, or superfluous. CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 716 S.E.2d 877, 881 (2011). The court must reject any interpretation which

would lead to a result so absurd the legislature could not have intended it. 16 Jade Street, LLC, 728 S.E.2d at 451.

Section 110 of the SVP Act provides that persons committed thereunder must have an annual examination of their mental condition, and the annual review report must be provided to the circuit court, the Attorney General, the solicitor who prosecuted the criminal case, and the Multi-Disciplinary Team. The court must conduct a hearing to review the committed person's status, and the person "may" retain a qualified expert to examine them, and may petition for release in connection with the annual review. S.C. Code §44-48-110 (Supp. 2012).

Section 130 provides that if a committed person has previously petitioned for release without DMH approval, and the court determined, either on the petition or after a hearing, the petition was frivolous or the person's mental status had not so changed he was no longer a threat to commit acts of sexual violence, the court "**must** deny the subsequent petition unless the petition contains facts upon which a court could find the condition of petitioner had so changed that a hearing was warranted." Upon receipt of a subsequent release petition from the committed person without DMH approval, "the court must, whenever possible, review the petition and determine if the petition is based upon frivolous grounds and, if so, **must** deny the petition **without a hearing**." S.C. Code §44-48-130 (Supp. 2012) (emphasis added).

Owen concedes he petitioned for release without DMH approval in connection with the 2011 annual review, which was denied in April, 2012. Thus, his petition for release in connection with the December, 2012, annual review, was clearly a

“subsequent” petition without DMH approval, which triggered application of §44-48-130.

The 2012 annual review report, submitted less than nine months after the hearing on Owen’s 2011 petition for release, indicated Owen “has slowly begun disclosing his problematic sexual behavior involving his children,” but continued to deny “the extent of the abuse reported by the victims.” The report further indicated Owen’s “lack of insight into his sexual offenses suggests he is in the early stages of treatment,” and concluded “there is insufficient basis to opine that [Owen’s] mental abnormality or personality disorder has so changed that he is not safe to be at large and no longer likely to engage in acts of sexual violence.” (Exhibit 2, Motion to Deny 2012 Petition for Release/Annual Review; R., pp. ____).

According to the Order denying Owen’s 2011 petition for release, his expert concurred with the DMH diagnoses of pedophilia and personality disorder, as well as the necessity of treatment to address those mental abnormalities, but merely opined Owen could be treated on an outpatient basis subject to significant restrictions, which the court found were not available under the SVP Act. While the 2012 annual review report notes some minimal progress indicating Owen is “in the early stages of treatment,” there is nothing indicating such a significant change in Owen’s mental status from March, 2012, to December, 2012, as to alter the conclusions of his own expert from the March, 2012, hearing.

Owen asserts the State’s position implies that “no one should ever be given a review hearing should [DMH] decide that there has been no change in their condition.” This grossly overstates the State’s argument in the circuit court, and again, ignores §44-

48-130. The State did not seek dismissal of Owen's 2011 petition for release, or make any attempt to thwart his independent evaluation in connection with that petition. Owen received a full evidentiary hearing, at which his expert testified, and he exercised his right to appeal the denial of the 2011 petition. All the State did in connection with his 2012 petition for release was make a proper motion alleging it was frivolous in light of the hearing and findings nine months earlier, and asking the circuit court to apply §44-48-130 to the "subsequent" petition for release.

The purpose of §44-48-130 is to give the circuit court discretion to review the subsequent petitions, and avoid the necessity of a hearing if the petition is frivolous in light of information before the court. Taken to its logical conclusion, however, Owen's argument effectively writes §44-48-130 completely out of the SVP Act. Regardless of a committed person's history regarding petitions for release without DMH approval, the circuit court could never determine subsequent petitions are frivolous without allowing the person to retain an expert, and conducting a hearing. Such a result renders §44-48-130 superfluous, which is contrary to the rules of statutory construction.

There is ample support for the circuit court's finding Owen's 2012 petition for release was frivolous in light of the hearing and findings regarding his 2011 petition. Therefore, the circuit court's denial of Owen's 2012 petition should be affirmed.

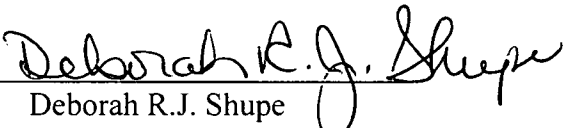
CONCLUSION

Based on the foregoing, the State respectfully submits the circuit court Order Denying 2012 Petition for Release/Annual Review should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 3, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2013-000217

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IN THE MATTER OF THE CARE AND TREATMENT OF
RONALD OWEN,

Appellant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondent proposes the following to be included in the Record on Appeal:

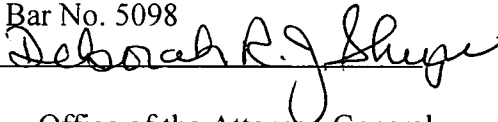
- (1) Annual Review Package, with Cover Letter to the Honorable Frank R. Addy, Jr., dated December 4, 2012
- (2) Motion to Deny 2012 Petition for Release/Annual Review, with Exhibits 1 and 2, filed December 14, 2012
- (3) Reply to Motion to Deny 2012 Petition for Release/Annual Review, served January 9, 2013
- (4) Order Denying 2012 Petition for Release/Annual Review, filed January 9, 2013
- (5) Motion for Reconsideration, dated January 15, 2013
- (6) Return to Motion for Reconsideration, filed January 17, 2013
- (7) Order Denying Motion for Reconsideration, filed January 28, 2013

To facilitate preparation of the Final Brief, Respondent requests that counsel for Appellant retain the original page numbers of the included documents, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

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July 3, 2013

STATE OF SOUTH CAROLINA

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IN THE MATTER OF THE CARE AND TREATMENT OF
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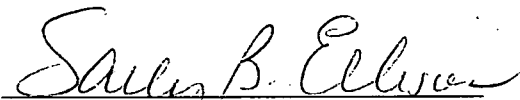
PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

Tommy A. Thomas, Esquire
PO Box 88
Irmo, SC 2063

I further certify all parties required by Rule to be served have been served.

This 3rd day of July, 2013.



Sally B. Ellison
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SC Court of Appeals



ALAN WILSON
ATTORNEY GENERAL

July 3, 2013

Tommy A. Thomas, Esquire
PO Box 88
Irmo, SC 29063

RE: In the Matter of the Care and Treatment of Ronald Owen
Appellate Case No.2013-000217

Dear Mr. Thomas:

Enclosed herewith and served upon you are two (2) copies of the Initial Brief of Respondent and Designation of Matter, with proof of service, in the above-referenced case.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

DRJS/sbe
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services (with enclosure)

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SC Court of Appeals