

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Cremation Society of SC – Westville Funerals,

Appellant,

v.

South Carolina Department of Labor, Licensing
and Regulation, State Board of Funeral Service,

Respondent.

Docket No. 22-ALJ-11-0441-AP

ORDER

RECEIVED

Jul 06 2023

SC Court of Appeals

STATEMENT OF THE CASE

This matter was initiated by a complaint against Cremation Society of SC – Westville Funerals (Appellant) by the South Carolina Department of Labor, Licensing and Regulation, State Board of Funeral Service (Board) alleging Appellant violated S.C. Code Ann. sections 32-8-345(C) (2007), 40-1-110(1)(f) (2011), and 40-19-110(9) (2011). The Board’s formal complaint was served upon Appellant on May 2, 2022. The case was heard by the Board on August 31, 2022. On November 15, 2022, the Board issued a Final Order finding Appellant in violation of the above statutes. The Board publicly reprimanded Appellant, assessed a total fine of \$3,500 to be paid within sixty days of the date of the order, and placed Appellant on probation for two years starting on the date of the order. This appeal is before the Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by counsel for Appellant on December 15, 2022.

ISSUES

1. Did the Board err in concluding Appellant violated section 32-8-345 by failing to deliver Decedent’s cremated remains to Decedent’s sister?
2. Does S.C. Code Ann. section 40-19-310(A) (2011) exempt Appellant from the requirements of the Funeral Service Practice Act, S.C. Code Ann. sections 40-19-5 to -320 (2011 & Supp. 2022)?
3. Were Decedent’s cremated remains a dead human body for purposes of the Funeral Service Practice Act?



BACKGROUND

Appellant is a licensed funeral establishment doing business in South Carolina and was licensed at all times relevant to the matters asserted in this case. On or about October 13, 2016, Decedent passed away. Appellant was notified and collected Decedent's remains from St. Francis Hospital in Greenville, South Carolina. After Decedent's passing, Decedent's sister, (S.C.), was contacted by Decedent's significant other (P.D.). P.D. informed S.C. of Decedent's passing. P.D. passed away soon after communicating Decedent's passing to S.C., though S.C. was not aware of P.D.'s passing until February, 2017. Within two days of Decedent's passing, Greg Broussard, one of Appellant's employees, called S.C. and let her know he was having difficulty contacting P.D. to move forward with funerary arrangements. In November, 2016, Randy Harreld (Harreld), another employee of Appellant at the time, contacted S.C. regarding completing an authorization to cremate Decedent's remains. On November 16, 2016, Harreld sent S.C. an email with the subject "Authorization form," with one PDF attached to it labeled "authorization2014." In his email, Harreld requested S.C. "please fill out the best you can" and "[i]nclude a copy of your driving license and have the 2nd page notarized." The next day, S.C. returned the signed and notarized cremation authorization form to Harreld via fax, who confirmed receipt via email.

On or about November 22, 2016, an employee of Appellant contacted the Greenville County Coroner's Office to obtain a cremation permit despite S.C. faxing a signed cremation form to Appellant. Appellant received a signed cremation permit from the coroner's office and proceeded with cremating Decedent's remains. On or about February 2, 2017, S.C. emailed Harreld inquiring on the status of Decedent's remains as she had not received an update from Appellant since November, 2016. Harreld informed S.C. of Decedent's cremation and the issuance of Decedent's death certificate. Harreld provided S.C. with a phone number and advised her to speak to an individual named Donna to coordinate delivery or retrieval of Decedent's cremated remains. On or about February 15, 2017, S.C. emailed Harreld inquiring why Donna had not returned her phone call. On or about March 28, 2017, S.C. emailed Harreld requesting assistance as she had not received a call from Appellant despite being told she would receive a call once Appellant researched the issue. On or about April 4, 2017, S.C. emailed

Harreld informing him no one would provide any information regarding Decedent's cremated remains. This was the last communication S.C. had with Appellant.

On or about April 20, 2017, a complaint was filed with the South Carolina Department of Labor, Licensing, and Regulation (Department). The complaint alleged Appellant retained possession of Decedent's cremated remains since October, 2016, and Appellant refused to respond to the inquiries of Decedent's family since February, 2017. The case was assigned to Investigator Meadows (Meadows) to investigate the complaint's allegations. On or about October 12, 2017, Appellant forwarded a copy of their file for Decedent which included a call log showing attempted calls to S.C. and P.D. through the end of October, 2016, a time prior to S.C.'s communication with Harreld. On or about October 17, 2017, in response to the Notice of Complaint, Appellant provided a written statement to Meadows in which Appellant, through its then manager, stated the family of Decedent "has made no effort of any kind to cooperate or assist with obtaining the necessary documentation to complete the required documentation to complete the file." The response further provided that, but for the coroner getting involved, Decedent's cremation could not have gone forward and that Decedent's family "repeatedly received requests to assist us in handling this matter responsibly and to date the requests have been ignored." Finally, the response provided that since her February 2, 2017 email, S.C. made no attempts to provide the required documentation, payment, or direction for Decedent's remains.

On or about January 9, 2018, Appellant located additional paperwork related to Decedent's cremation and emailed the paperwork to Meadows. This paperwork included the signed and notarized cremation authorization form S.C. faxed to Harreld on November 17, 2016. The cremation authorization form provided that Appellant was authorized to dispose of Decedent's remains by releasing them to his agent, which was designated as S.C. S.C. also faxed Appellant her driver's license and a fax cover sheet that included a message to Harreld. In the message, S.C. provided, in pertinent part:

If you have any further questions please contact me. I know my brother was receiving SSI/SSDI and I know here in Maryland if a person is receiving that they pay for the cost. I am not sure how South Carolina works. You have my email so please keep in contact. I am sorry that his girlfriend of 16 years [P.D.] would not return your calls (she stopped taking mine about 3 weeks ago as well.)

At the August 31, 2022 hearing, S.C. testified she sent back the cremation authorization form she received, but she did not receive a Statement of Funeral Goods and Services, which was a contract to perform funeral services. S.C. also testified she learned of P.D.'s passing in February, 2017, during the process of attempting to contact P.D. regarding Decedent's arrangements. S.C. testified she did not know where Decedent's remains were prior to being questioned at the hearing by a member of the Board, when she was asked if she knew Decedent's cremated remains were interred at a cemetery. At the hearing, Appellant introduced into the record two Statement of Funeral Goods and Services contracts, neither of which were signed by any party. Teresa Mercer (Mercer), who was Appellant's manager, chief financial officer, funeral director, and advanced planner, testified that when the authorization form was sent, the contract would have also been sent. Mercer testified P.D. did not respond to any of Appellant's attempts to contact her. Mercer testified she only learned of P.D.'s passing on the day of the hearing. Mercer testified Decedent's cremated remains were interred at Forest Lawn, in South Carolina.

The Board found the State met its burden of proving Appellant was in violation of section 32-8-345(C) because Appellant failed to deliver Decedent's remains to Decedent's agent, S.C., as instructed on the cremation authorization form signed by S.C. The Board found S.C.'s testimony that she did not receive a Statement of Funeral Goods and Services credible and found Appellant could not rely on its failure to provide S.C. the contract to then assert S.C. failed to provide proper instruction on the handling of Decedent's cremated remains. The Board found the State met its burden of proving Appellant was in violation of S.C. Code Ann. section 40-1-110(1)(f) (2011) because Appellant committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public when Appellant failed to communicate adequately with S.C. Finally, the Board found the term "dead human remains" as used in S.C. Code Ann. section 40-19-110(9) (2011) is properly understood to include human remains and cremated remains.

STANDARD OF REVIEW

This case is before the Court as an appeal of an agency action. As such, the Administrative Law Judge sits in an appellate capacity under the Administrative Procedures Act (APA), rather than as an independent finder of fact. S.C. Code Ann. § 1-23-600(D) (Supp. 2022). The provisions of the APA, specifically S.C. Code Ann. section 1-23-380(5) (Supp.

2022), govern the circumstances in which an appellate body may reverse or modify an agency decision. That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Id.

A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 641, 321 S.E.2d 63, 68 (Ct. App. 1984). The fact the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's finding from being supported by substantial evidence. Waters v. S.C. Land Resources Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Corp., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996), citing Kearse v. State Health & Human Servs. Fin. Comm'n, 318 S.C. 198, 456 S.E.2d 892 (1995). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995) (citing Gibson v. Florence Country Club, 282 S.C. 384, 318 S.E.2d 365 (1984)). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 312 S.C. at 226, 467 S.E.2d at 917 (citing Hamm v. AT&T, 302 S.C. 210, 394 S.E.2d 842 (1990)).

DISCUSSION

Failure to Deliver Decedent's Cremated Remains to S.C.

Appellant asserts it did not receive specific instructions on the manner of delivery of Decedent's cremated remains to S.C. within sixty days of the cremation. Appellant argues this delay in providing specific instructions entitled Appellant to dispose of Decedent's cremated remains in any way permitted under section 32-8-345 and absolves Appellant of the responsibility to deliver Decedent's cremated remains to S.C., Decedent's agent. For the following reasons, the Court disagrees.

Upon completion of the cremation process, if the crematory authority has not been instructed to arrange for the mailing, interment, inurnment, or scattering of the cremated remains, the crematory authority shall deliver in person or mail the cremated remains accompanied by the cremation certificate to the designee specified on the cremation authorization form. If no designee is specified, the cremated remains must be delivered in person or mailed to the decedent's agent. The cremated remains must be delivered in person or delivered to the United States Post Office or to a bonded licensed courier service to be sent by registered and return receipt requested mail. Upon receipt of the cremated remains accompanied by a photocopy of the Burial Transit Permit and Cremation Certificate, the individual receiving them may transport and dispose of them in any manner in accordance with this section. After delivery in person or to the United States Post Office or to a bonded, licensed courier service, the crematory authority is discharged from any legal obligation or liability concerning the cremated remains.

Section 32-8-345(C).

If after a period of sixty days from the date of cremation the decedent's agent has not instructed the funeral establishment or crematory authority to arrange for final disposition of the cremated remains or claimed the cremated remains, the funeral establishment or crematory authority may dispose of the cremated remains in any manner permitted by this section.

Section 32-8-345(D).

Appellant argued S.C. failed to submit a Statement of Funeral Goods and Services. Appellant relied on S.C.'s failure to provide a Statement of Funeral Goods and Services when it argued S.C. failed to communicate instructions to Appellant as to the final disposition of Decedent's remains within sixty days. The Board found S.C.'s testimony that she never received a Statement of Funeral Goods and Services from Appellant credible. The Court may not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact. § 1-23-380(5). Therefore, the Court is bound by the Board's finding that S.C. did not receive a

Statement of Funeral Goods and Services. Additionally, Appellant possessed a signed and notarized cremation authorization form submitted by S.C. on November 17, 2016, designating S.C. as Decedent's agent and authorizing Appellant to dispose of Decedent's remains by releasing the remains to S.C. Appellant possessed this cremation authorization prior to November 22, 2016, when Appellant obtained a cremation permit from the Greenville County Coroner's Office to proceed with the cremation of Decedent's remains. Appellant also knew S.C.'s contact information because Harreld was able to communicate with S.C. via email. The Board reasonably concluded from these facts that Appellant knew or should have known S.C. was Decedent's agent prior to Decedent's cremation and Appellant failed to follow S.C.'s instructions regarding the disposition of Decedent's remains. Therefore, the Board did not err when it concluded Appellant violated section 32-8-345(C) by failing to deliver Decedent's cremated remains to S.C. There is ample evidence in the record to support each of the Board's factual findings.

Section 40-19-310(A) Exemption for Paupers

Appellant next argues the Board erred because it failed to consider section 40-19-310(A), which provides, "The provisions of [the Funeral Board Practice Act] do not apply to the preparation and burial of dead bodies of paupers or of inmates of state institutions when the paupers or inmates are buried at the expense of the State." Mercer testified that Decedent was cremated as a pauper and Appellant received no compensation from any source. There is no evidence in the record with respect to whether Decedent was buried at the expense of the State. Appellant did not specifically raise the issue of whether section 40-19-310(A) barred the application of the Funeral Board Practice Act and the Board did not rule on the issue. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Therefore, this issue is not preserved on appeal.

Definition of "Dead Human Body"

Finally, Appellant argues Decedent's cremated remains are not a "dead human body."

The board may refuse to issue or renew or may suspend or revoke the license of a funeral director or embalmer or may place the licensee on probation after notice and a hearing for unprofessional conduct which includes: . . . refusing to properly release a dead human body to the custody of the person or entity who has the legal right to effect a release

Section 40-19-110(9).

South Carolina has long recognized the rule that an opinion or construction of a statute by an agency that is in charge of enforcing the statute should be given great deference. “[T]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.”

Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 26, 579 S.E.2d 334, 338 (Ct. App. 2003) (citing Brown v. S.C. Dep’t of Health & Env’tl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002)). “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Id.* “The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.” *Id.* at 91, 533 S.E.2d at 584.

The Board found the reference to a “dead human body” in section 40-19-110(9) is properly understood to include human remains and cremated remains. Specifically, the Board noted S.C. Code Ann. section 32-8-305(9) (2007) defines “Cremation” as “the technical process using heat and flame that reduces human remains to bone fragments” Section 32-8-305(22) defines “Human remains” as “the body of a deceased person, including any form of body prosthesis that has been permanently attached or implanted in the body.” Section 32-8-305(8) defines “Cremated remains” as “all human remains recovered after the completion of a cremation.”

Appellant admits Decedent’s remains are now cremated remains, but argues these cremated remains are no longer a “dead human body.” However, based on the above statutory definitions, the following inferences arise. First, all cremated remains are human remains. Second, all human remains are the body of a deceased person. Finally, all cremations are performed on a dead human body. The statutory definition of “Cremation” does not list any products of the process other than “bone fragments.” Since cremated remains are the human remains recovered after cremation and bone fragments are the only output of the cremation process described in the definition of “Cremation,” it would be absurd to assert human bone

fragments are not “Cremated remains” pursuant to section 32-8-305(8). Therefore, the bone fragments referred to in the definition of “Cremation” must also be cremated remains.

Appellant’s argument that Decedent’s cremated remains are no longer a dead human body does not logically follow from these facts. Since Appellant admits Decedent’s remains are now cremated remains, Decedent’s cremated remains are also human remains. Human remains are “the body of a deceased person.” Therefore, cremated remains are also “the body of a deceased person.” Since “dead human body” and “the body of a deceased person” plainly mean the same thing, Decedent’s cremated remains are a dead human body according to South Carolina law. Since the Board’s construction of section 40-19-110(9) and its applicability to cremated remains is supported by the statutory definitions of “Cremated remains,” “Cremation,” and “Human remains,” there is no compelling reason for the Court to reject the Board’s interpretation.

ORDER

IT IS THEREFORE ORDERED that the Final Order of the Board of Funeral Service is hereby **AFFIRMED**.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

June 6, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

June 6, 2023
Columbia, South Carolina

