

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Nov 08 2023

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
SC ADMINISTRATIVE LAW COURT

Case No.: 2023-001342

Michael Carwane,Appellant,

VS

South Carolina Department of Juvenile Justice, Respondent.

INITIAL BRIEF OF RESPONDENT

Eugene H. Matthews, S.C. Bar No. 10193
RICHARDSON PLOWDEN & ROBINSON, P.A.
Post Office Drawer 7788
Columbia, South Carolina 29202
T: (803) 771-4400
F: (803) 779-0016
Email: gmatthews@richardsonplowden.com

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

Table of Authorities ii

Statement of the Issues on Appeal 1

Statement of the Case..... 1

Statement of the Facts3

Standard of Review.....3

Arguments

 I. The Decision of the Administrative Law Court to deny a Motion to
 Enforce a Subpoena is not appealable4

 II. The Administrative Law Court correctly dismissed Appellant’s
 request for injunctive relief regarding enforcement of subpoenas issued
 in a matter before the State Employee Grievance Committee.5

Conclusion6

TABLE OF AUTHORITIES

Allen v. S.C. Dep’t of Corr., 2019 WL 7369263, at *1 (S.C. App. Dec. 31, 2019).....4

Entec Polymers, LLC v. Stabl Corp. Inc., 2008 WL 9841749, at *1 (S.C. App. June 11, 2008).....4

Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005)4

Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986)5

Hamm v. S.C. Pub. Serv. Comm’n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994)5

Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993).....4

S.C. Dep’t of Corr. v. Mitchell, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (S.C. App. 2008).....4

Tucker v. Honda of South Carolina Mfg., 354 S.C. 574, 582 S.E.2d 405 (2003)5

Tucker, 354 S.C. at 577, 583 S.E.2d at 406-07.....5

OTHER:

ALC Rule 11B2

S.C Code Ann. § 1-23-330(1)1

S.C. Code Ann. § 1-23-610(B)3, 4

S.C. Code Ann. § 14-3-3304, 5

S.C. Code §14-3-330(2)(a)5

S.C. Reg. § 19-718.07(D)(2)4

STATEMENT OF ISSUES ON APPEAL

- I. **IS THE DECISION OF THE ADMINISTRATIVE LAW COURT TO DENY A MOTION TO ENFORCE A SUBPOENA APPEALABLE?**

- II. **DID THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISS APPELLANT'S REQUEST FOR INJUNCTIVE RELIEF REGARDING ENFORCEMENT OF SUBPOENAS ISSUED IN A MATTER BEFORE THE STATE EMPLOYEE GRIEVANCE COMMITTEE?**

STATEMENT OF THE CASE

On March 8, 2023, Appellant filed a Motion to Compel with the Administrative Law Court (“ALC”) requesting injunctive relief. Specifically, Appellant requested enforcement of subpoenas issued to a number of public entities, including the South Carolina Department of Juvenile Justice (“SCDJJ”), pertaining to his appeal of his termination from employment before the State Employee Grievance Committee (“Committee”). ALC Docket No. 23-ALJ-30-0111-IJ. The Committee also issued subpoenas to the State Accident Fund (“SAF”) and the Saluda Police Department (“SPD”).

In April 2023, each of the agencies filed responses to the Appellant’s request. SCDJJ filed its response arguing that (1) Appellant had failed to properly serve it with the motion before the ALC pursuant to ALC Rule 11B, (2) Appellant had failed to timely serve SCDJJ with the subpoena, and (3) relevant information in the custody and control of SCDJJ had already been provided to Appellant and to the Committee. (SCDJJ Response to Motion to Compel, p. 1).

Substantively, SCDJJ argued that the documents subpoenaed by Appellant requested were duplicative, irrelevant, and inadmissible under S.C Code Ann. § 1-23-330(1). Committee Exhibit #1 in the still-pending grievance appeal is currently now 321 pages long, the majority of which were submitted by Appellant. The grievance record already includes copies of complaints and investigations relevant to his termination, including Appellant’s own complaints. The information requested in the subpoena is duplicative or irrelevant – including all parts of his personnel file or

“all contacts with the State Accident Fund” – have no bearing on the matter before the State Employee Grievance Committee. (SCDJJ Response to Motion to Compel, p. 2).

On June 19, 2023, Administrative Law Judge S. Philip Lenski issued an “Order of Dismissal,” noting that he had received responses from each of the three agencies receiving Appellant’s subpoenas.¹

On June 29, 2023, Appellant filed an “Appeal to Order of Dismissal” that the ALC treated as a Motion for Reconsideration pursuant to ALC Rule 29D. By Order dated July 19, 2023, the ALC denied the appeal. (Order Denying Motion for Reconsideration, p. 2).

On August 17, 2023, the ALC issued a memorandum noting that it had received an “Appeal to Order Denying Motion for Reconsideration” from Appellant. The ALC returned the documents to Appellant, noting that he would need to file an appeal of the decision in accordance with the South Carolina Appellate Court Rules. (ALC Memorandum dated August 17, 2023).

On August 21, 2023, Appellant filed a “Notice of Appeal” with this Court, but continued to serve the Respondent’s counsel at the wrong address (220 Executive Center Drive, Columbia, SC 29210), despite being fully aware of the correct address (1900 Barnwell Street, Columbia, SC 29201). (Notice of Appeal and “Proof of Service” dated August 21, 2023).

On or about September 25, 2023, Appellant filed a document entitled “Initial Brief,” although Appellant again served Respondent’s counsel at the wrong address (220 Executive Center Drive, Columbia, SC 29210), despite being fully aware of the correct address (1900 Barnwell Street, Columbia, SC 29201).

SCDJJ now files Respondent’s Initial Brief.

¹ The Order notes that Appellant had not “filed a reply nor responded to the any emails from the court.” (Order of Dismissal, p. 1, n. 2).

STATEMENT OF RELEVANT FACTS

Appellant's Initial Brief includes no separate "Statement of Facts" apart from his "Statement of the Case."

In his Brief, Appellant appears primarily to accuse unnamed staff members of the Administrative Law Court of "misleading" him when he/she/they allegedly told him "that a written rebuttal to the Respondent's response was optional. [Appellant], thus, opted to hold that debate for the Court's review date, as the [Appellant] had been unsuccessful with all prior attempts to discuss the issue..." (Appellant's Initial Brief, p. 3). He also alleges that he "was given the expectation by the Court that a hearing would be held to review the facts of the initial petition to the Court seeking Injunctive Relief regarding a Grievance process to convene [before the State Employee Grievance Committee]." (Appellant's Initial Brief, p. 4). He does not indicate who gave him this information, or why it might be relevant to this appeal.

Appellant also asserts, without any supporting evidence, that the subpoenas he requested from the State Employee Grievance Committee were issued with "prior ratification of the legal department of the reviewing SC Human Resource Administration [*sic*]." (Appellant's Initial Brief, p. 5). His only other factual assertion is that opposing counsel for the agencies receiving the subpoenas have engaged in "dubious lawyer tactics." (Appellant's Initial Brief, p. 5).

STANDARD OF REVIEW

Generally, S.C. Code Ann. § 1-23-610(B) defines the standard of review of an appeal from an administrative agency to the Administrative Law Court's order. The Court of Appeals must confine its review to the record, and may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. Rather, the Court

of Appeals may affirm the decision or remand the case for further proceedings, or reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

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

S.C. Dep't of Corr. v. Mitchell, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (S.C. App. 2008) (S.C. Code Ann. § 1-23-610(B) sets “forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency.”); *Allen v. S.C. Dep't of Corr.*, 2019 WL 7369263, at *1 (S.C. App. Dec. 31, 2019).

However, this appeal does not concern the ALC’s review of a “final agency decision.” Rather, the ALC is the tribunal charged with initially reviewing a request of an appellant to enforce a subpoena issued in a matter before the State Employee Grievance Committee. S.C. Reg. § 19-718.07(D)(2). In that regard, the order of the ALC is not appealable. *See* S.C. Code Ann. § 14-3-330 (restricting appellate review of interlocutory orders); *Entec Polymers, LLC v. Stabl Corp. Inc.*, 2008 WL 9841749, at *1 (S.C. App. June 11, 2008).

ARGUMENT

I. THE DECISION OF THE ADMINISTRATIVE LAW COURT TO DENY A MOTION TO ENFORCE A SUBPOENA IS NOT APPEALABLE.

Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final. *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993); *Ex parte Wilson*, 367 S.C. 7, 12,

625 S.E.2d 205, 208 (2005). In that regard, the order of the ALC regarding enforcement of a subpoena is not appealable. S.C. Code Ann. § 14–3–330.

An order compelling discovery, or to enforce or quash a subpoena, does not ordinarily involve the merits of the case and may not be appealed. See *Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986); *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994); *Tucker v. Honda of South Carolina Mfg.*, 354 S.C. 574, 582 S.E.2d 405 (2003).

Discovery orders can be appealed in two circumstances: (1) “after the trial court holds a party in contempt,” *Tucker*, 354 S.C. at 577, 583 S.E.2d at 406-07, or (2) when the order affects substantial rights which in effect determine the action and prevent a judgment from which an appeal might be taken or discontinues the action. S.C. Code §14-3-330(2)(a). Neither instance is conceivably present in the instant case.

For these reasons, Appellant’s petition is interlocutory and must be dismissed.

II. THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED APPELLANT’S REQUEST FOR INJUNCTIVE RELIEF REGARDING ENFORCEMENT OF SUBPOENAS ISSUED IN A MATTER BEFORE THE STATE EMPLOYEE GRIEVANCE COMMITTEE.

It is, frankly, difficult to follow Appellant’s arguments. While Appellant purports to offer five (5) separate arguments in his Initial Brief, he appears to make only two general arguments. First, he argues that unnamed ALC staff falsely promised him in a telephone conversation that he would be entitled to a hearing on his Motion to Compel. (Appellant’s Initial Brief, p. 7). Second, he claims that the ALC made errors “due to the deceptive nature” of the responses filed by opposing counsel with the ALC. (Appellant’s Initial Brief, p. 11). Neither argument is persuasive.

As an initial matter, Appellant’s arguments rely on imagined evidence that is not – and cannot – be in the record on appeal. Appellant references a conversation between himself and the ALC staff upon which he purportedly relied, but there is no evidence to substantiate the existence

or content of these conversations, and certainly no grounds to permit him to ignore duties to submit responses to the ALC. In any event, Appellant has presented no argument or evidence supporting the principle that he is entitled to an oral hearing before the ALC.

Further, while Appellant freely engages in *ad hominem* attacks on the counsel for SCDJJ, SAF, and SPD, these attacks do not amount to a substantive argument. Rather, they exemplify Appellant's tendency to attribute ill motives or deeds to anyone who he regards as an adversary, or who do not respond to his requests as he wishes. Appellant also directs these *ad hominem* attacks against the staff of the ALC, who Appellant baselessly accuses of attempting to "mislead" him.


In any event, there is no evidence in the record that the ALC erred in denying Appellant's motion to enforce the subpoenas at issue, and Appellant enjoys no entitlement to a face-to-face hearing before the ALC to make his arguments. Most importantly, Appellant has made no showing that he is entitled to enforcement of the subpoena on substantive grounds.

For these reasons, Appellant's petition must be dismissed.

CONCLUSION

For the reasons set forth above, Appellants respectfully requests that this Court deny appellant's Appeal, and for any other such relief as this Court deems just and proper.

Respectfully submitted,



Eugene H. Matthews, S.C. Bar No. 10193
RICHARDSON PLOWDEN & ROBINSON
Post Office Drawer 7788
Columbia, South Carolina 29202
T: (803) 771-4400
F: (803) 779-0016
Email: gmatthews@richardsonplowden.com
COUNSEL FOR RESPONDENT

November 6, 2023