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May 02 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Phillip Lenski, Administrative Law Judge

[Case No. 23-ALJ-22-0379-AP]

Appellate Case No. 2024-000251

SC Dept of Employment & Workforce and
Wells Fargo & Co. Inc.,

Respondent,

v.

Bridgette Chabot,

Appellant.

RETURN TO APPELLANT'S MOTION FOR PRESERVATION OF EVIDENCE

The Appellant's Motion for Preservation of Evidence includes a list of relevant evidence that may be subpoenaed and entered if granted a Trial De Novo. Appellant requested a reversal OR a Trial De Novo in her Notice of Appeal to the SC Court of Appeals, received by the court on March 7, 2024: Trial De Novo under SC Section 18-7-160: "Either party may move for a new trial in the appellate court." In accordance with SC Court Rule 59: (a) **Grounds.** ... (2) ... On a motion for a new trial in an action tried without a jury, the court may open the judgment if one

has been entered, take additional testimony, amend findings of fact and conclusions of the law or make new findings and conclusions.”

The Appellant’s Motion to Preserve Evidence comes after the Notice of Appeal; the foundation of the appeal and the request for a reversal of the original decision to deny her unemployment benefits is based on the stance that the decision was clearly erroneous and the Hearing Officer abused discretion: “the Appellant was without a fair trial under Section 1-23-380(5) where 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: (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.” There were no factual findings or substantial evidence to support a misconduct claim against the Appellant.” *Alden R. Barber v. SC Dept of*

Employment & Workforce Docket No. 11-ALJ-22-0487-AP decided by Honorable Deborah

Brooks Durden on February 21, 2012 :

“The Appeal Tribunal with or without notice to any of the parties, may take such additional evidence at the hearing as it deems necessary. After a hearing and prior to actually rendering the decision, the Appeal Tribunal with notice to the interested parties as provided for in Appeal Regulation 47-51, A.5, may call the parties and any witnesses to appear before it for the taking of such additional evidence as it deems necessary. The Hearing Officer’s claim that **no additional exhibits or documents may be submitted after the conclusion of the hearing is an error of law that clearly misstates the authority vested in the Appeal Tribunal by the applicable statutes and regulations.** An abuse of discretion arises where the deciding judge was controlled by some error of law or where his order, based upon factual, as distinguished from legal conclusions, **is without evidentiary support.** Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 163 (S.C. Ct. App. 1988). Moreover, a failure to exercise discretion amounts to an abuse of that discretion. Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997). When a trial judge is vested with discretion but his ruling reveals no discretion was in fact exercised, an error of law has occurred. Balloon Plantation, Inc. v. Head Balloons, Inc., 303 S.C. 152, 155, 399 S.E.2d 439, 441 (1990).”

The list of evidence included in the Motion to Preserve evidence is relevant in a new trial, a Trial De Novo because: 1. Any email and telephone conversations that involved Branch Manager Tracy McCarthy could show collusion/gossip: her decision to terminate the Appellant Chabot based on personal feelings rather than just cause. Email correspondence between McCarthy and other employees such as Nati and Murphy may show collusion over the incident. 2. It may also reveal the credibility of the witness Branch Manager Tracy McCarthy who served as Wells Fargo's only "witness" during trial but who, was not present during the week of the transaction the Appellant was terminated for. 3. Tracy McCarthy, the sole hearsay witness, testified extensively on surveillance footage that the Appellant Chabot contested repeatedly on the record during the Unemployment trial that took place June 27, 2023. The surveillance footage however, was not entered in to evidence and not found in the record. The surveillance footage on February 2, 2023, was what McCarthy testified on to prove the Appellant completed the transaction and therefore was responsible for misconduct, although McCarthy was not present nor was McCarthy questioned by the Hearing Officer if she watched or reviewed the footage she testified on. The Appellant Chabot contested multiple times that the surveillance footage would show Tyler Faizo completing the transaction and therefore this evidence is imperative to whether Chabot was unjustly terminated according to Wells Fargo's own disciplinary policy. As no substantial evidence was provided during the June 27, 2023 trial by the Respondents, nor did the Hearing Officer substantiate the surveillance footage or request the footage although the Appellant continuously contested McCarthy's hearsay testimony and requested the footage to be entered, the Appellant will move to subpoena the surveillance footage and any other necessary recordings/documents/witnesses if a Trial De Novo be granted. Furthermore, 4. Phone records would show the receipt of Tyler Faizo calling from his station phone to the N. Myrtle Beach Branch to have someone approve his transaction that Appellant

Chabot was terminated for. 5. Investigative notes by Investigator Seth Bowers should show what he considered in his investigation, including if he did in fact actually pull or watch the surveillance footage that McCarthy testified on. It should show Tyler's account and if Tyler Faizo admitted to doing the transaction or if he scapegoated the situation. It will also show his correspondence with HR over the investigation. 6. Any correspondence; email or telephone conversation when McCarthy's decision to coach Tyler Faizo on how she wanted him to use the policy after the transaction in question took place is relevant as it demonstrates that McCarthy did consider him involved in the transaction and why she personally decided not to discipline him as the teller who completed the transaction. That evidence also reveals that the policy in question was not a reasonable or well-known policy, otherwise, a coaching session would not have been necessary.

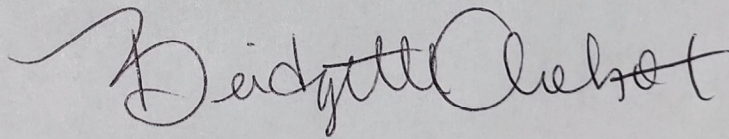
All evidence outlined in the Preservation Letter /Motion is relevant and should be considered. This omitted evidence can be subject to subpoena in a future Trial De Novo and the Appellant also reserves the right to file a civil suit outside of this employment claim; therefore the Appellant moves to recognize all relevant evidence outlined in the original motion.

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All evidence outlined in the Preservation Letter /Motion is relevant and should be considered. This omitted evidence can be subject to subpoena in a future Trial De Novo and the Appellant also reserves the right to file a civil suit outside of this employment claim; therefore the Appellant moves to recognize all relevant evidence outlined in the original motion.

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FORM 7

PROOF OF SERVICE FOR: RETURN TO APPELLANT'S MOTION FOR
PRESERVATION OF EVIDENCE

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

[In The Supreme Court]

Appellate Case No. 2024-000251

South Carolina Department of Employment and Workforce and Wells Fargo &
Company, Inc. Respondents,

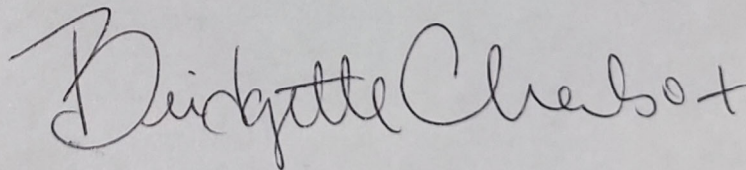
v.

Bridgette Chabot, Appellant.

PROOF OF SERVICE

I certify that I have served the **Return to Appellant's Motion for Preservation of Evidence** on SC Dept. of Employment & Workforce and on Wells Fargo & Co., by depositing a copy of it in the United States Mail, postage prepaid, on May 2, 2024, addressed to their attorneys on record: Ben Cook ESQ, SC Dept. of Employment & Workforce, P.O. Box 8597 Columbia, SC 29202 and Wells Fargo's counsel Matthew Korn & Andreas Mosby of Fisher & Phillips, LLP, 1320 Main Street, Ste 750 Columbia, SC 29201.

May 2, 2024



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