THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Administrative Law Court Judge

Appellate Case No. 2020-001689
Case No. 2020ALJ300064AP

South Carolina Technical College System, ... Appellant,

v.

Carla Jackson and South Carolina
Department of Administration, ... Respondents,

Of Whom, Carla Jackson is the..... Respondent.

MEMORANDUM IN SUPPORT OF
PETITION FOR REHEARING
DIRECTED AT OPINION RE-FILED AUGUST 14, 2024

The Appellant South Carolina Technical College System ("SCTCS") has petitioned this Court for a rehearing of the Court's recently re-filed decision in *South Carolina Technical College System v. Jackson, et al.*, Op. No. 2024-UP-189 (S.C. Ct. App. re-filed August 14, 2024).

Special Note

The Court of Appeals issued its original opinion on May 29, 2024. On June 13, 2024, the Appellant filed a timely Petition for Rehearing, and the Court ordered the Respondent to file a return. Thereafter, by order filed August 14, 2024, the Court of Appeals granted the Appellant's

Petition for Rehearing although the ultimate decision was not changed, meaning that the Court of Appeals still affirmed the decision of the Administrative Law Court. The Court of Appeals withdrew the opinion filed May 29, 2024, and after granting the Petition for Rehearing, the Court issued a new opinion on August 14, 2024. The new opinion does not address each of the grounds raised by the Appellant in its Petition for Rehearing filed June 13, 2024. Therefore, in order to ensure that it has complied with Rule 221(b) and Rule 242(d)(1), SCACR, the Appellant is filing an additional Petition for Rehearing directed at the new opinion issued on August 14, 2024. The Appellant is doing so because the initial Petition for Rehearing was granted; yet, the ultimate resolution did not change and each of the Appellant's grounds for rehearing have not been addressed.

In the undersigned counsel's experience, when the Court of Appeals withdraws an opinion and issues a new opinion without changing the result, the Court typically denies rather than grants the petition for rehearing. That has not occurred in the case at bar. Rather, this case is more akin to what occurred in the *Shirley's Iron Works, Inc. v. City of Union* litigation,[1] where the Court of Appeals issued three different opinions after the filing of two petitions for rehearing. In that example, because the Court granted a petition for rehearing and issued a new opinion, it was deemed necessary to file a successive petition for rehearing directed at each new opinion, and the Court acted on each such petition. As a result, the Appellant feels constrained to file this Petition for Rehearing in order to ensure compliance with Rule 221(b) and Rule 242(d)(1), SCACR, thereby making certain that issues raised but not addressed are deemed preserved for further appellate review.

[1] *See*, *Shirley's Iron Works, Inc. v. City of Union*, 2009 WL 4796073 (Ct. App. 2009); *Shirley's Iron Works, Inc. v. City of Union*, 387 S.C. 389, 693 S.E.2d 1 (Ct. App. 2010); and *Shirley's Iron Works, Inc. v. City of Union*, 397 S.C. 584, 726 S.E.2d 208 (Ct. App. 2010).

Grounds for Rehearing

I. The Administrative Law Court erred in finding that the Respondent's appeal of her termination was covered by the State Employee Grievance Procedure Act, and in finding as a result that the State Employee Grievance Committee and the Court had subject matter jurisdiction over the Respondent's grievance appeal.

A. Remand to the Committee

The Appellant SCTCS contends that the State Employee Grievance Committee and the Administrative Law Court ("ALC") lacked subject matter jurisdiction because the Respondent Carla Jackson did not file her appeal under a full-time equivalent ("FTE") position that was covered by the State Employee Grievance Procedure Act and, therefore, had no right to a grievance hearing under the Act. SCTCS contends that the ALC erred in its remand to the State Employee Grievance Committee for additional fact-finding on a jurisdictional issue and in then applying the substantial evidence standard of review.

In adjudicating these issues, the Court of Appeals applied the incorrect standard of review. The Court applies the "substantial evidence" standard despite the well-settled principle that issues of subject matter jurisdiction, including findings of fact incidental to the jurisdictional issues, are reviewed *de novo.* As such, this Court's review as to such jurisdictional facts is governed by the preponderance of evidence standard rather than the substantial evidence standard. *Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 647 S.E.2d 691, 694-695 (Ct. App. 2007). As this Court has held:

> Judicial review of a Workers' Compensation decision is governed by the substantial evidence rule of the Administrative Procedures Act. However, if the factual issue before the Commission involves a jurisdictional question, this court's review is governed by the preponderance of evidence standard. Consequently, our review is not bound by the Commission's findings of fact on which jurisdiction is based. A reviewing court has both the power and duty to review the entire record, find jurisdictional facts without

> regard to conclusions of the Commission on the issue, and decide the jurisdictional question in accord with the preponderance of evidence.

647 S.E.2d at 694-695. *See also*, *Wilkinson v. Palmetto State Transportation Co.*, 382 S.C. 295, 676 S.E.2d 700, 702 (2009) ("[b]ecause the question is jurisdiction, the Court may take its own view of the preponderance of the evidence"). In short, this Court applied an incorrect standard of review in reviewing the jurisdictional facts as found by the tribunals below.

Additionally, the Court erred in concluding that the Appellant's challenge to the ALC's standard of review is not preserved for appellate review. Even if that challenge was made for the first time on appeal, as this Court indicated, the issue before this Court is indisputably an issue of subject matter jurisdiction which may be raised at any time, including for the first time on appeal. The case of *State v. Oxner*, 391 S.C. 132, 705 S.E.2d 51 (2011), as cited by this Court, is inapposite and not controlling. In *Oxner*, the Supreme Court ruled that the appellant was required to request the circuit court to *reconsider* its subject matter jurisdiction ruling before appealing the order finding an absence of subject matter jurisdiction. Thus, in *Oxner*, the issue was whether a Rule 59(e) motion was required when a particular jurisdictional ruling was made in the lower court and an issue had been raised but not ruled upon. This case presents a much different scenario. Here, this Court concluded that the Appellant has raised an issue *for the first time on appeal*, and it is in that instance that Rule 59(e) has no application and SCTCS should not be precluded based on well established precedent from raising a new jurisdictional issue for the first time on appeal.

Moreover, in this context, the reliance on *Oxner* is also at odds with another longstanding rule of law holding that the "lack of subject matter jurisdiction in a case may not be waived." *Johnson v. South Carolina Dept. of Probation, Parole, and Pardon Services*, 372 S.C. 279, 641 S.E.2d 895, 897 (2007). Yet, that is exactly what this Court ruled – that SCTCS waived its

challenge to the Committee's subject matter jurisdiction on remand. Thus, the Court is respectfully requested to reconsider its reliance on the very limited rule announced in *Oxner*, which has no applicability to the scenario presented here.

Additionally, the Court erred in holding that "the ALC did not err in remanding to the Committee because the ALC is permitted to remand to make factual findings." (Slip Op. at 4). SCTCS does not challenge the Committee's authority to make factual findings, as the Court seems to suggest. Instead, SCTCS contends that the remand was inappropriate to determine *jurisdictional facts*, which is a question for the court and not the fact-finder. SCTCS relies on the case of *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 431 S.E.2d 631 (Ct. App. 1993), in which this Court explained that "[t]he question of subject matter jurisdiction is a question of law for the court, not a jury question." 431 S.E.2d at 631. This Court further held that "[i]f the facts which give rise to a jurisdiction issue are in dispute, the court, not the jury, must find the facts." *Id*. This Court reaffirmed the long-standing principle that "every court has the power and duty to determine whether it has jurisdiction which includes the power to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction." 431 S.E.2d at 632. In the case at bar, this Court, however, found that the principles articulated in *Chew* are inapplicable in this specific context only because the fact-finder was not a jury. With due respect, this is a distinction without a difference. *Chew* is not limited to a particular type of fact-finder; it applies to any fact-finder whether it is a jury or a lower tribunal. The key principle in *Chew*, which is equally applicable in the present context, is that a court which is determining whether subject matter jurisdiction exists "must find the [jurisdictional] facts." Critically, *Chew* uses the mandatory term "must" which strongly suggests that a court's duty to determine jurisdictional facts is not optional or discretionary.

In sum, on rehearing, this Court is respectfully requested to find that the ALC's remand

for jurisdictional fact-finding was in error, as was the subsequent "review" of the Committee's finding under a substantial evidence standard after remand.

B. Jackson as Interim Dean

The Appellant SCTCS further argues that the preponderance of the evidence supports a finding that Jackson was functioning in the position of Interim Dean of Business, Computers and Related Technologies at the time of her termination, a fact that Jackson herself admitted in the State Employee Grievance Procedure State Appeal Form that she submitted. Accordingly, the State Employee Grievance Committee lacked subject matter jurisdiction to consider Jackson's appeal of her termination. Likewise, the ALC lacked jurisdiction to uphold the Committee's decision.

In addressing this issue, the Court ruled that "there is substantial evidence in the record that Jackson was an administrative coordinator and a covered employee under the Act at the time of her termination." (Slip Op. at 5). The Court's principal error in so holding is the application of the incorrect standard of review, as discussed in detail above. As this Court has previously held, "[a] reviewing court has *both the power and duty* to review the entire record, find jurisdictional facts without regard to conclusions of the Commission on the issue, and decide the jurisdictional question in accord with the preponderance of evidence." *Hernandez-Zuniga,* 647 S.E.2d at 695. (Emphasis added).

The record reflects that Carla Jackson was initially hired by DTC in January 2011, as an Administrative Coordinator in the DTC President's office. Jackson described her primary duties in the Coordinator role as being to "basically manage the operation of the [DTC President's] office[,] to assist the president with the executive level documents in operation of the college, and to assist the executive staff." (R. 194). Jackson was in the Administrative Coordinator

position until October 1, 2015, when she became Interim Dean of Transitional Studies and Distance Education. (R. 195). She admitted that she no longer performed the Administrative Coordinator duties or worked in the President's office as of October 1, 2015, except for a brief period of three months or less immediately thereafter to assist the person who "fill[ed]" her "old position" with the transition into it. (R. 197).

Jackson's supervisor was the DTC President, Dr. Leonard McIntyre, who likewise testified that Jackson left the Administrative Coordinator position once she became Interim Dean and no longer performed the duties of the former position. (R. 190). In her State Employee Grievance Procedure State Appeal Form, Jackson represented that she had "previously" served as "Administrative Coordinator" in the President's office but that she "ha[d] not ... been employed" in that capacity "since October 2015 when she was *promoted to Interim Dean.*" (R. 681-683). (Emphasis added). Additionally, after Jackson became the Interim Dean, the Administrative Coordinator position was filled full time by another employee, Gwendolyn Bamberg. (R. 182-183, 187). That is undisputed.

Moreover, testimony from her supervisor showed definitively that Jackson was not functioning simultaneously as both an Interim Dean and an Administrative Coordinator. The Interim Dean position description was compared with the Administrative Coordinator position description during Dr. McIntyre's questioning by Jackson's counsel. Dr. McIntyre explained that Jackson's duties were dramatically different between the two jobs. (R. 191-192). Most critically, Dr. McIntyre testified that Jackson "absolutely" could not have been serving in both roles simultaneously:

> Jackson's counsel: [A]s the former President of a college, what would be the differences between what she was performing as an Administrative Coordinator and what might merit her receiving more pay for performing these Interim Dean roles.

> Dr. McIntyre: Well, certainly these duties required more credentials, in terms of ... the qualifications. And more accountability, more responsibility. That's basically what I can tell you. There's a big difference between what is expected from one position to the next.
>
> Jackson's counsel: And would it be ... as common sense, that someone couldn't be performing all of these full time roles at the same time, that even if Miss Jackson was keyed as one position she, as a full time job, would only have been doing one of these?
>
> Dr. McIntyre: Absolutely, only one.

(R. 192).

In sum, the preponderance of the evidence reflects that Carla Jackson was not filling more than one position at the time of her termination. She clearly held the Interim Dean position which is not a covered position under the State Employee Grievance Procedure Act.

Moreover, the correct standard of review notwithstanding, this Court overlooked or misapprehended that the record before the Committee also reflects that the Remand Order required the Committee to determine in which position Jackson was *functioning* at the time of her termination. In fact, in her pre-hearing order, the Committee Attorney ruled that the Committee was tasked on remand with "mak[ing] the factual finding about which position Appellant was functioning in." (R. 259). Additionally, the Committee Attorney ruled that the Proposed Instructions for the State Employee Grievance Committee submitted by SCTCS were appropriate and would govern the proceedings. (R. 308-309).[2] Those instructions include the following:

> The Committee's only authority on remand is to determine whether at the time of Appellant's termination she was *functioning* as an Interim Dean or as an Administrative Coordinator and issue a decision reporting this finding of fact to the Administrative Law Court.

[2] After SCTCS submitted proposed instructions, Jackson was asked to provide any objections to the proposed instructions, and no response was received from Jackson. (R. 308).

(R. 302). (Emphasis added). This instruction by the Committee Attorney was never challenged at the Committee hearing or on appeal and, therefore, represents the law of the case. *See*, *First Union National Bank v. Soden*, 333 S.C. 554, 511 S.E.2d 372, 378 (Ct. App. 1998) ("an unchallenged ruling, right or wrong, is the law of the case"). Moreover, statutory law provides that the parties are *bound by the legal rulings by the Committee Attorney*. S.C. Code Ann. § 8-17-340(C) provides in pertinent part:

> The committee attorney shall determine the order and relevance of the testimony and the appearance of witnesses, and shall rule on all motions, and all legal issues. The parties are bound by the decisions of the committee chairman or a designee or the committee attorney insofar as these hearings are concerned.

S.C. Code Ann. § 8-17-340(C).

In the 2020 appeal, the ALC attempted to backtrack from its use of the term "functioning" in the Remand Order. The ALC called its use of the term as "perhaps inartful" and suggested that SCTCS was interpreting that term "too narrowly." (R. 10). Nonetheless, the record reflects that such was the fact-finding that the Committee was tasked to accomplish, even if the ALC after-the-fact maintained that was not its intention. The Committee's decision on remand, nonetheless, focused on Jackson's state job classification of "Administrative Coordinator I" -- which is suggestive of a position that Jackson admittedly was not performing at the time of her termination. (R. 124). In addition to being contrary to the law of the case, as established by the legal rulings of the Committee Attorney, that decision improperly focused on the "label" given Jackson's employment rather than the function that she was fulfilling.

South Carolina law has always focused on substance over labels, and in particular a job function rather than a job title. For instance, in assessing whether a judge is entitled to judicial immunity, the South Carolina Supreme Court has ruled: "In determining whether an act serves a judicial function, the Court must look to the nature and function of the act as opposed to the title

of the person committing the act." *Plyler v. Burns*, 373 S.C. 637, 647 S.E.2d 188, 193 (2007), *citing Forrester v. White*, 484 U.S. 219 (1988). Similarly, in assessing the appealability of an order, the Supreme Court has focused on the substance of the order to be appealed rather than a label given that order. *See*, *Spalt v. South Carolina Dept. of Motor Vehicles,* 423 S.C. 576, 816 S.E.2d 579, 584 (2018) ("[t]he label given to the order is not determinative of its immediate appealability"). Likewise, in the insurance context, the Supreme Court instructs that the substance of an allegation rather than the label attached to it is determinative of insurance coverage. *See*, *Collins Holding Corp. v. Wausau Underwriters Ins. Co.*, 379 S.C. 573, 666 S.E.2d 897, 900 (2008) ("we must look beyond the label of negligence to determine … duty to defend").[3]

Thus, labels or titles are not determinative when assessing what job function is actually being undertaken. That is likewise the case with a state job classification. In the case at bar, it is well established by the evidentiary record that Jackson was functioning as the Interim Dean of Business, Computers and Related Technologies at the time of her termination, a position in which she was not a covered employee under the State Employee Grievance Procedure Act. She no longer held the position of Administrative Coordinator and had not performed those job functions or worked in the President's office as of October 1, 2015, except for a brief period of three months or less immediately thereafter to assist the person who "fill[ed]" her "old position" with the transition into it. (R. 197). Jackson was in the Administrative Coordinator position until October 1, 2015, when she became Interim Dean of Transitional Studies and Distance

[3] *See also*, *Greater Johnstown Area Voc.-Tech. Sch. v. Johnstown Area Voc.-Tech. Educational Association*, 426 A.2d 1203, 1205 (Pa. Cmwlth. Ct. 1981) (holding that teachers who had grievance rights as "professional employees" could not pursue grievances when their contracts affording them duties as Student Congress Advisors were not renewed, insofar as they were "not included within the category of 'professional employees'" when they were "acting in th[e] capacity" of advisors).

Education. (R. 195). Additionally, after Jackson became the Interim Dean, the Administrative Coordinator position was filled full time by another employee, Gwendolyn Bamberg. (R. 121-122, 228). That is undisputed. Nonetheless, the Committee, as also adopted as "fact" by the ALC, concluded in error that Jackson was functioning as an Administrator Coordinator at the time of her termination. (R. 124). In sum, there is an absence of any evidence, including substantial evidence, to support that finding by the Committee and the ALC.

Moreover, in her State Employee Grievance Procedure State Appeal Form, which was completed and signed by her legal counsel, Carla Jackson identified her job on the document's first page only as an "Interim Dean of Business, Computers and Rel[ated Technologies]." (R. 681). Her narrative statement on the Appeal Form confirmed the fact that she held the position of Interim Dean at the time of her termination. (R. 682-683). Specifically, she maintained that she was "an Interim Dean of Business, Computers and Related Technologies at Denmark Technical College," that she had been a "Dean of the College" whose "entire job entail[ed] 'college operations,'" and that she had served as "an Interim Dean of the College since October 2015." (R. 682). Jackson included no mention of holding the position of Administrative Coordinator at the time of her termination. In fact, she stated that she served "previously as Administrative Coordinator." (R. 682). This Court, nonetheless, states in a footnote that Jackson is not bound by the representations made in the Appeal Form. (Slip Op. at 5).

This Court, however, overlooks or misapprehends that the State Employee Grievance Procedure State Appeal Form is the functional equivalent of a pleading. In *Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322 (Ct. App. 1992), this Court held that "parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise." 418 S.E.2d at 323. "The allegations, statements or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or

inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action." *Id*. *See*, *Johnson v. Alexander*, 413 S.C. 196, 775 S.E.2d 697, 700 (2015); *Kitchen Planner, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020). *See also*, *Piers v. Rock Hill School District*, 2017 WL 5255904, *6 (S.C. Workers' Comp. Comm. 2017) (citing *Postal and Elrod v. All*, 243 S.C. 425, 134 S.E.2d 410 (1964) in finding that a workers' compensation claimant was judicially bound by statements made in her Form 50).

Additionally, the Court did not recognize or otherwise address the law of the case doctrine and its binding effect on the instructions given to the Committee at the Remand Hearing.[4] Specifically, the Committee was instructed that parties are "bound by their pleadings" including "any required form used to initiate an appeal." (R. 305). The instruction states as follows:

> Parties are judicially bound by their pleadings. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his or her pleadings, and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the case. A "pleading" includes any required form used to initiate an appeal or other proceeding that constitutes a contested case under the Administrative Procedures Act, including the State Employee Grievance Procedure State Appeal Form.

(R. 301, 305, 308-309).

On this point, the case of *Fisher v. South Carolina Department of Health and Environmental Control*, 309 S.C. 10, 419 S.E.2d 794 (Ct. App. 1992), is particularly instructive and was not addressed by this Court in its decision. In *Fisher*, a discharged public employee

[4] In *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche,* 327 S.C. 238, 489 S.E.2d 470 (1997), the Supreme Court explained that an "unappealed ruling is the law of the case," and the unappealed ruling "should not have been reconsidered by the Court of Appeals." 489 S.E.2d at 472.

claimed she had grievance rights under the State Employee Grievance Procedure Act despite alleging in her complaint that she was in probationary status. This Court concluded that the plaintiff was bound by the statements in her pleadings, and as a result it disregarded the facts she pointed to as evidence of why she should be entitled to a grievance hearing. 419 S.E.2d at 795.

Similarly, in *Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999), another case overlooked by this Court, a medical director alleged in his wrongful discharge complaint that he had been employed by a specific company. However, he later submitted an affidavit in which he claimed he worked for a different entity. This Court observed that the plaintiff was bound by the representation contained in his pleadings about who his employer was, and as a result this Court refused to consider the contents of the affidavit that ran contrary to his earlier statement. 524 S.E.2d at 841 n.1.

The ALC, however, committed reversible error in refusing to apply this rule of law (and the law of the case) to the representations made by Carla Jackson in her Appeal Form – a pleading that was prepared and filed on her behalf by legal counsel, which is an additional consideration that the ALC never mentions nor acknowledges. That Appeal Form was never withdrawn nor amended. Consequently, Jackson should be bound by the representations contained therein. The ALC attempts to distinguish the cases on which SCTCS relies but fails to note any meaningful distinctions. The ALC also claims that there are exceptions to the general rule, but then cites only to the case of *Gary v. Lowcountry Medical Transport, Inc.*, 424 S.C. 18, 817 S.E.2d 291 (Ct. App. 2018), in which this Court recognized a public policy exception to the "doctrine of binding a party to its pleadings." This Court noted that the doctrine is intended "to protect the integrity of the court process," but under the unique circumstances presented "should yield to the overriding policy against bigamous marriages." 817 S.E.2d at 294. In the case at bar, Jackson has not argued, and the ALC did not find, any public policy concern that should

override requiring Jackson to be bound by her pleadings. Thus, it was error for the ALC to disregard this well settled rule of law and to allow Jackson to assert inconsistent positions from her Appeal Form. This Court is respectfully requested to reconsider its footnote rejecting this analysis.

In sum, for each of these reasons, it is clear that the ALC committed reversible error in its analysis of the jurisdictional issues. The record establishes that Carla Jackson held the position of Interim Dean when she was terminated, and that was not a covered position allowing for grievance rights under the State Employee Grievance Procedure Act.

II. The Administrative Law Court erred in refusing to hear the merits of the Appellant's appeal that Denmark Technical College had valid reasons to terminate the Respondent and there was substantial evidence in the record to support that termination decision.

Assuming that the State Employee Grievance Committee and the ALC had subject matter jurisdiction, the ALC also erred in refusing to hear the merits of SCTCS's appeal that Denmark Technical College had valid reasons to terminate Carla Jackson and there was substantial evidence in the record to support that termination decision. To recap, the ALC determined that there were two separate appeals filed which the ALC referred to as the "2018 appeal" and the current appeal filed in March 2020. The ALC ruled that the 2018 appeal ended with the Remand Order issued on June 25, 2019, and that the appeal after the State Employee Grievance Committee issued its decision on remand was a new and separate appeal.

SCTCS has relied on this Court's decision in *Bobo v. Marshane Corp.*, 302 S.C. 86, 394 S.E.2d 2 (Ct. App. 1990), in which this Court held that an appeal from an administrative agency remains pending in the court sitting in an appellate capacity while that court awaits agency compliance with a remand order. This Court, however, concludes that *Bobo* is "inapplicable here." (Slip Op. at 6). Contrary to this Court's ruling, the rule of law applied in *Bobo* should

apply to any court *sitting in an appellate capacity* where a remand is deemed necessary for the appellate court to address the appeal pending before it. The rule of law should be deemed as having application to all appeals under the APA.

Nonetheless, even if *Bobo* is correctly deemed "inapplicable here," SCTCS presented an alternative argument which was not considered or addressed by this Court. As argued in its appellate briefs, regardless of whether the ALC retained jurisdiction or not, it would be a miscarriage of justice to conclude that SCTCS has waived the issues on appeal raised in the 2018 appeal. The Notice of Appeal filed after remand made it clear that SCTCS intended to raise the pre-remand issues asserted in the 2018 appeal. The purpose of a notice of appeal is to provide notice of the orders or issues being appealed. *Mason v. Mason*, 412 S.C. 28, 770 S.E.2d 405, 422 (Ct. App. 2015) (holding that despite errors parties received sufficient notice). That was accomplished with the Notice of Appeal filed by SCTCS. Both the ALC and Carla Jackson were on notice that SCTCS intended to continue its pursuit of the pre-remand issues on appeal. There is no other explanation for the references to "preexisting appeal" and the request to "consolidate" the appeals or otherwise allow for a supplemental record and briefing in the preexisting appeal. (R. 34). If SCTCS's language was inartful in any respect, that constitutes, at worst, a clerical error. However, both this Court and the Supreme Court have held clerical errors in the notice of appeal do not prevent an appeal from proceeding. *See, State v. Scott*, 351 S.C. 584, 571 S.E.2d 700, 701 (2002) (acknowledging that service of the notice of appeal is a jurisdictional requirement, but stating "non-prejudicial clerical errors in the notice are not detrimental to the appeal"); *Weatherford v. Price*, 340 S.C. 572, 532 S.E.2d 310, 313 (Ct. App. 2000) (holding the incorrect reference in the notice of appeal to the motion for reconsideration rather than the final order did not deprive this Court of jurisdiction to hear the appeal and noting the appellant did attach a copy of the appealed order to the notice); *Charleston Lumber Co. v. Miller Housing*

Corp., 318 S.C. 471, 458 S.E.2d 431, 435 (Ct. App. 1995) ("Clerical errors in a notice of appeal do not destroy the appeal"). The Supreme Court has also rejected adherence to notice requirements that elevate form over substance. *See*, *South Carolina Second Injury Fund v. American Yard Products*, 330 S.C. 20, 496 S.E.2d 862, 864 (1998).

Accordingly, justice dictates that SCTCS should be permitted to be heard on all issues raised on appeal, including the pre-remand issues on appeal as briefed as part of the so-called 2018 appeal. This Court erred in failing to even address this alternative argument. On rehearing, the Court is respectfully requested to rule that the decision of the ALC should be reversed and remanded to allow for a full review of those pre-remand issues.

Finally, this Court acknowledged at the close of its opinion that "SCTCS also makes several arguments regarding the merits of its appeal." (Slip Op. at 7). The Court then concluded that "SCTCS's arguments are not properly before this court for review" because "the underlying merits of SCTCS's appeal are unpreserved and the ALC refused to address these arguments." (Slip Op. at 7). SCTCS renews its request that the Court remand for consideration of the merits of its appeal that Denmark Technical College had valid reasons to terminate Jackson and there was substantial evidence in the record to support that termination decision.

CONCLUSION

Based on the foregoing discussion, the South Carolina Technical College System respectfully requests that the Court rehear its decision in this case and reverse the orders of the Administrative Law Court and remand with directions that the Respondent's grievance be dismissed for lack of jurisdiction. In the alternative, the Appellant seeks a remand for consideration of the merits of its appeal that Denmark Technical College had valid reasons to terminate the Respondent and there was substantial evidence in the record to support that termination decision.

Respectfully submitted,

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