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RECEIVED
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SC Court of Appeals

January 9, 2025

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Rita R. Greenawalt and James M. Greenawalt v. Nissan North America, Inc.,
Appellate Case No. 2023-001124

Dear Ms. Kitchings:

The following authorities have come to the attention of Appellants.

Turbeville v. Morris, 203 S.C. 287, 315, 26 S.E.2d 821, 832 (1943) (“‘Arbitrary’ means . . . without adequate determining principle . . . not governed by any fixed rules or standard.”)

Hatcher v. S.C. Dist. Council of Assemblies of God, Inc., 267 S.C. 107, 117, 226 S.E.2d 253, 258 (1976) (quoting Turbeville).

Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985) (following Hatcher and Turbeville) (“A decision is arbitrary if it is . . . without adequate determining principles, or is governed by no fixed rules or standards.”).

Johnson v. Johnson, 296 S.C. 289, 303-04, 372 S.E.2d 107, 115 (Ct. App. 1988) (following Turbeville). The party opposing fees had “rendered the case more difficult” and “further increased the time and expense of litigation.” Id. The Court held,

Despite these facts, the [lower] court, without giving any reason to justify its action, refused to award full fees. A decision lacking a discernible reason is arbitrary and constitutes an abuse of discretion. See Turbeville v. Morris, 203 S.C. 287, 26 S.E.2d 821 (1943). We hold that the court abused its discretion in awarding attorney’s fees in an amount less than actually incurred.

Id.

Daufuskie Island Util. Co. v. S.C. Off. of Regul. Staff, 427 S.C. 458, 832 S.E.2d 572 (2019) (quoting Deese).

Jordan v. Hartford Fin. Grp., Inc., 435 S.C. 501, 505–06, 868 S.E.2d 400, 402 (Ct. App. 2021) (quoting Daufuskie Island Util. Co.). The Court added, “The American tradition of rule of

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law has recognized from its earliest days that a ‘motion to [a court’s] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles.’”

Morris v. BB&T Corp., 438 S.C. 582, 885 S.E.2d 394 (2023).

“We publish this decision to clarify that no court is entitled to the deference associated with the discretion standard of review until that court has earned deference by fulfilling the responsibility of exercising its discretion according to law.” Id. at 585-86, 885 S.E.2d at 396 (following Jordan, 435 S.C. at 507, 868 S.E.2d at 403).

The exercise of discretion [is] to follow a thought process that begins with the trial court’s clear understanding of the applicable law, continues with the court’s sound analysis of the situation before it in light of the law, and ends with the trial court’s ruling that follows the law and is supported by the facts and circumstances. “[D]iscretion is . . . not . . . inclination, but . . . judgment . . . guided by sound legal principles.”

Id. at 587, 885 S.E.2d at 397 (quoting Jordan, 435 S.C. at 505, 868 S.E.2d at 402). “This ‘thought process’ requires analysis, and the ‘discretion’ standard we employ for reviewing [the lower tribunal’s] analysis requires the analysis be explained.” Id. at 588, 885 S.E.2d at 398.

These cases each pertain to Parts VI, VIII, and XI of the Brief of Appellant, Part I of the Brief of Respondent, and Parts I, II.B, II.D and II.E of the Reply Brief.

Copies of the cases are attached.

Thank you.

Sincerely,	
<i>s/Brooks R. Fudenberg</i> Brooks R. Fudenberg	<i>s/C. Steven Moskos</i> C. STEVEN MOSKOS, P.A. C. Steven Moskos 6650 Rivers Ave., Ste 210 N. Charleston, SC 29406 Tel. (843) 763-5297 Steve@moskoslawfirm.com
Attorneys for Appellants	

cc: Blake T. Williams

203 S.C. 287

Supreme Court of South Carolina.

TURBEVILLE et al.

v.

MORRIS et al.

No. 15572.

|

Aug. 25, 1943.

Synopsis

Appeal from Common Pleas Court of Clarendon County; Wm. H. Grimball, Judge.

Suit by Dan E. Turbeville and another, individually and as trustees of Pine Grove Methodist Church at Turbeville, South Carolina, and others, against M. J. Morris and others, for the cancellation of a deed and for an injunction. From the decree both the plaintiffs and the defendants appeal.

Affirmed.

West Headnotes (22)

[1] **Religious Societies** 🔑 Sale and conveyance

Ordinarily, trustee of church property has no power to convey trust estate unless such power is conferred by instrument creating the trust, or under a court order in a proper proceeding, or where duly authorized by organic law of the church.

1 Case that cites this headnote

[2] **Religious Societies** 🔑 Sale and conveyance

Where the discipline of the Methodist Episcopal Church, South, set forth in detail what business might be taken up at certain conferences, but gave conferences no power to authorize trustees to dispose of church property, attempted conveyance of lot and building of local congregation by three of the trustees thereof was void.

4 Cases that cite this headnote

[3] **Religious Societies** 🔑 Title and rights acquired and control and use of property or fund

Where short form of trust clause had been adopted by the Methodist Episcopal Church, South, showing policy of such church that property conveyed to church in trust should be used as place of worship for the use of the ministry and membership of the church, subject to the discipline, usage and ministerial appointments of the church, trust clause in deed to church, executed while adopted trust clause was in force, and not repugnant to adopted trust clause, would be construed in accordance with such policy.

- [4] **Charities** 🔑 Evidence to aid construction

Religious Societies 🔑 Title and rights acquired and control and use of property or fund

Where a donation is made to a charitable or religious institution, by which there is created no trust inconsistent with the trust in general use, the donor will be presumed to have intended the property donated to be applied to the usual use and to the usual trust.

1 Case that cites this headnote

- [5] **Religious Societies** 🔑 Title and rights acquired and control and use of property or fund

Deed of realty to trustees for the Methodist Episcopal Church, South, to hold in trust for church as church property, with warranty to such trustees in trust for the church forever, manifested intention of grantor that beneficiary under the deed should be the local congregation of the church, for use by such congregation as a place of worship according to the discipline and subject to the rules and discipline of the Methodist Episcopal Church.

3 Cases that cite this headnote

- [6] **Religious Societies** 🔑 Authority and jurisdiction

Religious Societies 🔑 Jurisdiction of courts to determine rights of property

Matters of a purely ecclesiastical nature are to be determined by church tribunals alone and matters purely of property rights, by the civil court alone.

4 Cases that cite this headnote

- [7] **Religious Societies** 🔑 Judicial supervision in general

Courts of law in considering a civil right which is dependent upon an ecclesiastical matter will accept as final the decision of the legally constituted ecclesiastical tribunal having jurisdiction of the matter.

- [8] **Religious Societies** 🔑 Judicial supervision in general

The acceptance by the courts of law of a decision of a legally constituted ecclesiastical tribunal having jurisdiction, is not a perfunctory one and while not inquiring into the wisdom of the decision, the court will make sure that the civil right is in fact founded upon the ecclesiastical matter, and will determine whether the ecclesiastical body has jurisdiction, and will ascertain that the steps required by the society have been taken, and will inquire into any charges of fraud, collusion or arbitrariness, but will go no further.

4 Cases that cite this headnote

[10] Stipulations ➡ Matters Concluded

In suit to determine property rights of a congregation as between two factions, wherein question of union of various branches of the church was involved, stipulations as to the action taken at annual conferences on the question, while conclusive upon the fact that the union of the branches had been voted was not conclusive on how the question of union had been voted upon, and proof thereof was properly admitted.

[11] Appeal and Error ➡ Sufficiency of evidence

Concurrent findings of fact of a referee and a circuit judge will not be disturbed unless such findings are shown to be contrary to the clear preponderance of the evidence or controlled or influenced by error of law.

[12] Religious Societies ➡ Consolidation

In suit to determine property rights of factions of a congregation, wherein plaintiffs represented the faction of the unified church, and defendants opposed it, evidence justified the award of the property to plaintiffs on ground that the union of the churches

had been adopted by the branches thereof.

[13] Religious Societies ➡ Consolidation

In suit to determine the property rights of factions of a congregation, evidence was insufficient to establish a custom or precedent which had become a part of the unwritten constitution of the church, requiring a majority vote of the membership of the church before unification might be had.

[14] Religious Societies ➡ Consolidation

In suit to determine property rights of factions of a congregation, where plaintiffs represented the faction of the unified church, and defendants opposed it, evidence sustained finding that the plan of union was duly voted upon at the Annual Conference.

[15] Religious Societies ➡ Consolidation

Conclusion of the judicial council of the Methodist Episcopal Church, South, that the actions of the members of the several annual conferences of the church, in approving the plan of unification with the Methodist Episcopal Church was valid included a finding that

the vote was properly taken on the question of unification in a manner in accord with ecclesiastical law.

5 Cases that cite this headnote

[16] Religious

Societies 🔑 Consolidation

In suit to determine property rights of factions of a congregation, where plaintiffs represented faction of the unified church, and defendants opposed it, where no objection was made as to the parliamentary procedure at the General Conference at which the question of union was voted upon, civil court would not inquire whether the conference so voting had violated any of its own rules.

[17] Religious

Societies 🔑 Consolidation

In suit to determine property rights of factions of a congregation, wherein plaintiffs represented the faction of the unified church and defendants opposed it, contention that no valid conference uniting the churches was held because the delegates to it were elected by "orders", could not be sustained where manner of such elections was the established practice of the church, resolution did not say how the delegates should be elected and no objection was raised.

[18] Religious

Societies 🔑 Consolidation

In suit to determine property rights of factions of a congregation wherein plaintiffs represented the faction of the unified church, and defendants opposed it, evidence sustained the finding of the circuit court that all steps required by church law on the question of unification had been taken.

[20] Religious

Societies 🔑 Consolidation

Resolution adopted by the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church, at the uniting conference, that the three churches did not surrender rights to respective names was beyond the powers of the conference and was void, hence neither the faction of a congregation which seceded from the unification nor the faction which adhered thereto was entitled to the exclusive use of the name "Methodist Episcopal Church, South".

4 Cases that cite this headnote

[21] Associations 🔑 Conflicting names; similarity and confusion

Injunction 🔑 Infringement of entity's franchise, rights, or name

Religious

Societies 🔑 Incorporation and organization

A voluntary association, either religious or secular, has the right to protect the use of the name under which the association operates and to seek an injunction against the use by another association of the same name or of a name so nearly similar thereto as to be misleading, but ordinarily no organization has a right to enjoin other organizations from using a name which is not the name of the organization seeking the injunction.

[20] Religious

Societies 🔑 Consolidation

Where the College of Bishops of the Methodist Episcopal Church, South, had in view of prior practices and procedure, jurisdiction to hear and determine the matter of the unification of various divisions of the church, its decision that the required steps were taken, where there was no fraud, collusion or arbitrariness, was conclusive on the civil court.

[21] Religious

Societies 🔑 Consolidation

In suit to determine property rights of factions of a congregation, wherein plaintiffs represented the faction of the unified church, and defendants opposed it, evidence showed that

the decision of the conference on the question of unification was not “arbitrary”, and hence such decision was conclusive on the courts where the required steps were taken.

2 Cases that cite this headnote

[22] Religious

Societies 🔑 Consolidation

Evidence justified a denial of injunction to a faction of a congregation representing the Unified Methodist Church against the use by another faction, of the name “Methodist Episcopal Church, South” on the ground that the unified church had abandoned that name and that the use thereof by other factions would not lead to confusion.

4 Cases that cite this headnote

Attorneys and Law Firms

***823** Collins Denny, Jr., of Richmond, Va., and Clint T. Graydon, of Columbia, for appellants-respondents.

Walter McElreath, of Atlanta, Ga., J. Morgan Stevens, of Jackson, Miss., Orville A. Park, of Macon, Ga., R. T. Jaynes, of Walhalla, R. E. Babb, of Laurens, and Henry R. Sims, of Orangeburg, for respondents-appellants.

Opinion

E. H. HENDERSON, Acting Associate Justice.

We are called upon in this case to determine the property rights of the plaintiffs and the defendants in connection with the lot and building of the Pine Grove Methodist Church at Turbeville, in Clarendon County, and in doing so we find that there necessarily arises for consideration the very important question of the validity of the unification of the three great branches of the Methodist faith.

After the adoption by the general conference of the Methodist Episcopal Church, South, in April, 1938, of a plan of union with the Methodist Episcopal Church and the Methodist Protestant Church, dissension arose among the members of the Pine Grove Church as to the wisdom of the proposed unification, and the congregation became divided into two factions. One of these factions, now represented by the plaintiffs, was in favor of union; the other faction, now represented by the defendants and composed of a majority of the members of the Pine Grove Church, was opposed to unification.

Shortly before the annual meeting of the South Carolina conference of the Southern Church, eleven of the twelve stewards of the Pine Grove Church wrote the bishop in charge that the board of stewards would not go into the unified church and would make its own arrangements for a pastor.

In accordance with the rules of the church, in November 1938, at the Hartsville conference, Bishop Purcelle appointed the Reverend L. D. B. Williams as the preacher in charge of the Turbeville-Olanta circuit, which included the Pine Grove Methodist Church. For several months after the arrival of Mr. Williams each

faction separately used the church building for religious services at hours which did not conflict, the opponents of unification having other preachers. On April 24, 1939, as the time drew near for the holding of the uniting conference at Kansas City, and as it appeared evident that union would be perfected, three of the trustees of the church, the defendants E. N. Greene, M. J. Morris and A. N. Coker, claiming to be a majority of the board, in order to keep the property from passing under the control of the unified church, executed and delivered an instrument in writing purporting to be a deed whereby they attempted to convey to the other three defendants H. W. Cole, F. B. Thomas and W. L. Coker, as trustees, the property upon which the Pine Grove Church is located. On May 10, 1939, these three grantees notified Mr. Williams that they were assuming control and direction of the church property, forbade him to use it, and warned him that any such use would be a trespass upon their rights; and thereafter the defendants announced a schedule of religious services to be held in the church building without the consent or approval of the pastor.

This suit was instituted on May 26, 1939, by some of the officers and members of the church, on behalf of themselves and other members, by C. C. Derrick, district superintendent of the Kingstree district, and by Mr. Williams as pastor, seeking to have the deed cancelled, and to enjoin the defendants in their own right and as representing all other members similarly situated from interfering with the use of ***824** the property by the plaintiffs and others in like situation. A temporary restraining order was granted by his Honor, Judge Philip H. Stoll.

A motion was made before his Honor, Judge William H. Grimball, for an order dissolving the temporary injunction. This motion was refused, and the case was referred to Hon. Nathaniel B. Barnwell under a general order of reference. A great deal of evidence was taken by him. He went into the matter with great care and thoroughness, and filed a comprehensive and able report. Exceptions to it were heard by his Honor, Judge Grimball, who after full and mature consideration made a decree confirming the report.

The Circuit Judge and Special Referee held, among other things, that the purported deed of the trustees is illegal and void, and should be cancelled of record; that the defendants and all others claiming under or through them should be permanently enjoined from interfering with the Pine Grove Church property or with the congregation of The Methodist Church worshipping there; that The Methodist Church has no exclusive right to the use of the name Methodist Episcopal Church, South; and that the plaintiffs are not entitled to have the defendants enjoined from using the name.

The plaintiffs except to the holding of the Circuit Judge as to the use of the name Methodist Episcopal Church, South. The defendants allege error in almost all of the other holdings of the Circuit Court.

There is no direct exception by the defendants to the holding of the Circuit Court that the deed of the trustees is invalid. That decision of the Court was clearly correct.

[1] A trustee of church property ordinarily has no power to convey the trust estate unless such power is conferred by the instrument creating

the trust, or under an order of Court in a proper proceeding, or where duly authorized by the organic law of the religious society. Thomson v. Peake, 38 S.C. 440, 17 S.E. 45, 725; Presbyterian Church v. Donnom, 1 S.C.Eq. 154, 1 Des.Eq. 154, decided in 1788; 65 C.J. 730; 54 C.J. 63.

The Gamble deed gave no power of sale to the trustees, and no Court action authorized it, so we shall look to the rules of the Southern Methodist Church to see what provision is there made in such cases.

[2] Under paragraph 248 of the discipline of the Methodist Episcopal Church, South, for the year 1938, the trustees of a church may convey, with the consent of the pastor in charge and of the quarterly conference, any church property which has gone out of use or which should be removed to another place, the proceeds to be invested in other church property under the direction of the quarterly conference. In this case the property has not gone out of use, and of course was not to be removed to another place; the conveyance was not authorized by a quarterly conference, and no consent was given by the pastor in charge.

The authority claimed by the trustees for executing the deed was based solely upon the action of a church conference which was called by a majority of the stewards pursuant to public notice, after the pastor had refused to call such a meeting. The discipline of the Methodist Episcopal Church, South, sets forth in detail what business may be taken up at church conferences. These matters are quite limited in scope, and it is perfectly clear that

a church conference has no power to authorize trustees to dispose of church property.

It is evident, therefore, that the defendant trustees had no authority to execute the deed, and the attempted conveyance is void and of no effect.

Although the pleadings are necessarily quite long, covering one hundred printed pages in the transcript of record, and although the testimony is voluminous, we think that a solution of the problems which are presented by the exceptions may be found in an answer to the following major questions:

(1) Who were the beneficiaries under the trust deed of W. J. Gamble by which the property was originally conveyed?

(2) Was unification of the three churches validly accomplished?

(3) Is The Methodist Church entitled to the exclusive use of the name Methodist Episcopal Church, South?

With the deed held to be invalid, the situation is that we have two groups, each claiming the right to the use of the church property, and so we must turn now, under the first issue involved, to examine the trust deed which conveyed this real estate to the Pine Grove Church in order to see who are the owners of the beneficial title.

***825** It appears that this property has been used and occupied as a church by the members of the Methodist Episcopal Church, South, for religious worship since about the year 1854. The first deed to the property, however,

was on May 7, 1877, by W. J. Gamble, who conveyed to trustees “for the Methodist Episcopal Church, South, two acres of land in the State and County aforesaid where Pine Grove Church stands. *** To have and to hold all and singular the above described plot of land in trust for said Church as a church lot,” with warranty to “the said trustees in trust for said Church forever.”

Some years, later, on October 16, 1897, W. D. Gamble, who was a son of W. J. Gamble, executed to the board of trustees of the Methodist Episcopal Church, South, and to their successors in office, a deed to the same land on the following trust: “For the use and benefit of the public worship of God. To be applied by the said trustees to the object herein stated under the directions of the General Conference of the Methodist Episcopal Church, South.”

It does not clearly appear why the second deed was given, since the first deed creates a valid trust. The second one would seem to be of little legal effect, except possibly to confirm the earlier conveyance.

For a great many years the Methodist Church had employed a long form of trust clause in its deeds, and that form was in use in 1854, when the congregation was originally organized; but in 1870 a shorter form was adopted, and so was in force in 1877, when the first Gamble deed was executed. This short form is as follows: “In trust, that said property shall be used, kept, maintained, and disposed of, as a place of divine worship for the use of the ministry and membership of the Methodist Episcopal Church, South; subject to the discipline, usage, and ministerial appointments of said church, as

from time to time authorized and declared by the general conference of said Church, and by the annual conference within whose bounds the said premises are situated.”

[3] [4] It is true that the deed of 1877 did not contain literally either of the approved trust clauses, yet the trust clause shows the policy of the church, and the deed is not repugnant to it. The trust provision in the deed will be given such construction as accords with that policy. In this case it will be given the same interpretation as would be given to a short form trust, for the reason that if a donation is made to a charitable or religious institution by which there is created no trust inconsistent with that in general use, it will be presumed that the grantor intended the property to be applied to the usual use and to the usual trust. *Wilson v. Presbyterian Church of John's Island*, 19 S.C.Eq. 192, 2 Rich.Eq. 192.

Such a form of trust deed and ownership of church property, safeguarding the rights of the conference which has jurisdiction over the individual congregations, is important and necessary under the Methodist polity, with its distinctive feature of an itinerant ministry.

[5] We think, then, that the Circuit Judge and the Special Referee properly concluded that it was the intention of W. J. Gamble that the beneficiary under his deed should be the local congregation of the Methodist Episcopal Church, South, for use by such congregation as a place of worship according to the discipline and subject to the rules and discipline of the Methodist Episcopal Church, South.

This being the case the question is, which one of the factions is the legal successor to the beneficiary under the trust deed? In

determining this we should keep in mind the fact that the Methodist Church does not have a congregational or independent form of government. It is a connectional organization, with a centralized form of government, the whole church being a general unit and the local churches being parts of the larger body. The church is governed by quarterly, district, annual, and general conferences, in an ascending scale, and the size of a faction and whether or not it is a majority of the membership of a local congregation is not at all controlling. *Zollman's American Church Law*, 262. One faction of this congregation is entitled to the use and enjoyment of the property as the true congregation of the church, for the use and benefit of which the property was originally conveyed. It is readily apparent that if the unification was validly effected the united organization, The Methodist Church, is the lawful successor and entitled to the benefits given by the deed to the Southern Church. If the unification is legal then the members of the Pine Grove Church who stand in connection with the successor church and who are organized as members under its discipline, constitute the membership which is entitled to the use of the trust property. *826 The plaintiffs claim that they, being the adherents of the unified church, are entitled to such use.

If on the other hand the merger is invalid the Methodist Episcopal Church, South, still exists as before, and those who adhere to it are entitled to the use and enjoyment of the property.

This, then, brings us face to face with the question of unification, and leads us to inquire: Who is to determine whether or not the unification was validly made under church law, the civil Courts of South Carolina or the judicial

council of the Methodist Episcopal Church, South, the highest judicial body of the religious society?

Fortunately, in determining what is the law of South Carolina on this far reaching point, we have three decisions of this Court to guide us.

The first case is that of *Harmon v. Dreher*, 17 S.C.Eq. 87, Speers Eq. 87, decided in 1843. Two factions claimed that they constituted the true congregation of St. Peter's Church in Lexington County, a Lutheran congregation and a member of the synod of that church. The schism arose over the expulsion of the minister by the synod, whereupon the adherents of the minister undertook to close the church against that portion of the congregation adhering to the synod, and executed a deed attempting to vest the title of the property in their own faction.

In the course of the opinion the Court said: "The bearing of the case, is to elicit a judgment, which of the parties is the true church of St. Peter's, as incorporated. Each party claims an exclusive right.

It belongs not to the civil power to enter into or review the proceedings of a Spiritual Court. The structure of our government has, for the preservation of Civil Liberty, rescued the Temporal Institutions from religious interference. On the other hand, it has secured Religious liberty from the invasion of the Civil Authority. The judgments, therefore, of religious associations, bearing upon their own members, are not examinable here; and I am not to inquire whether the doctrines attributed to Mr. Dreher, were held by him, or whether, if held, they were anti-Lutheran; or whether his conduct was, or was not, in accordance

with the duty he owed to the Synod, or to his denominations. I have stated the facts, and I have stated the judgment rendered on the facts, and that judgment must be conclusive here.

Where a civil right depends upon an ecclesiastical matter, it is the civil court, and not the ecclesiastical, which is to decide. The civil tribunal tries the civil right, and no more, taking the ecclesiastical decisions, out of which the right arises, as it finds them. *** Neither can this court look into the regularity of the process by which the Synod proceeded to its judgment. Every competent tribunal must of necessity regulate its own formulas.

If a portion secede, and the rest, however small their number, adhere, the adherents, by their fidelity, secure their corporate existence, and are entitled to all the privileges and property of the corporation."

The Court further said that under the law of the Lutheran Church the synod is required to notify the congregation of the expulsion of their pastor, and if the congregation continued to employ him, the synod might cut the congregation off. As this notification had not been given, the bill was dismissed.

The next decision, in the year 1846, is that of *Wilson v. Presbyterian Church of John's Island*, 19 S.C.Eq. 192, 2 Rich.Eq. 192. This case also dealt with two groups in dispute as to which was entitled to certain church property which had been obtained through different sources and held under various trusts. The church had been connected with the presbytery in South Carolina, but about 1838 the presbytery followed the example of the

national body, dividing into adherents of the so-called old and new school. A portion of the congregation, desiring to have nothing to do with the controversy, declared the church to be an independent institution, while the minority of the congregation recognized by the presbytery and the general assembly of the old school, claimed that it constituted the true Presbyterian Church of John's Island, and brought this suit to determine its rights to the funds and property of the church. The Court, in discussing the case said:

“The Court disclaims, altogether, any authority to decide on questions of religious faith, or on the fitness and propriety of the forms of government which a church or congregation may adopt, if it inculcates nothing that is prohibited by law or subversive of good morals.

***827** Within this rule, every society or association, whether the object be religious or secular, has the right to adopt such rules for its government, as to them shall seem best fitted to attain the ends of its institution.

I have before disclaimed the authority of the court to examine into the religious faith of any one, for that he must account to another tribunal, but what he has publicly said or done, is capable of being proved without resorting to machinery of an inquisition to extort it from him; and I apprehend that where the right of property depends upon the existence or non-existence of the fact, the civil tribunals must of necessity examine into it.”

A more recent case, in 1903, is that of *Morris St. Baptist Church v. Dart*, 67 S.C. 338, 45 S.E. 753, 754, 100 Am.St.Rep. 727.

This was a suit by the church to prevent the defendant from attempting to exercise his function as the alleged pastor of the church. The plaintiffs contended that the defendant had been regularly dismissed. This the pastor denied, and claimed that he was supported by a majority of the members of the church.

The Court said:

“Before entering upon the consideration of the questions of fact involved in the appeal, it is necessary to determine the extent to which this court, as a civil tribunal, can interfere in this unfortunate church controversy.

The civil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatories having cognizance of such matters. To assume such jurisdiction would not only be an attempt by the civil courts to deal with matters of which they have no special knowledge, but it would be inconsistent with complete religious liberty, untrammelled by state authority. On this principle, the action of church authorities in the deposition of pastors and the expulsion of members is final. Where, however, a church controversy necessarily involves rights growing out of a contract recognized by the civil law, or the right to the possession of property, civil tribunals cannot avoid adjudicating these rights, under the law of the land, having in view, nevertheless, the implied obligations imputed to those parties to the controversy who have voluntarily submitted themselves to the authority of the church by connecting themselves with it. Therefore, where it is admitted, as in this case, that property belongs to a particular church,

and the only question is whether the defendant claiming to be pastor should be excluded from its use, this court will only consider whether the church has ordered his exclusion, not whether it was right in doing so. Neither will the court, as a civil tribunal, undertake to determine whether the resolution directing exclusion was passed in accordance with the canon law of the church, except in so far as may be necessary to do so in determining whether it was in fact the church that acted.

The only questions, then, we have power to consider, are, did the congregation meet, and did it depose the defendant as pastor?"

The rule announced by the Supreme Court of the United States is in substantial accord with that of the South Carolina cases. A leading and widely cited case is that of *Watson v. Jones*, 13 Wall. 679, 727, 20 L.Ed. 666, decided in 1872. In reaching its decision the Federal Supreme Court quotes from and relies strongly upon the case of *Harmon v. Dreher*. Two groups formed in the congregation of the Third or Walnut Street Presbyterian Church, of Louisville, Kentucky, and both claimed the exclusive use of the church property.

The Court stated:

"In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has

been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual *828 members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches) has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest

minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so.”

The doctrine laid down in the Watson case was re-affirmed by the United States Supreme Court in 1918 in the case of Shepard v. Barkley, 247 U.S. 1, 38 S.Ct. 422, 62 L.Ed. 939.

In Gonzalez v. Roman Catholic Archbishop, 280 U.S. 1, 50 S.Ct. 5, 7, 74 L.Ed. 131, the United States Supreme Court declared: “In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.”

[6] [7] From these cases it clearly appears that matters of a purely ecclesiastical nature are to be determined by church tribunals alone; and matters purely of property rights by the civil Courts alone; and we agree with the Circuit Judge and the Special Referee that in South Carolina the Courts of law in considering a civil right which is dependent upon an ecclesiastical matter will accept as final the decision of a legally constituted ecclesiastical tribunal having jurisdiction of the matter.

[8] The decree and report accurately hold, also, that this acceptance is not a “blind or perfunctory” one. While not inquiring into the wisdom or correctness of ecclesiastical

decisions, the Court will make sure that the civil right is in fact dependent upon an ecclesiastical matter; it will determine whether the ecclesiastical body had jurisdiction; it will look to see if the steps required by the religious society have been taken; and will inquire into any charges of fraud, collusion, or arbitrariness. It will go no further.

[9] In the present case it is clear that the civil rights of the parties with reference to the church building and grounds are dependent upon an ecclesiastical matter, namely, which faction is the true congregation of the church. That depends upon questions of church law and government.

It is equally clear that the judicial council of the Methodist Episcopal Church, South, had jurisdiction to hear and determine this matter. For some time in the past the College of Bishops exercised a right, during the sessions of the general conference, to arrest legislation of the conference which they deemed unconstitutional, this being somewhat in the nature of a veto power. In the year 1934 the church established the judicial council as a supreme body to pass upon all questions of constitutional law which might be referred to it. The validity of unification, and the constitutionality of the steps taken to perfect it, were duly referred to the judicial council by more than the required one-third of the College of Bishops.

We turn, then, to the exceptions of the defendants in which they contend that certain required steps have not been taken, and for a proper understanding of these exceptions it is necessary that we give a condensed statement

of the procedure of unification, as developed in the testimony before the Referee.

***829** In 1934 the general conference of the Methodist Episcopal Church, South, appointed a commission, which met with similar commissions of the Northern Church and the Methodist Protestant Church, and on August 16, 1935, there was formulated a plan of union for submission to the three churches. The general conferences of both the Methodist Episcopal Church and the Methodist Protestant Church met in 1936 and approved the plan, which was then submitted to the respective annual conferences of these churches and approved by them.

The general conference of the Methodist Episcopal Church, South, did not meet until May, 1938, and at the 1936 sessions of the annual conferences of this church twenty-five out of the thirty-eight conferences adopted resolutions expressing their desire to vote on the plan of union at the 1937 annual conferences, and asked the bishops to formulate a "common question" on the plan of union to be put before the 1937 conferences. The College of Bishops at a meeting held in Nashville, Tenn, May 1, 1937, formulated the following form of question: "Shall the annual conferences of the Methodist Episcopal Church, South, approve and authorize the adoption of the plan of union of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church as proposed and recommended by the commissions on interdenominational relations and church union duly appointed by the general conferences of these three churches, and attached hereto?"

The plan of union was voted on by all thirty-eight of the annual conferences. Thirty-seven of them voted in favor of the adoption of the plan of union. One annual conference, the North Mississippi conference, voted against approval by a vote of 125 to 117. The total vote of all the members of the conferences was 8,897, of which 7,650 votes were for the approval, and 1,247 against the approval of the plan. The vote of the annual conferences was officially reported to the succeeding general conference which was held in Birmingham, Alabama, and the plan of union was then brought before the conference and adopted by a vote of 434 to 26.

After the adoption of the plan of union by the general conference its legality and validity was referred to the judicial council of the church. Interested parties were given the right to submit objections, and formal hearings were had. An elaborate opinion was delivered by the judicial council, with the unanimous concurrence of its nine members, sustaining the validity of the union, and the following judgment or conclusion was rendered:

"First. The actions of the members of the several annual conferences in approving the plan of union and authorizing its adoption, as reported to this general conference, were and are legal.

Second. The action of the general conference in ratifying and adopting the plan of union was and is legal.

Third. The action of the general conference in approving and authorizing the union of the Methodist Episcopal Church, South, with the Methodist Episcopal Church and the Methodist Protestant Church was and is legal.

Fourth. The union of the three churches and the plan of union have been legally adopted, and the union has been legally authorized in accordance with said plan of union.”

After the ruling of the judicial council, the College of Bishops made a “Declaration” to the conference on May 4th, 1938, in which after reciting the action of the annual conferences and of the general conference it was declared that the plan of union had been legally and constitutionally adopted by the Methodist Episcopal Church, South.

The delegates from the annual conferences to the uniting conferences were elected in due time, and this uniting conference met in Kansas City in May, 1939. All annual conferences of the Methodist Episcopal Church, South, including the North Mississippi conference, were represented at the uniting conference and a “Declaration of Union” was adopted by a unanimous vote.

Pursuant to authority given in the plan of union, the uniting conference called upon the annual conferences to meet. Sessions of all of the thirty-eight annual conferences were held, including the North Mississippi conference. At each of these conferences, resolutions were adopted which recognized the union of the three churches as an accomplished fact and then adjourned sine die.

We shall take up now the exceptions of the defendants relating to procedure.

In the fourth exception it is claimed that the Court was in error in admitting in evidence

***830** certain original certificates executed by the officers of the several annual conferences, showing that the form of question prepared by the College of Bishops was submitted to and acted upon by each of the conferences.

At the beginning of the hearings, the parties entered into a stipulation that the printed journals correctly set forth the actions taken at the several annual conferences, and that either party should have the right to introduce in evidence any portions of them without further proof, and that such portions should be conclusively accepted as the action of the conference. When the plaintiffs offered the journals in evidence the defendants objected to them on the ground that they did not show what plan of union was voted upon. The plaintiffs then offered in evidence the original certificates signed by the presiding bishop and the secretary of each one of the annual conferences, from the records of the secretary of the College of Bishops at Nashville, showing that the question formulated by the bishops had been acted upon by each conference. The defendants objected to them, contending that such evidence was in violation of the stipulation. The Special Referee overruled the defendants' objection and admitted the certificates.

[10] In this decision we think that the Referee and trial Judge were correct. We do not understand the stipulation to be that the action of an annual conference is to be determined exclusively or only by the printed journals, but rather that any excerpt or portion of the journals offered in evidence would be conclusive in the sense that it could not be contradicted. They were conclusive as to what they showed, but we do not think that the stipulation would prevent proof by official records of matters which in no way altered or contradicted the journals.

The journals showed that all of the annual conferences had voted in one way or another on the question of union, but the secretaries did not copy in the minutes, word for word, the text of the plan of union. Under the stipulation the fact that union had been voted upon was conclusive and could not be contradicted. The certificates, official records made at the time, showing just how the question of union had been voted upon, would not, we think, be in contradiction of the journals but would show matters as to which they were silent or incomplete. The testimony was consistent with the journals, and so did not violate the stipulation. 60 C.J. 74, 80, 84.

[11] **[12]** In the 14th exception the defendants say that the evidence does not show that the Northern Church and the Methodist Protestant Church adopted the plan of union. Here we have the concurrent finding of fact of the Referee and the trial Judge, and a review of the evidence convinces us that this finding has ample support in the testimony.

“Under the well-settled rule concurrent findings of fact of the referee and the circuit judge will not be disturbed, unless shown to be contrary to the clear preponderance of the evidence, or controlled or influenced by error of law.” *Williams v. Bruton*, 133 S.C. 395, 131 S.E. 18, 20.

[13] In the 10th exception the defendants urge that a majority vote of the membership of the church is necessary before union may be had. There is no rule in the Methodist discipline requiring or contemplating such action. The defendants point to the fact that votes were taken by the membership when the Southern church divided from the

Northern branch in 1844. That was done under peculiar circumstances, and at a time when the annual and general conferences were composed exclusively of preachers, with no lay representation. Certainly one act standing alone, taking place nearly one hundred years ago, cannot be regarded as having established a custom or precedent, or as having become a part of the unwritten constitution of the church. This is the first and only plan of union ever adopted; there was only one separation in the history of the church.

Not being congregational in form of government, it is not required in Methodist churches that the membership act as a whole in determining action to be taken by the church. It is clear, we think, that a vote of the membership is not a step required by the church.

[14] It is contended by the defendants in the fifth exception that the evidence does not show that the plan of union was ever voted upon by the annual conferences of the Southern Methodist Church, the argument being that it does not appear what plan of union was before the conferences. We approve the concurrent finding of fact of the Special Referee and the Circuit Judge that the present plan of union was duly voted upon. The “common question” prepared by the College of Bishops, together with a copy *831 of the plan of union, was sent to each one of the annual conferences. The “common question,” with the plan of union attached, was voted upon at each conference. No other plan of union was being proposed for adoption. It is reasonable to suppose that the members knew of this plan of union, and knew that the general conference was soon to meet at Birmingham and that union would be acted upon. The plan was definitely

identified, in the question, as the one for the union of the three named churches, as proposed by the commissions appointed by the general conferences.

“The practice of submitting long and involved propositions in abbreviated form by categorical questions to be answered by yes or no is very common.” *Barkley v. Hayes*, D.C., 208 F. 319, 331.

[15] We think that the conclusion of the judicial council, that the actions of the members of the several annual conferences in approving the plan of union was valid, necessarily includes a finding that the vote was properly taken on this question in a manner which was in accord with ecclesiastical law.

[16] In their sixth exception it is urged that the Circuit Judge should have held that the general conference of the Southern Church failed to proceed according to its own rules of order.

We do not think that this objection can be sustained. The general conference is the supreme legislative body of the church. It made its own rules of order, and was competent to determine whether or not they had been obeyed. No objection appears to have been made by any one at the time, and we do not think that a civil Court should say how such an ecclesiastical body shall conduct its deliberations under its own parliamentary procedure and rules.

“The civil courts will not inquire whether in doing so it violated any of its own rules.” *Morris St. Baptist Church v. Dart*, above.

[17] In the 11th exception the defendants say that no valid uniting conference was held

for the reason that the delegates to it were elected “by orders,” that is, the election of the clerical delegates by the clerical members, and the election of the lay delegates by the lay members. Elections of delegates “by orders” was the established practice of the church, and specifically so authorized since 1870 by its discipline, for the election of delegates to the general conferences. The plan of union did not forbid elections “by orders.” It was merely provided that four hundred delegates be chosen in such manner as the general conference might determine, with only the limitation that there should be an equal number of ministers and laymen. The general conference of the Southern church provided that in addition to the twenty members of the commission on union, the remaining three hundred eighty delegates should be elected by the annual conference. Here, again, the resolution did not say how they should be elected, and did not prohibit election “by orders.” In each annual conference the entire body acquiesced in the choosing of all the delegates to the uniting conference. No objection was raised in any annual conference or in the uniting conference to this procedure. We do not think that the objection is sound.

[18] Finally on this point the defendants contend, in exceptions 12 and 13, that no valid sessions of the annual conferences were held after the meeting of the uniting conference, and that in any event no such annual conferences could cure any irregularity in procedure. In the first place, it was not necessary that the plan of union be ratified by the annual conferences, as it had already been regularly adopted. It is true, however, that it was duly provided that the annual conferences should meet, and these meetings were held by each one, including

that of the North Mississippi conference. The North Mississippi conference, as did the others, adopted resolutions recognizing the fact of union. It appears, then, that at a legally held meeting, the North Mississippi conference has in fact accepted the plan of union.

We, therefore, think that the Circuit Court correctly found and held that all steps required by the church law have been taken.

No fraud or collusion is even charged. Such a question does not enter into the case, and it is mentioned here only for the purpose of trying to cover all points in logical order.

[19] We turn next to inquire whether or not the decision of the judicial council has been arbitrary, and the only exceptions of the defendants which so charge are the 8th and 9th. It is there claimed that the decision was arbitrary because the adoption of the plan of union would alter the 23rd article of religion of the Methodist Episcopal *832 Church, South, and would alter the procedure established for amending the first restrictive rule of the church; that to make such a change the approval of each annual conference and of two-thirds of the succeeding general conference was required; and that the approval of each annual conference was not had, since the North Mississippi annual conference at its 1937 meeting did not give its approval.

The 23rd article of religion has to do with the church's attitude towards civil government and the duties of members to the civil authority. The first restrictive rule denies power to the general conference to alter the articles of religion. At

the end of the six restrictive rules is given the method for amending them.

This entire matter was presented to the judicial council, and it held that the plan of union did not alter the 23rd article of religion or any other article; that the constitution of the church does not require that an amendment to the articles of religion, or an amendment to the procedure for altering the articles, receive the joint recommendation of all of the annual conferences and two-thirds of the general conference succeeding; but that such action may be taken by three-fourths of the members of the several annual conferences and two-thirds of the general conference; and that even though the North Mississippi conference did not vote in favor of the plan in 1937, yet more than three-fourths of the members of the annual conferences did approve it, as well as more than two-thirds of the general conference.

These matters present questions of a purely ecclesiastical nature. They depend upon the constitution and discipline, the faith and doctrine of this great denomination. It may be that in countries which have a State religion such questions could be inquired into by the civil Courts, but with us freedom of religion and the separation of church and state are among our most highly cherished principles. The Courts of South Carolina will not go behind the decisions of ecclesiastical tribunals on questions of this nature, by making the slightest inquiry into their wisdom. We take such decisions as we find them, after making the preliminary inquiries stated above.

We fully agree with the Circuit Court that the decision of the judicial council on these matters of church law and doctrine was not arbitrary.

The judicial council had for decision intricate questions of the interpretation of ecclesiastical law extending back for more than a century. It involved the answer to such difficult questions as these: Have the articles of religion been changed? How may an article of religion be amended since the action of the general conference in 1832? Does the first restrictive rule have to be amended by the process laid down in 1808? Was there a legal method since 1832 for amending the articles of religion? Was the action of the general conference in 1906, in adding to or construing the language of the 1832 provision, legal and constitutional under church law? Was the footnote in the discipline to the 23rd article of religion, relating to foreign residence, constitutionally adopted in 1922?

We are convinced that the Court would be altogether unwarranted in saying that a decision on such complicated and abstruse questions is arbitrary. “Arbitrary” means based alone upon one's will, and not upon any course of reasoning and exercise of judgment; bound by no law; done capriciously or at pleasure, without adequate determining principle, nonrational; not governed by any fixed rules or standard. 6 C.J.S., Arbitrary, p. 145.

It is also urged that the decision is arbitrary because it is contrary to former decisions of the College of Bishops, some of which consisted of a failure to exercise the veto power. We do not think it at all follows from this that the decision is arbitrary. This was the supreme judicial council of the church, and as such was not obliged to follow prior decisions of other bodies.

Having made all the inquiries the Court may properly make in a case where civil

rights depend upon ecclesiastical matters, inquiries as to jurisdiction, procedural steps, and arbitrariness, in accordance with law we accept the ecclesiastical decision that unification has been validly accomplished, and that as a consequence the group represented by the plaintiffs constitutes the true congregation of the Pine Grove Church. Applying to that decision the applicable principles of State law governing the use of realty, we hold that the plaintiffs are entitled to the injunction which they seek with respect to the use and enjoyment of the property.

[20] We come now to the last point in the case, the exceptions of the plaintiffs to *833 the decision of the Circuit Judge that neither they nor The Methodist Church are entitled to the exclusive use of the name Methodist Episcopal Church, South.

At the uniting conference a resolution was adopted by that body, one section of which was as follows: “The Methodist Episcopal Church, the Methodist Episcopal Church South, and the Methodist Protestant Church, in adopting the name ‘The Methodist Church’ for the united church, do not and will not surrender any right, interest or title in and to these respective names which, by long and honored use and association, have become dear to the ministry and membership of the three uniting churches and have become enshrined in their history and records.”

The Circuit Judge and the Special Referee held that this action was beyond the powers of the uniting conference and was void. We agree with that conclusion. The plan of union made no reference to the subsequent use of the name Methodist Episcopal Church, South. No

conference of the Southern Methodist Church took any action in that regard. The uniting conference was not authorized to make any such declaration as was made for the first time at the Kansas City meeting. No grant of power to it even remotely contemplated any such action as this declaration. The uniting conference was powerless to take any action concerning names. Its powers were clearly set out and limited in the plan of union, which merely stated that the united Church should have the name The Methodist Church. In fact, the declaration does not purport to be the act of the uniting conference, but is framed in the language of a declaration of each of the three constituent churches.

[21] It is true that a voluntary association, whether it be religious or secular, has the right to protect the use of the name under which it operates, and to seek an injunction against the use by another association of the same name or of one so nearly similar as to be misleading. Ordinarily, however, no organization has a right to enjoin others from using a name which is not that of the association seeking the injunction. 7 C.J.S., Associations, § 13, p. 37; 54 C.J. 13.

[22] The Circuit Judge and the Special Referee concur in a finding of fact that the unified church has abandoned the name Methodist Episcopal Church, South. This concurrent finding of fact is soundly based on the evidence.

[23] It is argued by the plaintiffs that the use of the name by other religious societies would lead to confusion. It seems, however, that the unified church has selected a name which cannot readily be confused with other names. The fact that the word Methodist appears in both names would not necessarily cause confusion, since the words Methodist, or Episcopal, or Protestant appear in very many names of religious associations. The evidence shows that there are sixteen or seventeen organizations using the word Methodist in their official names.

We do not think that the plaintiffs or the united church have the right to the exclusive use of the name, Methodist Episcopal Church, South, nor that they are entitled to have the defendants enjoined from using the name.

Accordingly, all of the exceptions of both the plaintiffs and the defendants are overruled, and the judgment of the Circuit Court is affirmed.

BAKER and FISHBURNE, JJ., and T. S. SEASE and A. L. GASTON, A.A.JJ., concur.

All Citations

203 S.C. 287, 26 S.E.2d 821

267 S.C. 107
Supreme Court of South Carolina.

Charlie M. HATCHER et al.,
Respondents,

v.

SOUTH CAROLINA DISTRICT
COUNCIL OF the ASSEMBLIES OF
GOD, INC., et al., Appellants.

No. 20250.

|

June 24, 1976.

Synopsis

A class action was brought seeking, inter alia, a judgment declaring plaintiffs to be members of named local church and either the legal or equitable owners of the church property. The Common Pleas Court of Dillon County, J. A. Spruill, J., declared the congregation of the church to be the equitable owners of its property and certain plaintiffs to be members of the congregation and granted them other related relief. Upon church district council's appeal, the Supreme Court, Rhodes, J., held that the lower court had the authority to review the action of district presbytery, which dissolved the entire membership of the church, to determine whether such action resulted from fraud, collusion or arbitrariness, since it was necessary to determine the identity of the local church membership in that the class had been decreed the beneficiaries of the church property; and that special master's finding, concurred in by the lower court, that the

district presbytery acted arbitrarily in dissolving the entire membership of the church was supported by the record, and the lower court therefore properly ordered the district council to restore to membership the expelled members of the church.

Affirmed.

West Headnotes (6)

[1] **Religious Societies**—Authority and jurisdiction

Religious Societies—Jurisdiction of

courts to determine rights of property
A purely ecclesiastical matter is to be determined by church tribunals alone, whereas matters purely of property rights are to be determined by the civil courts alone.

2 Cases that cite this headnote

[2] **Religious Societies**—Operation and effect of decisions, laws, and proceedings

Civil courts, in considering a property right which is dependent upon an ecclesiastical matter, will accept as conclusive the decision of a legally constituted ecclesiastical tribunal having jurisdiction of the matter absent fraud, collusion or arbitrariness.

2 Cases that cite this headnote

- [3] **Religious Societies**—Judicial supervision in general

In reviewing a specific church decision for proof of fraud, collusion or arbitrariness, the civil court will not inject itself into substantive ecclesiastical matters.

1 Case that cites this headnote

- [4] **Religious Societies**—Actions to determine rights to property and funds; injunction

In class action seeking, inter alia, a judgment declaring plaintiffs to be members of named local church and either the legal or equitable owners of the church property, the lower court had the authority to review the action of district presbytery, which dissolved the entire membership of the church, to determine whether such action resulted from fraud, collusion or arbitrariness, since it was necessary to determine the identity of the local church membership in that the class had been decreed the beneficiaries of the church property.

1 Case that cites this headnote

- [5] **Appeal and Error**—Sufficiency of evidence

In an action in equity, tried first by special master and concurred in by lower court, concurrent findings of fact will not be disturbed on appeal

unless found to be without evidentiary support or against the clear preponderance of the evidence.

- [6] **Religious Societies**—Actions to determine rights to property and funds; injunction

In class action seeking, inter alia, a judgment declaring plaintiffs to be the members of named local church and either the legal or equitable owners of the church property, special master's finding, concurred in by the lower court, that the district presbytery acted arbitrarily in dissolving the entire membership of the church was supported by the record, and the lower court therefore properly ordered the district council to restore to membership the expelled members of the church.

Attorneys and Law Firms

****254 *108** Hyman, Morgan & Brown, Florence, for appellants.

***109** E. N. Zeigler, Florence, for respondents.

Opinion

RHODES, Justice:

This class action was instituted by plaintiffs-respondents seeking declaratory and injunctive

relief against defendant-appellant, the South Carolina District Council of the Assemblies of God, Inc., and others. Plaintiffs sought, for themselves and those similarly situated, to be declared members ***110** of the Dillon Assembly of God Church and either the legal or the equitable owners of the Church property. The lower court declared the congregation of the Dillon Church to be the equitable owners of the property and certain plaintiffs to be members of the congregation and granted to them other related relief. We affirm.

The South Carolina District Council of the Assemblies of God, Inc., is an integral part of the General Council of the Assemblies of God, Inc. located in Springfield, Missouri, and is the highest ecclesiastical authority for individual Assembly of God churches in South Carolina. Immediately below the District Council level is the District Presbytery which has general, statewide ****255** oversight of church affairs during the interim between the annual sessions of the Council. South Carolina is divided into eight geographical sections and each section is headed by a Sectional Presbyter.

The Council's chief executive officer is the District Superintendent who is also a member and the presiding officer of the District Presbytery. Sectional Presbyters are also members of the District Presbytery. At the time of this action, the Rev. W. G. Dixon was the District Superintendent and the Rev. A. L. Dutton was the Sectional Presbyter for the section in which the Dillon Church is located.

According to the Constitution of the District Council, individual churches are classified into two categories, dependent and sovereign. Generally, dependent churches are congregations which are newly organized and still in the formative state, and have very little autonomy. They are under the general supervision of the District Presbytery until they have 'matured sufficiently to accept their full share of responsibility for the maintenance of Scriptural order.' Article XI of the Council's Constitution. Sovereign churches have the right to choose their own pastors, elect officers, own property, discipline members, and transact other business pertaining to its life as a local church.

***111** The Dillon Church was organized in March of 1970 as a dependent church and held its initial service in a rented store building. Two years later, the Church held its first service in its present, permanent place of worship, title to which was taken in the name of the District Council as required by its Constitution.

In the course of construction of the present Church properties, certain of the named plaintiffs donated considerable amounts of cash, time, and labor. It is clear that the initiative for the acquisition of the land on which the Church buildings were built and the construction of these buildings is attributable to the then local congregation of the Church and principally by persons who are plaintiffs herein. The only contribution made by the District Council was donation of \$1,000.

The lower court imposed a trust on all the Church property in favor of the congregation of the Dillon Church. No appeal was taken from this portion of the lower court's order.

A year after the Dillon Church was organized, it employed, with the District Presbytery's approval, the Rev. Steven Allen to be its pastor. On February 3, 1972, the congregation voted to give Rev. Allen a two year term as minister. However, during the next few months the members of the Church became dissatisfied with Allen and requested his resignation. He refused to resign and on January 15, 1973, the congregation voted to reduce his term as pastor to one year.

The following day Rev. Dixon and Rev. Dutton met with the leaders of the Dillon Church and were informed of the action taken by the members. Rev. Dixon then announced that he was taking over the supervision of the Church until the District Presbytery could review the matter. The next day the locks on the doors of the Church buildings were changed by action of the District Council.

***112** On January 29, 1973, the members of the Dillon Church were given a copy of a resolution, adopted by the District Presbytery, which vacated all offices of the Church and dissolved its membership. There were twelve or thirteen members of the Church at the time. The resolution specified the following reasons for the action taken: (1) inability to maintain Scriptural order; (2) improper conduction of business affairs; and (3) bringing reproach upon the Assemblies of God by being in a state of confusion.

The expelled members presented a petition to Rev. Dixon on February 7, 1973, requesting a review and rescission of the action of the Presbytery. The petition contained detailed reasons for the requested relief and asked that the expelled members be allowed to appear and be heard at the consideration of the petition. On March 20, 1973, the petitioners were notified that the ****256** Presbytery would grant them a hearing on their petition only if they agreed to pay \$200 in advance and send only three persons to the hearing. The expelled members refused to agree to these conditions and began conducting religious services elsewhere.

The present action was instituted in July of 1973 by eleven of the expelled members and several others who had joined them in their services. Plaintiffs alleged in their complaint that the District Council wrongfully and in violation of its Constitution and By-Laws dissolved the membership roll of the Dillon Church and declared all offices vacant. They asked the lower court to declare them members of the congregation of the Dillon Church and to restrain the District Council from interfering with their use and occupancy of the Church property.

The joint answer of the defendants denied the material allegations of the complaint and alleged that the actions of the District Council were authorized by its Constitution and By-Laws. The matter was referred to a special master who heard voluminous testimony and filed a lengthy report containing his findings

and recommendations. His report was confirmed in all particulars by the lower court.

***113** The lower court and the master found the action of the District Council in dissolving the membership roll of the Dillon Church and vacating its officers to be arbitrary.¹ The Council was ordered by the lower court to reinstate the expelled members as members of the congregation of the Dillon Church, and to allow the congregation to conduct the business affairs of the Church in the same manner as was permitted by the Council before January 16, 1973. The lower court refused to issue an injunction but retained jurisdiction of the action reserving authority to issue supplemental orders if necessary.

¹ While the master and lower court also characterized the Council's action as being collusive and contrary to law, the finding of arbitrariness is sufficient to support the conclusion reached and our consideration will be confined to this single finding.

The first issue raised is whether the lower court had the authority to review the action of the District Presbytery. One of the leading South Carolina cases on the subject of the proper scope of review by civil courts of ecclesiastical decisions is *Turbeville v. Morris*, 203 S.C. 287, 26 S.E.2d 821 (1943). In *Turbeville*, one of the principal cases relied upon for determining the authority of civil courts in this area was *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929).

In *Gonzalez* Gonzalez claimed the right of appointment to a chaplaincy in the Roman Catholic Church under a will which provided that a member of his family receive the appointment and provided funds for the chaplaincy. The Roman Catholic Archbishop of Manila refused to appoint Gonzalez on the ground that he did not satisfy the qualifications established by Canon Law for that office. Gonzalez brought suit in the Court of First Instance of Manila for a judgment directing the Archbishop to appoint him chaplain. The trial court entered such an order but the Supreme Court of the Philippine Islands reversed and 'absolved the archbishop from the complaint.' Mr. Justice Brandeis defined the civil court role in the following words:

***114** 'In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.' *Gonzalez v. Roman Catholic Archbishop of Manila*, *supra*.

The scope of review was delineated in *Turbeville* as follows:

'While not inquiring into the wisdom or correctness of ecclesiastical decisions, the Court will make sure that the civil right is in fact dependent upon an ecclesiastical matter; it will determine whether the ecclesiastical body had jurisdiction; it will look to see if the steps required by the

religious society have been taken; and will inquire into any charges of ****257** fraud, collusion, or arbitrariness. It will go no further.'

reviewing a specific church decision for proof of fraud, collusion, or arbitrariness, the civil court will not inject itself into substantive ecclesiastical matters.

In *Presbyterian Ch. v. Mary Elizabeth Blue Hull Mem. Pres. Ch.*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969), the United States Supreme Court commented on the decision in *Gonzalez* as follows:

'It was the archbishopric, not the civil courts, which had the task of analyzing and interpreting church law in order to determine the validity of *Gonzalez*' claim to a chaplaincy. Thus, the civil courts could adjudicate the rights under the will without interpreting or weighing church doctrine but simply by engaging in the narrowest kind of review of a specific church decision—i.e., whether that decision resulted from fraud, collusion, or arbitrariness. Such review does not inject the civil courts into substantive ecclesiastical matters.'

Our first inquiry, therefore, is whether there is a property right of plaintiffs which was affected by the action of the District Presbytery in dissolving the entire membership of the Dillon Church. The lower court held that title to the local Church property was in the District Council subject to a trust in favor of the local congregation, and that legal title to the property was to be conveyed to the congregation upon the Church attaining the status of a sovereign church. The expelled members were, thus, foreclosed of any right as beneficiaries of the trust by the action of the Presbytery when it ousted them as members of the Congregation of the Dillon Church.

^[4] As stated in *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442 (1975): 'By a determination of this case, this Court exercises no role in determining ecclesiastical questions. We merely settle a dispute on the question of identity, which in turn necessarily settles a dispute involving the control of property.' Likewise, it becomes necessary in this case to determine the identity of the Dillon Church membership in that this class has been decreed the beneficiaries of the Church property. Thus, the lower court had the authority to review the action of the District Presbytery to determine whether it resulted from fraud, collusion, or arbitrariness. *Turbeville v. Morris*, *supra*.

^[1] ^[2] ^[3] It appears from these decisions that a purely ecclesiastical matter is to be determined by church tribunals alone; that matters purely of property rights by the civil courts alone; that the civil courts, in considering a property right which is dependent upon an ecclesiastical matter, will accept as conclusive the decision of a legally constituted ecclesiastical tribunal having jurisdiction ***115** of the matter absent fraud, collusion, or arbitrariness; that in

[5] The finding by the special master that the action of the District Presbytery was arbitrary was concurred in by the lower court. The nature of this action is equitable and the concurrent finding of arbitrariness 'will not be disturbed on appeal unless found to be without evidentiary support or against the clear preponderance of the evidence.' Townes Assoc., Ltd. v. City of Greenville, S.C., 221 S.E.2d 773 (1976).

***116** After members of the Dillon Church had initially expressed their dissatisfaction with Rev. Allen to Rev. Dixon and Rev. Dutton, Dutton purported to make an investigation of the matter which was at best cursory and superficial. After being requested to resign, Allen telephoned Dutton who told him that he could not be forced to resign by the Church because it was not a sovereign church and recommended that he not resign.

Furthermore, during the lengthy January 16th meeting, Rev. Dixon did not look at the minutes of the meeting of the previous night when the members of the Church had unanimously voted to reduce Rev. Allen's term of office. He had not looked at them at the time of the hearing before the master. Although the January 16th meeting was recorded, neither the transcript of it nor the minutes of the January 15th meeting was introduced into evidence.

****258** With respect to the specific grounds given for the District Presbytery's action, Rev. Dixon and Rev. Dutton were unable to give

more than vague explanations for any of them. There was no proof of the failure of the expelled members to maintain the biblical scriptures, the tenets of faith of the organization, or any other aspect of scriptural matters. When asked if there was any departure from the tenets of faith by the members, Dixon responded: 'I do not know any I could point to right at this minute.'

The testimony of Rev. Dixon and Rev. Dutton reveals that the charge of 'inability to maintain Scriptural order' was predicated solely on the expelled members' reluctance to agree with the desire of District officials that Rev. Allen be retained as minister of the Dillon Church. No substantive ecclesiastical matter was involved in this charge.

The charge of 'improper conduction of business affairs' was predicated on the contention that the expelled members' meeting on January 15th was held without adequate notice. The meeting was announced the previous day during the Church service and was attended by all the members except ***117** for one person. Moreover, the Dillon Church had not adopted a Constitution or By-Laws prescribing the type of notice required to call a meeting. The Council's Constitution and By-Laws do not contain a specific provision providing for the method of calling meetings in a dependent church.

The charge of 'bringing reproach upon the Assemblies of God by being in a state of confusion' is nebulous in nature and is not supported by any evidence other than that relating to the other two charges.

The authority for the action of the District Council in dissolving the Church membership is not specifically granted in either the Constitution or By-Laws of the Council. Moreover, there was no prior written authority for the \$200 charge imposed as a condition for a hearing before the District Presbytery.

All Citations

267 S.C. 107, 226 S.E.2d 253

In *Turbeville v. Morris*, *supra*, this Court stated that:

“Arbitrary’ means based alone upon one’s will, and not upon any course of reasoning and exercise of judgment; bound by no law; done capriciously or at pleasure, without adequate determining principle, nonrational; not governed by any fixed rules or standard.’

^[6] We are of the opinion that the concurrent finding of arbitrariness by the master and lower court is supported by the record. The lower court, therefore, properly ordered the District Council to restore to membership the expelled members of the Dillon Church. The additional relief ordered by the lower court was necessary and proper to restore all the rights and privileges exercised by the expelled members as members of the congregation prior to the arbitrary action of the District Council.

AFFIRMED.

LEWIS, C.J., and LITTLEJOHN, NESS and GREGORY, JJ., concur.

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286 S.C. 182
Court of Appeals of South Carolina.

Dr. Carlton DEESE, Appellant,
v.
SOUTH CAROLINA STATE BOARD OF
DENTISTRY, Respondent.

No. 0503.
|
Heard April 23, 1985.
|
Decided June 18, 1985.

Synopsis

The Common Pleas Court, Florence County, Luke N. Brown, Jr., J., upheld decision of State Board of Dentistry suspending dentist's license, and dentist appealed. The Court of Appeals, Cureton, J., held that Board's action in suspending dentist's license for five years, stayed at end of two years on condition he accept three-year probation and pass clinical portion of dental examination, for dentist's permitting of unlicensed personnel to do dental work was not arbitrary and capricious.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (2)

[1] **Administrative Law and Procedure**

🔑 Review for arbitrary, capricious,

unreasonable, or illegal actions in general

Administrative decision is “arbitrary” if it is without rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards. Code 1976, § 1–23–380(g).

18 Cases that cite this headnote

[2] **Health** 🔑 Dealing with unqualified or unlicensed persons

Action of State Board of Dentistry in suspending dentist's license for five years, stayed at end of two years on condition that dentist accept three-year probation and pass clinical portion of dental examination, for permitting unlicensed personnel to perform dental work was not arbitrary and capricious, notwithstanding dentist's allegations that others similarly situated had received lesser sanctions; suspension of license was within sanctions established by law for dentist's “extensive” violations. Code 1976, § 40–15–200.

2 Cases that cite this headnote

Attorneys and Law Firms

****540 *183** J. Allen Lewis, Jr., of Yarborough, Lewis, Weaver & Stewart, Florence, for appellant.

Atty. Gen. T. Travis Medlock, Retired Atty. Gen. Daniel R. McLeod and Sr. Asst. Atty. Gen. Edwin E. Evans, Columbia, for respondent.

Opinion

CURETON, Judge:

In a decision affirmed by the circuit court, respondent South Carolina State Board of Dentistry suspended appellant Carlton Deese's license to practice dentistry. Deese contends the court erred in finding that the Board did not abuse its discretion in imposing the sanction. We find no error and affirm.

The Board filed a Formal Accusation against Dr. Deese, owner of the Deese Dental Clinic, alleging that he employed or permitted unlicensed personnel to take impressions of the teeth and mouths of patients, to insert dentures in the mouths of patients and to make adjustments of dentures of dental patients, in violation of the Dental Practices Act, S.C. Code Ann. Sections 40–15–10 to 40–15–380 (1976 & Supp.1984).

Deese entered into a Stipulation of Facts in which he admitted the allegations against him and offered facts in mitigation. Following a hearing, the Board suspended Deese's license for five years, stayed at the end of two years

on condition he accept a three-year probation period and take and pass the clinical portion of the State Dental Examination as a prerequisite to reinstatement of his license.

Deese appealed the Board's decision, asserting that the sanctions imposed did not reflect the evidence in mitigation and were disproportionate to those imposed in past cases. The circuit court remanded the case to the Board for rehearing ***184** in light of Deese's assertions. The Board reaffirmed its decision and again Deese appealed. The circuit court found the Board's sanctions to be within its statutory authority and therefore affirmed the decision.

On appeal to this Court, Deese contends the circuit court erred in three particulars. First, according to Deese, the court failed to adequately review the Board's decision since it determined only that the decision was not “clearly erroneous in view of the substantial evidence,” but failed to determine whether the decision was “arbitrary and capricious.” Second, Deese claims the sanctions were in fact arbitrary and capricious because they were disproportionate to those imposed on his co-accused colleagues and on other dentists in past cases. Third, Deese argues, the record fails to support the factual bases upon which the Board imposed the sanctions.

Section 1–23–380(g) of the Administrative Procedures Act (S.C. Code Ann. Section 1–23–310 to 1–23–400 (Supp.1984)) governs ****541** the standard of judicial review of decisions of the South Carolina State Board of Dentistry.

Among other things, the section provides that the court may modify the agency's decision "if substantial rights of the appellant have been prejudiced because the administrative ... decisions are: (5) clearly erroneous in view of the ... substantial evidence ... or (6) arbitrary or capricious or characterized by abuse of discretion...."

The record before us reveals that contrary to Deese's assertion, the circuit court did review the Board's decision to determine whether it was arbitrary and capricious. The court's order states, "Petitioner argues that the sanction imposed was arbitrary and capricious.... While this Court may not necessarily agree with the Board's sanctions, it may not substitute its judgment for that of the Board.... Upon review of the sanction, this Court does not find it to be an abuse of discretion on the part of the Board."

^[1] In addition, our own review reveals that the Board's decision cannot be characterized as arbitrary or capricious. A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is *185 governed by no fixed rules or standards. *Hatcher v. South Carolina District Council of Assemblies of God, Inc.*, 267 S.C. 107, 226 S.E.2d 253 (1976); *Turbeville v. Morris*, 203 S.C. 287, 26 S.E.2d 821 (1943).

^[2] The Board was clearly authorized by Section 40–15–200 of the South Carolina

Code of Laws of 1976 (Supp.1984) to revoke or suspend Deese's license, reprimand him, or take any other reasonable action short of license revocation or suspension.¹ Since the sanctions were within those established by law, Deese's contention that they were arbitrary and capricious is without merit.

¹ Section 40–15–200 provides:

If the board shall be satisfied that the dentist ... is guilty of any offense charged in the formal accusation ... it shall thereupon revoke or suspend the license ... reprimand the dentist ... or take any other reasonable action short of revocation or suspension, such as requiring the person to undertake additional professional training ... psychiatric evaluations, controlled substance restrictions, institutional practice under supervision, and any other actions deemed appropriate by the board....

Deese argues that the disparity between the sanctions imposed on him and those imposed on his co-accused colleagues and other dentists in recent Board decisions reveals the arbitrariness of the Board's decision.² It appears settled, however, that the alleged disparate treatment affords no basis for reversal of the Board's sanctions.

² Of the three other dentists employed in the Deese Dental Clinic and charged with similar violations, one

was suspended from practice for thirty days and placed on probation for one year, another was reprimanded and the third received dismissal of the accusation against him.

An agency need not exercise its discretion identically in every case. “A penalty that is within the authority of the agency is not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases” and “mere unevenness in the application of the sanction does not render its application in a particular case unwarranted in law.” [citation omitted].

Villela v. Department of the Air Force, 727 F.2d 1574, 1577 (Fed.Cir.1984); *Butz v. Glover Livestock Commission Co.*, 411 U.S. 182, 93 S.Ct. 1455, 36 L.Ed.2d 142 (1973); *186 *Sartain v. Securities and Exchange Commission*, 601 F.2d 1366 (9th Cir.1979); *Barnum v. National Transportation & Safety Board*, 595 F.2d 869 (D.C.Cir.1979).

Finally, Deese contends that the Board's findings of fact upon which the sanctions are based conflict with the stipulations entered into by the parties. For example, Stipulation of Fact V states, “There has been recent improvement in the operation of the clinic ... and the accused is now more closely monitoring the operations of the clinic....” The Board, responding to the stipulation in its order, stated, **542 “[Deese's] present compliance ... which is expected and required of all licensed practitioners, does not erase the extensive violation that occurred during 1980 and 1981.” Deese contends the record does not

support the Board's finding that extensive violations took place. We disagree.

The Board's findings are in fact based upon the Stipulations of Fact or testimony elicited during the hearing. Stipulations II and III both concede that violations occurred during 1980 and 1981. The Board's characterization of the violations as “extensive” was therefore proper based on the evidence adduced. We find no merit in the contention that the court should have reversed or modified the sanctions because they were not based upon facts appearing in the record.

We have reviewed the errors alleged and find the allegations to be without merit. For the reasons given herein, the judgment of the circuit court affirming the decision of The South Carolina State Board of Dentistry is

AFFIRMED.

GARDNER and BELL, JJ., concur.

All Citations

286 S.C. 182, 332 S.E.2d 539

427 S.C. 458
Supreme Court of South Carolina.

DAUFUSKIE ISLAND UTILITY
COMPANY, INC., Appellant,

v.

SOUTH CAROLINA OFFICE OF
REGULATORY STAFF, Haig Point Club
and Community Association Inc.,
Melrose Property Owner's Association,
Inc., and Bloody Point Property Owner's
Association, Respondents.

Appellate Case No. 2018-001107

|

Opinion No. 27905

|

Heard April 18, 2019

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Filed July 24, 2019

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Rehearing Denied September 27, 2019

Synopsis

Background: Water and wastewater utility sought review of Public Service Commission's order that granted utility 39% of the additional revenue that it requested in its application. The Supreme Court, 420 S.C. 305, 803 S.E.2d 280, reversed. On remand, the Commission, 2018 WL 741908, disallowed certain rate case expenses. Utility appealed.

[Holding:] The Supreme Court, Few, J., held that Commission acted arbitrarily in subjecting utility to retaliatory, higher standard of scrutiny on remand.

Reversed and remanded.

Procedural Posture(s): Review of Administrative Decision.

West Headnotes (4)

[1] **Public Utilities**—Nature and extent in general
When presiding over a ratemaking proceeding, the Public Service Commission (PSC) takes on a quasi-judicial role. S.C. Code Ann. § 58-3-140(A).

[2] **Public Utilities**—Evidence
In scrutinizing evidence during a ratemaking proceeding, the Public Service Commission (PSC) should evaluate the evidence in accordance with objective and consistent standards.

2 Cases that cite this headnote

[3] **Public Utilities**—Review and determination in general

A decision by the Public Service Commission is arbitrary if it is without a rational basis, is based not upon any course of reasoning and

exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards. S.C. Code Ann. § 1-23-380(5)(f).

3 Cases that cite this headnote

[4] **Municipal Corporations** → Sewer rates

Water Law → Determination and disposition

Public Service Commission (PSC) acted arbitrarily in subjecting water and wastewater utility to retaliatory, higher standard of scrutiny on remand after utility prevailed before Supreme Court in its application for rate increase for water and sewer service.

Appeal From The Public Service Commission

Attorneys and Law Firms

Thomas P. Gressette Jr. and George Trenholm Walker, Walker Gressette Freeman & Linton, LLC, of Charleston, for Appellant.

Andrew McClendon Bateman and Jeffrey M. Nelson, of Columbia, for Respondent South Carolina Office of Regulatory Staff; John Julius Pringle Jr. and Lyndey Ritz Zwing Bryant, Adams and Reese LLP, of Columbia, for Respondents Haig Point Club and

Community Association, Inc., Melrose Property Owner's Association, Inc., and Bloody Point Property Owner's Association.

Opinion

JUSTICE FEW:

459** Daufuskie Island Utility Company, Inc. (DIUC) filed an application with the Public Service Commission for a rate increase for the water and sewer service it provides to residents of Daufuskie Island in Beaufort County. During a hearing on the merits of the application, the commission approved a purported settlement agreement between the Office of Regulatory Staff (ORS) and three property owners' associations: Haig Point Club and Community Association Inc., Melrose Property Owner's Association, Inc., and Bloody Point Property Owner's Association. DIUC appealed, and we reversed. *Daufuskie Island Util. Co., Inc. v. S.C. Office of Regulatory Staff*, 420 S.C. 305, 803 S.E.2d 280 (2017). We found the agreement “was not a true settlement” because DIUC did not agree to it. *573** 420 S.C. at 315-16, 803 S.E.2d at 285-86. We remanded the case to the commission for a new hearing on all issues. 420 S.C. at 316, 803 S.E.2d at 286.

***460** On remand, the commission held a second hearing on the merits and issued a second order. DIUC now appeals the second order, arguing the commission erred in disallowing certain rate case expenses¹ and refusing to include items of capital in DIUC's rate base.² DIUC argues ORS and the commission applied a higher standard of

scrutiny on remand in retaliation against DIUC for successfully seeking reversal of the commission's initial order. At oral argument on this second appeal, when pressed by the Court to respond to DIUC's "retaliation" argument, appellate counsel for ORS conceded a heightened standard had been employed. Counsel stated, "Was it a higher standard than was previously applied? It certainly was a different standard," and "I don't believe it was a lesser standard, you are correct." Pressed further, counsel stated, "You're right. There is a difference ... [in] the way we handled the methodology" Finally, a Justice of the Court challenged counsel, "The reason that [the rate case expenses] were paid the first go around ..., but disallowed the next time, is because of the higher level of scrutiny." Counsel responded, "At the end of the day I think that's a fair characterization."

¹ Rate case expenses are expenses incurred by a utility in the preparation of a rate application and in related proceedings before the commission. See generally 73B C.J.S. *Public Utilities* § 87 (2015) (describing rate case expenses as "expenses incurred during a rate-making proceeding"); 64 Am. Jur. 2d *Public Utilities* § 127 (2011) (describing rate case expenses as "costs incurred by a utility to prepare and present a rate case").

² " 'The "rate base" is the amount of investment on which a regulated public utility is entitled to an

opportunity to earn a fair and reasonable return.' It 'represents the total investment in, or the fair value of, the used and useful property which it necessarily devotes to rendering the regulated services.' " *Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 101 n.2, 708 S.E.2d 755, 758 n.2 (2011) (quoting *S. Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n of S.C.*, 270 S.C. 590, 600, 244 S.E.2d 278, 283 (1978)).

We appreciate the professionalism of appellate counsel as an officer of the court in giving candid answers to our direct questions. We do not attribute the actions of ORS to its appellate counsel. Nevertheless, these retaliatory actions by ORS are deeply troubling. We rightly demand more of governmental representatives—like ORS—than such an unprofessional approach to the legitimate financial interests of South *461 Carolina businesses, and of South Carolina utility ratepayers. Likewise, we expect more respect for the rulings of this Court than administrative officers exhibit when they retaliate against parties who prevail against them on appeal.

The misconduct by ORS, however, does not necessarily require the commission's order on remand be reversed. For two reasons, we find it must be. First, ORS is not simply a party to a rate case application. Under the legislation creating it, "ORS ... has the power to review and investigate rate applications, and to make recommendations to the PSC." *Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*,

392 S.C. 96, 105, 708 S.E.2d 755, 760 (2011); *see generally* S.C. Code Ann. § 58-4-10(B) (Supp. 2018) (providing ORS “must represent the public interest of South Carolina before the commission” and “must be considered a party of record in all filings, applications, or proceedings”); § 58-4-50(A)(2), (9) (2015) (providing ORS must “make inspections, audits, and examinations of public utilities” and “serve as a facilitator or otherwise act directly or indirectly to resolve disputes and issues involving matters within the jurisdiction of the commission”). Specifically, in a rate application proceeding, ORS must “review, investigate, and make appropriate recommendations to the commission with respect to the rates charged or proposed to be charged by any public utility.” § 58-4-50(A)(1).

These statutes require ORS to fulfill a unique role in proceedings before the commission. They require ORS to act in a fair and unbiased manner to protect the public interest, provide public utilities a fair rate application proceeding, and make appropriate and reliable recommendations to the commission. When ORS fails to meet this responsibility, it necessarily affects the decision-making of the commission. In this case, ORS made recommendations to the commission ****574** which the commission accepted. The commission's decision cannot be separated from the higher standard of scrutiny ORS now concedes it applied on remand from its unsuccessful first trip to this Court.

Second, the commission's own treatment of DIUC's rate case expense claims demonstrate the commission also employed a heightened standard of scrutiny on remand. In the commission's initial order, the commission awarded DIUC a ***462** portion of rate case expenses for work performed by its consultant, Guastella Associates. Addressing DIUC's initial request to recover \$191,200 in rate case expenses, the commission wrote,

ORS proposed ... current rate case expenses in the amount of \$75,000 for [Guastella's] preparation of the Application, developing rate models, calculating test year data, filing other rate case documents and legal expenses.... The Commission agrees with ORS's judgment that \$75,000 in rate case expenses is a reasonable amount to pass to ratepayers for this rate case.

On remand, DIUC requested more rate case expenses than the \$75,000 the commission awarded the first time, including \$542,978 for Guastella's services. During the remand hearing, when asked by a commissioner to explain ORS's rate case expense recommendation—specifically, “how much goes to Guastella Associates”—a witness for ORS responded, “ ‘Zero goes to Guastella Associates,’ is the quick and easy answer. They have submitted, roughly \$540,000 worth of invoices that were insufficient, and we removed those.” The commission then adopted ORS's proposed adjustment and excluded recovery of the entire \$542,978. The

commission's wholesale rejection of every Guastella invoice appears retaliatory because the commission approved and awarded \$75,000 for Guastella's services after the initial hearing.³

³ Although the commission's order on remand appears to allow DIUC the ability to recover the \$75,000 awarded after the initial hearing, the order on remand only specifies, "The \$75,000 is a figure that was used in the previous hearing and was arrived at during settlement negotiations between the ORS and POAs." Because the commission's order precludes recovery for all of the invoices detailing the rate case services performed by Guastella, it is not clear to us how the order on remand actually permits DIUC the ability to recover the previously awarded rate case expenses.

Additionally, in contrast to the commission's assessment of the invoices in its order after the initial hearing, the commission heavily scrutinized the format of the Guastella invoices on remand. The commission's order on remand provides, "The Commission agrees with ORS.... The evidence shows that a large sum of what DIUC seeks was based on invoices that could not be verified." The commission's order denying DIUC's motion for reconsideration also provides, "ORS ...
*463 completed a thorough review of all invoices from Guastella Associates, and found that they 'contained mathematical errors,

lacked sufficient detail, and/or did not appear to be paid.' " However, the commission expressed these concerns with the invoices only in its evaluation on remand. The commission's harsher treatment of the *same* invoices on remand—of which rate case expenses were previously awarded—convinces us the commission itself employed a retaliatory standard of scrutiny.

¹¹ The commission is "vested with power ... to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State." S.C. Code Ann. § 58-3-140(A) (2015). "When presiding over a ratemaking proceeding, the PSC takes on a quasi-judicial role." *Utils. Servs.*, 392 S.C. at 105, 708 S.E.2d at 760. In *Utilities Services*, we explained,

[T]he PSC is the ultimate fact-finder in a ratemaking application. It has the power to independently determine whether an applicant has met its burden of proof. The PSC is not bound by ORS's determination that an expenditure was reasonable and proper for inclusion in a rate application. The PSC may determine—independent of any party—that an expenditure is suspect and requires further scrutiny.

392 S.C. at 106, 708 S.E.2d at 761.

^[2] However, in scrutinizing evidence during a ratemaking proceeding, the commission ****575** should evaluate the evidence in accordance with objective and consistent standards. *See Utils. Servs.*, 392 S.C. at 113, 708 S.E.2d at 764-65 (acknowledging “the PSC’s duty to fix ‘just and reasonable’ rates” includes evaluating evidence within “the context of an objective and measurable framework”); *see also* § 58-3-225(A) (2015) (“Hearings conducted before the commission must be conducted under dignified and orderly procedures designed to protect the rights of all parties.”).

^[3] This Court’s review is governed by section 1-23-380 of the South Carolina Code (Supp. 2018). We may reverse an order of the commission “if substantial rights of the appellant have been prejudiced because the [commission’s] findings, inferences, conclusions, or decisions” are “arbitrary.” ***464** § 1-23-380(5)(f). **A decision by the commission is arbitrary “if it is without a rational basis, is based ... not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.”** *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985) (citing *Hatcher v. S.C. Dist. Council of Assemblies of God, Inc.*, 267 S.C. 107, 117, 226 S.E.2d 253, 258 (1976); *Turbeville v. Morris*, 203 S.C. 287, 315, 26 S.E.2d 821, 832 (1943)).

^[4] The commission’s denial of DIUC’s rate case expenses it previously permitted was

arbitrary because DIUC’s evidence was subjected to a retaliatory, higher standard of scrutiny on remand. As counsel for ORS conceded, “The reason that the rate case expenses were paid the first go around, but disallowed the next time, is because of the higher level of scrutiny.” This arbitrary, higher standard of scrutiny affected substantial rights of DIUC. The commission’s findings of fact and conclusions of law must be reversed. We remand to the commission for a new hearing.

DIUC’s rate application will now go before the commission for a third hearing. In our initial reversal and remand, we explained certain points of law applicable to the merits of DIUC’s claims. *Daufuskie Island Util. Co.*, 420 S.C. at 316-20, 803 S.E.2d at 286-88. In this reversal and remand, we do not address the merits at all. In reversing the commission twice, we do not intend to make any suggestion of our views of the merits. Rather, we simply require the commission and ORS evaluate the evidence and carry out their important responsibilities consistently, within the “objective and measurable framework” the law provides. *Utils. Servs.*, 392 S.C. at 113, 708 S.E.2d at 765.

REVERSED AND REMANDED.

BEATTY, C.J., KITTREDGE, HEARN and JAMES, JJ., concur.

All Citations

427 S.C. 458, 832 S.E.2d 572

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296 S.C. 289

Court of Appeals of South Carolina.

C. Carl JOHNSON, Appellant–Respondent,
v.

Terry Cobb JOHNSON,
Respondent–Appellant.

No. 1212.

|

Heard March 14, 1988.

|

Decided Aug. 29, 1988.

Synopsis

Husband brought action to enforce an antenuptial agreement and wife counterclaimed, seeking divorce on the ground of physical cruelty. The Family Court, Greenwood County, Thomas B. Barrineau, Jr., J., declared the antenuptial agreement void and granted the divorce. Husband appealed from the equitable distribution and attorney's fees award, and wife appealed from the award of alimony and attorney's fees. The Court of Appeals, Bell, J., held that: (1) court erred in concluding that certain disputed property was transmuted; (2) court did not err in apportioning the marital estate; (3) court erred in awarding rehabilitative alimony, and award of permanent, periodic alimony was required; and (4) court abused its discretion in awarding attorney's fees in an amount less than actually incurred.

Affirmed in part, reversed in part, and remanded.

Procedural Posture(s): On Appeal.

West Headnotes (20)

[1] **Divorce** 🔑 Commingling, tracing, and transmutation

Court erred in concluding that disputed property was transmuted into marital property, as antenuptial agreement stated plainly that neither party would acquire interest in separately titled property of other by reason of marriage, and, although antenuptial agreement was not enforceable contract, it was evidence of husband's intent to maintain his previously acquired, nonmarital property as separate property, and subsequent acts of parties did not show change of intent. Code 1976, § 20–7–473(2).

23 Cases that cite this headnote

[2] **Divorce** 🔑 Real estate and proceeds thereof in general

Divorce 🔑 Personal and household goods

Divorce 🔑 Retirement or pension rights

Household contents acquired during marriage, contributions of marital funds to husband's Keogh account, and use of marital funds to reduce mortgage indebtedness on husband's separately titled real estate, were clearly marital property, and were properly considered for purposes of apportionment and distribution of

marital estate. Code 1976, § 20–7–473(5).

5 Cases that cite this headnote

[3] **Divorce** 🔑 Distribution of separate property in general

Divorce 🔑 Particular applications of multiple factors

Equal distribution of marital property was fair, even though most of appreciation in value of marital assets was attributable to husband's earnings and income during marriage, and marriage lasted only 14 months, as husband had earning capacity of \$100,000 a year and received marital and nonmarital assets totalling \$628,928, wife had earning capacity of \$18,000 a year and received marital and nonmarital assets totalling \$34,360, husband had insisted that he would be income earner and wife would be homemaker, husband's earnings were property of marriage, not his separate property, and wife was entitled to special equity in husband's nonmarital rental property, as property had deteriorated to point where it was no longer rentable, and wife personally renovated property, which subsequently became marketable and began producing rental income. Code 1976, § 20–7–472.

5 Cases that cite this headnote

[4] **Divorce** 🔑 Extent of Time of Payments

Court erred in awarding wife rehabilitative alimony of \$300 per month for 12 years, rather than permanent, periodic alimony, despite fact that marriage lasted only 14 months, as husband was responsible for short duration of marriage, rehabilitative alimony would have restored wife to standard of living she had before marriage, rather than standard of living she enjoyed during marriage, husband's financial resources and earning capacity far exceeded wife's, and husband had financial ability to meet his own needs while supporting wife at standard of living she enjoyed during marriage.

11 Cases that cite this headnote

[5] **Divorce** 🔑 Attorney Fees

Court abused its discretion in awarding wife attorney's fees in amount less than actually incurred, in divorce action, as fee actually incurred was reasonable, husband had ability to pay fee and wife did not, husband initiated lawsuit, his attempt to enforce invalid antenuptial agreement rendered case more difficult to defend, and he failed to furnish discovery information and to file proper financial declaration as required by rules of court.

9 Cases that cite this headnote

- [6] **Divorce** 🔑 Nature and purpose of spousal support; property award distinguished
Alimony is a substitute for the support which is normally incident to the marital relationship.

21 Cases that cite this headnote

- [7] **Divorce** 🔑 Nature and purpose of spousal support; property award distinguished
Ordinarily, the purpose of alimony is to place the supported spouse, as nearly as is practical, in the position of support she enjoyed during the marriage.

19 Cases that cite this headnote

- [8] **Divorce** 🔑 Award in General; Calculation
Divorce 🔑 Award of Gross Sum
Alimony may be awarded as periodic payments or in a lump sum. Code 1976, § 20–3–130.

1 Case that cites this headnote

- [9] **Divorce** 🔑 Award of Gross Sum
The power to award lump sum alimony should be exercised only where special circumstances require it.

1 Case that cites this headnote

- [10] **Divorce** 🔑 Award of Gross Sum
Lump sum awards are not favored and should be given only in exceptional cases or when consented to.

- [11] **Divorce** 🔑 Grounds, factors, and defenses in general

An award of lump sum alimony must be supported by some impelling reason for its necessity or desirability.

1 Case that cites this headnote

- [12] **Divorce** 🔑 Rehabilitative awards; awards until self-supporting
Rehabilitative alimony may be awarded only upon a showing of special circumstances justifying a departure from the normal preference for permanent, periodic support; the purpose of rehabilitative alimony is to encourage a dependent spouse to become self-supporting after a divorce; however, it should be approved only in exceptional circumstances, in part, because it seldom suffices to maintain the level of support the dependent spouse enjoyed as an incident to the marriage.

20 Cases that cite this headnote

[13] Divorce 🔑 Rehabilitative awards; awards until self-supporting

The factors to be considered in awarding rehabilitative alimony include: (1) the duration of the marriage; (2) the age, health, and education of the supported spouse; (3) the financial resources of the parties; (4) the parties' accustomed standard of living; (5) the ability of the supporting spouse to meet his needs while meeting those of the supported spouse; (6) the time necessary for the supported spouse to acquire job training or skills; (7) the likelihood that the supported spouse will successfully complete retraining; and (8) the supported spouse's likelihood of success in the job market.

4 Cases that cite this headnote

[14] Divorce 🔑 Rehabilitative awards; awards until self-supporting

While based upon the reasonable needs of the wife to maintain her marital standard of living, the alimony award should also take into account her own earning capacity; alimony should not serve as a disincentive for her to improve her employment potential nor dissuade her from providing, to the extent feasible for her own support.

3 Cases that cite this headnote

[15] Divorce 🔑 Commingling, tracing, and transmutation

In certain circumstances, nonmarital property, as defined by the Act, may be transmuted into marital property during the marriage; property, nonmarital at the time of its acquisition, may be transmuted (1) if it becomes so commingled with marital property as to be untraceable; (2) if it is titled jointly; or (3) if it is utilized by the parties in support of the marriage or in some other manner so as to evidence an intent by the parties to make it marital property.

60 Cases that cite this headnote

[16] Divorce 🔑 What is marital property in general

The equitable apportionment of Marital Property Act defines marital property as all real and personal property acquired by the parties during the marriage which is owned as of the date of filing or commencement of marital litigation, regardless of how legal title is held. Code 1976, § 20–7–473.

45 Cases that cite this headnote

[17] Divorce 🔑 Property acquired before marriage

Under the Act, property acquired by either party before the marriage is nonmarital property. Code 1976, § 20–7–473(2).

8 Cases that cite this headnote

[18] Divorce ➡ Commingling, tracing, and transmutation

As a general rule, transmutation is a matter of intent to be gleaned from the facts of each case.

12 Cases that cite this headnote

[19] Divorce ➡ Particular Interests as Separate or Marital Property

Divorce ➡ Factors and considerations in general

Divorce ➡ Equity and proportionality in general

Divorce ➡ Contributions during marriage in general; marital role

Divorce ➡ Particular methodologies in general

Divorce ➡ Valuation, Division or Distribution of Particular Property or Interests

Divorce ➡ Verdict, Findings, or Determination

In making equitable distribution of marital property, the court must (1) identify the marital property, both real and personal, to be divided between the parties; (2) determine the fair market value of the property so identified; (3) apportion the marital estate according to the contributions, both direct and indirect, of each party to the acquisition of the property during the marriage, their respective assets

and incomes, and any special equities they may have in marital assets; and (4) provide for an equitable division of the marital estate, including the manner in which distribution is to take place.

31 Cases that cite this headnote

[20] Divorce ➡ Particular Interests as Separate or Marital Property

Divorce ➡ Nature or character of property or ownership in general

The spouse claiming an equitable interest in property upon dissolution of the marriage has the burden of proving the property is part of the marital estate.

14 Cases that cite this headnote

Attorneys and Law Firms

****108 *291** C. Rauch Wise, of Wise & Tunstal, and Joseph M. Pracht, of Pracht & Wyndham, Greenwood, for appellant-respondent.

Robert J. Thomas, Columbia, for respondent-appellant.

Opinion

BELL, Judge:

This is a divorce action. Both parties appeal from the final decree of divorce. The issues on appeal concern (1) the equitable distribution of the marital estate; (2) the award of rehabilitative

alimony to the wife; and (3) the award of attorney's fees to the wife. We affirm in part and reverse in part and remand.

C. Carl Johnson, a dentist practicing in Greenwood, South Carolina, proposed marriage to Terry Cobb, a dental hygienist working in Columbia, in April, 1985. Dr. Johnson made the proposal by telephone, asking Terry to quit her job and marry him. Terry immediately accepted the proposal. It was her first marriage, his second.

During the five week engagement, Dr. Johnson told Terry he wanted her to be his wife, homemaker, and companion. He promised she would never have to work again outside the home. He suggested she ****109** dispose of much of her furniture, because together they had more than they needed for the marital home. Five days before the wedding, and after Terry quit her job, gave up her apartment in Columbia, and disposed of many of her belongings, Dr. Johnson presented her with an antenuptial agreement drafted by his lawyer. The ***292** family court found that he presented it in a way that left Terry with the belief there would be no wedding unless she signed it. She signed in the kitchen of Dr. Johnson's home without consulting an attorney. The family court ruled that the agreement was procedurally and substantively unfair and, therefore, void. Dr. Johnson does not contest that ruling.

The parties were wed on May 11, 1985. After the wedding, the marriage began to deteriorate rapidly due to Dr. Johnson's conduct. We need not detail his behavior. Suffice it to say, he severely mistreated Mrs. Johnson, mentally and physically abusing her in many ways. Among

other things, he battered her on at least three occasions, the last consisting of seven or eight blows to her face. After submitting to fourteen months of continuous abuse, and fearing for her physical safety, Mrs. Johnson left the marital home on July 14, 1986. She went to live with her mother. Thenceforward, the parties lived separately.

On August 21, 1986, Dr. Johnson commenced this action seeking to enforce the antenuptial agreement. Mrs. Johnson answered, denying the validity of the agreement, and counterclaimed, seeking a divorce on the ground of physical cruelty. She also petitioned for an equitable division of marital property, an award of alimony, and attorney's fees.

In an unusually detailed order, the family court declared the antenuptial agreement void; granted a divorce on the ground of physical cruelty; identified, valued, and distributed the marital estate; awarded Mrs. Johnson rehabilitative alimony for a period of twelve months; and granted her partial attorney's fees. Dr. Johnson does not contest the judgment of divorce. He does challenge the equitable distribution and the attorney's fees. Mrs. Johnson appeals from the award of alimony and the attorney's fees.

I.

A.

[1] Each party brought previously acquired property into the marriage. Among other things, Dr. Johnson owned a house at

Wellington Green, which the parties used as the marital residence; a 1976 Mercedes automobile, *293 which he let Mrs. Johnson use as her own during the marriage; over \$33,000 of household contents; a Keogh account valued at the time of divorce at \$189,428; Individual Retirement Accounts (IRA's) valued at the time of divorce at \$9574; a Kiawah Island property; a Belle Meade property; and a MayApple property. For convenience, we shall refer to these items as the “disputed property.”

In the family court, Mrs. Johnson argued the “disputed property” was transmuted into marital property and became subject to equitable distribution. Dr. Johnson maintained that all property acquired before the marriage remained separate property during the marriage and was not subject to equitable distribution.

The family court judge, while expressing the opinion that the “disputed property” was “probably” transmuted into marital property, in effect treated it as Dr. Johnson's separate property in the actual equitable distribution. The judge held, however, that the increase in value of these properties during the marriage was marital property subject to equitable distribution. Dr. Johnson asserts this was error.

B.

The doctrine of equitable distribution is based on a recognition that marriage is, among other things, an economic partnership. Upon dissolution of the marriage, property acquired during the marriage should be divided and distributed in a manner which fairly reflects

each spouse's contribution to its acquisition, regardless of which spouse holds legal title. *Walker v. Walker*, 295 S.C. 286, 368 S.E.2d 89 (Ct.App.1988).

In making an equitable distribution of marital property, the court must (1) identify the marital property, both real and personal, to be divided between the parties; (2) determine the fair market value of the property so identified; (3) apportion the marital estate according to the contributions, both direct and indirect, of each party to the acquisition of the property during the marriage, their respective assets and incomes, and any special equities they may have in marital assets; and (4) provide for an equitable division of the marital estate, including the manner in which distribution is to take place. *294 *Toler v. Toler*, 292 S.C. 374, 356 S.E.2d 429 (Ct.App.1987); *Gibson v. Gibson*, 283 S.C. 318, 322 S.E.2d 680 (Ct.App.1984).

C.

Identification of marital property is controlled by the provisions of the Equitable Apportionment of Marital Property Act.¹ The Act defines marital property as all real and personal property acquired by the parties during the marriage which is owned as of the date of filing or commencement of marital litigation, regardless of how legal title is held. Section 20–7–473; *see also*, *Berry v. Berry*, 290 S.C. 351, 350 S.E.2d 398 (Ct.App.1986), *affirmed*, 294 S.C. 334, 364 S.E.2d 463 (1988) (marital property is all property acquired during the marriage which does not fall within some established exception).

¹ Section 1, Act No. 522, Acts and Joint Resolutions of the General Assembly of South Carolina, Regular Session, 1986, 64 Stat. at Large 3264, 3265 (codified as Sections 20–7–471 through 20–7–479, Code of Laws of South Carolina, 1976, as amended).

The spouse claiming an equitable interest in property upon dissolution of the marriage has the burden of proving the property is part of the marital estate. *Cf., Roberts v. Roberts*, 296 S.C. 93, 370 S.E.2d 881 (Ct.App.1988). If she carries this burden, she establishes a prima facie case that the property is marital property.

If the opposing spouse then wishes to claim that the property so identified is not part of the marital estate, he has the burden of presenting evidence to establish its nonmarital character. *Miller v. Miller*, 293 S.C. 69, 358 S.E.2d 710 (1987).

Under the Act, property acquired by either party before the marriage is nonmarital property. Section 20–7–473(2); *see also, Sauls v. Sauls*, 287 S.C. 297, 337 S.E.2d 893 (Ct.App.1985). Property acquired during the marriage in exchange for property acquired before the marriage is also nonmarital property. Section 20–7–473(3). Likewise, any increase in the value of nonmarital property during the marriage is nonmarital property, except to the extent the increase resulted directly or indirectly from the efforts of the other spouse during the marriage. Section 20–7–473(5); *see also, Miller v. Miller, supra*.

***295** If the opposing party shows that an item of property was either acquired before the

marriage or falls within a statutory exception, this rebuts the prima facie case for its inclusion in the marital estate. However, it does not necessarily end the matter.

In certain circumstances, nonmarital property, as defined by the Act, may be transmuted into marital property during the marriage. Property, nonmarital at the time of its acquisition, may be transmuted (1) if it becomes so commingled with marital property as to be untraceable; (2) if it is titled jointly; or (3) if it is utilized by the parties in support of the marriage or in some other manner so as to evidence an intent by the parties to make it marital property. *Trimnal v. Trimnal*, 287 S.C. 495, 339 S.E.2d 869 (1986); *Wyatt v. Wyatt*, 293 S.C. 495, 361 S.E.2d 777 (Ct.App.1987).

As a general rule, transmutation is a matter of intent to be gleaned from the facts of each case.² The spouse claiming ****111** transmutation must produce objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage. Such evidence may include placing the property in joint names, transferring the property to the other spouse as a gift, using the property exclusively for marital purposes, commingling the property with marital property, using marital funds to build equity in the property, or exchanging the property for marital property.³ The mere use of separate property to ***296** support the marriage, without some additional evidence of intent to treat it as property of the marriage, is not sufficient to establish transmutation.⁴ The primacy of the parties' intent in determining if property is marital or nonmarital is underscored by the Act itself,

which permits the parties to exclude property from the marital estate by written agreement. See Section 20–7–473(4).

2 See *Clinkscales v. Clinkscales*, 275 S.C. 308, 270 S.E.2d 715 (1980) (interspousal gift); *Walton v. Walton*, 282 S.C. 165, 318 S.E.2d 14 (1984) (separately titled residence acquired before marriage); *Hussey v. Hussey*, 280 S.C. 418, 312 S.E.2d 267 (Ct.App.1984) (proceeds of inherited property commingled); *Cooksey v. Cooksey*, 280 S.C. 347, 312 S.E.2d 581 (Ct.App.1984) (proceeds of inherited property used to purchase jointly titled marital residence); *Rampey v. Rampey*, 286 S.C. 153, 332 S.E.2d 213 (Ct.App.1985) (inherited property jointly titled and used in support of marriage); *Barr v. Barr*, 287 S.C. 13, 336 S.E.2d 481 (Ct.App.1985) (third party gift).

3 See *Cooksey v. Cooksey*, *supra* (property placed in joint names); *Peterkin v. Peterkin*, 293 S.C. 311, 360 S.E.2d 311 (1987) (using for marital purposes); *Trimnal v. Trimnal*, *supra* (commingling with marital property); *Wyatt v. Wyatt*, *supra* (building equity); *cf. Burgess v. Burgess*, 277 S.C. 283, 286 S.E.2d 142 (1982); *Bailey v. Bailey*, 293 S.C. 451, 361 S.E.2d 348 (Ct.App.1987) (interspousal gift). An exchange of nonmarital property for marital property should not be confused with an exchange of nonmarital property for other nonmarital property. The latter case is

governed by Section 20–7–473(3); the former is not.

4 See *Peterkin v. Peterkin*, *supra* (income from nonmarital property used for marital purposes); *Walton v. Walton*, *supra* (separately titled house acquired before marriage used as marital residence); *Brooks v. Brooks*, 289 S.C. 352, 345 S.E.2d 510 (Ct.App.1986) (portion of inherited property used in support of marriage); *Sauls v. Sauls*, *supra* (separately titled marital residence purchased and paid for prior to marriage).

D.

Turning to the facts of this case, we hold the family court erred in concluding the “disputed property” was transmuted. The record discloses a clear, consistent intent of Dr. Johnson to maintain the nonmarital character of all property he acquired before the marriage. In particular, the antenuptial agreement stated plainly that neither party would acquire any interest in the separately titled property of the other by reason of the marriage. Although the antenuptial agreement is not an enforceable contract, it is evidence of Dr. Johnson's intent to maintain his previously acquired, nonmarital property as separate property. Unless subsequent acts of the parties during the marriage showed a change of intent, the property could not be transmuted. Here we find no evidence of such a change. Consequently, the “disputed property” was not transmuted.

The family court found the “disputed property” was probably transmuted; but in the actual

apportionment and distribution of the marital estate, the court allocated all property which Dr. Johnson acquired before the marriage to him. Since he received the “disputed property” free and clear from any equity in favor of Mrs. Johnson, and did not suffer any corresponding reduction in his share of the remaining marital estate, the final result was the same as if the property had been found to be nonmarital. Thus, any *297 error in characterizing the “disputed property” as marital property was harmless.

[2] The only property considered for the purposes of apportionment and distribution of the marital estate was the increase in value of the parties' realty and personalty during the marriage. The court found these assets appreciated a total of \$94,492 in value during the marriage. Following Section 20–7–473(5), the court determined that only the portion of the increase resulting directly or indirectly from the efforts of the parties was marital property. The court valued this portion of the appreciation at \$55,969. The remaining appreciation was treated as nonmarital property.

Items the court treated as part of the marital estate included such things as household contents acquired during the **112 marriage, contributions of marital funds to Dr. Johnson's Keogh account, and the use of marital funds to reduce mortgage indebtedness on his separately titled real estate. These items were clearly marital property.⁵ The judge correctly concluded that they were subject to equitable apportionment and distribution.

⁵ See *Morris v. Morris*, 268 S.C. 104, 232 S.E.2d 326 (1977) (household contents

acquired during marriage); *Watson v. Watson*, 291 S.C. 13, 351 S.E.2d 883 (Ct.App.1986) (contribution of spousal income to voluntary pension plan); *Trimnal v. Trimnal*, *supra* (reduction of mortgage indebtedness on separately titled real estate by joint efforts during marriage).

E.

[3] Dr. Johnson does not challenge the family court's valuation of the parties' marital and nonmarital assets. He does argue, however, that even if the marital estate was correctly identified and correctly valued, the judge erred in apportioning it.

In making an apportionment of the marital estate, the court must consider fifteen criteria specified by the Act, giving to each such weight as it finds appropriate on the facts of the case. See Section 20–7–472.⁶ These criteria guide the court in exercising its discretion over apportionment of the marital property. They are nothing more than equities *298 to be considered in reaching a fair distribution of marital property. They subserve the ultimate goal of apportionment, which is to divide the marital estate, as a whole, in a manner which fairly reflects each spouse's contribution to the economic partnership and also the relative effect of ending that partnership on each of the parties.⁷

⁶ These statutory criteria replace the thirteen so-called “*Shaluly* factors” of

pre-Act law. *See Shaluly v. Shaluly*, 284 S.C. 71, 325 S.E.2d 66 (1985).

7 Prior to *Shaluly v. Shaluly*, *supra*, the law looked solely to the economic status of the parties at the time of divorce or separation. The primary factor to be considered was the relative incomes and material contributions of the spouses during the marriage. The court could also give secondary consideration to relative fault in ending the marriage and to the net worth of the nonmarital estate of each party. *See Foreman v. Foreman*, 280 S.C. 461, 313 S.E.2d 312 (Ct.App.1984). In other words, judicial enquiry was retrospective. It sought to determine how the spouses had reached the economic status they enjoyed before separation. Under *Shaluly* and the Act, the court must consider not only retrospective factors, but also prospective factors (e.g., earning potential, opportunities for future acquisition of capital assets, vested retirement benefits, child custody) in reaching a fair apportionment. This approach gives consideration to the impact of separation on the future economic status of the parties.

F.

In this case, the family court determined that the marital estate should be apportioned fifty per cent to each spouse. Dr. Johnson argues that an equal apportionment is inequitable because his direct contributions far exceeded those of Mrs. Johnson. There is no question that most

of the appreciation in the value of the assets was attributable to Dr. Johnson's earnings and income during the marriage. Dr. Johnson's argument overlooks the fact, however, that the direct contribution of each party to the acquisition of marital property is not the only criterion to be considered in apportionment. The record reflects several important equities in Mrs. Johnson's favor which Dr. Johnson ignores.

First, there is her homemaker's equity. At Dr. Johnson's insistence, the parties agreed that in their marriage he would be the income earner and she would be his wife, homemaker, and companion. Dr. Johnson asked Mrs. Johnson to give up her career and promised she would never again have to work outside the home. Prior to this suit, Dr. Johnson apparently considered this arrangement to be an equal partnership of the spouses. During the marriage, Mrs. Johnson faithfully performed her homemaker role under the ***299** most trying of circumstances. Because she gave up her own career and dutifully contributed her labor to provide a good marital home for her husband, she acquired an equity in the marital estate to be considered in making the apportionment. *Cf., Parrott v. Parrott*, 278 S.C. 60, 292 S.E.2d 182 (1982).

****113** Second, Dr. Johnson's earnings were property of the marriage, not his separate property as he seems to suppose. *See Orszula v. Orszula*, 292 S.C. 264, 356 S.E.2d 114 (1987) (wages and substitutes for wages received during marriage are marital property); *Hamiter v. Hamiter*, 290 S.C. 508, 351 S.E.2d 581 (Ct.App.1986) (funds derived from salary earned during marriage are marital property).

The contribution of these marital earnings to the appreciation in value of his nonmarital property represented nothing more than a change in the form of the marital property. Marital property in the form of earnings simply became marital property in the form of appreciation in the value of the nonmarital estate. This was a factor to be considered in making the apportionment.

Third, Mrs. Johnson is entitled to a special equity in the Kiawah Island property. When the parties married, the Kiawah property had deteriorated to the point that it was no longer rentable. Mrs. Johnson personally renovated the property, contributing her own labor and skills to improve it. As a direct result of her efforts, the property became marketable and began producing rental income, amounting to \$7373 in the last eleven weeks of the summer of 1986. A spouse has an equitable interest in improvements to property to which she has contributed, even if the property is nonmarital. *Webber v. Webber*, 285 S.C. 425, 330 S.E.2d 79 (Ct.App.1985).

In addition to ignoring these equities in Mrs. Johnson's favor, Dr. Johnson also quarrels with the weight the family court gave to several statutory factors. Among other things, he argues that the length of the marriage should have weighed heavily in his favor.

How the individual factors are weighed depends on the facts of each case. *See Foreman v. Foreman, supra*. The statute vests in the trial judge, not the appellate court, the discretion to decide what weight should be assigned to the *300 various factors. *Cf., Simon v. Flowers*, 231 S.C. 545, 99 S.E.2d 391 (1957). On review,

this Court looks to the fairness of the overall apportionment. *See Morris v. Morris*, 295 S.C. 37, 367 S.E.2d 24 (1988). If the end result is equitable, it is irrelevant that this Court might have weighed specific factors differently than the trial judge. *See Simon v. Flowers, supra*.

In this case, the family court reached an eminently fair result. The total net value of the property owned by the parties at divorce was \$663,288. Dr. Johnson, with an earning capacity and income well over \$100,000 a year, received marital and nonmarital assets totalling \$628,928, with a substantial opportunity for future acquisition of capital assets. Mrs. Johnson, with an earning capacity of \$18,000 a year, received marital and nonmarital assets totalling \$34,360. Dr. Johnson's property includes substantial income-producing assets; Mrs. Johnson's, none. On these facts, Dr. Johnson's claim that Mrs. Johnson's award was excessive is patently without merit.

We affirm the equitable distribution.

II.

[4] Mrs. Johnson appeals from the court's award of rehabilitative alimony. She contends an award of \$300 a month for twelve months is plainly inadequate to maintain the standard of living she enjoyed during the marriage. She also argues that there is no evidence to show she would be able to support herself at her marital standard of living after a twelve month rehabilitation period.

Alimony is a substitute for the support which is normally incident to the marital relationship.

Lide v. Lide, 277 S.C. 155, 283 S.E.2d 832 (1981). Ordinarily, the purpose of alimony is to place the supported spouse, as nearly as is practical, in the position of support she enjoyed during the marriage. See *Voelker v. Hillock*, 288 S.C. 622, 344 S.E.2d 177 (Ct.App.1986).

Alimony may be awarded as periodic payments or in a lump sum. Section 20–3–130, Code of Laws of South Carolina, 1976; *McCune v. McCune*, 284 S.C. 452, 327 S.E.2d 340 (1985). It may also be awarded as permanent support or as temporary, rehabilitative support. See Section 20–3–130; cf., *301 *Brewer v. Brewer*, 242 S.C. 9, 129 S.E.2d 736 (1963) (permanent alimony); *Herring v. Herring*, 286 S.C. 447, 335 S.E.2d 366 (1985) (temporary, rehabilitative support). If a claim for alimony is well founded, the law favors the award of permanent, periodic alimony. See *O'Neill v. O'Neill*, 293 S.C. 112, 359 S.E.2d 68 (Ct.App.1987).

The power to award lump sum alimony should be exercised only where special circumstances require it. *Millis v. Millis*, 282 S.C. 610, 320 S.E.2d 66 (Ct.App.1984). Lump sum awards are not favored and should be given only in exceptional cases or when consented to. *Matheson v. McCormac*, 186 S.C. 93, 195 S.E. 122 (1938). An award of lump sum alimony must be supported by some impelling reason for its necessity or desirability. *Millis v. Millis*, *supra*.⁸

⁸ The factors to be considered in awarding lump sum alimony are set forth in *Atkinson v. Atkinson*, 279 S.C. 454, 309 S.E.2d 14 (Ct.App.1983). Special circumstances justifying a

lump sum award include the need to continue support after the death of the supporting spouse and the likelihood of default if periodic payments are awarded. See *McCune v. McCune*, *supra*; *Hendricks v. Hendricks*, 285 S.C. 591, 330 S.E.2d 553 (Ct.App.1985).

Similarly, rehabilitative alimony may be awarded only upon a showing of special circumstances justifying a departure from the normal preference for permanent, periodic support. The purpose of rehabilitative alimony is to encourage a dependent spouse to become self supporting after a divorce. *Toler v. Toler*, *supra*. It permits former spouses to develop their own lives free from obligations to each other. *Id.* However, it should be approved only in exceptional circumstances, in part, because it seldom suffices to maintain the level of support the dependent spouse enjoyed as an incident to the marriage. See *Id.*; *Voelker v. Hillock*, *supra*.

The factors to be considered in awarding rehabilitative alimony include: (1) the duration of the marriage; (2) the age, health, and education of the supported spouse; (3) the financial resources of the parties; (4) the parties' accustomed standard of living; (5) the ability of the supporting spouse to meet his needs while meeting those of the supported spouse; (6) the time necessary for the supported spouse to acquire job training or skills; (7) the likelihood that the supported spouse will successfully complete retraining; and (8) the supported spouse's likelihood of success in *302 the job market. There must be evidence demonstrating the self sufficiency of the supported spouse at the expiration of the ordered payments in order

for rehabilitative alimony to be granted. *Toler v. Toler, supra*.

In this case, the court found as a fact that Mrs. Johnson's standard of living during the marriage was much higher than her premarital standard of living and more than her income after dissolution of the marriage could sustain. Without explaining why rehabilitative alimony was appropriate, the judge fixed alimony at an amount which, at best, would restore her to her standard of living *before* she married, not, as the law requires, the standard of living she enjoyed *during* the marriage. This was an error of law amounting to an abuse of discretion.

The record reveals a great disparity in the financial resources and earning capacities of the parties. Moreover, it shows that Dr. Johnson has the financial ability to meet his own needs while supporting Mrs. Johnson at the standard of living she enjoyed during the marriage. It is likewise apparent that Mrs. Johnson could not possibly sustain her marital standard of living on her own earnings at the end of the period of rehabilitation. To require Dr. Johnson to pay a paltry \$3600 in support of his former spouse is plainly insufficient. These circumstances mandate an award of permanent, periodic alimony.

Dr. Johnson argues, and the family court agreed, that the short duration of this marriage weighs in favor of rehabilitative alimony. He overlooks the fact that his own conduct was responsible for its quick demise. Mrs. Johnson was entirely blameless for the failure of the marriage. When she married, she was entitled to expect a lifelong partnership which would provide her with a high standard of living

and great financial security. Without cause, Dr. Johnson brought those prospects to an end.

****115** In effect, he now asks us to treat the result of his own misconduct as an equity in his favor.

Unlike most cases, fault is a substantial factor in awarding alimony in this case. Dr. Johnson, not Mrs. Johnson, is to blame for the shortness of the marriage. When the duration of the marriage is seen in its proper light, the equities favor Mrs. Johnson, not Dr. Johnson. An at fault spouse cannot ***303** destroy a marriage and then claim its short duration entitles him to more favorable consideration when the economic adjustments attendant to divorce are made.

We reverse the award of rehabilitative alimony and remand for an award of permanent, periodic alimony. *See Voelker v. Hillock, supra*. The factors which should guide the judge's discretion in making the award are set forth in *Lide v. Lide, supra*. While based upon the reasonable needs of the wife to maintain her marital standard of living, the award should also take into account her own earning capacity. Alimony should not serve as a disincentive for her to improve her employment potential nor dissuade her from providing, to the extent feasible, for her own support. *Josey v. Josey*, 291 S.C. 26, 351 S.E.2d 891 (Ct.App.1986).

III.

[5] Finally, Mrs. Johnson appeals from the court's refusal to award her full attorney's fees.

It is undisputed that her fees actually incurred were \$12,901. The court found that her attorney enjoys high professional standing and that the fee charged was customary for similar legal services. Dr. Johnson does not contend the attorney's billing rate is unreasonable. Neither is there any question about Dr. Johnson's ability to pay.

On the other hand, Mrs. Johnson had no means to pay for defense of the action. Under the fee agreement with her lawyer, the practical effect of the court's failure to award a full fee was to reduce her modest equitable distribution award by almost fifteen per cent.

The court found that Dr. Johnson initiated the lawsuit and that his attempt to enforce an invalid antenuptial agreement rendered the case more difficult to defend. According to the court, he also failed to furnish discovery information and to file a proper financial declaration, as required by the rules of court, which further increased the time and expense of litigation for Mrs. Johnson. For example, when Mrs. Johnson's attorney sought disclosure of his assets, Dr. Johnson disclosed assets of only \$7500. By other means, Mrs. Johnson's attorney was ultimately able to uncover assets in his name of \$653,773.

Despite these facts, the court, without giving any reason *304 to justify its action, refused to award full fees. A decision lacking a discernible reason is arbitrary and constitutes an abuse of discretion. See *Turbeville v. Morris*, 203 S.C. 287, 26 S.E.2d 821 (1943). We hold that the court abused its discretion in awarding attorney's fees in an amount less than actually incurred.

In reaching this conclusion, we have given consideration to Dr. Johnson's contention that the fee awarded is excessive. His primary complaint is that Mrs. Johnson's lawyer spent too many hours preparing the case. He objects, in particular, to the thirty-five hours spent on the pretrial brief or proposed order, the thirteen hours spent in conference with the client, and four hours spent in trial preparation. Given the factual and legal complexity of the case, the vigorous manner in which Dr. Johnson contested every issue, his lack of cooperation in discovery which forced Mrs. Johnson to obtain relevant evidence by other means, and the excellence of her attorney's work in briefing and presenting the case, we are satisfied the number of hours spent were reasonable and justified. We find no evidence that the hours were inflated by unnecessary work.

The award of attorney's fees is reversed and remanded for redetermination in light of our opinion. Of course, Mrs. Johnson will incur additional expenses as a result of this appeal and the remand. The family court should include these in its determination **116 of the attorney's fee to be finally awarded in the case.

For the reasons stated, we affirm the judgment of the court as to the apportionment and distribution of the marital estate. We reverse and remand the judgment as to alimony and attorney's fees.

AFFIRMED IN PART, REVERSED IN PART
AND REMANDED.

SANDERS, C.J., and GARDNER, J., concur.

All Citations

296 S.C. 289, 372 S.E.2d 107

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Distinguished by Palmetto Construction Group, LLC v. Restoration Specialists, LLC, S.C.App., August 14, 2024

435 S.C. 501

Court of Appeals of South Carolina.

Tammy JORDAN, Respondent,

v.

The HARTFORD FINANCIAL GROUP, INC.,
Resurgent Capital Services, Employer, Interstate
Contact Cleaning Services, Inc. Third Party
Tortfeasor,

Of which The Hartford Financial Group, Inc. is the
Appellant.

Appellate Case No. 2019-001190

|

Opinion No. 5879

|

Submitted November 1, 2021

|

Filed December 8, 2021

Synopsis

Background: Lienor appealed from decision by Workers' Compensation Commission denying lienor's motion to reinstate its administrative appeal from commissioner's denial of lienor's motion to enforce lien against settlement received by claimant, after Commission dismissed appeal for failure to file timely brief.

[Holding:] The Court of Appeals, Hill, J., held that Commission was required to determine whether good cause existed to reinstate appeal rather than denying reinstatement summarily.

Reversed and remanded.

Procedural Posture(s): Review of Administrative Decision.

West Headnotes (7)

- [1] **Workers' Compensation** ⚡ Lien of employer or insurer

Summary denial by Workers' Compensation Commission of lienor's motion to reinstate its untimely appeal, which sought reversal of commissioner's denial of lienor's motion to enforce lien against claimant's settlement, reflected that Commission failed to fulfill its obligation of exercising its discretion to consider whether to reinstate appeal for good cause, and, thus, denial was arbitrary; Commission could not strictly enforce rule requiring timely filings while ignoring rule allowing it to reinstate appeals for good cause, given possibility that good cause to reinstate appeal might exist, in light of lienor's one-day delay in filing appeal resulting from honest mistake in calendaring and in light of late stage of overall proceedings. S.C. Code Ann. § 1-23-380(5); S.C. Code Ann. Regs. 67-705(H)(4).

1 Case that cites this headnote

- [2] **Workers' Compensation** ⚡ Dismissal, hearing, and rehearing

The "good cause" standard for reinstatement of an appeal before the Workers' Compensation Commission exists to ensure the interests of justice are protected even when a party missteps, so a harmless procedural foot fault does not spring a trap door that mindlessly jettisons innocent parties out of court, regardless of the circumstances. S.C. Code Ann. Regs. 67-705(H)(4).

- [3] **Workers' Compensation** ⚡ Rules of procedure in general

A workers' compensation tribunal cannot strictly enforce rules regarding due dates but ignore the rule of good cause for a party's failure to make timely filings; when that happens, the decision has left discretion's range and wandered into the arbitrary. S.C. Code Ann. § 1-23-380(5)(f); S.C. Code Ann. Regs. 67-705(H)(4).

- [4] **Administrative Law and Procedure** ⚡ Review for arbitrary, capricious, unreasonable, or illegal actions in general

An agency decision is “arbitrary,” within the meaning of the statute governing judicial review of such decisions, if it is without a rational basis, is based not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards. S.C. Code Ann. § 1-23-380(5)(f).

- [5] **Workers' Compensation** ⚡ Rules of procedure in general

Miscalendaring is not always good cause for a party's failure to make timely filings before the Workers' Compensation Commission, but a reflexive refusal to consider that a calendaring mistake could be good cause is an abuse of discretion. S.C. Code Ann. § 1-23-380(5)(f); S.C. Code Ann. Regs. 67-705(H)(4).

1 Case that cites this headnote

- [6] **Administrative Law and Procedure** ⚡

Management of actions or matters in general

Administrative agencies may insist upon strict compliance with filing deadlines, but to survive a challenge of arbitrariness, they must act consistently and with a rationale that reflects the appropriate discretionary factors were considered and touched upon. S.C. Code Ann. § 1-23-380(5)(f).

- [7] **Workers' Compensation** ⚡ Dismissal, hearing, and rehearing

The touchstone of the determination of whether to reinstate an untimely appeal before the Workers' Compensation Commission is good cause, a standard designed to excuse honest, harmless human mistakes so a case may be judged on its merits rather than its missteps. S.C. Code Ann. Regs. 67-705(H)(4).

****401** Appeal From The Workers' Compensation Commission

Attorneys and Law Firms

Stephen Thomas Anderson, of Jordan Law Center, LLC, of Greenville, for Appellant.

Richard L. Patton, of Patton Law Firm, of Greenville, for Respondent.

Opinion

HILL, J.:

***503** This worker's compensation matter began when Hartford Financial Group, Inc. sought to enforce a lien against a settlement received by Tammy Jordan. A single commissioner ***504** denied Hartford's motion, and Hartford appealed to the full commission. A Form 31 Briefing Schedule and Notice of Appellate Hearing was served on all parties April 12, 2019. The Form advised that Appellant's brief was due on May 12, 2019, and that Regulation 67-705(A) required Appellant to file a brief. The Form further stated that Respondent “may” file a brief within fifteen days of service of Appellant's brief. The Form did not state that an appeal could be dismissed for failure to timely file a brief. The Form was captioned “*Sherman Financial v. Tammy A. Jordan*” and does not identify who the Appellants or Respondents are.

Upon receiving the Form 31, Hartford's counsel asked his paralegal to log the relevant dates on his calendar. The paralegal ****402** mistakenly thought Hartford was the Respondent and accidentally calendared that its brief was due on May 27, 2019.

On May 23, 2019, the commission dismissed Hartford's appeal for failure to file its brief by May 12. The next day, Hartford's counsel moved to reinstate its appeal. The motion, which included the paralegal's affidavit explaining the mix-up, asked the commission to reinstate the appeal for good cause due to the “honest human mistake.” On June 17, 2019, the commission, without explanation, denied Hartford's motion to reinstate. Hartford now appeals to us. We reverse, reinstate the appeal and remand so Hartford's appeal may proceed.

I.

A. Standard of Review

Our standard of review of a decision of the South Carolina Workers' Compensation Commission is the familiar one established by § 1-23-380(5), which, as relevant here, allows us to “reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: ... (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” S.C. Code Ann. § 1-23-380(5) (2008).

Using this yardstick, we must consider how the commission's denial of Hartford's motion to reinstate measures up. *505 The commission is free to reinstate an appeal for “good cause,” a term the regulations do not further define. *See* S.C. Code Ann. Regs. 67-705(H)(4) (2012).

B. Good Cause

^[1] ^[2] Why the commission did not deem Hartford's miscalendarings good cause is a mystery, for the Form Order does not mention the phrase or cite the controlling regulation. We cannot determine if the commission recognized it had the discretion to consider Hartford's all too human blunder to be sufficient good cause to allow its appeal to march on. *See State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006) (abuse of discretion occurs “when the trial court is vested with discretion, but the ruling reveals no discretion was exercised.”); *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) (“It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.”). The good cause standard exists to ensure the interests of justice are protected even when a party missteps, so a harmless procedural foot fault does not spring a trap door that mindlessly jettisons innocent parties out of court, regardless of the circumstances.

^[3] ^[4] Rules are rules, and due dates matter. The rule of good cause is also a rule. A tribunal cannot strictly enforce due dates but ignore good cause. When that happens, the decision has left discretion's range and wandered into the arbitrary. An

agency decision is arbitrary within the meaning of § 1-23-380(5)(f) “if it is without a rational basis, is based ... not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.” *Daufuskie Island Util. Co. v. S.C. Off. of Regul. Staff*, 427 S.C. 458, 464, 832 S.E.2d 572, 575 (2019) (citations omitted). The American tradition of rule of law has recognized from its earliest days that a “motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles.” *United States v. Burr*, 25 F. Cas. 30, 35 (C.C.D. Va. 1807) (Marshall, C.J.); *see also Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 139, 126 S.Ct. 704, 163 L.Ed.2d 547 (2005) (“Discretion is not whim, and limiting discretion according to legal standards helps promote the *506 basic principle of justice that like cases should be decided alike.”).

We have held that an Administrative Law Judge acted arbitrarily by dismissing an appeal when a party's lawyer did not appear for court due to a calendar mishap. *See Micronics, Inc. v. S.C. Dep't of Rev.*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (“We find no evidence in the record that the mistake was anything but a good faith error, as shown by [counsel's] explanation coupled with his speed in asking the ALJ for rehearing.”). We have also held good cause exists to **403 set aside a default granted because the answer was received one day late. *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986) (“[W]here there is a good faith mistake of fact, and, no attempt to thwart the judicial system, there is basis for relief.”). These cases recognize, as we do again today, that the practice of law is challenging enough without having to endure the overbearing enforcement of technicalities when prejudice is absent from the scene.

^[5] To be sure, miscalendarings is not always good cause. But a reflexive refusal to consider that a calendaring mistake could be good cause is an abuse of discretion. Some decisions have refused to find the neglect of a party's lawyer or agent in forwarding a summons or other time-triggering paperwork sufficient good cause to set aside a default, but those cases dealt with degrees of carelessness and periods of inattention far greater than we have here, and none tossed a party out of court for not timely filing a brief at a later stage of a perfected case. *See, e.g., Campbell v. City of North*

Charleston, 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020);  *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 463 S.E.2d 636 (Ct. App. 1995). It bears mention that these decisions also illustrate how, rather than resolving a case, a trial court's inflexibility in applying procedural rules can inspire appeals resulting in awkward showdowns at the farthest ends of discretion's range.

[6] [7] We also point out the commission has been less than consistent in dealing with motions to reinstate dismissed appeals. See *Matute v. Palmetto Health Baptist*, 391 S.C. 291, 705 S.E.2d 472 (Ct. App. 2011) (affirming the commission's reinstatement of appeal based on good cause where party claimed it never received order of single commissioner). Administrative ***507** agencies may insist upon strict compliance with filing deadlines, but to survive a challenge of arbitrariness, they must act consistently and with a rationale that reflects the appropriate discretionary factors were considered and touched upon. The touchstone here is good cause, a standard designed to excuse honest, harmless human mistakes so a case may be judged on its merits rather than its missteps. See  *S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 188, 348 S.E.2d 617, 626 (Ct. App. 1986) (“The law, however, is not merely an exercise of judicial power through the mechanical manipulation of rules; it is an organic body of principles rooted in reason, ethics, and human experience. The reason for a rule must control the application of the rule[.]”).

We therefore hold the commission's summary denial of Hartford's motion to reinstate without rational analysis of the good cause standard was arbitrary and an abuse of discretion. We reinstate the appeal and remand so the appeal may proceed.

REVERSED AND REMANDED.¹

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

KONDUROS and HEWITT, JJ., concur.

All Citations

435 S.C. 501, 868 S.E.2d 400

438 S.C. 582

Supreme Court of South Carolina.

Misty A. MORRIS, Claimant,

v.

BB & T CORPORATION, d/b/a BB & T
Bank, Employer, and Hartford Accident
& Indemnity Co., Carrier,

In re: Attorney's Fee Petition of David
Proffitt, Petitioner,

v.

South Carolina Workers' Compensation
Commission, Respondent.

Appellate Case No. 2020-001494

|

Opinion No. 28131

|

Heard February 2, 2022

|

Filed January 25, 2023

Synopsis

Background: Attorney who represented claimant in underlying workers' compensation claim sought review of decision of Workers' Compensation Commission which denied attorney's motion to reinstate his appeal of denial of portion of attorney's fees, after appeal was dismissed for attorney's failure to timely file his brief. The Court of Appeals, 2020 WL 6492803, affirmed. Attorney petitioned for certiorari review, which was granted.

Holdings: The Supreme Court, Few, J., held that:

[1] Commission abused its discretion in denying motion to reinstate appeal, and

[2] attorney demonstrated good cause that would support reinstatement of appeal.

Reversed and remanded.

Procedural Posture(s): On Appeal; Review of Administrative Decision.

West Headnotes (9)

[1] **Appeal and Error**—Discretion of Lower Court

No court is entitled to the deference associated with the discretion standard of review until that court has earned deference by fulfilling the responsibility of exercising its discretion according to law.

[2] **Appeal and Error**—Procedural Matters in General

Appellate courts apply the “discretion” standard to review decisions trial courts make on procedural questions.

[3] **Appeal and Error**—Procedural Matters in General

Supreme Court defers to the exercise of discretion by any trial-level

tribunal when making a procedural decision.

[4] **Appeal and Error**—Discretion of Lower Court

The exercise of discretion is not to simply make a decision; rather, the exercise of discretion requires first that the trial court recognize it has the responsibility of discretion.

[5] **Appeal and Error**—Discretion of Lower Court

Appeal and Error—Construction, Interpretation, or Application of Law

The exercise of discretion is to follow a thought process that begins with the trial court's clear understanding of the applicable law, continues with the court's sound analysis of the situation before it in light of the law, and ends with the trial court's ruling that follows the law and is supported by the facts and circumstances.

2 Cases that cite this headnote

[6] **Appeal and Error**—Application of law to or in light of facts

When a trial court's thought process of applying sound principles of law to the court's view of the facts and circumstances is evident in the record of proceedings in a hearing, in a written order, or otherwise, the appellate court will defer to the trial court's exercise of discretion, even when the judges on the appellate

court might have made the decision differently.

1 Case that cites this headnote

[7] **Workers' Compensation**—Review

Workers' Compensation Commission abused its discretion in denying claimant's attorney's motion to reinstate attorney's appeal of denial of portion of attorney's fees, pursuant to rule allowing such reinstatement for good cause, after appeal was dismissed for attorney's failure to timely file his brief, where Commission offered no explanation for its decision. S.C. Code Ann. Regs. 67-705(H)(3), 67-705(H)(4).

[8] **Workers' Compensation**—Taking and Perfecting Proceedings for Review

The failure to accurately calendar a filing deadline will not constitute good cause for reinstating a workers' compensation administrative appeal in every instance. S.C. Code Ann. Regs. 67-705(H)(4).

[9] **Workers' Compensation**—Review

Attorney for workers' compensation claimant demonstrated good cause that would support reinstatement of attorney's appeal of denial of portion of attorney's fees, after appeal was dismissed for attorney's failure to timely file his brief, in case in which attorney explained he had not

calendared deadline correctly and apologized to Workers' Compensation Commission for delay. S.C. Code Ann. Regs. 67-705(H)(4).

****395 ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

Appeal from the Workers' Compensation Commission

Attorneys and Law Firms

Robert David Proffitt, of Proffitt & Cox, LLP, of Columbia, Petitioner.

Carmen Vaughn Ganjehsani, of Richardson Plowden & Robinson, PA; James Keith Roberts, both of Columbia, for Respondent.

Opinion

JUSTICE FEW:

***584 **396** The workers' compensation commission dismissed an appeal to its appellate panel because the attorney filing the appeal missed a deadline for his brief. The commission refused to reinstate the appeal even after the attorney explained he made an innocent calendaring mistake, and then the commission refused to reconsider its decision. In all three instances, the commission gave no explanation of its decision; it simply issued a form order with blanks checked indicating the commission's action. We reverse the commission's decision refusing to reinstate the

appeal and remand to the appellate panel for consideration of the appeal on the merits.

Attorney David Proffitt represented Misty A. Morris in her 2016 workers' compensation claim against BB & T Corporation. After settling her claim, Proffitt filed a Form 61—"Attorney Fee Petition"—with the commission seeking approval of his contingent attorney's fee in the amount of \$36,633.33, along with costs in the amount of \$5,134.10. Commissioner Susan S. Barden approved attorney's fees in the amount of \$24,641.04 and all of the costs, but denied attorney's fees for the amount the settlement agreement allocated to future medical expenses. Proffitt filed a Form 30—"Request for Commission Review"—appealing Commissioner Barden's order to an appellate panel.

***585** A member of the commission's staff issued a Form 31—"Briefing Schedule and Appellate Hearing"—setting the due date for Proffitt's brief as January 16, 2018.¹ After Proffitt failed to file his brief by January 16, the "judicial director" of the commission dismissed the appeal by administrative order pursuant to regulation 67-705(H)(3) of the South Carolina Code of Regulations (2012). Proffitt then filed a "Motion to Reinstate" the appeal arguing his calendaring mistake constituted "good cause." *See* S.C. Code Ann. Regs. 67-705(H)(4) ("An appeal administratively dismissed ... may be reinstated for a good cause"). In the motion, Proffitt admitted he had not calendared the deadline correctly and explained he thus wrongly believed the due date for filing his

brief was January 31. He apologized to the commission for the delay. A commissioner denied Proffitt's motion without explanation. The same commissioner later denied Proffitt's "Motion for Rehearing," again without any explanation.

¹ The Form 31 listed the filing date for Proffitt's brief as January 14, 2018. However, January 14 was a Sunday and January 15 was a holiday. Therefore, the actual filing deadline was January 16, 2018.

The court of appeals affirmed in an unpublished opinion. *Morris v. BB&T Corp.*, Op. No. 2020-UP-235, 2020 WL 6492803 (S.C. Ct. App. *withdrawn, substituted, and refiled* Nov. 4, 2020). We granted Proffitt's petition for a writ of certiorari to review the court of appeals' decision. We reverse.

^[1] We cannot better explain our reasoning for reversal than the court of appeals itself explained in a different case, decided approximately a year after it decided this case. See *Jordan v. Hartford Fin. Grp., Inc.*, 435 S.C. 501, 868 S.E.2d 400 (Ct. App. 2021) (explaining "the commission's summary denial of [a] motion to reinstate without rational analysis of the good cause standard was arbitrary and an abuse of discretion," 435 S.C. at 507, 868 S.E.2d at 403, and reinstating the appeal). At oral argument before this Court, Justices questioned counsel for the commission as to how *Jordan* does not resolve the question before us here. Counsel responded by arguing the commission made a

discretionary decision and this Court should defer to the commission's decision. We publish this decision to clarify that no court is entitled to the deference associated with the discretion standard of review until *586 that court has earned deference by fulfilling the responsibility of exercising its discretion according to law.

^[2] ^[3] Appellate courts apply the "discretion" standard to review decisions trial courts make on procedural questions such as the one at issue in this case, decisions to admit or exclude evidence, and other decisions. See, e.g., **397 *Trotter v. Trane Coil Facility*, 393 S.C. 637, 645, 650, 714 S.E.2d 289, 293, 295 (2011) (applying the "discretion" standard in reviewing the workers' compensation commission's procedural decisions); *State v. Gibbs*, Op. No. 28215, 438 S.C. 542, 885 S.E.2d 378 (S.C. Sup. Ct. filed Jan. 4, 2023) (Howard Adv. Sh. No. 1 at 12, 18-20) (explaining the type of thorough trial court analysis that warrants our applying the "discretion" standard to evidentiary rulings); *Stoney v. Stoney*, 422 S.C. 593, 594 n.2, 813 S.E.2d 486, 486 n.2 (2018) (reiterating the "discretion" standard is applied when reviewing procedural or evidentiary rulings by a family court); *Kovach v. Whitley*, 437 S.C. 261, 263, 878 S.E.2d 863, 864 (2022) (applying the "discretion" standard when reviewing a trial court's imposition of sanctions). When the commission actually exercises discretion in making a procedural decision such as this one, the Administrative Procedures Act requires we defer to that exercise of discretion. See S.C. Code Ann. § 1-

23-380(5) (Supp. 2022) (“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: ... (f) ... characterized by abuse of discretion or clearly unwarranted exercise of discretion.”). The law requires we defer to the exercise of discretion by any trial-level tribunal when making a procedural decision. *See* 5 C.J.S. *Appeal and Error* § 924 (2019) (“The disposition of procedural matters is reviewed for abuse of discretion.”). We disagree the commission is entitled to any deference in this case, however, because there is no indication the commission actually exercised its discretion. *See State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) (“A failure to exercise discretion amounts to an abuse of that discretion.” (quoting *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997))); *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) (“When the trial judge is vested with discretion, but his ruling reveals *587 no discretion was, in fact, exercised, an error of law has occurred.”).

[4] [5] [6] The exercise of discretion is not to simply make a decision. The exercise of discretion requires first that the trial court recognize it has the responsibility of discretion. *See Jordan*, 435 S.C. at 505, 868 S.E.2d at 402 (“We cannot determine if the commission recognized it had the discretion ...”); *Lunneborg v. My Fun Life*, 163 Idaho 856, 421 P.3d 187, 194 (2018) (stating one of the “essential” considerations for reviewing a discretionary decision is “[w]hether the trial

court ... correctly perceived the issue as one of discretion”); *Johnson v. United States*, 398 A.2d 354, 367 (D.C. 1979) (“[R]eversal should follow if ... the trial court did not recognize its capacity to exercise discretion ...”).² The exercise of discretion is then to follow a thought process that begins with the trial court's clear understanding of the applicable law, continues with the court's sound analysis of the situation before it in light of the law, and ends with the trial court's ruling that follows the law and is supported by the facts and circumstances. *See* 435 S.C. at 505, 868 S.E.2d at 402 (“The American tradition of rule of law has recognized from its earliest days that a ‘motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles.’ ” (citation omitted)). The trial court's recognition of its responsibility to exercise discretion will be apparent when the record indicates the court followed such a thought process. Thus, when a trial court's—or the commission's—thought process of applying sound principles of law to the court's view of the facts and circumstances is evident in the record of proceedings in a hearing, in a written order, or otherwise, the appellate court will defer to the trial court's exercise of discretion, even when the judges on the appellate court might have made the decision differently.

² *See also* 5 C.J.S. *Appeal and Error* § 826 (2022) (“The grounds for appellate review include the lower court's ... erroneous belief that no such

discretion exists, [or] not recognizing its capacity to exercise discretion”).

^{17]}In this case, the commission's initial decision to dismiss the appeal required no explanation. The Form 31 set a clear due date for Proffitt's brief, and Proffitt clearly failed to file *588 the brief in time. Regulation 67-705(H)(3) specifically permits the commission **398 in that circumstance to “issu[e] an administrative order dismissing the appeal.” The commission's decision first to refuse to reinstate the appeal, however, and then its decision to deny reconsideration, are different. Regulation 67-705(H)(4) requires the commission to soundly apply the principle of “good cause” to the facts and circumstances before it. This “thought process” requires analysis, and the “discretion” standard we employ for reviewing the commission's analysis requires the analysis be explained.

^{18]} ^{19]}Because the commission offered no explanation for its decision, we find the commission did not act within its discretion in refusing to reinstate Proffitt's appeal. The failure to accurately calendar a filing deadline will not constitute good cause for reinstating an appeal in every instance. We have reviewed the record in this case, however, and we find Proffitt demonstrated good cause. We reverse the commission's decision refusing to reinstate the appeal and remand to the appellate panel for consideration of the appeal on the merits.

REVERSED AND REMANDED.

KITTREDGE, Acting Chief Justice, HEARN, J., and Acting Justices James E. Lockemy and Aphrodite K. Konduros, concur.

All Citations

438 S.C. 582, 885 S.E.2d 394

