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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable ALJ Durden

Case No. 23-1552
ALC Case No. 22-ALJ-17-0398-CC

J.K. Holmes and C.C. Holmes,

Appellants,

v.

Chas. Cty. Assessor,

Respondent.

EXPEDITED AMENDED MOTION FOR STAY FOR DISPOSITION BY THE COURT
PENDING SUPERIOR COURT JURISDICTION AND
MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION

Appellants respectfully submit Expedited Amended Motion For Stay For Disposition By the Court Pending Superior Court Jurisdiction and Motion for Abeyance of Time Limits Pending Resolution. Pursuant to, including but not limited to, S.C. Code § 1-23-380, S.C. Code § 1-23-310(5), S.C. Code § 1-23-610(A)(1), ALC Rule 2(H), S.C. Code § 14-8-80, S.C. Code § 14-8-220, and the SCACR, sua sponte ex parte summary dismissal of the executive branch ALC taxpayer appeal by right is currently pending appeal in the superior appellate court. For good cause including the reasons set forth below, appellants respectfully request this Honorable Court grant the motions.

The following South Carolina Constitutional provisions are pertinent:

Art. 1, § 23. Provisions of Constitution mandatory.

The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms. (1970 (56) 2684; 1971 (57) 315.)

Art. 1, § 22. No person “shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard ... and he shall have in all such instances *the right to judicial review.*” (Emphasis supplied.)

Art. 1, § 2. Religious freedom; freedom of speech; right of assembly and petition.

The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and *to petition the government or any department, including the matter herein for a redress of grievances.* (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 3. Privileges and immunities; due process; equal protection of laws.

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property, *including taxpayers’ appeal by right,* without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Accordingly, appellants respectfully request the motions be granted.

As a threshold matter, Rule 241, SCACR, provides the general rule of automatic stay of the decision on appeal in a civil matter. Specifically, the decision on appeal in the superior court is the sua sponte ex parte summary dismissal without jointly-filed ROA or factual support in the record of

taxpayers executive branch ALC appeal by right. Because that order affects matters herein, jurisdiction vests with the South Carolina Supreme Court pending resolution. See *South Carolina Nat'l Bank v. Devine Blossom*, 321 S.C.110, 467 S.E.2d 767 (Ct. App. 1996). To the extent there is ambiguity, the rule of lenity supports the taxpayers appeal by right from the executive branch ALC. Accordingly, expedited motion for stay with abeyance is respectfully requested. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

Pursuant to S.C. Code § 1-23-610(A)(1), "Appeal in these matters is by right." The statute, S.C. Code § 1-23-310(5), provides, "Party" means each person named as a party in the ALC. Under ALC Rule 2(H), "Party" means each person named or admitted as a party in the proceeding below. The record reflects the caption and the parties herein are the same caption and parties appearing in the ALC and in the proceeding below. Pursuant to subsection (a), S.C. Code § 14-8-80 mandates, "The Court shall sit in three panels of three judges each" on appeals. S.C. Code § 14-8-80(d) states, "On a panel, three judges shall constitute a quorum, and the concurrence of a majority of the judges is necessary."

S.C. Code § 14-8-80

By statute, the Legislative intent, letter, and spirit of the law *require at least three judges* to constitute a quorum of the Court of Appeals *for de novo interpretation of the law, to decide appeals, and for disposition of appeals by right*. The concurrence of a majority of the judges is necessary to decide cases and there is *no statutory authority* for a single individual's overreaching impermissible sua sponte ex parte dismissal of taxpayers' appeal by right from the executive branch ALC without jointly-filed ROA or factual support in the record. S.C. Code § 14-8-80. (Emphasis supplied.)

See State v. McMillan, 349 S.C. 17, 561 S.E.2d 602 (2002) (reversing where hearing was conducted with only two of three panel judges present). The concurrence of a majority of the judges, at least two or more, not a single individual judge, is necessary to decide cases. Lack of statutory authority renders the opinion void/voidable. Moreover, S.C. Code § 14-8-220 specifies, "The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction."

S.C. Code § 14-8-220

Power of Court and judges to administer oaths and writs; appeal. The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. An appeal shall be allowed from decision of any one judge to a panel of the Court. (Emphasis supplied).

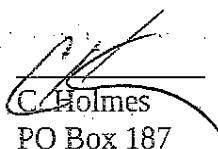
Statutory construction directs that the Legislature and the statute specifying authority of a single individual judge in S.C. Code § 14-8-220 fail to provide a single individual judge the authority to sua sponte ex parte summarily dismiss taxpayers appeal by right from the executive branch ALC without jointly-filed ROA or factual support in the record. Further, the proper legal standard pursuant to S.C. Code § 14-8-220 appeal is de novo. Under the facts, failure to apply the proper legal standard is reversible as a matter of law. "In that vein, we must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law."

(citation omitted). *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Accordingly, application of the improper legal standard to Rule 240(j), SCACR, appeal herein of a single individual's overreaching sua sponte ex parte summary dismissal of taxpayers' ALC appeal by right cannot pass statutory or Constitutional muster.

CONCLUSION

For substantial justice affecting substantial rights, the taxpayers respectfully submit appeal by right from the executive branch ALC. Overreaching sua sponte ex parte summary dismissal by a single individual without factual support or ROA of taxpayers' appeal by right from the ALC effectively dismisses and/or finally decides the taxpayers' appeal by right from the ALC. Rule 221, SCACR. Moreover, expedited amended motion for stay with abeyance is respectfully requested pending jurisdiction in the superior appellate court regarding denial of substantial rights capable of repetition, capable of evading judicial review, and incapable of vindication after-the-fact.

Respectfully submitted,


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PROOF OF SERVICE

I certify that a copy of the above document was served upon the respondents by regular first class mail postage pre-paid on this date at this address:

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on request -

A handwritten signature in black ink, appearing to be 'Thy' followed by a large, stylized flourish that ends in a vertical line with a small circle at the bottom.