THE STATE OF SOUTH CAROLINA
In The Supreme Court

Paul David Hess, APRN-BC, Respondent-Petitioner,

v.

Morphis Pediatric Group of Lancaster, P.A.; Elizabeth J. Morphis, M.D.; Gregory M. Alexander, CPA; and Moore Beauston and Woodham, LLP; Defendants,

Of whom Morphis Pediatric Group of Lancaster, P.A. and Elizabeth J. Morphis, M.D. are Petitioners-Respondents.

Appellate Case No. 2025-002144

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Lancaster County
DeAndrea G. Benjamin, Circuit Court Judge

Opinion No. 28357
Heard May 20, 2026 – Filed November 18, 2026

REVERSED AND REMANDED

Charles Franklin Thompson, Jr., of Malone, Thompson, Summers & Ott, of Columbia; and Ryan Lewis Beasley, of Ryan Beasley Law, of Greenville, both for Petitioners-Respondents.

David Eliot Rothstein, of Burnett Shutt & McDaniel, PA, of Greenville, for Respondent-Petitioner.

Frank L. Eppes, of Eppes & Plumblee, PA, of Greenville, as Amicus Curiae for the South Carolina Association for Justice.

JUSTICE VERDIN: Paul David Hess (Hess) brought this action against his former employer, Morphis Pediatric Group of Lancaster, P.A. (MPG), operated by Elizabeth J. Morphis (Morphis), in part alleging violations of the South Carolina Wage Payment Act[1] arising from disputed bonus calculations under his employment agreements. Following the jury's verdict in Hess's favor, the trial court denied Morphis and MPG's motion for Judgment Notwithstanding the Verdict (JNOV) and granted statutory treble damages and related relief. The court of appeals affirmed in part and reversed in part, holding, among other things, that the Wage Payment Act permits a private cause of action for notice violations and the statute of limitations issue was properly submitted to the jury. *Hess v. Morphis Pediatric Grp. of Lancaster*, *P.A.*, 446 S.C. 389, 920 S.E.2d 1 (Ct. App. 2025). We granted Morphis and MPG's petition for certiorari and now answer whether the court of appeals erred in (1) finding an employee may seek private remedies for an employer's violation of section 41-10-30(A) and (2) finding the question of whether Hess knew or should have known he had a claim more than three years before filing his action was properly submitted to the jury. We reverse and remand.

I. Factual and Procedural Background

In 2009, Hess began working at MPG as a nurse practitioner. The following year, Hess and MPG entered into a written employment agreement (2010 Agreement), which provided Hess a base salary of $100,000 per year and stated "[a]ll or any bonuses shall be at the discretion of the board or as determined in any appendix that is hereby signed and agreed upon by the parties." Appendix A, which both Hess and Morphis signed, established the following bonus structure:

> Provided that the employee meets criteria as decided upon by the Board, the employee will be eligible for an annual bonus paid by the company based on the following formulation. All end of the year profits generated by this

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[1] S.C. Code Ann. §§ 41-10-10 to -110 (2021).

> above mentioned business shall be divided and the employee is granted 50% (fifty percent) of the said monies after all debts, expenses, royalties, and expenditures have been allowed. These monies will be determined by the Company Accountant after the close of the year on December 31st of each calendar year and payable by the 15th of February.

In May 2015, MPG's accountant and Morphis met with Hess to discuss changes to his bonus structure. Specifically, they considered replacing Hess's annual bonus of 50% of MPG's net income with a bonus equal to 5% of MPG's gross revenue.

Before the meeting, MPG's accountant and Morphis decided that if Hess asked bonus-related questions Morphis was uncomfortable with, the accountant would respond that the matter involved "a larger tax position" being taken by Morphis and that the details were "not relevant." After the meeting, MPG's accountant sent separate emails to Hess and Morphis. The Morphis email included a spreadsheet showing MPG's gross revenues, net income, doctor bonuses, and Hess's bonuses as percentages of both gross revenues and net income. MPG's accountant noted that spreadsheet was for Morphis alone and would not be shared with Hess. The spreadsheet sent to Hess omitted MPG's net income and doctor bonus information.

On December 20, 2015, Hess emailed Morphis stating he was "agreeable to 5% gross revenue as [his] bonus," while raising concerns from his accountant and proposing changes to compensation and benefits. Ten days later, Hess signed a new employment agreement (2015 Agreement). The 2015 Agreement changed Hess's annual bonus from 50% of MPG's net income to 5% of its gross revenues and applied retroactively to March 1, 2015. Hess received bonuses in 2015, 2016, and 2017 under the 2015 Agreement.

In 2018, Hess and another MPG provider attempted to purchase MPG from Morphis. During due diligence, Hess obtained access to MPG's financial records and discovered Morphis had been receiving a salary from MPG and the practice was paying for her BMW. Morphis ultimately rejected the purchase offer and shortly thereafter terminated both Hess and the other provider.

In September 2018, Hess filed this action against MPG, Morphis, MPG's accountant, and Moore Beauston & Woodham, LLP.[2] Hess asserted claims for violation of the Wage Payment Act, breach of contract, breach of contract accompanied by a fraudulent act, tortious interference with contract, fraud or constructive fraud, negligent misrepresentation, declaratory judgment, and equitable accounting. Hess alleged that Morphis and MPG failed to pay him the bonuses required under the 2010 Agreement and refused to provide the financial information necessary to verify those bonus calculations. The matter proceeded to a six-day jury trial in early 2022.

a. Hess's Testimony

At trial, Hess testified he received annual bonuses of $75,000 in 2010, $25,000 in 2011, $46,968.48 in 2012, and $48,000 in both 2013 and 2014. Hess explained that after the sharp decrease in 2011, he repeatedly requested financial information to determine how his bonuses were calculated. According to Hess, Morphis routinely responded that she would need to ask MPG's accountant. Hess testified he never received supporting financial information for his 2011 or 2012 bonuses.

Hess further acknowledged that in 2014 he questioned Morphis after receiving his W-2 without his usual bonus. Hess stated that Morphis again deferred to MPG's accountant, who later explained MPG had converted from a "C-Corp to an S-Corp" and assured Hess he would receive the same amount as the prior year so he would not be "penalized" by the conversion. Hess testified that he found it "[p]retty strange" that his bonus remained unchanged because he had "never seen a company make the same amount of money every year in a row," but he "wasn't sure exactly what was going [on] and they weren't providing any information." Hess stated he did not receive his 2014 bonus until March 2015.

Hess also testified regarding the May 2015 meeting about the proposed bonus formula change. Hess stated that at the meeting, MPG's accountant and Morphis presented Hess with a spreadsheet indicating Hess would receive roughly the same bonuses under a 5% gross-revenue model as he had received under the 50% net income model. Hess testified that when he directly asked MPG's accountant whether he had been receiving 50% of MPG's net profits, MPG's accountant responded, "I can't divulge that information. That is [Morphis's] private tax information." Hess then stated he never received the more detailed spreadsheet MPG's accountant later sent only to Morphis.

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[2] MPG's accountant and Moore Beauston & Woodham, LLP, settled with Hess and are no longer parties to this appeal.

Hess confirmed he signed the 2015 Agreement on December 30, 2015. He denied knowing MPG's net income exceeded half a million dollars at the time. He further testified that during the 2018 due diligence process, he reviewed MPG's financial records and realized he had "never" received 50% of MPG's net profits under the 2010 Agreement. Hess calculated his unpaid bonuses under the 2010 Agreement at $656,950.82.

On cross-examination, Hess acknowledged that between 2010 and 2014 he suspected he was not receiving 50% of MPG's net profits. Hess also acknowledged seeing bank statements reflecting that MPG paid for Morphis's BMW and hearing from MPG employees that Morphis may have been drawing a salary from the practice.

b. Morphis's Testimony

Morphis testified that her attorney drafted the 2010 Agreement. She acknowledged Hess received a bonus every year he worked at MPG and agreed that meant he satisfied the eligibility criteria outlined in Appendix A of the 2010 Agreement. Morphis further testified that although MPG's accountant supplied MPG's yearly net income figures, she personally determined Hess's bonuses because she was "trying to be fair."

Morphis acknowledged she did not inform Hess she was taking $180,000 in compensation from MPG in 2011 while Hess received a $25,000 bonus. Morphis also agreed the accounting records showed she paid herself what her accountant considered bonuses of $330,000 in December 2012, $151,000 in 2013, and $81,212.80 in 2014. Concerning Hess's 2014 bonus, Morphis testified she instructed MPG's accountant to set it at $48,000 after she forgot to pay Hess's bonus in December. Morphis described Hess's inquiries into MPG's finances between 2010 and 2014 as "constant" and "intimidating." Morphis also testified she stated in an email that she never wanted to be paid from MPG "[b]ecause [she] feared [Hess] would question [her]."

c. Directed Verdict Motion, Jury Verdict, Post-Trial Motions, and Procedural History

Morphis and MPG later moved for a directed verdict. Relevant here, they argued that Hess could not use the seven-day notice requirement for wage term changes in section 41-10-30(A) of the Wage Payment Act, to recover his 2015 bonus under the 2010 Agreement if the 2015 Agreement was deemed unenforceable for deficient notice. They also argued Hess's claims were barred by the statute of limitations in

section 41-10-80(C) because Hess knew or should have known of any claim more than three years before filing suit. The trial court denied that motion.

After deliberation, the jury returned a verdict for Hess. It awarded $548,290.42 in actual damages against Morphis and MPG on all claims, along with $475,000 in punitive damages on the claims for breach of contract accompanied by a fraudulent act, fraud, and negligent misrepresentation. Hess elected to forgo punitive damages and pursue remedies under the Wage Payment Act. Hess then petitioned the trial court for treble damages, attorney's fees and costs, and prejudgment interest. Morphis and MPG filed post-trial motions for JNOV and nisi remittitur, renewing their directed verdict arguments. The trial court denied Morphis and MPG's motions for JNOV and nisi remittitur and granted Hess's petition for treble damages, attorney's fees and costs, and prejudgment interest. The trial court also denied Morphis and MPG's motion to amend the prejudgment interest order.

The parties filed cross-appeals in December 2022. The court of appeals affirmed in part, reversed the award of prejudgment interest, and held that the trial court abused its discretion in reducing attorney's fees. *Hess*, 446 S.C. at 405–12, 920 S.E.2d at 9–13. The parties then petitioned this Court for certiorari, which we granted as to Morphis and MPG, but denied as to Hess.

II. Standard of Review

"When reviewing the trial court's ruling on a motion for a directed verdict or a JNOV, this Court must apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331–32, 732 S.E.2d 166, 171 (2012). "The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. Moreover, '[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict.'" *Id.* at 332, 732 S.E.2d at 171 (alteration in original) (quoting *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998)).

"An appellate court will reverse the trial court's ruling only if no evidence supports the ruling below. In deciding such motions, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence." *Id.* "The trial court's ruling on a directed verdict or JNOV motion will be reversed only if the ruling is governed by an error of law or no evidence supports the ruling." *Dawkins v. Sell*, 434 S.C. 572, 580, 865 S.E.2d 1, 5 (Ct. App. 2021). In any event, the interpretation of a statute is a question of law,

which this Court reviews de novo. *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021).

III. Private Cause of Action Under Section 41-10-30(A)

Morphis and MPG contend the Wage Payment Act does not create a private cause of action for violations of the notice requirement in section 41-10-30(A). They argue Hess cannot recover damages for such a violation. We agree in part.

"The main factor in determining whether a statute creates a private cause of action is legislative intent." *Isaac v. Onions*, 445 S.C. 525, 536, 915 S.E.2d 492, 498 (2025) (quoting *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 576, 614 S.E.2d 619, 622 (2005)). Legislative intent is derived primarily from the statutory text, and "a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability." *Id.* (quoting *Overcash*, 364 S.C. at 576, 614 S.E.2d at 622); *see Kubic v. MERSCORP Holdings*, *Inc.*, 416 S.C. 161, 170, 785 S.E.2d 595, 600 (2016) ("When the legislature delineated who would be able to bring a suit pursuant to section 30-9-30(B), it chose not to afford that right to government officials. We decline to imply language into a deliberate silence because to do so would be to rewrite the statute."). In addition, under the canon *Inclusio unius est exclusion alterius*, "to express or include one thing implies the exclusion of another, or of the alternative." *Isaac*, 445 S.C. at 536, 915 S.E.2d at 498 (quoting *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000)). Applying this principle to a potential private cause of action, this Court has found that where the legislature expressly provides a private cause of action in one provision but omits it in another, courts will not supply what the legislature withheld. *Isaac*, 445 S.C. at 537, 915 S.E.2d at 498.

Section 41-10-30(A) of the Wage Payment Act states "Every employer shall notify each employee in writing at the time of hiring of the normal hours and wages agreed upon . . . . Any changes in these terms must be made in writing at least seven calendar days before they become effective." The remedy for violations of section 41-10-30(A) is found in section 41-10-80(A) which states "Any employer who violates the provisions of Section 41-10-30 must be given a written warning by the Director of the Department of Labor, Licensing and Regulation or his designee for the first offense and must be assessed a civil penalty of not more than one hundred dollars for each subsequent offense."

Section 41-10-40(D) of the Wage Payment Act states "Every employer in the State shall pay all wages due at the time and place designated as required by subsection

(A) of Section 41-10-30." Section 41-10-50 states "When an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday which may not exceed thirty days." The remedy for violations of section 41-10-40(D) and 41-10-50 is found in section 41-10-80(C) which states "In case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50 the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. Any civil action for the recovery of wages must be commenced within three years after the wages become due." Here, the legislature expressly authorized a private cause of action for violations of sections 41-10-40 and 41-10-50 in section 41-10-80(C), while providing only an administrative remedy for violations of section 41-10-30 in section 41-10-80(A). *See* S.C. Code Ann. §§ 41-10-30 to -80 (2021). That allocation shows an intent to exclude notice violations from the Wage Payment Act's private enforcement mechanism. Reading a private cause of action into section 41-10-30(A) would disregard this deliberate allocation of remedies.

Accordingly, we hold the Wage Payment Act does not create a private cause of action for violations of the notice requirement in section 41-10-30(A).

However, our holding does not foreclose an action using the *language* of section 41-10-30(A) to prove Morphis violated section 41-10-40 when she failed to pay Hess the 2015 bonus based on the 2010 calculation method; therefore, recovery may be available under section 41-10-80(C). Morphis asserts that Hess's signature on December 31, 2015, makes the contract enforceable on that date. However, Hess argues the 2010 Agreement controls his 2015 bonus because the 2015 Agreement, which he signed on December 30, 2015, could not become effective until January 6, 2016, seven days later. Hess contends Morphis should have paid him the 2015 bonus based on the 2010 calculation method and failed to do so. We agree that Hess did not use section 41-10-30(A) as a private cause of action, but rather as a basis to find the 2015 Agreement void for his 2015 bonus, allowing him to recover his 2015 bonus according to the 2010 Agreement under section 41-10-40.

A statute does not need to provide a private cause of action for a party to invoke the statute to determine whether a contract has legal effect. *A & E Supply Co. v. Nationwide Mut. Ins. Co.*, 798 F.2d 669, 677 n. 9 (4th Cir. 1986) (explaining a statute can create contractually enforceable duties without creating a private cause of action); *see also Ward v. W. Oil Co.*, 387 S.C. 268, 274, 692 S.E.2d 516, 519 (2010) ("[T]his Court will not 'lend its assistance' to carry out the terms of a contract that violates statutory law or public policy."). The legislature clearly stated in section

41-10-100 that "[n]o provision" of the Wage Payment Act "may be contravened or set aside by a private agreement." *See Ross v. Ligand Pharms., Inc.*, 371 S.C. 464, 473 n.1, 639 S.E.2d 460, 465 n.1 (Ct. App. 2006) (explaining any agreement between an employer and an employee to circumvent the requirements of section 41-10-30(A) would be void and unenforceable); *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 528–29, 642 S.E.2d 751, 756 (2007) ("[I]t is a fundamental rule of contract construction that the law existing at the time and place of the making of a contract is a part of the contract.") (quoting *City of North Charleston v. N. Charleston Dist.*, 289 S.C. 438, 442, 346 S.E.2d 712, 715 (1986))).

We hold Hess's 2015 bonus should have been paid under the 2010 Agreement because pursuant to section 41-10-40, the 2015 Agreement could not have been in effect until January 6, 2016. While the court of appeals erred in determining a private cause of action existed for violations of section 41-10-30(A), Hess still has an action for a violation of section 41-10-40 regarding his 2015 bonus. Thus, we remand to the trial court for further proceedings based upon the jury's verdict and consistent with our decision.

IV. Statute of Limitations

Morphis and MPG contend the court of appeals erred in affirming the denial of their JNOV motion because the statute of limitations issue should not have been submitted to the jury. They argue the evidence established, as a matter of law, that Hess knew or should have known he had a cause of action more than three years before filing suit. Hess responds that the court properly treated application of the discovery rule as a factual question for the jury. We agree with Morphis and MPG in part.

We find that the Wage Payment Act provides the applicable statute of limitations. "Any civil action for the recovery of wages must be commenced within three years after the wages become due." Section 41-10-80(C).

When "there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010) (quoting *Spectre, LLC v. S.C. Dep't of Health and Envtl. Control*, 386 S.C. 357, 372, 688 S.E.2d 844, 851 (2010)). Applying this principle to the Wage Payment Act, this Court finds that where the legislature expressly provided a statutory statute of limitations, the legislature intended for section 41-10-80(C) to be the applicable statute of limitations.

Here, no party contests the dates that the bonuses became due. Hess received bonus payments for his employment in 2010, 2011, 2012, 2013, 2014, and 2015, all of which were due by February 15th of the following year. Hess commenced his action for recovery of wages in September 2018. Thus, only the 2015 bonus falls within the applicable statute of limitations.

Because we find that the language of section 41-10-80(C) of the Wage Payment Act controls the statute of limitations issue, we need not reach the application of the discovery rule to the statute of limitations issue. However, we take this opportunity to note that if the discovery rule were applicable, Hess's claims for his 2010-2014 bonuses may have been time-barred. The record indicates that Hess knew or should have known he might have a claim at the May 2015 meeting with MPG's accountant. The discovery rule asks when the plaintiff knew or should have known the claim "might exist," not when the plaintiff acquired complete knowledge of every supporting fact. *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).

We caution the bench and bar that diligence must be taken in determining when a claimant knew or should have known he might have a claim. "A plaintiff cannot make use of the discovery rule . . . by putting his or her head in the sand. In other words, a party cannot close its eyes to easily discernible facts." *Estate of Sarocco v. Gen. Elec. Co.*, 939 F. Supp. 91, 96 (D. Mass. 1996). Whether a claim is time-barred is not always a question to be determined by a jury. *Compare Maher*, 331 S.C. at 378–79, 500 S.E.2d at 207–08 (holding that the plaintiff was on notice of his claim no later than the date of his demotion because the evidence at that point permitted only one reasonable inference), *with Walbeck v. I'On Co.*, 439 S.C. 568, 580–84, 889 S.E.2d 537, 543–45 (2023) (finding that the discovery rule issue remained for the jury where competing evidence at each alleged point of discovery supported conflicting inferences on notice of a potential claim).

V. Conclusion

Accordingly, we hold the court of appeals erred in determining the Wage Payment Act created a private cause of action for violations of the notice requirement in section 41-10-30(A), as the Wage Payment Act provides an administrative remedy for notice violations in section 41-10-80(A), while limiting the private cause of action in section 41-10-80(C) for failure to pay wages. However, because Hess's 2015 bonus was calculated based on an unenforceable contract, the amount he received was incorrect and his bonus should have been calculated and paid using the 2010 Agreement. Morphis and MPG's failure to pay all wages due violated section

41-10-40. Therefore, we remand to the trial court for calculation of the 2015 bonus, treble damages, attorney's fees, and costs. We further hold that the applicable statute of limitations is contained in the Wage Payment Act and the discovery rule is inapplicable to these facts. The trial court should have granted Morphis and MPG's JNOV motion on the statute of limitations issue for Hess's 2010-2014 bonuses. Only Hess's 2015 bonus falls within the applicable statute of limitations. The court of appeals' decision is therefore

REVERSED AND REMANDED.

KITTREDGE, C.J., JAMES, HILL, JJ., and Acting Justice Daniel McLeod Coble, concur.