

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.

Case No. 2008-CP-10-6117

Kathryn Dawson a/k/a
Kathryn Huffstetler.....Respondent,

v.

George Christodal, Jr.....Appellant.

RESPONDENT'S INITIAL BRIEF

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SC Court of Appeals

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ISSUE

DID THE TRIAL COURT ERR AS A MATTER OF LAW BY FINDING DEFENDANT LIABLE UNDER THE SOUTH CAROLINA PAYMENT OF WAGES ACT?

STATEMENT OF THE CASE

On October 27, 2008, Respondent, Kathryn Dawson (hereinafter "Respondent") filed a Summons and Complaint against Appellant, George Christodal (hereinafter "Appellant"). (Complaint). The Complaint consists of two causes of action: (1) violation of the South Carolina Payment of Wage Act pursuant to S.C. Code Ann. §41-10-10, et seq; and (2) breach of contract. (Complaint). On December 3, 2008, Appellant filed an Answer. (Answer). Within the Answer Appellant admitted certain allegations of the Complaint asserting he was "an officer or managing agent of Swan Development, LLC" (Complaint ¶ 3, Answer ¶3). Appellant's Answer asserted two affirmative defenses: (1) failure to state a claim; and (2) breach of a contract condition. (Answer ¶¶ 21 and 23).

On April 18, 2011, an Order (Order Form 4) was entered as a result of the case resolving as advised by counsel. On August 2, 2011, Respondent filed a Motion to Reopen the within matter "due to Defendant's failure to consummate the negotiated settlement." (Motion to Reopen). On February 2, 2012, an Order granting Respondent's Motion to Reopen the case was filed. (Order).

On October 10, 2012, the matter was tried before the Honorable J.C. Nicholson. On October 25, 2013, the trial court entered a formal Order of Judgment finding in favor of Respondent against Appellant. On November 7, 2013, Respondent filed a Motion to Alter or Amend the Judgment pursuant to Rule 59(2), SCRPC. On April 15, 2014, the

Court affirmed its Order of October 25, 2013. On May 9, 2014, Appellant filed his Notice of Appeal.

SUMMARY OF FACTS

Respondent was an employee of Swan Development, LLC (hereinafter "Swan") from 2002 until mid-2007. (Order). During the course of her employment she perform multiple functions including, sales, booking keeping, general clerical and check writing functions. Appellant was the officer, manager and minority owner of Swan at all relevant times. (Order).

In May of 2007, Respondent and Appellant agreed Respondent's employment with Swan would end. Respondent and Appellant agreed to certain terms and memorialized the responsibilities and obligations of the parties for the remainder of the term of employment and the obligations for payment of wages. (Order). It was undisputed Respondent received a portion of the agreed upon wages but that a balance of \$20,000.00 remained unpaid. (Order). Appellant did not dispute that Respondent owed the sum of \$20,000 for wages from the beginning September 2007. (Order). Appellant in fact communicated via email with Respondent and acknowledged payments were due and would resume if Swan's financial condition improved. (Order).

STANDARD OF REVIEW

Actions for violation of the South Carolina Payment of Wages Act are actions at law. *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 307, 698 S.E.2d 773, 777 (2010). When reviewing an action at law the appellate court's jurisdiction is limited to correcting errors of law, and the appellate court will not disturb the findings of fact as

long as they are reasonably supported by the evidence. *Linda Mc Co. v. Shore*, 390 S.C. 543, 555, 703 S.E.2d 499, 505 (2010).

ARGUMENT

I. THE LOWER COURT CORRECTLY DETERMINED LIABILITY UNDER THE SOUTH CAROLINA PAYMENT AND WAGE ACT.

A. Appellant has not properly preserved matters before the court.

The lower court correctly determined that Respondent was individually liable for the nonpayment of wages. It appears that Appellant argues matters not properly before this Court. It further appears Appellant now raises issues not addressed below.

“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Even if an issue has been preserved before the lower court, the appellant must raise the error to the appellate court or else lose it forever. “Unappealed rulings become the law of the case and should not be considered by this court.” *Sims v. Hall*, 357 S.C. 288, 293, fn. 2, 592 S.E.2d 315, 318, fn. 2 (Ct. App. 2003). Thus, to the extent that Appellant argues facts not contained in the record or not raised to the court below, this Court is precluded from considering the unsupported facts and claims as a basis for reversal.

B. The lower court correctly determined that Appellant as an officer of Swan was liable for the undisputed non-payment of wages owed to Respondent.

The South Carolina Payment of Wages Act provides “every employer in the State shall pay wages when due...” S.C. Code Ann. § 41-10-40(A) (Supp. 2003). It further provides in pertinent part:

S.C. Code Ann. § 41-10-10:

- 1) “Employer” means every person, firm, partnership, corporation. . . of this State. . . and any *agent or officer* of the above classes employing any person in this State.

S.C. Code Ann. § 41-10-40:

- (C) An employer shall not withhold or divert any portion of an employee’s wages unless the employer is required or permitted to do so by state or federal law. . .

“Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.”

State v. Sweat, 386 S.C. 339, 688 S.E. 2d. 569 (2010).

In *Dumas v. Infosafe Corp.*, 463 S.E.2d 641, 645 (Ct. App. 1995), the South Carolina Court of Appeals in construing the S.C. Code Ann. § 41-10-40(A) (Supp. 2003)

held that:

[T]he legislature intended to impose individual liability on agents or officers of a corporation who knowingly permitted their corporation to violate the Act. To hold otherwise would require us to ignore that words ‘and any agent or officer of the above classes.’ These words have appeared in the definition of ‘employer’ in every version of the Act since its first enactment in 1938. *Dumas* 463 S.E.2d at 645.

The personal liability of officers under §41-10-10 et. seq. was addressed again several years ago in *Allen v. Pinnacle HealthCare Systems, LLC*, 394 S.C. 268, 273, 715 S.E.2d 362 (Ct. App 2011). In *Allen* officers of a corporation argued that an employee must prove they held more than a mere membership or a management position in a company in order to be individually liable. In furtherance of *Dumas*, in *Allen* it was

determined that because the Defendants were involved in the finances of the business they had to have known Allen was not being paid and knowingly failed to pay wages in violation of the Act. The Court of Appeals affirmed the lower courts imposition of liability on the officers for failure of payment of wages.

Here the Respondent takes issue with being held personally liable for the non-payment of wages. He does not however assert the lower court committed an error of law. He does not challenge the finding of fact that he fell within the definition of employer as set forth in the Act. The lower court in fact committed no error of law. Rather, the lower court specifically followed what the appellate courts have determined was the intent of the legislature behind the South Carolina Payment of Wages Act; to impose personal liability on the officers of a company for the non-payment of wages. The lower court properly followed the dictates of both *Dumas* and *Allen*. No basis for reversal has been asserted and the lower court's decision should be affirmed.

CONCLUSION

For the reasons stated above the decision of the lower court should be affirmed.

RESPECTFULLY SUBMITTED,

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December 3, 2014
Mt. Pleasant, SC

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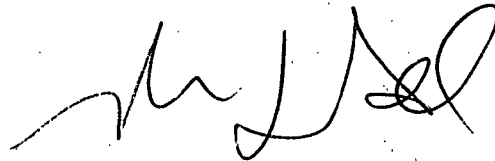
v.

George Christodal, Jr.....Appellant.

PROOF OF SERVICE

I hereby certify that I have placed this 3rd day of December, 2014, a copy of the Respondent's Initial Brief was placed in the mailed addressed to the *Pro Se* Appellant George Christodal, Jr. addressed as follows:

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December 3, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
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Columbia, SC 29211

RE. Kathryn Dawson vs. George Christodal, Jr.
Case No.: 2008-CP-10-6117
Appellate Case No.: 2014-001030

Dear Ms. Kitchings:

Please find enclosed with regard to the above referenced matter the Respondent's Initial Brief with accompanying certificate of service. Also, enclosed please find Respondent's Designation of Record.

The Court's consideration in this matter is greatly appreciated.

With kind regards,

MARY LEIGH ARNOLD, PA



Mary Leigh Arnold

Enclosures
Cc: George Christodal, Jr.

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