

# The South Carolina Court of Appeals

Grand Strand Regional Medical Center, LLC,  
Respondent,

v.

South Carolina Department of Health and Environmental  
Control, Respondent below.

Grand Strand Regional Medical Center, LLC,  
Respondent,

v.

South Carolina Department of Health and Environmental  
Control and Carolina Regional Cancer Center,  
Respondents below,

of whom Carolina Regional Cancer Center is the  
Appellant.

Appellate Case No. 2014-000973

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## ORDER

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The South Carolina Department of Health and Environmental Control (DHEC) granted Carolina Regional Cancer Center (Appellant) a Certificate of Need (CON) to add a linear accelerator to a proposed radiation cancer treatment facility in Conway. At the same time, DHEC found competing—and denied—a CON application by Respondent, Grand Strand Regional Medical Center, LLC, seeking to add a linear accelerator facility to its hospital campus in Myrtle Beach. On appeal to the Administrative Law Court (ALC), the ALC reversed DHEC's decision in part, finding the applications were not competing and both Appellant and Grand Strand should be granted a CON.

Appellant appealed the ALC's decision granting Grand Strand's CON. As required by section 44-7-220(B) of the South Carolina Code (Supp. 2014), Appellant posted a bond with this court in the amount of \$489,431.25, which represents an amount equal to five percent of the total cost of Grand Strand's project. Section 44-7-220(B) further provides, "If the Court of Appeals affirms the [ALC]'s decision or dismisses the appeal, the Court of Appeals shall award to the party whose project is the subject of the appeal all of the bond and also may award reasonable attorney's fees and costs incurred in the appeal."

Appellant subsequently filed a petition for supersedeas and requested panel review of a single judge's order denying the petition. We granted panel review and held a hearing on February 25, 2015. Appellant asks the court to stay the ALC's order granting a CON to Grand Strand pending the resolution of the appeal. In its filings and in its arguments before the court, Appellant argued (1) it was entitled to a stay under Rule 241(c)(2), SCACR; (2) this court should read a mandatory stay into section 44-7-220(B) because without a stay, the statute produces absurd results contrary to the CON Act's purposes; and (3) unless a stay is imposed the appeal bond provision unconstitutionally curtails Appellant's right to judicial review, violates procedural and substantive due process, and violates the constitutional guarantee of equal protection. After careful consideration, we deny the petition for supersedeas.

Appeals from administrative tribunals are exceptions to the automatic stay requirement of Rule 241(a) of the South Carolina Appellate Court Rules. Rule 241(b)(11), SCACR. However, a supersedeas may be ordered pursuant to Rule 241(c), SCACR. The rule provides that "[i]n determining whether [a supersedeas] should issue . . . [we] should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. We find there is no danger the court will lose jurisdiction or the issues on appeal will become moot if Grand Strand is allowed to proceed with its project. *See S.C. Ret. Sys. Inv. Comm'n v. Loftis*, 402 S.C. 382, 384, 741 S.E.2d 757, 758 (2013) ("A case is moot where a judgment rendered by the [c]ourt will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the [c]ourt."). Grand Strand acknowledges that if it were to proceed with construction of its facility, it would have to cease all operations related to its project if this court reverses the ALC's decision approving its CON. Therefore, whether Grand Strand proceeds with construction and operation of its facility will not moot the issues on appeal or strip this court of jurisdiction.

Appellant asserts it will face "severe consequences" if Grand Strand is allowed to begin operating its linear accelerator services on its hospital campus "just three miles away from Appellant's existing operations" because referral patterns among doctors in the area will change. We find Appellant has not established that a stay is necessary to prevent irreparable harm to its referral base. Briefing is complete in the case and Grand Strand confirmed during the hearing that it has not yet begun its project, which is scheduled to take eighteen months. Therefore, even if Grand Strand were to begin its project today, this court will likely decide the merits of the appeal before the completion of Grand Strand's project and thus, well before area doctors begin to change their referral patterns.

Appellant further argues section 44-7-220(B) yields an absurd result, contrary to the CON Act's purpose, if a mandatory stay is not required in exchange for it posting a bond, "[d]espite the lack of the word 'stay' in the . . . bond provision." However, our rules of statutory construction do not allow courts "to add the words [the legislature] omitted, nor to interpolate them on conceits of symmetry and policy." *Consumer Advocate for the State of S.C. v. S.C. Dep't of Ins.*, 397 S.C. 599, 602, 725 S.E.2d 708, 710 (Ct. App. 2012) (alteration in original) (quoting *Kinard v. Moore*, 220 S.C. 376, 388, 68 S.E.2d 321, 325 (1951)). Section 44-7-220(B) contains no requirement that a mandatory stay be issued in conjunction with the filing of the appeal bond, and we decline to insert such a requirement into the statute.

Appellant also asserts this court may reject the plain language of the statute if abiding by it would render it unconstitutional. *See Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) ("However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the [l]egislature or would defeat the plain legislative intention."). Here, Appellant argues there can be only two justifications for awarding the appeal bond to Grand Strand if its CON is upheld: (1) to compensate Grand Strand for delay costs caused by the appeal, or (2) to deter and punish Appellant for appealing. If Grand Strand proceeds with its project, unencumbered by a stay, it will incur no delay costs, and in that situation, Appellant argues the appeal bond provision becomes punitive, violating its constitutional right to judicial review, procedural due process, substantive due process, and equal protection.

We find there has been no impairment of Appellant's right to judicial review under Article 1, Section 22 of the South Carolina Constitution, nor has there been a

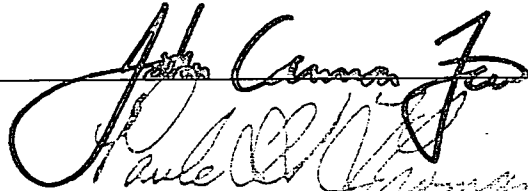
violation of its right to procedural due process. *See* S. C. Const. art. I, 22 (providing "[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard . . . and he shall have in all such instances the right to judicial review"); *Harbit v. City of Charleston*, 382 S.C. 383, 393, 675 S.E.2d 776, 781 (Ct. App. 2009) ("The fundamental requirements of due process under the United States Constitution and the South Carolina Constitution include notice, an opportunity to be heard in a meaningful way, and judicial review."). Appellant has successfully initiated its appeal of the ALC's decision, and this court will soon give Appellant its judicial review. Appellant has never claimed it was unable to afford the appeal bond or that the appeal bond otherwise deterred it from filing its appeal. Further, because Appellant will receive its judicial review, we decline to find that the legislature's decision to impose the appeal bond violated the separation of powers doctrine by attempting to curtail judicial review and make the ALC, an executive branch agency, the final arbiter in CON cases.

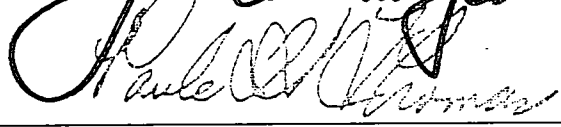
Second, we find Appellant has not demonstrated an equal protection or substantive due process violation because there is a rational basis for the statute's provision awarding a respondent the appeal bond if the ALC's decision is upheld, and this provision is related to a legitimate government interest. *See Sloan v. S.C. Bd. of Physical Therapy Examiners*, 370 S.C. 452, 480, 636 S.E.2d 598, 613 (2006) ("To satisfy the equal protection clause, a classification must (1) bear a reasonable relation to the legislative purpose sought to be achieved, (2) members of the class must be treated alike under similar circumstances, and (3) the classification must rest on some rational basis."); *id.* at 483, 636 S.E.2d at 614 ("[T]he standard for reviewing all substantive due process challenges to state statutes . . . is whether the statute bears a reasonable relationship to any legitimate interest of government."). As we read the statute, the legislature imposed the appeal bond on CON appellants to reserve some funds to compensate a respondent harmed by the delay of its approved project during the pendency of the appeal. We believe that is a legitimate government purpose.

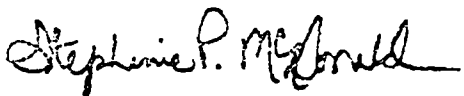
We acknowledge that in some instances, adherence to the statute as written may produce imperfect results; however, we do not believe this invalidates the statute. *See Bodman v. State*, 403 S.C. 60, 70, 742 S.E.2d 363, 368 (2013) (stating that in the equal protection analysis, "[t]he classification also does not need to completely achieve its purpose to withstand constitutional scrutiny" nor does "[t]he fact that the classification may result in some inequity" make the classification unconstitutional (internal quotation marks omitted)). For example, if Grand Strand chose not to delay its project during the appeal and we affirm the ALC's decision,

Grand Strand may be entitled to receive the appeal bond without having suffered any delay costs. In that event, depending on how and whether this court awards costs and attorney's fees, the award of the appeal bond to Grand Strand could constitute a windfall. On the other hand, if we impose a stay or if Grand Strand chooses to delay its project during the appeal process and we affirm the ALC's decision, the award of the appeal bond may not fully compensate Grand Strand, resulting in a shortfall. In that case, the appeal would have harmed Grand Strand's economic interests. The statute may be understood to balance these two potential outcomes within the larger statutory framework of the CON Act, which seeks to efficiently regulate the construction of health facilities. See S.C. Code Ann. § 44-7-120 (2002) (stating two of the purposes of the CON Act are to "guide the establishment of health facilities and services which will best serve public needs, and ensure that high quality services are provided in health facilities in this State"). Accordingly, we believe section 44-7-220(B) is constitutional as written, and it is not necessary to grant Appellant a stay to render the statute valid.

Therefore, for these reasons noted above, we deny Appellant's petition for supersedeas.

  
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CJ.

  
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J.

  
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J.

Columbia, South Carolina.

cc: William R. Thomas, Esquire  
Walter Hammond Cartin, Esquire  
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Vito Michael Wicevic, Esquire  
Amber B. Carter, Esquire

**FILED**

March 19, 2015 *gk*