THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Deadra Jeffferson
Circuit Court Judge

Case No.: 2012-CP-26-4852
Appellate Case No.: 2015-002533

Opinion No. 5345 (S.C. Ct. App. filed August 26, 2015)

Jacklyn J. Donevant, ...Respondent,

vs.

Town of Surfside Beach, ...Appellant.

RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF QUESTIONS PRESENTED

1. There are no factual issues presented on appeal; thus, the Town's version of the "Facts" should be disregarded.

2. This case does not expand the wrongful termination doctrine; rather, it fits squarely within the defined contours of the wrongful termination doctrine as set forth by Barron v. Labor Finders of South Carolina, 393 S.C. 609, 615-16, 713 S.E.2d 634, 637 (2011).

3. Donevant would have been subject to sanction and discipline had she not issued the stop work order.

4. The decision in Antley v. Sheperd, 340 S.C. 541, 532 S.E.2d 294 (Ct. App. 2000), *affirmed as modified*, 349 S.C. 600, 564 S.E.2d 116 (2002) does not control this case.

5. The Town's termination of Donevant presents an issue of fact as to whether she was terminated in violation of a clear mandate of public policy.

6. No special or important reasons exist to justify granting certiorari.

STATEMENT OF THE CASE

This case arises out of the Town's employment termination of Jacklyn J. Donevant ("Donevant"), who held the positions of Director of Planning, Building, and Zoning and building official. **(R. pp. 1-5; R. pp. 25-26; R. p. 301; R. pp. 292-93**). Following her termination, Donevant filed suit against the Town in the Horry County Court of Common Pleas on June 19, 2012, asserting a single cause of action for wrongful termination in violation of a clear mandate of public policy. **(R. pp. 1-5)**. This case was tried before a jury on February 10, 11, 13, and 14, 2014.[1] The Honorable Deadra Jefferson presided over the trial.

At the conclusion of Donevant's case, the Town moved for directed verdict, arguing the Town's termination of Donevant did not constitute a violation of a clear mandate of public policy. The trial court denied the Town's motion and, after the Town presented its case, the trial court

[1] By order of Chief Justice Toal, all courts in South Carolina were closed on February 12, 2014 due to inclement weather.

submitted the case to the jury, which returned a verdict in favor of Donevant in the amount of Five Hundred Thousand and 00/100 ($500,000.00) Dollars. The verdict was reduced to Three Hundred Thousand and 00/100 ($300,000.00) Dollars pursuant to the relevant provisions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.* (2005 & Supp. 2014). Following the jury's verdict, the Town moved for a judgment notwithstanding the verdict (hereafter "JNOV") on the same grounds as argued in its motion for directed verdict. The trial court denied the Town's JNOV motion, and the Town filed a notice of appeal on March 10, 2014.

On appeal, the Town alleged the trial court erred in denying its motion for directed verdict. On August 26, 2015, the Court of Appeals issued an opinion, affirming the trial court's ruling. The Town then filed a Petition for Rehearing and Suggestion for Rehearing *En Banc* on September 9, 2015, with the arguments therein mirroring the arguments in this instant Petition. The Court of Appeals issued an Order on November 19, 2015, denying the Town's Petition for Rehearing and Suggestion for Rehearing *En Banc*. This Petition followed.

STATEMENT OF FACTS

In 2005, the Town hired Donevant for the positions of Director of Planning, Building, and Zoning and building official.[2] **(R. pp. 25-26; R. p. 301; R. pp. 292-93; R. p. 387)**. As building official, Donevant was required by law to enforce the building code of the State of South Carolina, including issuing stop work orders for unpermitted construction. **(R. pp. 131-32; R. pp. 144-45)**. Also, as building official, Donevant made all "final decisions on ... code interpretations" and was the only person authorized to approve the issuance of building permits and to issue stop work

[2] Previously, Donevant worked for the Town as the deputy building official and then as the building official. **(R. pp. 24-25)**. Donevant left her employment with the Town in 2002 to work in the private sector. **(R. p. 67)**. In total, Donevant worked for the Town for almost fifteen (15) years. **(R. pp. 67-68)**.

orders within the Town's jurisdiction. **(R. p. 26; R. p. 28; R. p. 387; R. p. 177; R. pp. 245-46; R. p. 145; R. p. 295)**.

In December 2010, the Town hired Duckett as Town Administrator. **(R. p. 30)**. Duckett had no experience in the construction industry. **(R. p. 30)**. During Duckett's tenure as Town Administrator, there was an ongoing controversy with the vacancy of the Pier Restaurant, which was owned by the Town. **(R. p. 49; R. pp. 95-96)**. The Town acquired the Pier, which included the Pier Restaurant, in 2008. **(R. p. 276)**. Shortly after the Town acquired the Pier, a long-time tenant of the Pier Restaurant vacated the premises, leaving the space vacant and depriving the Town of expected revenue. **(R. p. 49; R. p. 279)**. The Town experienced difficulty finding a new tenant for the Pier Restaurant. **(R. p. 49; R. p. 94; R. p. 276; R. p. 279)**. The vacancy of the Pier Restaurant was a prominent, public issue in the Town, with stories appearing in a number of newspaper articles. **(R. pp. 95-96)**. Duckett worked to find a new tenant for the Pier Restaurant. **(R. p. 49)**.

After being diagnosed with breast cancer on October 17, 2011, Donevant applied for and received twelve (12) weeks of leave from work pursuant to the mandates of the Family Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (LexisNexis 2014). **(R. p. 40, p. 43)**. During her absence, the Town was forced to contract with the City of Myrtle Beach to perform Donevant's duties of building official, because no other Town employee was qualified to perform these duties. **(R. pp. 47-48)**. Thus, while Donevant was on sick leave, the City of Myrtle Beach assumed the responsibility of reviewing plans, issuing permits, conducting inspections, and issuing stop work orders within the Town's jurisdiction. **(R. pp. 47-48)**.

While Donevant was on sick leave, Duckett found a new tenant to occupy the vacant Pier Restaurant space. **(R. p. 49)**. The new tenant wished to remodel the interior of the space. **(R. p.**

49). Because Donevant was on sick leave, the City of Myrtle Beach initiated the plan review for the Pier Restaurant and issued a demolition permit for the requested demolition work. **(R. p. 90; R. p. 96; R. p. 394)**. The demolition permit allowed for "demo interior of building only." **(R. p. 90; R. p. 96; R. p. 394)**. This demolition permit was the only permit issued to the Pier Restaurant during Donevant's absence. **(R. pp. 49-50; R. p. 394)**. While Donevant was on sick leave, Mr. Duckett visited the Pier Restaurant frequently and remained in direct communications with the City of Myrtle Beach about the construction plans. **(R. pp. 200-01; R. p. 316)**.

Donevant returned from sick leave on March 13, 2012. **(R. p. 400)**. Before allowing her to resume her duties, Duckett required Donevant to meet with him on the morning of March 13, 2012. **(R. pp. 44-45; R. pp. 313-14)**. Duckett requested that Debera E. Herman, Town clerk, witness the meeting. **(R. p. 233; R. pp. 44-45)**. During the meeting, Duckett informed Donevant that she would resume all of her job duties, but he warned her that if she reversed anything that was done in her absence, he would "fire" her. **(R. pp. 44-45)**. Duckett testified the reason for this instruction was to prevent Donevant from revisiting any decisions made by the City of Myrtle Beach in her absence. **(R. p. 313)**. Herman prepared a memorandum from the meeting, that read:

> Mr. Duckett explained that Jackie [Donevant] was now officially returned to work; however, he gave her a direct order that she could not and would not change, ameliorate, or in any other manner amend any action that was taken during her absence. That if she did so, she would be fired.

(R. p. 400; R. p. 234).

After the meeting, Donevant spoke with Herman, expressing concern over the instruction given to her by Duckett. **(R. p. 240)**. Donevant informed Herman that "if she did not do [her] job, she would lose her license." **(R. p. 240)**. Herman responded, "well, your boss is giving you an order, you need to do what your boss tells you." **(R. p. 240)**.

On March 20, 2012, shortly after Donevant returned to work from sick leave, she discovered, by reading a local newspaper article, that new construction had commenced at the Pier Restaurant. **(R. p. 51)**. At this point in time, there was no construction permit issued for the Pier Restaurant. **(R. p. 50)**. The only permit issued for the Pier Restaurant was a demolition permit, which allowed for "demo interior of building only." **(R. pp. 49-51; R. p. 394)**. Upon reading the newspaper article, Donevant contacted John Harrah[3] with the City of Myrtle Beach to ensure that no construction permit was issued in her absence. **(R. p. 90; R. p. 102)**. Donevant was informed that no construction permit had been issued. **(R. p. 102)**.

Thereafter, Donevant drove to the Pier Restaurant to inspect the premises. **(R. pp. 52-53)**. Upon arrival, she saw that new construction had begun at the Pier Restaurant. **(R. pp. 52-53)**. Specifically, Donevant observed that the contractors at the Pier Restaurant had cut openings for doors and windows, studded a new wall, installed plumbing, installed electrical, and installed subflooring. **(R. p. 53)**. In Donevant's view, this work constituted "construction," which required the issuance of a construction permit before such work could be lawfully performed. **(R. p. 53; R. p. 401)**. In Donevant's view, if the unpermitted construction continued within the Town's jurisdiction, it posed a significant safety risk to the public. **(R. pp. 54-55; R. pp. 58-59)**. Donevant testified, "Well, it was unsafe and it was dangerous. They had openings that anybody could step in and fall. There was loose wires and plumbing. There was stuff that hadn't been inspected, how do you know whether it's safe or not. We have to protect the public. The pier is a busy place. A lot of kids go [out] there." **(R. pp. 58-59)**. Therefore, Donevant issued a stop work order to halt construction at the Pier Restaurant and taped the stop work order to the door. **(R. p. 53)**.

[3] John Harrah's name is mistakenly transcribed as "John Harold" on page 144.

Donevant, as the building official, was obligated to issue a stop work order to halt the unpermitted construction at the Pier Restaurant. **(R. p. 145; R. pp. 152-53)**. If Donevant refused or neglected to do so, she would be disciplined by the South Carolina Building Codes Council, with such discipline ranging from a letter of caution to a full revocation of her license as a building official. **(R. pp. 155-56; R. pp. 161-63; R. pp. 169-72)**. As Gary Wiggins, the former Director of the Building Codes Council and an expert in the field of building code enforcement, testified, "any time that there is a potential of life safety or fire safety or if there's a direct violation of the law, the building official is obligated to issue a stop work order." **(R. p. 144)**. The following colloquy occurred at trial between counsel for Donevant and Wiggins:

> Q. What if with respect to there's no construction permit?
> A. That's a violation of the law. And anytime there's a violation of the law, a stop work order must be issued.

(R. p. 145).

When Duckett learned Donevant issued the stop work order, he became angry. **(R. p. 319)**. Duckett immediately drove to the Pier Restaurant, and in his words, "[i]n a fit of anger, I tore [the stop work order] off the door." **(R. p. 319)**. Duckett continued, "I do get angry, and I was angry." **(R. p. 319)**. Duckett also cursed at the stop work order, saying aloud "all this ... for putting some damn boards down." **(R. p. 349)**. Thereafter, Duckett called Donevant that evening and directed her to be in his office at eight o'clock in the morning. **(R. pp. 60-61)**. Duckett added, "I can't believe you been to that pier."[4] **(R. p. 61)**.

[4] Donevant did not report that she issued a stop work order to Duckett, because as Kevin Otte, current building official for the Town, testified and Donevant confirmed, the fact that the building official issued a stop work order is not a reportable matter. **(R. p. 64; R. pp. 299-300; R. p. 246)**.

On March 21, 2012, the morning following Donevant's issuance of the stop work order, she reported to Duckett's office as he instructed. **(R. p. 62)**. During the meeting, Duckett told Donevant he could not believe she stopped work at the Pier Restaurant after all the work he had done on the project. **(R. p. 114; R. p. 120)**. With this statement, Duckett turned his attention to the three (3) pieces of paper, lying face down on his desk. **(R. p. 62)**. Duckett turned over the first piece of paper, which was a written reprimand. **(R. p. 63; R. p. 406)**. Donevant refused to sign the written reprimand because it was not true. **(R. p. 63)**. When Donevant refused, Duckett turned over the second piece of paper, which was an order of suspension. **(R. p. 63; R. p. 405)**. Donevant disagreed with the suspension and the insinuation of wrongdoing in the suspension notice. **(R. p. 63; R. p. 116)**. However, Donevant suspected the third and final document lying facing down on Duckett's desk was a termination notice. **(R. p. 63; R. p. 116; R. p. 407)**. Even though she disagreed with the suspension, Donevant signed the document and served a three-day suspension, because she "needed to work." **(R. p. 63; R. p. 116)**. Donevant testified, "I got suspended for putting a permit on the pier." **(R. p. 118)**.

Donevant returned to work on March 25, 2012, and on that date, Donevant informed Duckett in writing that she must follow the law even if it meant not following his instructions. **(R. p. 410)**. The letter Donevant delivered to Duckett stated:

> My suspension was not right. All I did was follow the law, which you didn't want me to follow. Like I told you the other day, I will follow the law even if that means not following your instructions. You have been picking on me and treating me badly, for a long time, even though I do my work by the book and I am dedicated to the Town.

(R. p. 410).

On April 4, 2012, Duckett terminated Donevant. **(R. p. 412)**. Duckett provided Donevant with no reason for her termination, and subsequently, Duckett informed the South Carolina

Department of Employment and Workforce, that Donevant's termination was due to "operational changes." **(R. p. 66; R. p. 68; R. p. 332; R. p. 413; R. p. 350)**. Donevant maintained that Duckett fired her for issuing a stop work order for unpermitted construction at the Pier Restaurant. **(R. p. 120)**. Therefore, Donevant brought this suit against the Town, asserting a single cause of action for wrongful termination. **(R. pp. 1-5)**.

ARGUMENT

I. THE "FACTS" OF THIS CASE

The Town offers a vastly different version of the facts than those presented by Donevant. The jury clearly did not believe the Town's version of the facts, and it did believe those presented by Donevant. By continuing to argue its version of the facts in its Petition, the Town is ignoring the reality of trial. The purpose of trial is to allow a jury to decide issues of fact. The jury believed the facts as presented by Donevant and returned a verdict in her favor. Additionally, there are no factual issues presented on appeal. As the Court stated in its opinion, "At oral argument, the Town conceded that the reason Donevant was fired is not an issue on appeal. **Consequently, the Town's arguments are all questions of law**." Donevant v. Town of Surfside Beach, Appellate Case No. 2014-00457, pp. 9-10 (August 26, 2015) (emphasis added). Thus, it is curious as to why the Town goes to such great lengths to tell its version of the facts, when there is no factual issue on appeal and the jury did not believe the Town's version of the facts.

While Donevant takes issue with the facts presented by the Town, Donevant will not dedicate this Return to correcting every contested fact because such an analysis is not germane to this Court's inquiry of whether to grant the Town's Petition. See McCall v. Finley, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) (noting our appellate courts recognize an overriding rule which

says: "whatever doesn't make any difference, doesn't matter."). That being said, there are two (2) matters that must be corrected.

First, the Town mischaracterizes Judge Jefferson's view of whether Donevant was required to issue the stop work order for unpermitted construction at the Pier Restaurant. On page 18 of its Petition, the Town states, "Even Judge Jefferson agreed that the stop work order was discretionary and Donevant 'wasn't mandated to do it.'" **(Petition p. 18)**. The Town has not presented Judge Jefferson's statements in an accurate light. The Town has taken Judge Jefferson's comments out of context and in doing so, has changed the meaning of her statement. The full statement made by Judge Jefferson reads as follows, "Whether [Donevant] was mandated to take the action that she took on that day, **which initially, I have to admit, my first reaction to it, pursuant to the statute, was that she wasn't mandated to do it**." **(R. p. 366)** (emphasis added). It is this last phrase, "she wasn't mandated to do it," that the Town seizes upon and presents as though Judge Jefferson believed Donevant was not required to issue the stop work order. However, as this Court can plainly see, in making this statement, Judge Jefferson did not "agree[] that the stop work order was discretionary," and Judge Jefferson did not state that Donevant was not required to issue the stop work order. Quite plainly, Judge Jefferson stated that initially, she thought Donevant was not required to issue the stop work order. **(R. p. 366)**. This is a far cry from the statement attributed to her by the Town, that, "Even Judge Jefferson agreed that the stop work order was discretionary and Donevant 'wasn't mandated to do it.'" **(Petition p. 18)**.

On pages 367 and 368 of the Record, Judge Jefferson continued to explain why she thought the issue presented in this case was one of fact, for the jury to decide. Judge Jefferson noted the existence of a public policy, stating, "I think it is clear that we do have building codes in South Carolina and they are for the protection of the public, and that is a public policy issue." **(R. pp.**

367-68). Thus, there being no matter of law, Judge Jefferson stated, "[t]he issue in this case is a factual one, and it comes down to whose version of events the jury believed." **(R. p. 381)**.

Judge Jefferson's comments speak for themselves, but the Town has presented the Judge's comments in a light to appear as though she thought the stop work order was discretionary and that Donevant was not required to issue the stop work order, which is neither accurate, nor fair. This Court should know that Judge Jefferson fully understood this case and the law encompassing the wrongful termination doctrine. Judge Jefferson would not have sent this case to the jury had she believed as the Town has represented to this Court.

Second, the Town states, "Donevant herself admitted she did not always issue stop work orders for violations." **(Petition p. 19)**. The Town has not presented Donevant's testimony in an accurate light. In full context, Donevant testified that she always issued stop work orders when there was no permit, as was the case with the Pier Restaurant, where unpermitted construction was taking place. **(R. pp. 121-22)**. However, Donevant testified if there was a code violation and there was a permit issued, she did not always issue a stop work order. **(R. 122)**. Donevant testified as follows:

> Q So if there was a code in violation that did not involve a permit problem, you wouldn't always give the builder a stop-work order?
> A Well, a permit will be issued. They call for an inspection. We go out and do the inspection. If there was something wrong, we would write it up and leave it there for them to correct. But they had a permit.
>
> ...
>
> Q So yes or no would you always issue a stop-work order for code violations?
> A For code violations of no permit, yes, sir.
> Q For other code violations not involving a permit?
> A No, sir.

(R. pp. 121-22).

II. NO EXPANSION OF THE PUBLIC POLICY DOCTRINE

The Town contends the Court of Appeals "greatly expanded" the wrongful termination doctrine by affirming this case. The Town argues that the wrongful termination doctrine is limited to situations where the employer requires the employee to violate the law or the reason for the employee's termination itself is a violation of the law. According to the Town, because Donevant failed to demonstrate that she could face criminal penalties if she refused or neglected to issue the stop work order, the trial court should have directed a verdict in the Town's favor. However, the Town does not correctly articulate the state of the wrongful termination doctrine following this Court's decision in Barron v. Labor Finders of South Carolina, 393 S.C. 609, 713 S.E.2d 634 (2011). Barron clearly holds that the wrongful termination doctrine is not limited to situations where the employer requires the employee to violate the law or the reason for the employee's termination itself is a violation of the law. Id. at 615, 713 S.E.2d at 637. The Town's argument that the wrongful termination doctrine is limited to these situations fails to account for this Court's holding in Barron. In Baron, this Court stated:

> Here, the Court of Appeals correctly recognizes that the public policy exception applies to situations where an employer requires an employee to violate the law, or the reason for the termination itself is a violation of criminal law. **We find the court erred, however, in holding the exception is limited to these situations .... Accordingly, we overrule the Court of Appeals' opinion to the extent it holds the public policy exception applies only in situations where the employer asks the employee to violate the law or the reason for the termination itself is a violation of criminal law**.

Id. at (emphasis added).

Barron continues, "[A]n at-will employee may have a cause of action for wrongful termination even if the discharge did not violate criminal law or the employer did not require the

employee to violate the law." Id. at 615, 713 S.E.2d at 637. This Court cannot be any clearer than it was in Barron that the wrongful termination doctrine is not as limited as the Town understands it to be. It is disingenuous for the Town to paint a picture of this case as "greatly expanding" the wrongful termination doctrine, when in reality, this case fits squarely within the rubric of the current state of the wrongful termination doctrine. As the Court of Appeals stated, "Donevant's claim comes clearly within what our courts have already articulated what the law is—that she was required by her employer to violate the law." Donevant v. Town of Surfside Beach, Appellate Case No. 2014-00457 (August 26, 2015), p. 14 (internal quotations omitted).

III. CONSEQUENCES IF DONEVANT REFUSED TO ISSUE THE STOP WORK ORDER

Next, the Town argues there was no evidence presented showing that Donevant would have been subject to some type of sanction if she did not issue the stop work order. This argument ignores the testimony of Donevant and Gary Wiggins, the former Director of the Building Codes Council and an expert in the field of building code enforcement. **(R. p. 124)**. Donevant clearly testified that she could lose her license if she did not issue the stop work order for unpermitted construction at the Pier Restaurant. **(R. p. 55)**. Mr. Wiggins testified if Donevant refused or neglected to issue the stop work order, she would be disciplined by the South Carolina Building Codes Council, with such discipline ranging from a letter of caution to a full revocation of her license as a building official. **(R. pp. 155-56; R. pp. 161-63; R. pp. 169-72)**. Mr. Wiggins continued, "any time that there is a potential of life safety or fire safety or if there's a direct violation of the law, the building official is obligated to issue a stop work order." **(R. p. 144)**. The following colloquy occurred at trial between counsel for Donevant and Wiggins:

> Q. What if with respect to there's no construction permit?

A. That's a violation of the law. And anytime there's a violation of the law, a stop work order must be issued.

(R. p. 145).

Thus, Donevant clearly presented evidence that she would be subject to discipline, including potential loss of her job, if she did not issue the stop work order. Additionally, if Donevant followed Duckett's directive and did not take action in response to the unlawful construction at the Pier Restaurant, she could have been charged with misconduct in office for failing to discharge her legal duty. Donevant v. Town of Surfside Beach, Appellate Case No. 2014-00457, p. 14 (August 26, 2015); see State v. Hess, 279 S.C. 14, 20, 301 S.E.2d 547, 550 (1983). Therefore, Donevant would have been subject to sanction and discipline had she not issued the stop work order.

In addition, to the extent the Town argues in its Petition that the Court of Appeals improperly relied on the testimony of Mr. Wiggins, it must be noted that the Town did not appeal from any alleged error as it relates to the testimony of Mr. Wiggins. Therefore, any alleged defects with respect to Mr. Wiggins' testimony is unappealed, and therefore, it is the law of the case. See ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (unappealed ruling is the law of the case); see also Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of issues on appeal."). Additionally, the Town did not raise this issue in the "Questions Presented" section of its Petition. Rule 242(d)(2).

IV. THE ANTLEY DECISION IS INAPPLICABLE TO THIS CASE

The decision in Antley v. Sheperd, 340 S.C. 541, 532 S.E.2d 294 (Ct. App. 2000), *affirmed as modified*, 349 S.C. 600, 564 S.E.2d 116 (2002), does not control this case, as Donevant, unlike

the tax assessor in Antley, was required to issue the stop work order for unpermitted construction, and she possessed the sole and unfettered authority to issue the stop work order.

In Antley, a county tax assessor refused to comply with the county administrator's directive not to initiate an appeal from a decision by the board of assessment appeals. 340 S.C. at 546, 532 S.E.2d at 296. When the tax assessor refused to dismiss a pending appeal, the county administrator terminated the tax assessor for refusing to follow his directives. Id. Following her termination, the tax assessor filed a claim for wrongful termination against the County, alleging she, as tax assessor, maintained the statutory right to file appeals from decisions by the board of assessment appeals. The tax assessor relied on the sections 12-37-90 and 12-60-2540 of the South Carolina Code of Laws in support of her argument. 340 S.C. at 549, 532 S.E.2d at 298.

Section 12-37-90(f) of the South Carolina Code of Laws provides that the tax assessor has "the **right** of appeal from a disapproval of or modification of an appraisal made by him." S.C. Code Ann. § 12-37-90(f) (2014) (emphasis added). Section 12-60-2540(A) provides that within thirty (30) days of a decision by the board of assessment appeals, "a property taxpayer or county assessor **may** appeal a property tax assessment." S.C. Code Ann. § 12-60-2540(A) (2014) (emphasis added).

Based upon the statutory language, the Court of Appeals affirmed the trial court's decision granting summary judgment to the County on the tax assessor's wrongful termination claim. Antley, 340 S.C. at 549, 532 S.E.2d at 298. The Court observed the above cited statutory provisions "permitted, but did not require, [the tax assessor] to appeal adverse board decision." The Court of Appeals continued:

> [N]othing in sections 12-37-90 or 12-60-2540 gave [the tax assessor] **the sole discretion** in determining which cases to appeal. If the General Assembly had intended the assessor's right of appeal to be **unfettered** by the county administrator or county council, it

> certainly could have provided that the decision of whether or not to appeal a board's determination is solely that of the assessor.

Id. (emphasis added).

The Town interprets the holding in Antley broadly; however, the plain language of Antley announces a much narrower holding than the one advocated for by the Town. The statues at issue in Antley did not grant any real authority to the tax assessor. The Court of Appeals made three (3) observations about the statutes to determine they granted no real authority to the tax assessor: (1) Antley had the statutory right to file appeals, but was not required to do so; (2) the statues she relied on her for her authority did not give her the sole discretion to determine which cases to appeal; and (3) the General Assembly had not provided that the assessor's right of appeal was unfettered; therefore, nothing prevented the County from adopting a policy that defined the cases to appealed.

The decision in Antley should be viewed based upon its unique facts and the statutes applicable to the tax assessor. This case presents facts drastically different from Antley. Unlike the tax assessor in Antley, Donevant, as the building official, was required to take action to enforce compliance with the building code when she saw unpermitted construction at the Pier Restaurant. Section 6-9-10(A) of the South Carolina Code of Laws requires all municipalities and counties to enforce the building code. The exact statutory language provides:

> All municipalities ... and counties in this State **shall enforce** ... building codes in this chapter, relating to the construction, livability, sanitation, erection, energy efficiency, installation of equipment, alteration, repair, occupancy, classification, or removal of structures located within their jurisdictions and **promulgate regulations to implement their enforcement**.

S.C. Code Ann. § 6-9-10(A) (Supp. 2014) (emphasis added).

Section 6-9-30 of the South Carolina Code of Laws requires all municipalities and counties to appoint a building official or contract for a building official within the municipal limits. S.C. Code Ann. § 6-9-30 (Supp. 2014). The statute uses the mandatory "shall" language. S.C. Code Ann. § 6-9-30. Pursuant to section 6-9-50(A), the International Building Code, with the exception of Chapter 1, is adopted in every municipality or county in the State. S.C. Code Ann. § 6-9-50(A). The Town specifically adopted Chapter 1 of the International Building Code by passing section 13-21 of the Town of Surfside Beach's Code of Ordinances. Thus, Chapter 1 of the International Building Code, which provides for certain duties and responsibilities for the building official, applies within the Town's jurisdiction. Id.

Under Chapter 1 of the International Building Code, "The building official is hereby authorized **and directed to enforce the provisions of this code**." Int'l Bldg. Code § 104.1 (2006) (emphasis added). "**The building official shall** ... issue permits for the erection, and alteration, demolition and moving of buildings and structures, inspect the premises for which such permits have been issued and **enforce compliance with the provisions of the code**." Int'l Bldg. Code § 104.2 (2006) (emphasis added). "The building official shall issue all necessary notices or orders to ensure compliance with this code." Int'l Bldg. Code § 104.3 (2006).

Section 105.1 of the International Building Code provides:

> Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, **shall first make application to the building official and obtain the required permit**.

Int'l Bldg. Code § 105.1 (2006) (emphasis added).

"It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, **in conflict with or in violation of any of the provisions of this code**." Int'l Bldg. Code § 113.1 (2006) (emphasis added).

Here, the contractors at the Pier Restaurant had not obtained a construction permit when Donevant issued the stop work order. The contractors only had a demolition permit that allowed for "demo interior of building only." **(R. p. 394)**. Thus, before the contractors could perform construction at the Pier Restaurant, they were required to obtain a proper construction permit. See Int'l Bld. Code § 105.1 ("Any owner or authorized agent who intends to construct ... shall first make application to the building official and obtain the required permit."). Donevant testified the contractors started construction at the Pier Restaurant by cutting openings for doors and windows, studding a new wall, and installing plumbing, electrical, and subflooring. **(R. p. 53)**. Because the contractors started construction at the Pier Restaurant without the required permit, the construction was unlawful under the building code. See Int'l Bld. Code § 113.1 (declaring it unlawful for any person to erect, construct, or alter any building or structure "in violation of any provisions of this code.").

Because the unpermitted construction at the Pier Restaurant violated the building code, the law required Donevant, as building official, to enforce compliance with the code. See Int'l Bld. Code § 104.2 (stating "the **building official shall** ... issue permits for the erection, and alteration, demolition and moving of buildings and structures, inspect the premises for which such permits have been issued and **enforce compliance with the provisions of the code**."). (emphasis added). In order to carry out her legal duty to "enforce compliance" with the building code, Donevant issued a stop work order as she was required to do so by law. See Int'l Bld. Code § 104.3 ("The

building official shall issue all necessary notices or orders to ensure compliance with this code."). Therefore, unlike Antley, where the statutes "permitted but did not require" the tax assessor to take action, the statutory and building code provisions at issue here required Donevant's actions of enforcing compliance with the building code.

In addition, unlike Antley, where the tax assessor or a "property taxpayer" could appeal a property tax assessment, Donevant, as building official, was the only person authorized to issue a stop work order for code violations. See Int'l Bld. Code § 114.1. Every individual who testified about the matter agreed Donevant, and Donevant alone as building official, was empowered with absolute, sole, and unfettered authority to issue a stop work order. **(R. p. 28; R. p. 177; R. pp. 245-46; R. p. 145-46; R. p. 295)**. As Mr. Wiggins testified, "As a matter of fact ..., the building official is charged with [the] responsibility [of issuing stop work orders] specifically and no other person either the city manager, the mayor, chief of police, fire chief any other person can perform is authorize[d] or can perform that function or task." **(R. p. 145)**. Thus, unlike the tax assessor in Antley, Donevant possessed the sole, absolute, and unfettered right to make a determination of whether a stop work order should be issued.

Accordingly, for the foregoing reasons, this case is distinguishable from Antley, and it does not control.

V. DONEVANT'S TERMINATION PRESENTS AN ISSUE OF FACT AS TO WHETHER SHE WAS TERMINATED IN VIOLATION OF A CLEAR MANDATE OF PUBLIC POLICY

This case presents an issue of fact as to whether Donevant was terminated in violation of a public policy.

"The primary source of the declaration of public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration."

Barron, 393 S.C. at 618, 713 S.E.2d at 639 (citing Citizens' Bank v. Heyward, 135 S.C. 190, 133 S.E. 709, 713 (1925)). "[O]nce a public policy is established, the jury would determine the factual question whether the employee's termination was in violation of that public policy." Barron, 393 S.C. at 618, 713 S.E.2d at 639.

Title 6 of the South Carolina Code of Laws is the title that deals with the building code. See S.C. Code Ann. § 6-9-5 *et seq.* (1977 & Supp. 2014). Section 6-9-5(A) of the South Carolina Code of Laws provides:

> **The public policy of South Carolina** is to maintain reasonable standards of construction in buildings and other structures in the State consistent with the public health, safety, and welfare of its citizens. To secure these purposes, a person performing building codes enforcement must be certified by the South Carolina Building Codes Council, and this act is necessary to provide for certification.

S.C. Code Ann. § 6-9-5(A) (Supp. 2014) (emphasis added).

To achieve the stated public policy of South Carolina, to maintain reasonable construction standards in building to protect the health, safety, and welfare of its citizens, the General Assembly adopted the remaining statutory provisions in Title 6 of the South Carolina Code of Laws, including section 6-9-10(A) of the South Carolina Code of Laws which requires "[a]ll municipalities ... and counties" to enforce the building code "within their jurisdiction and promulgate regulations to implement their enforcement." S.C. Code Ann. § 6-9-10(A). It is within this public policy context that the General Assembly allows municipalities and counties to either adopt Chapter 1 of the International Building Code,[5] or to promulgate and adopt its own regulations to enforce the building code. S.C. Code Ann. § 6-9-50(A); S.C. Code Ann. § 6-9-10(A).

[5] Chapter 1 of the International Building Code provides a mechanism upon which the building code can be enforced. The General Assembly gives municipalities or counties the option to either adopt Chapter 1 or to promulgate and adopt their own enforcement regulations. See S.C. Code Ann. § 6-9-10(A).

The building code requires any owner or authorized agent, before engaging in any construction on the premises, to "first make application to the building official and obtain the required permit." Int'l Bldg. Code § 105.1. Chapter 1 declares it unlawful for any person to erect, construct, or alter any building or structure "in violation of any provisions of this code." Int'l Bld. Code § 113.1. The building code requires the building official to enforce compliance with its provisions. Int'l Bldg. Code §§ 104.1-104.3.

It is a rare event for the General Assembly to use the magic words "the public policy of South Carolina." It is additionally an unusual step for the General Assembly to implement the public policy of the State by requiring counties and municipalities to enforce the building code. S.C. Code Ann. § 6-9-50(A); S.C. Code Ann. § 6-9-10(A). This legislative intent, design, and policy of this statutory framework cannot be ignored. See State v. Morgan, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct. App. 2002) ("The statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.").

Here, Donevant presented a cognizable theory for wrongful termination, which was correctly sent to the jury. See Barron, 393 S.C. 609, 615-16, 713 S.E.2d 634, 637 (holding a wrongful termination claim is not limited to situations where the employer requires the employee to violate the law or the reason for the employee's termination itself is a violation of the law). The public policy of the State of South Carolina is to maintain reasonable construction standards in building to protect the health, safety, and welfare of its citizens. S.C. Code Ann. § 6-9-5(A). To achieve these purposes, the General Assembly requires the building code to be adhered to and requires them to be enforced. S.C. Code Ann. § 6-9-10(A); Int'l Bldg. Code §§ 104.1-104.3, 105.1, 113.1, 114.1. Donevant was enforcing the building code on March 20, 2014, when she issued a stop work order for unpermitted construction at the Pier Restaurant. Donevant presented evidence

that after issuing the stop work order, Duckett initially suspended her and ultimately terminated her. Thus, Donevant testified and presented evidence to support a theory for wrongful termination that was proper to submit to the jury.

From there, it was an issue of fact as to whether the jury believed the Town terminated Donevant for issuing a stop work order or for other reasons not related to Donevant's issuance of the stop work order. Donevant clearly presented evidence to support her theory that "[Duckett] fired [her] for putting a stop-work order, for doing my job."[6] **(R. p. 120)**. Ultimately, the jury believed the version of facts as presented by Donevant. Accordingly, this Court should not disturb the jury's verdict as there was an issue of fact as to whether the Town terminated Donevant in violation of a clear mandate of public policy.

VI. NO SPECIAL OR IMPORTANT REASONS EXIST TO JUSTIFY GRANTING CERTIORARI

This Court should deny the Town's request for a writ of certiorari because the Town failed to identify any "special and important reasons" to justify granting certiorari.

Rule 242 of the South Carolina Appellate Court Rules provides that a writ of certiorari "will be granted only where there are special and important reasons." (emphasis added). Rule 242, SCACR, identifies five (5) factors as indicative of "the character of reasons which will be considered" by the Court in making its decision:

> (1) Where there are novel questions of law.
>
> (2) Where there is a dissent in the decision of the Court of Appeals.
>
> (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
>
> (4) Where substantial constitutional issues are directly involved.

[6] On appeal, the Town does not allege that Donevant failed to present sufficient evidence in support of her wrongful termination claim. Therefore, this issue is not preserved for appellate review.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242, SCACR.

Here, this case possesses none of the characteristics identified by Rule 242, SCACR as special and important. In fact, as the Court of Appeals stated, "Donevant's claim comes clearly within what our courts have already articulated what the law is—that she was required by her employer to violate the law." Donevant v. Town of Surfside Beach, Appellate Case No. 2014-00457 (August 26, 2015), p. 14 (internal quotations omitted). As a consequence, this case is not appropriate for certiorari.

CONCLUSION

For the foregoing reasons, this Court should deny the Town's request for a writ of certiorari.

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January 12, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Deadra Jeffferson
Circuit Court Judge

Case No.: 2012-CP-26-4852
Appellate Case No.: 2015-002533

Opinion No. 5345 (S.C. Ct. App. filed August 26, 2015)

Jacklyn J. Donevant, ...Respondent,

vs.

Town of Surfside Beach, ...Appellant.

PROOF OF SERVICE

I, Carole Koerner, an employee of McNair Law Firm, P.A., attorneys for Respondent, Jacklyn J. Donevant, in the above-entitled action, certify that I have served the Respondent's Return to Petition for Writ of Certiorari, and Proof of Service on all parties to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 12th day of January, 2016.

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