

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

BEFORE THE COUNTY COUNCIL

In re:)
)
Arthur L. Jayroe Jr.,)
)
Petitioner)
_____)

COUNTY COUNCIL DECISION

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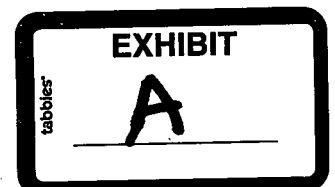
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SC Court of Appeals

On or about March 11, 2015, Petitioner, Arthur L. Jayroe, a former part-time magistrate judge in Newberry County, filed a petition for redress of compensation actions against Respondent, Newberry County, pursuant to the South Carolina Magistrate's Pay Act, S.C. Code Ann. §§ 22-8-10 through 22-8-50, and the South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 through 44-1-110. The Magistrate's Pay Act specifies the compensation structure for South Carolina magistrate judges. The Payment of Wages Act requires generally that every South Carolina employer pay all wages due to employees at the appropriate time and place.

On October 27, 2015, Newberry County Council convened a hearing for the purpose of hearing Mr. Jayroe's petition and Newberry County's response. At the hearing, Mr. Jayroe was represented by Attorney Desa Ballard of Ballard & Watson. Newberry County was represented by Attorneys Chris Gantt-Sorenson and Perry MacLennan of Haynsworth Sinkler Boyd.

Two witnesses testified at the hearing: Mr. Jayroe and Newberry County Administrator Wayne Adams. The hearing was recorded and transcribed by a Notary Public who administered the oath to both witnesses. Each party's hearing exhibits are included in the hearing transcript.



Six members of Newberry County Council were present for the hearing: Buddy Livingston, Chairman; Scott Cain; Steve Stockman; Les Hipp; Bill Waldrop; and Travis Reeder. Council member Kirksey Koon recused himself from the matter. Attorney David Dubberly of Nexsen Pruet was employed by County Council to advise and assist County Council with the conduct of the hearing.

At the hearing, Mr. Jayroe requested, based on S.C. Code Ann. § 22-8-40(F), that he be paid for all hours he was scheduled to be on call for the last three years of his employment as a magistrate, or, in the alternative, that he be treated as a full-time magistrate for compensation purposes.

Mr. Jayroe also requested, based on S.C. Code Ann. § 22-8-40(J), payment for on-call time for the last ten months of his employment under the County's plan to compensate for on-call duties that had been in place from 1995 until 2014. The plan started in 1995 was replaced with a new plan that went into effect in September 2014. Under the new plan, Mr. Jayroe's overall compensation decreased.

Finally, Mr. Jayroe argued that pursuant to the Payment of Wages Act he is entitled to treble damages and attorney's fees on wages due to him. S.C. Code Ann. § 41-10-80(C) provides that if an employer fails to pay wages due, 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."

On December 16, 2015, both parties filed proposed findings of fact and conclusions of law.

County Council, having carefully considered the hearing testimony and exhibits as well as the arguments of counsel, hereby issues its findings of fact and conclusions of law.

FINDINGS OF FACT

The following findings of fact are supported by the witness testimony and exhibits presented at the hearing.

1. Mr. Jayroe is a CPA. He has maintained an active accounting practice in Little Mountain, South Carolina since 1984.

2. Mr. Jayroe served as a part-time magistrate in Newberry County from 1995 until 2015. He served as Associate Chief Magistrate from 2000 until 2005, and as Chief Magistrate from 2005 until 2015.

3. As a magistrate, Mr. Jayroe held office hours for six hours per week (three hours two days per week). He held his magistrate office hours at his accounting firm. In addition, he had on-call duties.

4. As of 2005 when he became Chief Magistrate, Mr. Jayroe set the after-hours on-call schedule for magistrates in Newberry County. By order of the Chief Justice of the South Carolina Supreme Court, it was the Chief Magistrate's responsibility to "Establish with the other magistrates of the county, a schedule so arranged that a magistrate will be available, in person or on call, in the county to issue warrants and conduct bail proceedings."

5. In 1995, Newberry County Council had voted to pay a stipend of \$4,500 to compensate for magistrate weeknight on-call duties regardless of the number of on-call hours worked. The stipend continued to be paid until 2014. Per meeting minutes from

1995, the stipend was to be "split ... between Chief Magistrate and Assistant Magistrate." (There was no "Assistant Magistrate" in Newberry County, but there was, from time to time, an Associate Chief Magistrate, and there were other magistrates who assisted with weeknight on-call duties.)

6. Starting in July 2005, Mr. Jayroe was paid his regular salary, which covered his six office hours and four additional hours (the four additional hours were intended to compensate for weekend on-call duties), and a \$1,500 part-time Chief Magistrate supplement in accordance with the Magistrate's Pay Act. In addition, he directed that the \$4,500 on-call stipend be shared between himself and another magistrate. Starting in December 2005, Mr. Jayroe assigned himself all weeknight on-call hours for 49 to 50 weeks of the year and he directed that the entire \$4,500 stipend be paid to himself.

7. Mr. Jayroe testified that he was on call for 3,500 to 4,000 hours per year or about 77.5 hours per week (every hour between midnight on Sunday night and midnight on Friday night outside of normal business hours). While on call, he was somewhat restricted in terms of travel and conduct, but he was generally free to live his life without interruption. Only rarely was it necessary for him to perform magisterial duties while on call.

8. Mr. Jayroe continued to receive the entire \$4,500 on-call stipend until it was discontinued. Effective in September 2014, Newberry County replaced the \$4,500 stipend with a plan to pay for on-call hours actually worked by each magistrate. In transitioning to the new plan, Newberry County offered payments to its part-time

magistrates, including Mr. Jayroe, to compensate for any on-call hours actually worked during the prior three years.

CONCLUSIONS OF LAW

Scheduled On-Call Hours Issue; Alternative Full-Time Status Issue

1. S.C. Code Ann. § 22-8-10(3) defines a part-time magistrate as "a magistrate who regularly works less than forty hours per week performing official duties required of a magistrate as a judicial officer." S.C. Code Ann. § 22-8-40(F) sets out how part-time magistrates are to be paid; it states:

Part-time magistrates are entitled to a proportionate percentage of the salary provided for full-time magistrates. This percentage is computed by dividing by forty the number of hours a week the part-time magistrate spends in the performance of his duties. The number of hours a week that a part-time magistrate spends in the exercise of the judicial function, and scheduled to be spent on call, must be the average number of hours worked and is fixed by the county governing body upon the recommendation of the chief magistrate. However, a part-time magistrate must not work more than forty hours a week, unless directed to do so on a limited and intermittent basis by the chief magistrate.

2. Mr. Jayroe asserts that the phrase "scheduled to be spent on call" in the third sentence of S.C. Code Ann. § 22-8-40(F) indicates part-time magistrates should be paid for both (1) all hours spent performing magistrate functions and (2) all scheduled on-call hours including scheduled on-call hours in which no work was performed. Per his testimony, Mr. Jayroe scheduled himself to be on-call for 3,500 to 4,000 hours per year or about 77.5 hours per week, but only rarely did he perform magisterial duties while on call.

3. Council does not believe the General Assembly intended for part-time magistrates to be paid for all hours scheduled to be on call in addition to hours actually worked. In interpreting a statute, the language "must be read in a sense which

harmonizes with its subject matter and accords with its general purpose.” *Multi-Cinema, Ltd. v. South Carolina Tax Comm.*, 292 S.C. 411, 413, 357 S.E.2d 6, 7 (1987). Reading S.C. Code Ann. § 22-8-40(F) as a whole, the first two sentences indicate that part-time magistrates are to be paid a “proportionate percentage of the salary provided for full-time magistrates.” The proportionate percentage is calculated by dividing by 40 “the number of hours a week the part-time magistrate spends in the performance of his duties.” And per the last sentence of § 22-8-40(F), the number of compensable hours worked must usually be less than 40. Thus, part-time magistrates are to be paid a proportionate percentage of a full-time magistrate’s salary based on the number of hours, usually under 40, worked in a week.

4. Also, paying for hours scheduled to be on call but not “performing official duties” would yield an absurd result in a case like this in which a part-time Chief Magistrate scheduled himself to be on call for 77.5 hours almost every week for years. It would result in Mr. Jayroe as a six-hour per week magistrate being paid twice as much as a full-time magistrate. We do not believe the General Assembly intended such a result. “[A] statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Carolina Alliance for Fair Employment v. S.C. Dept. of Labor, Licensing, and Regulation*, 337 S.C. 476, 490, 523 S.E.2d 795, 802 (Ct. App. 1999). We cannot accept an interpretation which “torture[s] the meaning of the statute.” *Santee Cooper Resort, Inc. v. South Carolina Public Serv. Comm’n*, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989).

5. Mr. Jayroe claims our Supreme Court’s decision in *Ramsey v. County of McCormick*, 306 S.C. 393, 412 S.E.2d 408 (1991), supports his contention that he must

be compensated for all scheduled on-call time. *Ramsey* appears to hold that part-time magistrates who were scheduled to be on call every fourth weekend should be compensated for their scheduled on-call hours. *Id.* 306 S.C. at 396-397, 412 S.E.2d at 410. But there is no indication in *Ramsey* that a part-time magistrate like Mr. Jayroe who assigned himself on call duties almost every weeknight for a total of 3,500 to 4,000 hours per year should be compensated for such hours.

6. At the hearing in this matter, Mr. Jayroe argued, in the alternative, that even though he was a part-time magistrate, he may be treated for compensation purposes as a full-time magistrate given the many hours he scheduled himself to be on call. Thus, he stated, the County could pay him a full-time magistrate's salary for the last three years of his employment in lieu of compensation for each of the 3,500 to 4,000 hours he was scheduled to be on call.

7. Mr. Jayroe claims the *Ramsey* decision supports his argument on this issue as well. In *Ramsey*, our Supreme Court held that a magistrate who was classified as part-time, but held office hours for 40 hours per week, from 9:00 a.m. to 5:00 p.m. every weekday, was "in substance" a full-time magistrate and entitled to be paid accordingly. *Id.* 306 S.C. at 397, 412 S.E.2d at 411. Mr. Jayroe, however, did not work 40 hours per week or hold a schedule that was even close to full-time. He held office hours for six hours per week (three hours two days per week). He maintained, and still maintains, an active CPA practice. Accordingly, we believe it would be inappropriate to compensate him as a full-time magistrate.

Salary Reduction Issue

8. We turn next to Mr. Jayroe's contention that Newberry County violated S.C. Code Ann. § 22-8-40(J) as to him when it discontinued the \$4,500 stipend and implemented a new plan to compensate part-time magistrates for on-call duties. Section 22-8-40(J) restricts reductions in magistrate salaries; it states:

A magistrate who is receiving a salary greater than provided for his position under the provisions of this chapter must not be reduced in salary during his tenure in office, and must be paid the same percentage annual increase in salary as other magistrates. Tenure in office continues at the expiration of a term if the incumbent magistrate is reappointed.

9. Section 22-8-40(J) does not appear to apply to Mr. Jayroe for two reasons. First, he testified at the hearing in this matter that he was not "receiving a salary greater than provided for his position under the provisions of" the Magistrate's Pay Act. Mr. Jayroe's salary was calculated based on the Act, specifically § 22-8-40(B) and (F). His salary as thus calculated was not reduced.¹ The \$4,500 stipend was not required by the statute and was not part of his salary as determined based on the statute.

10. Second, Mr. Jayroe testified that the \$4,500 stipend was not intended specifically for him. It was started in 1995, ten years before he became Chief Magistrate. Moreover, two of the undersigned were on Council in 1995, and each of the undersigned voted at various times to renew the stipend. We did not intend the stipend

¹ Mr. Jayroe now argues that the \$4,500 on-call stipend "was never designated or paid as a 'stipend' or a 'supplement'" and that it was part of his salary. What the payment is called is not outcome-determinative, but we point out that that Mr. Jayroe referred to the payment as a "stipend" in his petition and in his communications directing how the payment was to be applied; and in his testimony he referred to the payment as a "stipend," a "supplement," and "supplemental compensation."

to be considered a part of any particular magistrate's salary, but rather to be shared with magistrates who provided on-call services.

Payment of Wages Act Issue

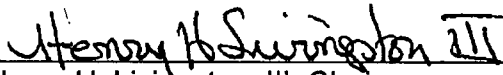
11. After careful consideration of the evidence presented in this case and the parties' arguments, we conclude that Newberry County paid Mr. Jayroe all wages due to him and he is owed no additional compensation. Accordingly, he is not entitled to recover treble damages or attorney's fees under the Payment of Wages Act.²


IT IS THEREFORE DECIDED that Newberry County Council rejects Mr. Jayroe's petition. The findings and conclusions set forth herein are hereby made the Decision of County Council.


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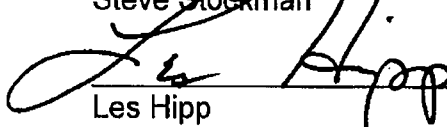
² Even if Mr. Jayroe were owed additional compensation, he would not necessarily be entitled to recover treble damages and attorney's fees; those remedies are not awarded where there was a good faith dispute over wages due. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 605, 518 S.E.2d 591, 594 (1999)(declining to reinstate trial court's award of treble damages and attorney's fees because there was bona fide dispute about whether employer owed employee any wages); *Rice v. Multimedia, Inc.*, 318 S.C. 95, 99-100, 456 S.E.2d 381, 383 (1995)(affirming trial court's refusal to treble damages where there was bona fide dispute over wages allegedly due). Accordingly, had we concluded that Newberry County owed Mr. Jayroe additional wages, we would then have examined whether the County had legitimate reasons for disagreeing in good faith with Mr. Jayroe's claim before reaching a conclusion regarding his entitlement to treble damages and attorney's fees.

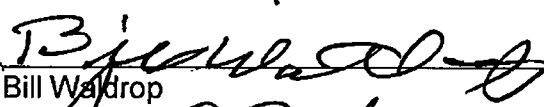
Respectfully submitted,


Henry H. Livingston, III, Chairman


Scott Cain


Steve Stockman


Les Hipp


Bill Waldrop


Travis Reeder

Newberry, South Carolina
February 3, 2016