

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM NEWBERRY COUNTY
DECISION OF NEWBERRY COUNTY COUNCIL
Appellate Case Number 2016-000305

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SC Court of Appeals

Arthur L. Jayroe Jr.,

Appellant,

Vs.

Newberry County,

Respondent.

FINAL BRIEF OF APPELLANT

Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29071
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. COUNTY COUNCIL ERRED IN FINDING THAT APPELLANT'S COMPENSATION WAS NOT REDUCED DURING THE TERM OF HIS OFFICE, VIOLATING THE MAGISTRATE'S PAY ACT AND ITS OWN ANNUAL BUDGET.
2. COUNTY COUNCIL ERRED IN FAILING TO FIND THAT THE COUNTY VIOLATED S.C. CODE ANN. SECTION 14-10-40, 41-10-50, AND 41-10-60.
3. COUNTY COUNCIL ERRED IN FAILING TO FIND THAT APPELLANT WAS ENTITLED TO COMPENSATION FOR THE ON-CALL HOURS HE WAS ORDERED TO PROVIDE DURING WEEKNIGHTS BY COUNTY COUNCIL.
4. COUNTY COUNCIL ERRED IN FAILING TO COMPENSATE APPELLANT AS A FULL-TIME MAGISTRATE.
5. APPELLANT SHOULD HAVE BEEN AWARDED ATTORNEYS' FEES PURSUANT TO S.C. CODE ANN. SECTION 41-10-80(C).

STATEMENT OF THE CASE

Appellant Arthur L. Jayroe (hereafter “Jayroe”) is a former part-time Magistrate for Newberry County, whose service to that County ended in June, 2015 when he was not reappointed to his position by the Governor¹. For the last ten years of his service, Jayroe had been appointed to serve as Chief Magistrate by the Chief Justice.

This Court can take judicial notice of the turmoil in the Newberry County magistrates court system during the fifteen year period from 2000 to 2015 when Magistrates Beckham (620 S.E.2d 69 (2005)), Koon (*In the Matter of Newberry Municipal Court Judge Barry S. Koon*, 354 S.C. 210, 580 S.E.2d 147 (2003)), English (*In Re: Newberry County Magistrate Mark English* 625 S.E.2d 919 (2006)), and Rushton (*In the Matter of Re: Former Newberry County Magistrate Charles Rushton*, Opinion No, 25419 (Feb. 25, 2002)) were reprimanded, and three of them were relieved from office or resigned. Another magistrate was disciplined between magisterial terms for acts committed while serving as a municipal judge.

By statute, a magistrate is paid by the county wherein he works, but the duties of the office are prescribed by statute, by the rules of court and by court orders from the Chief Justice (and the Supreme Court). The county funds office space, operating expenses and salaries of adjunct personnel, but theoretically exercises no control over the functions of the court. What is important is that as an appointed official of the unified court system, a magistrate exercises the sovereign power of the State and is thus a public officer and not a

¹ Jayroe was one of three part-time magistrates who served Newberry County, along with two full-time magistrates. Effective June, 2015, the County now has three full-time magistrates and no part-time magistrates.

mere public employee. See *State v. Bailey*, Opinion No. 5399, S.C. Ct. of Appeals, April 6, 2016. This is important because magistrates are entitled to the same fringe benefits as similarly situated person paid by the county, and for part time magistrates, the most similarly situated persons are members of county council, who both exercise the sovereign power of the State through their legislative function and who work part time. They receive health insurance benefits as a job perquisite at county expense, which part-time magistrates are also entitled to receive. Toward the end of his term the County Administrator cut off Petitioner's health insurance, thus wrongfully reducing his salary during his term of office.

Once he was appointed as Chief Magistrate, Jayroe interpreted his duty as keeping the magistrates court system running smoothly during this time of turmoil, in order to restore the confidence of the Chief Justice and the public in the local magistrate court system. The mandatory administrative duties of the Chief magistrate were enumerated by the Chief Justice by orders issued about every six months, and these duties were lengthy and required a good bit of time to perform. These orders are part of the record.

By order of the Chief Justice, summary courts are required to have a magistrate that will "always be available... to conduct bond proceedings." Order 2007-09-19-01 of the Chief Justice dated September 19, 2007 (superseding a prior order dated November 28, 2000). By that order, the Chief Justice also required Chief Magistrates to provide call duty "after hours and weekends." *Id.* The duty to assign Magistrates to be on-call was vested in the Chief Magistrate. *Id.*

In 1995, Newberry County Council had voted to establish a salary supplement for weeknight on-call duty, and required that duty to be provided by the Chief Magistrate and Assistant Magistrate. (R. pp. 172-173). Because Newberry County had no "Assistant

Magistrate,” Jayroe complied with the directive of County Council to fulfill the necessary weeknight on-call duty by assigning himself for that duty. He provided that coverage personally for 50 weeks annually for approximately ten years.

In 2014, Newberry County Administrator Wayne Adams (hereafter “Adams”) unilaterally eliminated the salary supplement that was being paid to Jayroe in connection with the on-call duty (R. p. 37). Adams notified Jayroe (and others) in August 2014 that the compensation the County had previously provided for weeknight on-call responsibilities had been “discontinued².” (R. pp. 201-206).

Jayroe continued to provide weeknight on-call duty, even though the compensation for it was eliminated. He filed this Petition for Redress seeking a reversal of Adams’ reduction of Jayroe’s compensation. He also sought additional unpaid compensation due to him for on-call hours he provided for the final three years of his employment, plus related relief. The County opposed the relief sought, and a hearing was held before Newberry County Council on October 27, 2015. The County denied all relief sought by Jayroe. (R. pp. 17-26.) This appeal was filed pursuant to S.C. Code Ann. Section 22-8-50.

² Adams instead created a “time-sheet” system for magistrates to be paid only for actual time worked during on-call assignments, not for the time actually spent on-call, which was inconsistent with the County’s obligations under the Magistrate’s Pay Act. *See* discussion, *supra*.

FACTS RELEVANT TO ALL ISSUES

Jayroe has been a part-time magistrate in Newberry County since 1995, having served consecutive four-year terms for twenty years. (R. p. 46, lines 6 – 21; R. p. 50, line 19- p. 51, line 16). His final reappointment by the Governor occurred on April 30, 2011. (ROA p. 27) He was removed from office in June, 2015 when Senator Ronnie Cromer requested, and the Governor agreed, to the appointment of three-full time magistrates. (R. p. 64, lines 14-18; R. pp. 254-255). That change eliminated part-time magistrates in Newberry County.

Minimum salaries for Magistrates and Part-time Magistrates are set forth by the Magistrate's Pay Act, S.C. Code. Ann. Section 22-8-40. The Office of Court Administration, which operates under the authority of the Chief Justice, provides a salary schedule annually for full-time and part-time magistrates, which considers years of service, the County population, and other factors set forth in the statute. The Magistrates' Pay Act also provides for a statutory salary supplement for Magistrates who are appointed to serve as Chief Magistrates in a county, an acknowledgment of the extra duties required thereof. The Act provides \$3,000 annually for a full-time Chief Magistrate, and \$1,500 annually for a part-time Chief Magistrate.

The Chief Justice designated Chief Magistrates for each County by order issued twice-annually. In some counties, the Chief Justice also designated an Associate Chief Magistrate. The Chief Justice's orders established additional, managerial obligations for each Chief Magistrate, in addition to those services each was already providing as a full-time or part-time magistrate. Those additional duties included assigning magistrates to be available 24/7 as required by law enforcement. (R. pp. 180-189).

Before Jayroe was Chief Magistrate, in or about September, 1995, County Council approved a continuing annual payment of \$4,500.00 for payment³ to the Chief Magistrate and Assistant Magistrate, as additional compensation for providing weeknight on-call duties. (R. pp. 172-173). Council's discussion prior to their vote included reference to weekend call as well, but the payment, as approved, was allocated to the Chief Magistrate and Assistant Magistrate, who were providing weeknight call. *Id.* At no time relevant to the issues in this appeal were there any Assistant Magistrates in Newberry County.

In December, 2000, Jayroe was appointed as Associate Chief Magistrate by the Chief Justice, with the Chief Magistrate position held by Barry Koon. In May, 2001, Koon was removed from office, and Magistrate E. M. English became Chief Magistrate. Jayroe continued to be appointed as Associate Chief Magistrate under Chief Magistrate English, until Jayroe was eventually appointed Chief Magistrate by order of the Chief Justice dated June 17, 2005 (R. pp. 185-189). He continued to serve as Chief Magistrate for Newberry County until he was removed from office in June, 2015.

During his tenure as Chief Magistrate, Jayroe's salary from the County included the \$1,500 statutory Chief Magistrate supplement. He received a single paycheck which included base salary, as well as the statutory Chief Magistrate supplement and the County \$4,500 pay for weeknight call. *See footnote 3.*

Historically, the County had an established procedure for compensating part-time magistrates for weekend on-call time by assigning them fewer hours of office time per

³ The 1995 minutes implemented the \$4,500.00 payment as "pay." The \$4,500 payment was never designated or paid as a "stipend" or a "supplement." It was all included in one paycheck. *See also* Footnote 4.

week than the hours for which they were actually paid. By way of example, a part-time magistrate who was paid for ten hours per week was required to be in his office six hours per week. Jayroe did not change the established practice. He assigned weekend call on a rotating basis with each part-time and full-time magistrate, including Jayroe, serving on-call duty every third, fourth, or fifth weekend, depending on the number of magistrates in office at the time. This too was a continuation of the procedure already established.

As to weeknight on-call duty, Jayroe was governed by the 1995 County Council decision to assume all weeknight call himself, since there were no “assistant magistrates.” (R. p.54, line 22 – p. 57, line 3; R. p. 69, lines 18-25). During his entire tenure as Chief Magistrate, from June 2005 to June 2015, Jayroe followed the 1995 direction of County Council minutes to personally provide on-call time during weeknights (after 5:00 pm daily until 8:30 am the following day). *Id.* See also R. p. 75, lines 19-24). Approximately two weeks a year, he would ask another magistrate to cover his weeknight call for vacations or other time off. (R. p. 58, line 15 – p. 59, line 21). As a result, Jayroe was on-call every weeknight for approximately 50 weeks per year. (R. p. 58, line 15- p. 59, line 6). While on-call, Jayroe’s travel and conduct were restricted, insofar as he had to be physically available to perform needed duties within a reasonable time following a call from law enforcement. (R. p. 61, line 15 – p. 64, line 13).

In July, 2005, after he became Chief Magistrate, Jayroe instructed Debbie Cromer, finance director of Newberry County, to pay him one-half of the County’s weeknight on-call pay and to continue paying Judge English the other half. (R. p.190). Jayroe only requested half the weeknight on-call pay at that time as an accommodation to Judge English, whose assigned hours had been cut. (R. p. 66, line 14 – p. 67, line 8). However,

once Judge English resigned effective December 31, 2005, Jayroe instructed Ms. Cromer to pay the entire weeknight on-call pay to him since he was handling all weeknight on-call duties in accordance with the 1995 minutes. (R. p. 67, line 9 – p. 68, line 23; R. pp. 190-191).

In each County budget since 2005, including 2014 when the \$4,500 pay was eliminated by Adams, County Council voted in the annual budget to include the \$4,500 annual pay as part of Jayroe's salary. (R. p. 197; R. p. 76, line 8 – p. 77, line 16). The County's own payroll records clearly establish that the \$4,500.00 was paid to Jayroe as salary⁴. The \$4,500 was never treated by the County in any manner other than as salary. (R. p. 77, line 22 – p. 78, line 9; R. p. 238, R. p. 259, R. pp. 260- 264).

By letter dated August 28, 2014 and confirmed September 9, 2014, Adams notified Jayroe that "we have discontinued the stipend." (R. p. 85, line 4 – p. 86, line 11; R. pp. 201-203). Adams also implemented a requirement for compensation for part-time magistrates to record their actual weekend on-call time on a time sheet for submission for payment, notwithstanding the existing on-call assignments issued by Jayroe and despite

⁴ Exhibit 18 (R. p. 241) contains multiple documents, including W-2s from Newberry County for the period 2011 - 2014. The W-2s reflect taxes, retirement, and health insurance contributions and other employee withholdings deducted from Jayroe's entire salary, including the \$4,500 additional pay, evidencing the treatment of all funds being paid as salary.

Exhibit 26 (R. p. 259) is a Personnel Action Request Form dated August 28, 2014, signed by Adams, Debbie Cromer, and Wanda Hill (Director of Human Resources) directing a reduction in Jayroe's "salary" from \$19,960.93 annually to \$15,460.93 annually. It states "Remove \$4,500 on call salary supplement." (emphasis added).

Exhibit 27 (R. p. 260) is an internal "Employee Earnings" report dated July 9, 2015 which reflects a reduction in Jayroe's bi-weekly gross wages (before payroll deductions as shown in Exhibit 19) from \$767.72 bi-weekly to \$594.65 bi-weekly, beginning with the September 9, 2014 check.

Exhibit 28 (R. p. 265) appears to be internal notes from County staff, which reflect that Jayroe's request for payment of the \$4,500.00 to him would "increase his salary..."

having no authority over setting the schedule or pay of magistrates.⁵ *Id.* See also R. p. 83, line 15 – p. 84, line 9). The two (2) other part-time magistrates complied with Adams’ directive to submit time sheets for time actually spent performing duties on-call during weekend call. (R. p. 151 lines 8-25). Jayroe did not. (R. p. 120, line 2 – p. 121, line 10).

Adams acknowledged that the decision to eliminate the County’s on-call weeknight payment was his decision, not one made by County Council. (R. p. 230). However, County Council was advised after-the-fact that Adams had eliminated the payment from Jayroe’s compensation. (R. p. 230).

On or about August 28, 2014, Adams also notified Jayroe and the other part-time magistrates that the County “may not have been fully compliant with the Magistrate’s Pay Act” by reporting that the amount due to Jayroe for “hours worked over [his] set weekly hours” had not been paid to him “over the last three years.” (R. p. 266).

Adams refused to pay the funds due to Jayroe or the other part-time magistrates unless they executed a full release in favor of the County. (R. p. 204). The two other part-time magistrates accepted the tendered compensation and signed releases as requested by Adams. Jayroe elected not to sign the release, because he believed he was entitled to

⁵ As discussed *infra*, Adams did not understand the distinction between the \$4,500.00 for weeknight call and the built-in compensation for weekend call. (R. p. 56 line 8 – p. 57 line 3 ; p. 59 lines 7-21; p. 65, line 7 – p. 66, line 11; p. 77, line 3 – p. 78, line 9; p. 83 lines 2- 14; p. 166, line 21 – p. 167, line 10). As a result, the calculations he made for additional payments to the part-time magistrates did not take into account the additional on-call weekend hours for which they were already being paid. R. p. 206). As a result, Adams’ calculations resulted in double-payments for weekend call to the other part-time magistrates, and eliminated all compensation for Jayroe for weeknight call, approximately 3,500 hours per year (or 10,500 hours for the 3 year period). See Issue Four, *infra*.

⁶ Adams’ calculations for the amount due to each part-time magistrate calculated only weekend hours for which they had been on-call. (R. p. 206). He subtracted from the amount he determined was due to Jayroe for weekend call, the weeknight call payment (\$4,500.00 x 3 years = \$13,500), thereby eliminating completely any compensation for Jayroe for weeknight call. Adams’ testimony made clear he did not understand the distinction between weeknight and weekend call, for which part-time magistrates which were compensated in two entirely different ways.

additional compensation for his weeknight on-call availability and service. (R. p.82, line 11-p. 83, line 6). He nonetheless continued to provide weeknight call every week as directed by County Council in 1995 until he was removed from office in June, 2015. (R. p. 86, lines 3-11). Jayroe was not paid the funds Adams calculated were due to him at in August, 2014, even though it was conceded to be owed. (R. p. 266).

Jayroe continued to provide weeknight on-call duty, even though the compensation for it was eliminated. (R. p. 86, lines 3-11). He filed this Petition for Redress seeking a reversal of Adams' reduction of Jayroe's compensation. (R. p. 27). He also sought additional unpaid compensation due to him for on-call hours he provided for the final three years of his employment, plus related relief. *Id.* The County opposed the relief sought. (R. p. 31). A hearing was held before Newberry County Council on October 27, 2015. The County denied all relief sought by Jayroe. (R. p. 17)

Months after this petition was filed, Newberry County tendered to Jayroe additional gross wages which Adams had calculated were due to Jayroe more than a year prior in August, 2014. (R. p. 233)⁷. The record reflects no evidence or explanation from the County for how this calculation was made, what it was intended to compensate, or why it was paid when it was. It is clear, however, that the payment did not include any of the eliminated \$4,500.00 payment for weeknight call.

⁷ The amount Adams calculated as being due to Jayroe on August 28, 2014 was \$2,670.32. (R. p. 266). The check dated August 27, 2015 was for the same gross amount, less taxes and other deductions. (R. p. 233). The copy of the check attached as Exhibit 17 does not reflect whether the check has been negotiated. It is presumed that the amount paid in August 2015 was intended to be the payment owed in August, 2014.

ARGUMENT

ISSUE ONE

COUNTY COUNCIL ERRED IN FINDING THAT APPELLANT'S COMPENSATION WAS NOT REDUCED DURING THE TERM OF HIS OFFICE, VIOLATING THE MAGISTRATE'S PAY ACT AND ITS OWN ANNUAL BUDGET.

- A. Jayroe is required to be compensated for on-call time, not merely for tasks actually performed during those required call periods.

Magistrates are required by statute to be compensated for time they “spend in the performance of their official duties.” S.C. Code Ann. Section 22-8-20. Part-time magistrates are required by statute to be compensated for the time “scheduled to be spent on call.” S.C. Code Ann. Section 22-8-40(F). When a statute is clear and unambiguous, the rules of statutory construction do not apply, and the plain language of the statute controls. *Storm M.H. v. Charleston County Board of Trustees*, 400 S.C. 478, 735 S.E.2d 492 (2012); *see also Enos v. Doe*, 380 S.C. 295, 669 S.E.2d 619 (Ct.App. 2008)⁸.

The South Carolina Supreme Court has already held that part-time magistrates must be paid for time “scheduled to be spent on call.” *Ramsey v. County of McCormick*, 306 S.C. 393, 412 S.E.2d 408 (1991). Thus, part-time magistrates are required to be compensated for the time “scheduled to be spent on call,” as opposed to only for time actually worked while on-call. The time sheet requirement implemented by Adams for part-time magistrates (other than Jayroe) to be paid only for the hours they actually worked on-call is clearly contrary to the statutory requirement, and results in part-time magistrates being paid twice for weekend work since their on-call weekend hours were already

⁸ The County submitted legal authority construing federal labor law, which is inapplicable because Jayroe's claim is based solely on state law, specifically the Magistrate's Pay Act. Had Jayroe filed an action seeking compensation under federal law, federal authority submitted by the County might have been relevant.

compensated by the additional weekday hours for which they were already paid⁹. (R. p. 83, lines 2 – 13).

The statutory requirement which requires compensation of part-time magistrates for time “scheduled to be on call”, Section 22-8-40(F), is modified by the same statute. It prohibits part-time magistrates from working “more than forty hours a week, unless directed to do so on a limited and intermittent basis by the chief magistrate.” Statutes on the same subject matter should be read in harmony when possible to do so. *Tillotson v. Keith Smith Builders*, 357 S.C. 554, 593 S.E.2d 621 (2004). The “more than forty hours a week” proscription addresses an entirely different category of services provided by part-time magistrates: one is for salary for week day work and the other is for on call time.

B. Reduction in greater than minimum salary during Jayroe’s tenure in office was unlawful.

In September, 1995, County Council discussed the issue of payment to Magistrates for providing 24-hour a day call. The decision was to add a salary supplement of \$4,500 per year for the duty. (R. pp. 172-173). Because Jayroe was on-call every weeknight (with rare exception for vacation), Jayroe’s assertion that he spent more than 3,500 hours on-call annually is correct, regardless of how, when, and for how long he was actually required to perform official duties during those hours.

Such compensation as enacted, which exceeded the minimums required by the Magistrates Pay Act, is fixed by statute and protected from the sort of reduction suffered

⁹ As Jayroe testified, the additional hours each week for which part-time magistrates were paid, which exceeded the amount of hours they were actually assigned to be performing duties, provided a built-in, although rudimentary, method for compensating part-time magistrates for “time scheduled to be spent on call.” (R. p. 47, line 21 – p. 48, line 24).

by Jayroe. S.C. Code Ann. Section 22-8-40(J) protects a magistrate who is receiving a salary greater than provided under the statutes by stating that the magistrate “must not be reduced in salary during his tenure in office.” Council argues, erroneously, that Jayroe is not eligible for recovery of the balance of the terminated payment because he was not receiving a salary greater than provided for his position by the Magistrate’s Pay Act.

1. Jayroe was receiving more than the minimum salary.

The County’s annual payment of \$4,500.00 as salary itself establishes that Jayroe was receiving compensation greater than that mandated by the Magistrate’s Pay Act. The Act provides statutory supplements only for \$3,000 annually for a full-time Chief Magistrate, and \$1,500 annually for a part-time Chief Magistrate. S.C. Code Ann. § 22-8-40(G). The County’s \$4,500.00 payment was “compensation greater than that mandated by the Magistrate’s Pay Act.”

Council, however, distorts Jayroe’s testimony by suggesting that his answer to a single question in a deposition disqualifies him from eligibility under the statute. (Order p. 24 ¶ 9). Jayroe was asked if he was “receiving a salary greater than provided for under the positions” of the Magistrate’s Pay Act. He accurately said he was not receiving salary greater than provided by the Act, because he was not. (R. p. 111 line 13 – p. 112 line 9). His regular base salary was exactly what was provided under the Magistrate’ Pay Act. He was, however, receiving additional salary for his weeknight on-call time, in accordance with the 1995 directive of County Council, and annually approved by Council in its budget. (R. pp. 172-173; R. p. 197).

Council’s decision on that basis ignores the fact that the County treated the \$4,500 annual payment exactly like salary, taking out taxes, social security, and other salary

deductions. (R. pp. 241-247). Council even devotes a footnote to the analysis of what the \$4,500 annual payment was called, *i.e.*, a “stipend” versus a “supplement”, as if those terms were functionally distinct or determinative, which they are not. (R. p. 24, ¶ 9, footnote 1). The County paid the additional salary to Jayroe as salary, and cumulatively it exceeded state statutory minimums. Its own records demonstrate that. (See footnote 4 *supra*).¹⁰

2. The lesser pay received was a prohibited “reduced [in] salary” action by the County.

Because Adams eliminated the \$4,500.00 pay from his salary, Jayroe’s paycheck was reduced every pay period beginning with the check dated September 12, 2014 in violation of Section 22-8-40(j), which prohibits a reduction in salary during a magistrate’s term of office. That facet of Jayroe’s compensation was mandated as a part of Jayroe’s salary by County Council for 2014 in its annual budget, consistent with the earlier 1995 County Council action¹¹. (R. p. 197). When the County eliminated the additional salary, or whatever ineffectual alternative label they want to affix to what is in effect and substance a salary, it reduced Jayroe’s paycheck.

Jayroe calculated that the amount withheld from the \$4,500 salary payment, after Adams unilaterally cut it off and replaced it with a new payment system, occurred for a period of 20.65 weeks – the time between salary reduction starting September 12, 2014

¹⁰ Even if Adams had sought authorization from County Council for the reduction in salary, County Council would also have been prohibited by the Magistrate’s Pay Act from reducing Jayroe’s salary during his term in office.

¹¹ Even if County Council had not taken the action it did in 1995, the annual budget appropriated the \$4,500.00 to Jayroe as salary every year. So in 2014, Adams’ decision to reduce Jayroe’s compensation violated the county’s own budget.

until he was removed from office. The reduction was \$173.08 per pay period, for a total of \$3,574.00 withheld from his salary¹². (R. p. 102 lines 10-19).

The record is sufficient, and the facts are undisputed, concerning the amount by which Jayroe's salary was reduced by Adams' elimination of Jayroe's on-call salary. This reduction in salary violated the Magistrate's Pay Act in Section 22-8-40(J), and constituted a unilateral decision by Adams to amend the County approved budget for FY 2014-15 on his own accord. Council's decision upholding that unlawful reduction should be reversed.

ISSUE TWO

COUNTY COUNCIL ERRED IN FAILING TO FIND THAT THE COUNTY VIOLATED S.C. CODE ANN. SECTIONS 41-10-40, 41-10-50, AND 41-10-60.

Common sense would seem to dictate that employees should be paid what they are required to be paid, and what they are promised to be paid. But since common sense does not always prevail, the South Carolina legislature has codified those basic principles within the Payment of Wages Act. S.C. Code Ann. §§ 41-10-10 et seq. The purpose of the Payment of Wages Act is to protect employees from the "unjustified and willful retention of wages by the employer." *Mathis v. Brown & Brown of South Carolina Inc.*, 389 S.C. 299, 698 S.E.2d 773 (2010). *See also Williams v. Grimes Aerospace Co.*, 988 F. Supp. 925 (D.C.S.C. 1997).

Council does not dispute that the County ceased payment of the on-call weeknight salary beginning with Jayroe's September 12, 2014 paycheck. Nevertheless, it has yet to

¹² Jayroe's calculations were provided to Council in a document identified as Exhibit 19. The document was not introduced as an evidentiary exhibit, but the parties agreed it could be provided to Council as a "chart, summary or calculation" in accordance with SC Rule of Evidence 1006.

pay Jayroe that portion of his unpaid salary. While the County did pay some additional wages to Jayroe a year later, in August, 2015 (R. p. 233), that payment, whatever it was for, was not tendered as the unpaid remaining on-call weeknight salary payment. The County still owes Jayroe \$3,574.00 for unpaid on-call salary.

Council addressed Jayroe's argument concerning the County's violation of the Payment of Wages Act by simply concluding (erroneously as discussed *supra.*) that the County paid all wages that were due. (R. p. 25, ¶ 11). Council devoted a mere two sentences to its analysis of this issue. *Id.* It is respectfully submitted that even cursory analysis of the issue, however, would have compelled them to reach a different conclusion.

Section 41-10-30(A) requires every employer to notify the employee in writing of the wages he will be receiving for his work. Section 41-10-40 requires the wages to be paid when earned, and prohibits withholding or diverting wages unless authorized by state or federal law. The County complied with its obligations, at least for a time, and until Adams unilaterally decided he did not want to pay Jayroe the \$4,500.00 supplement any longer. Even if Adams had sought permission from Council to reduce Jayroe's salary, the Payment of Wages Act prohibited it¹³.

The malicious nature of the County's elimination of Jayroe's wages for on-call duty (while not eliminating on-call payment to other part-time magistrates, whose weekday hour

¹³ By way of separate action pending in Newberry County, Jayroe is seeking equitable relief to amend an order of the circuit court which is believed to have been used by Adams as ammunition to convince County Council to remove him from office. *Jayroe v. Newberry County*, Case No. 2015-CP-36-00636. It is believed that Adams (perhaps in concert with others) coordinated the issuance of an order in a 2011 circuit court case that suggested Jayroe may have misappropriated County money, forming the basis for Adams' campaign to convince County Council to remove all part-time magistrates (and therefore accomplish the actual goal of eliminating Jayroe's position). *See Abraham v. Newberry County*, Case No. 2011-CP-36-464 (Order filed July 7, 2014). Interestingly, Adams' decision to reduce Jayroe's salary came mere months after the July 7, 2014 order which defamed Jayroe.

assignments included additional hours each week to provide for on-call assignments) warranted an award of treble damages¹⁴. Council did not address this issue at all, not even bothering to address it with two sentences.

Jayroe sought his unpaid on-call wages via this action. Pursuant to Section 41-10-80(C), he is entitled to recover those wages, trebled, for a total of \$10,722.00 in unpaid weeknight on-call salary. *See Ross v. Ligand Pharmaceuticals Inc.*, 371 S.C. 464, 639 S.E.2d 460 (Ct. App. 2006) (examples of bad faith conduct which supports trebled damages under Payment of Wages Act). By way of footnote in its order, Council provided dicta which concluded that the County's failure to pay Jayroe for the time he spent on-call was a "good faith dispute". (R. p. 25, footnote 2). While the County raised this issue in its Answer to the Petition for Redress (R. p. 35, unnumbered paragraph identified as "For a Ninth Defense."), it did not argue this issue at the hearing in this matter.

ISSUE THREE

COUNTY COUNCIL ERRED IN FAILING TO FIND THAT APPELLANT WAS ENTITLED TO COMPENSATION FOR THE ON-CALL HOURS WE HE WAS ORDERED TO PROVIDE DURING WEEKNIGHTS BY COUNTY COUNCIL.

It is undisputed that the County stopped paying Jayroe any compensation for the on-call weeknight duties he provided from September, 2014 until he was removed from office in June, 2015. It is also undisputed that Jayroe continued to provide all on-call

¹⁴ As Jayroe testified, each part-time magistrate's assigned hourly office time was several hours less than the hours for which he was paid, creating a built-in payment for on-call weekend call. (R. p. 47 line 21 – p. 48 line 24). Jayroe, too, served on-call time on weekends, and was paid for it by his regular wages as a part-time magistrate. (R. p. 65 line 7 – R. p. 66 line 11). So Adams' action solely affected Jayroe, and no one else (R. p. 85 lines 4-23).

duties for week nights during that time, as he construed the 1995 minutes to require him to solely carry that burden himself. (R. p. 89 line 25 – p. 90, line 18).

The County apparently believes it can stop paying Jayroe without consequence, perhaps because its bizarre decision ignores the plain language of Section 22-8-40(F), which requires that magistrates be compensated for “hours spent on call.” “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.” (R. p.21, ¶ 3). Council overtly ignores the statutory mandate.

In an attempt to justify its decision, Council analyzes the statute which establishes the salary requirements for part-time magistrates, set forth in Section 22-8-40(F), and later language of that same statute, which prohibits part-time magistrates from receiving a salary for “usually... than 40 hours [per week.]” (R. p. 22, ¶ 3). It concludes that paying a part-time magistrate for time spent to be on-call, as mandated by Section 22-8-40(F), would be “absurd.” Council mixes up the proverbial apples and oranges to reach that conclusion.

First, it analyzes the compensation that a part-time magistrate receives for the hours he is actually assigned during the weekdays. Then it concludes that the General Assembly could not possibly have intended to pay a part-time magistrate both for his regular weekday assigned hours, and for the time scheduled to be spent on-call (which, by definition, is nights and weekends). Council’s interpretation concludes that it can mandate the Chief Magistrate (as it did in the 1995 minutes) to be responsible for all weeknight call without compensation of any kind. That, to use the Council’s language, is what is absurd. It would certainly be more cost-effective for a municipality to be exempt from paying people for hours mandated by law, whether it be overtime, or on-call hours. But municipalities do

not have that choice, since there is no exception to the Payment of Wages Act allowing them to ignore the generalized obligations thereunder.

Jayroe testified that the assigned and paid weekday hours for each part-time magistrate included several hours that was intended to pay the part-time magistrates for the time they would be assigned for weekend call (not weeknight call). (R. p. 48 lines 3-24). Council agrees this is the established protocol. (R. p. 20 ¶ 6).

Jayroe acted in good faith when complying with the 1995 minutes which directed him, as Chief Magistrate (and in the absence of an Assistant Magistrate), to provide the on-call coverage for weeknights. Similarly, when County Council appropriated the \$4,500 annually to Jayroe's salary specifically in the County budget through the FY2014-15 budget, the County implicitly ratified Jayroe's implementation of the 1995 minutes. *See Hansen v. Fields Company LLC*, 409 S.C. 541, 763 S.E.2d 31 (2014) (holding a company implicitly ratified a contract when it accepted the benefits of with knowledge of its terms). The County administrative staff also ratified the assignment when Jayroe was paid the additional \$4,500 salary for weeknight call.

ISSUE FOUR

COUNTY COUNCIL ERRED IN FAILING TO COMPENSATE APPELLANT AS A FULL-TIME MAGISTRATE.

Jayroe asserted in his petition for redress that he should either be paid for the on-call hours he provided, or, he should be paid as a full-time magistrate. (R. p. 30). Incredibly, Counsel concluded he need not be paid at all for his weeknight on-call service.

Prior precedent from the Supreme Court establishes that a part-time magistrate must be paid for time spent on-call. *Ramsey v. County of McCormick*, 306 S.C. 393, 412 S.E.2d

408 (1991). The plain language of the statute compels it as discussed supra, as such magistrates are required to be compensated for the time “scheduled to be spent on call.” S.C. Code Ann. Section 22-8-40(F). When a statute is clear and unambiguous, the rules of statutory construction do not apply, and the plain language of the statute controls. *Storm M.H. v. Charleston County Board of Trustees*, 400 S.C. 478, 735 S.E.2d 492 (2012); *see also Enos v. Doe*, 380 S.C. 295, 669 S.E.2d 619 (Ct.App. 2008).

The statute does not provide that part-time magistrates should be paid for only that on-call time when they are required to go to the jail, sign a warrant, or perform any of the myriad other duties an on-call magistrate provides. Adams’ solution to eliminate all weeknight call for Jayroe, but begin paying other part-time magistrates additional money above those for which they were already compensated by the statutory formula, created a double-payment to those magistrates, while eliminating Jayroe’s on-call payment completely.

The Ramsey court also held that, when a part-time magistrate works a full-time schedule, s/he should be compensated as a full-time magistrate. *Ramsey*, 306 S.C. at 396. In its order, Council attempted to distinguish *Ramsey* by concluding that Ramsey’s additional hours (beyond those assigned to her as week day hours as a part-time Magistrate) occurred during normal business hours. (R. p. 23, ¶ 7). Council also rationalized that Jayroe’s weekday hours “did not work 40 hours per week or hold a schedule that was even close to full-time.” *Id.* Council completely ignored the 77.5 additional on-call hours that Jayroe provided every week (although they acknowledged he provided the on-call coverage). R. p. 20, ¶ 7). Council ignores those hours and its order eliminates all

compensation for the on-call services Jayroe provided for the three years prior to filing of the Petition for Redress.

Based on the calculations presented (R. p. 248), which were not disputed by the County and are not disputed¹⁵ by Council (and which provides credit for the regular salary Jayroe received as a part-time magistrate), Jayroe is entitled to recover an additional \$119,461.00 (\$39,820.33 per year) in salary for the difference for three years, between his salary as a part-time magistrate and a full-time magistrate as well the additional \$4,500 unpaid statutory supplement for full-time Chief Magistrates pursuant to Section 22-8-40(G)¹⁶. The amount due to Jayroe as unpaid salary as a full-time magistrate and as a full-time Chief Magistrate is \$123,961.00. Pursuant to Section 41-10-80(C), that award should be trebled, so Jayroe is entitled to recover unpaid wages in the amount of \$371,883.00 for unpaid regular salary.

ISSUE FIVE

APPELLANT SHOULD HAVE BEEN AWARDED ATTORNEYS' FEES PURSUANT TO S.C. CODE ANN. SECTION 41-10-80(C).

Jayroe submitted an affidavit of attorney fees incurred by him in prosecuting this action, and he seeks to be reimbursed for the cost of the attorney fees and costs he has incurred in this matter. His counsel's affidavit reflects that Jayroe has incurred \$18,731.09 in attorney's fees and costs, including the day of trial, for legal services

¹⁵ See Exhibit 19, as cited in footnote 12 supra.

¹⁶ As a part-time magistrate, Jayroe did receive the statutory chief magistrate supplement of \$1,500. Section 22-8-40(G). However, since he is reclassified as a full-time magistrate by this order, he is entitled to recover the balance of the \$3,000.00 annual statutory supplement for full-time chief magistrates for the three-year period.

rendered to Jayroe in this action¹⁷. The County did not dispute the amount of the fees or the reasonableness of the fees requested. Jayroe's request for an award of attorney fees under Section 41-10-80(C) should have been granted in the amount of \$18,731.09. Council ignored this issue, after concluding that Jayroe was not entitled to any additional compensation under any theory. (R. p. 25). Jayroe incorporates his arguments set forth in Issue Two, *supra*.

CONCLUSION

Council's decision in this case is legally and factually wrong. Council made it clear that it did not matter what arguments Jayroe made, it was going to agree with the County. That is an inherent defect in the statutory system prescribed in the Magistrate Pay Act of requiring adjudication of a county salary dispute by the same body that voted on the salary in the first place. But this defect and effectuated wrong is clearly exposed by the record and arguments presented, and one in which this Court has the authority to remedy.

Taken at its core, Council was determined to deny Jayroe any relief. And that's what it did.

This Court is presented the record, and arguments, to remedy this wrong. Therefore, it is respectfully urged that this Court reverse the order of Council, and award Jayroe the following:

¹⁷ In the affidavit of attorney fees submitted at the hearing, counsel inaccurately stated the attorney fees were \$8,200.00. Counsel filed an amended affidavit correcting the error, however, reflecting the actual total as \$18,731.09 (R. p. 39). The County did not dispute counsel's fees.

- \$371,883.00 for unpaid regular salary (including the improperly eliminated week night on-call salary) and the difference between his part-time salary and that of a full-time magistrate; and
- Attorney fees in the amount of \$18,731.09.

For the reasons set forth above, it is respectfully requested that this Court reverse the order of Council, and remand the case for entry of a judgment in favor of Jayroe against Newberry County in the amount of \$390,614.09 (combining the two numbers above).

Respectfully submitted,



Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desballard.com

ATTORNEYS FOR APPELLANT

September 16, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM NEWBERRY COUNTY
DECISION OF NEWBERRY COUNTY COUNCIL
Appellate Case Number 2016-000305

Arthur L. Jayroe Jr.,

Appellant,

Vs.

Newberry County,

Respondent.

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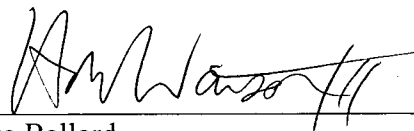
SEP 19 2016

SC Court of Appeals

CERTIFICATE OF COUNSEL

A typographical error was corrected in the Statement of Issue on Appeal as to issue number one, as the word "not" was obviously intended as part of that statement but inadvertently omitted previously. The undersigned hereby further certifies that this Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,



Desa Ballard
Harvey M. Watson III

BALLARD & WATSON

Post Office Box 6338

West Columbia, South Carolina 29171

Telephone 803.796.9299

Facsimile 803.796.1066

desab@desaballard.com

harvey@desaballard.com

ATTORNEYS FOR APPELLANT

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