THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
H. W. Funderburk, Jr., Administrative Law Judge

Appellate Case No. 2018-0186
Case No. 17-ALJ-17-0001-CC

Emad Tadros, M.D.,.....Respondent,

v.

Richland County Assessor,.....Appellant.

REPLY BRIEF OF APPELLANT

MALANE S. PIKE
SC Bar No. 4469
Post Office Box 729
White Rock, SC 29177
(803) 622-1493
Counsel for Appellant

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ARGUMENTS

The Appellant, Richland County Assessor (Assessor) hereby files the following Reply Brief to address the Brief of the Respondent (Taxpayer).

I. The ALC decided issues of law in the two orders it issued in this matter.

The Taxpayer asserts that the ALC decided the Tadros case purely on the factual conclusion that the Taxpayer did not receive the assessment notices, not on any legal conclusions about service. This is inaccurate. The ALC, in its "Final Order" and in its "Order Denying Respondent's Motion for Reconsideration," very clearly interpreted S.C. Code Ann. § 12-60-2510(A)(3) (2014) to require that the Assessor mail the assessment notice, as opposed to the Assessor's third party mailing service. Under "Conclusions of Law" on page 4 of the Final Order, the judge opines:

> However, in this case, the assessor did not mail the assessment notice but delivered the notice to a third party for transmission and mailing. Giving a notice "to a third party for mailing does not amount to service on the addressee." Southbridge Properties, Inc. v. Jones, 291 S.C. 198, 355 S.E.2d 535 (1987).

On page 1 of the ALC's "Order Denying Respondent's Motion for Reconsideration," the ALC further clarifies its ruling with regard to this matter as follows:

> The Court agrees to the extent that South Carolina law does not contemplate the use of a third party to mail documents. Section 12-60-2510(A)(3) provides that the taxpayer must give the assessor written notice of objection "within ninety days after the assessor mails the property tax assessment notice." In this case, the assessor has never mailed the assessment notice. ...
>
> Petitioner's testimony that he did not receive the Notice of Assessment coupled with the irregularities of transmission support the Court's finding that the appeal period did not start until February 2016.

Clearly, the "irregularities of transmission" referenced above is addressing the third party mailing service's mailing of the assessment notices since that is the topic of the discussion immediately before this language.

This interpretation of § 12-60-2510(A)(3) formed the basis for the ALC's decision. Otherwise, there would be no reason for the ALC to opine on these matters as they were not argued at the hearing.

An appellate court may not substitute its judgement for that of the ALC as to weight of the evidence on questions of fact unless the ALC's findings are clearly erroneous in view of the reliable, probative and substantial evidence on the record. See Friends of the Earth v. Public Service Commission of South Carolina, 387 S.C. 360, 692 S.E.2d 910 (2010). Conversely, an appellate court is free to decide questions of law without any deference to the court below. See CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011). Questions of statutory interpretation are questions of law. Id.

II. Reliance by the ALC on Hamm v. South Carolina Public Service Com'n, 287 S.C. 180, 336 S.E.2d 470 (1985), for the proposition that the Taxpayer's time to appeal began to run when he received notice is an error of law in that:

> **(A) This case has been distinguished by South Carolina Coastal Conservation League v. South Carolina Department Of Health And Environmental Control, 390 S.C. 418, 702 S.E.2d 246 (2010), in situations where the statute clearly indicates when the appeal period is to begin running; and**
>
> **(B) There was no evidence of invalid service of the assessment notices.**

The ALC relies on the Hamm decision for the proposition that the Taxpayer's appeal period ran from the time he received written notice of the assessed values and/or

that service of the assessment notices was invalid. The first is an inaccurate statement of the law and the second is not supported by the evidence on the record.

A. The Taxpayer's time to appeal begins to run with the mailing of the assessment notices.

The Hamm decision dealt with an interpretation of a portion of the South Carolina Administrative Procedures Act stating that appeals from agency rulings must be commenced within thirty days after the decision. However, the statute did not address how a party was to receive notice of the decision. The Supreme Court held that this statute must be read to allow a party thirty days after notice of a decision to commence the appeal. Otherwise, an agency could preclude judicial review by concealing its decision.

Further guidance from the Supreme Court came in the case of South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control which distinguished the Hamm decision. The statute in question established the appeal period as fifteen days "after notice of the department decision has been mailed to the applicant." The Court held that the statute was clear that the appeal period was to begin upon the mailing of the department decision, not the receipt. The Court distinguished the Hamm decision by stating that Hamm did not hold that a filing period must begin with receipt of notice of the decision. Rather, the court read this requirement into the statute in the Hamm case to prohibit the absurd result that an agency would conceal its decision. The Court further stated that the statute establishing the appeal period as fifteen days after notice has been mailed did not exhibit the same infirmities as in Hamm and should be read on its face.

In the Tadros case, the relevant statute is § 12-60-2510(A)(3) which reads as follows:

> In years when there is a notice of property tax assessment, the property taxpayer, within ninety days after the assessor mails the property tax assessment notice, must give the assessor written notice of objection to one or more of the following: the fair market value, the special use value, the assessment ratio, and the property tax assessment.

This statute is very similar to the statute in the Conservation League case in that the statute clearly states the event that triggers the running of the appeal period (i.e., the mailing of the property tax assessment notice). Thus, barring any problems with service, the appeals period for Tadros began to run with the mailing of the assessment notices on July 17, 2015, not upon receipt as specified in the Hamm case. (R. p. 32, lines 10-11) Thus, reliance by the ALC on the Hamm case is in error given the Court's later decision in the Conservation League case.

It should be noted that the ALC held that the Assessor never mailed the assessment notices in that the Assessor contracted with a third party mailing service to perform this function. The ALC therefore concludes that service was invalid/defective. A full discussion of the legality of the Assessor's use of a third party mailing service has been provided in the Appellant's brief.

B. The Assessor's service of the assessment notices was not invalid.

The ALC relies on the Hamm decision for the proposition that invalid service will transform the beginning date of the appeal period from the date of mailing to the date of receipt. In the Hamm case, service was invalid because the envelope was addressed to a former employee of the Consumer Advocate's office rather than to the Consumer

Advocate. This case is inapplicable to the Tadros matter in that service to the Taxpayer was not invalid. The Taxpayer admitted that the address used by the Assessor was the correct address and Mr. Fancey testified that the notices were never returned to the Assessor as undeliverable. (R. p. 71, lines 8-10; R. pp. 46-47, lines 21-1) Mr. Fancey further testified that there were no known problems with service of the assessment notices. (R. p. 47, lines 4-11) Finally the last scan of the assessment notices was within twenty miles of the Taxpayer's residence. (R. p. 52, line 13) This scan did not indicate that this was the last post office to process the notices, but instead, was the last scan facility to process the notices. (R. p. 44, lines 7-9) Based on the evidence in the record, there is nothing to indicate that the Taxpayer did not receive the assessment notices or that service was otherwise invalid. Thus, the ALC's reliance on the Hamm decision is in error.

It should be noted that the ALC held that the Assessor never mailed the assessment notices because the Assessor contracted with a third party mailing service to perform this function. The ALC therefore concludes that service was invalid/defective. A full discussion of the legality of the Assessor's use of a third party mailing service has been provided in the Appellant's brief.

III. The ALC's finding that the Taxpayer did not receive the notices of assessment based upon the fact that the Assessor provided no evidence of final delivery is factually erroneous in that it is inconsistent with the reliable, probative and substantial evidence on the record and legally erroneous in that the Assessor is not required by law to track assessment notices to the taxpayer.

The ALC placed great importance on the fact that the last scan of the assessment notices in the U.S. Postal Service's system was in San Diego, California, approximately twenty miles from the Taxpayer's home but there was no evidence of final delivery.

There was much speculation at the hearing as to why the assessment notices did not go to post offices closer to Taxpayer's home. However, the Taxpayer presented no evidence or knowledge of the specific post office routing for his mail.

Conversely, the Assessor provided testimony that the scan service did not track mail to its final destination, there were no known problems with the delivery, the assessment notices were not returned to Richland County and the postal service assumed delivery to the recipient. (R. p. 43, lines 13-16; R. p. 47, lines 4-11; R. pp. 46-47, lines 21-1; R. p. 43, line 13) Further, the testimony indicates that San Diego was the last scan destination prior to delivery to the Taxpayer. (R. p. 44, lines 7-9) Thus, the assessment notices may have been routed to other post offices without scan facilities before being delivered to the Taxpayer. More importantly, the fact that San Diego was the last scan destination does not lead a reasonable person to the conclusion that the assessment notices were not delivered. Conversely, it leads a reasonable person to the conclusion that the assessment notices were delivered to the Taxpayer in that they were scanned within twenty miles of the Taxpayer's residence. Without specific evidence of the postal service's routing of the Taxpayer's mail that is contrary the postal scans of the assessment notices (of which there was none), the ALC's conclusion that Tadros did not receive the assessment notices is clearly erroneous.

> Under the scope of review established in the APA, this court may not substitute its judgment for that of the Appellate Panel as to the weight of the evidence on questions of fact, but may reverse or modify the Appellate Panel's decision if the appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." *See* S.C. Code Ann. § 1–23–380(5)(e) (Supp.2010); *Stone*

> *v. Traylor Bros., Inc.*, 360 S.C. 271, 274, 600 S.E.2d 551, 552 (Ct.App.2004). Our supreme court has defined substantial evidence as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion the Appellate Panel reached. *Lark*, 276 S.C. at 135, 276 S.E.2d at 306.

Carolinas Recycling Group v. South Carolina Second Injury Fund, 398 S.C. 480, 483, 730 S.E.2d 324, 326 (Ct.App.2012). See also Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 454 S.E.2d 320 (1995).

Finally, there is no legal requirement, statutory or otherwise, stating that the Assessor must provide evidence of final delivery. See § 12-60-2510(A)(2) and (3) for mailing requirements of assessment notices. The statute provides assurances that the assessment notices are being mailed to the correct address but does not specify any additional mailing requirements. Where the legislature intended for there to be actual notice of delivery, the legislature provided such requirement in the statute (see e.g., S.C. Code Ann. § 12-51-40(b) (2014)).

Statutory interpretation is a question of law. City of Newberry v. Newberry Elec. Co-op., Inc., 387 S.C. 254, 256, 692 S.E.2d 510, 512 (2010). The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Id. When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

Given the above, the ALC erroneously interpreted § 12-60-2510 to require proof of delivery of the assessment notices.

CONCLUSION

Based upon the foregoing discussion and analysis, the Appellant, Richland County Assessor, respectfully renews its request that this Court reverse the decision of the ALC that the Respondent timely appealed his assessment notices for the 2015 tax year; reverse the ALC decision that § 12-60-2510 precludes the Assessor from using a third party mailing service to mail tax assessment notices; reverse the ALC decision by implication that § 12-60-2510 requires proof of delivery of the assessment notices.

Respectfully submitted,

Malane S. Pike

MALANE S. PIKE
S.C. Bar #4469
Post Office Box 729
White Rock, SC 29177
(803) 622-1493
Attorney for Appellant

8/2, 2018
Columbia, SC

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

MALANE S. PIKE
S.C. Bar #4469
Post Office Box 729
White Rock, SC 29177
(803) 622-1493
Attorney for Appellant

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Columbia, SC