THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS

The Honorable DeAndrea Benjamin, Presiding Circuit Court Judge

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Docket No. 2017-CP-40-04199
Appellate Case No. 2018-001305

John McPartland, ... Appellant,

v.

State of South Carolina Dept. of Motor Vehicles, ...Respondents.

INITIAL BRIEF OF APPELLANT

The Appellant, John McPartland, appeals the final order in this case. The Final Order was issued and served on June 26, 2018. Appellant timely filed a motion to reconsider on July 6, 2018. Appellant's motion to reconsider and/of for rehearing was denied on July 13, 2018.

November 13, 2018

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1. DID THE TRIAL COURT ERR DISMISSING THE COMPLAINT ON THE BASIS OF ITS FINDING THAT THE APPELLANT HAD FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES?

STATEMENT OF THE CASE

On July 13, 2017, the Appellant, John McPartland, a South Carolina resident, brought this action against the South Carolina Department of Motor Vehicles ("SCDMV") seeking a declaratory judgment that S.C. Code § 56-1-40(2) and 56-1-240 are unconstitutional as applied to him as well as an injunction against the SCDMV requiring it to issue Appellant a driver's license. The parties stipulated to the facts in the case and held a hearing on the matter on June 18, 2018.

On June 26, 2018, the Circuit Court dismissed the case without reaching the merits based on a finding that the Appellant had failed to exhaust his administrative remedies by not appealing the NYSDMV appeal board's denial of his appeal to the New York State Supreme Court. On July 6, 2018, Appellant filed a Rule 59(e) motion to alter or amend the dismissal of the Complaint. On July 13, 2018 the Circuit Court denied the Rule 59(e) motion, again without addressing the merits of the case. On July 16, 2018 McPartland filed his Notice of Appeal in this Court and properly served the Defendant.

The Circuit Court did not address the merits of the case in its order of dismissal. Therefore, the merits are not being addressed by the Appellant in this appeal. If this Court is inclined to review the merits of the case then Appellant respectfully requests that this Court issue an order requiring the parties to brief those issues.

STANDARD OF REVIEW

The decision to dismiss a case is within the purview of the trial court and will not be disturbed absent an abuse of discretion. An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions. *In Re Miller*, 393 S.C. 248, 256, 713 S.E.2d 253, 257 (2011).

FACTS

Between 1982 and 1999, while a resident of New York state, Appellant McPartland was convicted of five alcohol related driving offenses resulting in the permanent revocation of his New York driver's license when a new law went into effect in 2012. The exact dates of the offenses are set forth in the Stipulation of Facts, which was filed with the Circuit Court and will be added to the Record on Appeal. McPartland moved to South Carolina in 2000 and obtained a South Carolina

driver's license on June 15, 2000. McPartland renewed the S.C. license on June 15, 2005 and June 11, 2015. McPartland was, in fact, never eligible to be issued a license because while the suspension period for his last DUI had expired, he had apparently never taken the steps necessary to clear the suspension in New York. McPartland maintains that he was unaware of this fact when he applied for his licenses in South Carolina beginning in the year 2000 because he believed the suspension period in New York elapsing was all that was required. The responses on his SCDMV applications were, therefore, incorrect as to whether he was suspended in other jurisdictions. McPartland never received any alcohol related offenses against his license in South Carolina or otherwise committed any offense that would result in the suspension or revocation of his South Carolina driver's license.

Pursuant to standard procedure when someone applies for a license or renews their license in South Carolina, the SCDMV ran a background check on McPartland when he renewed his license on June 11, 2015. For the first time since he obtained his license in South Carolina in the year 2000, the SCDMV obtained a "hit" on his background showing a revoked status on his license in New York. As a result, pursuant to S.C. Code §§ 56-1-40 (2) and 56-1-240, the SCDMV sent McPartland a letter dated June 12, 2015 informing him that his license was being cancelled due to the problem in New York. McPartland requested, and was granted, a 60 day extension to attempt to resolve the New York state problem but his license in South Carolina was ultimately canceled on October 9, 2015. S.C. Code §§ 56-1-40 and 56-1-240 together require the SCDMV to deny the issuance or renewal of a license application for anyone who is suspended or revoked in another state at the time of the application for issuance or renewal.

The problem in New York arose because of a change in the law of the state of New York with the passage of 15 NYCRR § 136.5 on or about December 24, 2012. This amendment to the New York state laws mandated a lifetime driving ban for anyone who has five or more alcohol related offenses any time in their lifetime. This mandatory ban for anyone with McPartland's record is subject to a discretionary waiver that may be granted by the Commissioner of Motor Vehicles in New York. In practice, almost no one who has applied for the waiver has had it granted, with only 4 out of 1,031 applications for a waiver being granted according to a September 28, 2016 affidavit filed in a New York case.

After he was notified by the SCDMV that his license here was being canceled, he filed for his license to be reinstated in New York, which was denied, and did file an appeal of the denial to the New York DMV appeal board, which was also denied. He did not appeal the appeal board decision to a New York court. The Circuit Court in this case dismissed his Complaint in this action because it interpreted his failure to seek judicial review of the administrative appeal board's decision as a failure to exhaust his administrative remedies. This appeal followed.

ARGUMENT

I. THE CIRCUIT COURT ERRED BY DISMISSING THE COMPLAINT FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

McPartland respectfully submits that it was error for the Circuit Court to dismiss his complaint for failing to exhaust his administrative remedies. First, the record clearly shows that McPartland did exhaust his administrative remedies within the New York State Department of Motor Vehicles ("NYSDMV"). The SCDMV has pointed out that, following the cancelling of his South Carolina license in 2016, McPartland attempted to get his license reinstated in New York so that he could clear his hit in the Problem Driver Point System ("PDPS") database that caused the SCDMV to cancel his SCDL pursuant to SC law. McPartland's application for reinstatement in New York was denied by letter dated December 13, 2016. *See* Stipulation of Facts at Ex. F p. 7. McPartland subsequently appealed this denial and lost his appeal, which was subject to further judicial review but no further review within the agency. *See* Stipulation of Facts at Ex. F p. 2 (instructing McPartland that "[a]ny further appeal of an adverse decision should be made to the New York State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.").

As stipulated by the SCDMV in the factual record below, the New York state laws were changed to include §§ 136.5(a)(4) and 136.5(b)(1) of the Regulations of the Commissioner of Motor Vehicles, which require the Commissioner of Motor Vehicles to revoke McPartland's license permanently by virtue of his having five DUI convictions on his record. There is within the NYSDMV rules a procedure for appealing this decision to the New York DMV Bureau of Driver Improvement, which can grant a waiver based on unusual or extenuating circumstances. McPartland filed this appeal and this was denied on March 2, 2017. *See* reference to this denial in Stipulation of

Facts Ex. F p. 4 (referencing prior appeal stage in Bureau of Appeal decision although this appeal was not produced by the NYSDMV). McPartland appealed the denial of his license waiver to the New York DMV Appeals Board and provided documentation of extenuating circumstances in support of his request for a waiver. *See* Stipulation of Facts Ex. F. p. 10-12, 14-16. McPartland's appeal was denied on May 1, 2017 on the basis that it "was a reasonable exercise of discretion and had a rational basis." *See* Stipulation of Facts Ex. F p. 2-4. There was not a further level of appeal within the NYSDMV for McPartland to pursue as evidenced by the final appeal board decision instructing him that any further appeal must be made to New York Supreme Court.

The Circuit Court in this case made a finding that McPartland had failed to exhaust his administrative remedies and dismissed his complaint. *See* Order of Dismissal. McPartland respectfully submits that this was an error for the reasons cited by McPartland in the Rule 59(e) Motion to Alter or Amend as well as the points raised in his memorandum of law provided to the Circuit Court prior to its ruling.

First, it is important to keep in mind the point of the exhaustion principle, which is to give agencies an opportunity to first interpret the statutes that they are tasked with administering on a day to day basis. *See Brown v. S.C. DHEC,* 560 S.E.2d, 410, 415 (2002). In this case that rationale is irrelevant because the SCDMV cannot be petitioned to disregard § 56-1-40 and 56-1-240, which plainly disqualify McPartland from being issued a SC license as long as he is revoked in New York. Therefore, there can be no administrative remedy within South Carolina. Instead, the SCDMV succeeded in having the Complaint dismissed for McPartland's failure to exhaust his remedies in another state, which is very unorthodox. McPartland has done his very best to resolve this issue by exhausting his administrative remedies in New York even though it is his contention that he did not

need to do so in order to pursue this action in the Circuit Court.

McPartland has asked the NYSDMV to reinstate his license, which they denied. He then petitioned the Driver Improvement Bureau for a waiver of the policy, which was again denied. He appealed that denial to the NYSDMV Appeal Board, which upheld the denial of his reinstatement. *See* Stipulation of Facts Ex. F.

Based on this extensive interaction between McPartland and the NYSDMV, it cannot be said that McPartland has eschewed any attempt to resolve the matter with the NYSDMV in favor of litigation in South Carolina. Likewise, based on the number of waivers that are granted in New York to the draconian lifetime ban that they have made a part of their law, it cannot be seriously contended that any further judicial review in New York would result in a favorable outcome for McPartland. *See* Affidavit of Ira L. Traschen Stipulation of Facts Ex. G. (noting that 4 out of 1,031 waiver requests to the policy had been granted by the NYSDMV Commissioner). Therefore, any further attempt to resolve the issue in New York would be futile, thereby excusing compliance with the doctrine. "A commonly recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of administrative remedies would be a vain or futile act." *See Storm M.H. v. Charleston Cnty. Bd. Of Trs.*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012) (quoting *Brown v. James*, 389 S.C. 41, 54, 697 S.E.2d 604, 611 (Ct.App.2010). It has been McPartland's position throughout this case that it is not possible with the current New York regulatory scheme for him to clear his license status in that state. *See* Plaintiff's Memorandum of Law p. 4 (stating "There is no prospect of the Plaintiff getting a clear license status from New York."). Therefore, the Circuit Court erred when it dismissed the Complaint for failure to exhaust administrative remedies.

Even if this Court finds that McPartland could have pursued further judicial review in New York, McPartland prays that this Court hold it was error for the Circuit Court to dismiss the Complaint for failing to exhaust administrative remedies because this is a case involving only an issue of law and, therefore, compliance with the doctrine of exhaustion of administrative remedies is discretionary.

The basis of this argument is found in *Andrews Bearing Corp. v. Brady*, 201 S.E.2d 241 (1973). In that case, a company complained that taxes enacted by statute were unconstitutional because, as imposed by the Tax Commission against the company, they taxed the company higher than similarly situated taxpayers. Although permitted to appeal to the Tax Board of Review, the company instead filed a lawsuit in circuit court. The circuit court held that the company did not have to exhaust its administrative remedies prior to bringing the action. This ruling was upheld on appeal. In that case, the Tax Commission argued that the rule requiring exhaustion of administrative remedies was an "inflexible" one, but, as McPartland argued to the circuit court in this case, the Supreme Court held that in South Carolina, our law has committed to the position of other jurisdictions where it is "a rule of policy, convenience, and discretion rather than of law, and is not jurisdictional." *Andrews*, 201 S.E.2d at 243 (quotations omitted). The Supreme Court went on to say "[w]hile we have, where the question was involved, rather consistently applied the doctrine of exhaustion of administrative remedies to avoid interference with the orderly performance of administrative functions, We have recognized that it is not an invariable rule." *Id.* "The adoption of the view that the rule is discretionary in nature is a recognition that situations can exist where failure to exhaust administrative remedies may be excused." *Id.* (citing *Pullman Co. v. Public Service Commission*, 234 S.C. 365 108 S.E.2d 571; *Ex Parte Allstate Insurance Company*, 248 S.C. 550, 151

S.E.2d 849.

The *Andrews Bearing* case is particularly helpful in this case because it involved only an issue of law with no disputed facts. Here, the SCDMV obviously does not have the authority to ignore the challenged statutes that bar McPartland from obtaining a license because they are not vested with authority to grant exceptions to those statutes for any reason. *See Responsible Econ. Dev. V. S.C. Dep't of Health & Envtl. Control*, 641 S.E.2d 425, 428 (2007) (regulatory agencies have only the authority granted them by the legislature).

Read broadly, the *Andrews Bearing* case has been held to allow circuit courts to excuse exhaustion in any case that raised only a pure issue of law, as McPartland argued to the circuit court. *See State Dairy Commission v. Pet, Inc.*, 324 S.E.2d 56 (1984), *overruled in part on other grounds, R.L. Jordan Co. v. Boardman Petroleum Inc.*, 527 S.E.2d 763, 765 n.4 (2000); see also Rule 59(e) motion at p. 1. In *Pet*, the Supreme Court cited to *Andrews Bearing*, holding that "the failure to exhaust administrative remedies is excused where the facts are undisputed and the issues are solely ones of law." *Pet* 324 S.E.2d at 57.

Furthermore, the Supreme Court in *Charleston Trident Home Builders v. Town Council of Summerville*, 632 S.E.2d 864 (2006), the court addressed a challenge by a non-profit corporation to the validity of a town ordinance. Like in this case, the plaintiff in *Charleston Trident* was not making a facial challenge to the statute, but was rather challenging agency action. The Court held broadly, "[a] party is not required to exhaust administrative remedies if the issue is one that cannot be ruled upon by the administrative body." *Charleston Trident*, 632 S.E.2d at 867 (citation omitted).

Finally, the statutory scheme in administrative law favors a finding that either McPartland has exhausted his administrative remedies in New York or that such failure to fully explore any judicial

review there should have been excused by the circuit court. The Administrative Procedures Act ("APA") in South Carolina contains § 1-23-380, which regulates someone seeking judicial review of an agency's final decision. This section of the code states, "[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy." *See* S.C. Code § 1-23-380. Based on the plain reading of this statute, it appears that the legislature, which incorporated the existing exhaustion requirements into the statute, interprets "exhaustion" to mean getting to the final appeal level within the agency, not exhausting every level of judicial review on top of that. In this case, as was stipulated to the trial court, McPartland did exhaust every appeal within the NYSDMV. *See* Stipulation of Facts at p. 6.

In this case, it was an abuse of discretion for the circuit court to dismiss the action under the exhaustion doctrine because the SCDMV cannot simply ignore the statutes at issue, and the only possible remedy lies with the ability of the courts to strike statutes as-applied where their application is so manifestly unfair as to amount to a denial of due process. *See Davis v. SCDMV,* 420 S.C 98, 105 (Ct.App.2017). This is not a case where strict adherence to the exhaustion principle is justified by its underlying rationale that an agency should ordinarily have the initial opportunity to provide its interpretation of the statutes and regulation that it is tasked with administering. Furthermore, McPartland did not simply skip any effort to resolve the matter within the administrative framework in New York, as he appealed the matter to the highest level within the agency asking for the all-but-

nonexistent waiver to be granted to him. For these reasons, McPartland respectfully submits that it was error to dismiss his complaint against the SCDMV for failing to exhaust his administrative remedies.

CONCLUSION

Based on the foregoing, the Appellant respectfully requests that this Court reverse the circuit court's order dismissing the complaint and return the case to the circuit court for adjudication on the merits.

November 13, 2018

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PROOF OF SERVICE

I hereby certify that a true copy of the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal in the above-referenced case has been served upon opposing counsel Brandy Duncan, Esq. by mailing same this date to her office at the South Carolina Department of Motor Vehicles, P.O. Box 1498, Blythewood, SC 29016-0020.

November 13, 2018

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