THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Hon. S. Phillip Lenski, Judge

Appellate Case Number 2018-002153
Case Number 18-ALJ-17-0233-CC

J. ANNETTE OAKLEY,

Appellant,

vs.

BEAUFORT COUNTY ASSESSOR,

Respondent.

INITIAL REPLY BRIEF OF APPELLANT

Curtis L. Coltrane
COLTRANE & WILKINS, LLC
Post Office Box 6808
Hilton Head Island, SC 29938
(843) 785-5551
curtis@coltraneandwilkins.com

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BECAUSE THE ONLY EVIDENCE IN THE RECORD IS THAT MILLARD V. OAKLEY DOES NOT RESIDE WITH J. ANNETTE OAKLEY, HE IS NOT A "MEMBER OF HER HOUSEHOLD" AS THAT TERM IS USED IN S. C. CODE ANN. § 12-43-220(C)(2)(B)(III)(A)(SUPP. 2018). J. ANNETTE OAKLEY IS SQUARELY WITHIN THE TERMS OF S. C. CODE ANN. § 12-43-220(C)(SUPP. 2018), AND SHE IS ENTITLED TO THE 4% RESIDENTIAL ASSESSMENT RATIO.

In its Brief, the Beaufort County Assessor argues the plain language of the statute should disregarded, and that rules applicable to the construction of an ambiguous statute should be applied, in order to achieve a result that is contrary to the plain language of the statute.

The language at issue is S. C. Code Ann. § 12-43-220 (c)(2)(B)(iii)(Supp. 2018), which reads:

> (iii) For purposes of subitem (ii)(B) of this item, "a member of my household" means:
>
> (A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant;

In the face of this unambiguous text, the Beaufort County Assessor argues that the definition of "member of my household" set out in S. C. Code Ann. § 12-43-220 (c)(2)(B)(iii)(Supp. 2018), applies to S. C. Code Ann. § 12-43-220 (c)(2)(ii)(B)(Supp. 2018), and also to S. C. Code Ann. § 12-43-220 (c)(2)(ii)(A)(Supp. 2018).

The Beaufort County Assessor argues that the Court should look to the statutory history and other parts of the statute in order to determine the intent of the General Assembly.

That course of action would be appropriate if the intent of the General Assembly could not be determined from the language of the statute itself, but such is not the case.

In South Carolina, where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.[1] In interpreting a statute, words must be given their plain and ordinary meaning with resort to subtle or forced construction to limit or expand the statute's operation.[2]

The text of S. C. Code Ann. § 12-43-220 (c)(2)(B)(iii)(Supp. 2018), is plain. The definition of "member of my household" set out in S. C. Code Ann. § 12-43-220(c)(2)(B)(iii)(A)(Supp. 2018), applies only to S. C. Code Ann. § 12-43-220 (c)(2)(ii)(B)(Supp. 2018). Any other reading ignores that plain language, and renders the limitation set out in S. C. Code Ann. § 12-43-220(c)(2)(B)(iii)(A) (Supp. 2018), meaningless. Such a result is contrary to the law of South Carolina which is that a court must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.[3] To this point, our Supreme Court has said: "[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law."[4]

The Order of Judge Lenski does precisely what the law does not allow, and the Order, if allowed to stand, will render limitation that was written into the statue by the General

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[1] *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009).

[2] *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007); *Paschal v. State Election Commission*, 317 S.C. 434, 454 S.E.2d 890 (1995).

[3] *Montgomery v. Spartanburg County Assessor*, 419 S.C. 77, 80, 795 S.E.2d 866, 867 (Ct. App. 2016).

[4] *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

Assembly to be meaningless. Had the General Assembly intended something other than what the plain language of the statute says, then it would have drafted S. C. Code Ann. § 12-43-220 (c)(2)(B)(iii)(Supp. 2018), without the limiting text (For purposes of subitem (ii)(B) of this item. . .). But, the General Assembly did not do that, and in the face of the unambiguous language, courts are required to interpret the statute according to its literal meaning.[5]

In its Brief, the Beaufort County Assessor argues that the Administrative Law Courts have consistently interpreted the statute contrary to the position of J. Annette Oakley. The Beaufort County Assessor admits, though, that the question presented by this appeal has yet to be addressed by the appellate courts in this state.[6] This Court is not bound by decisions of the Administrative Law Court and is free to correct errors of law.[7]

The Beaufort County Assessor argues that enforcing the statute as written leads to an absurd result. It does not, because S. C. Code Ann. § 12-43-220(c)(2)(ii)(A)(Supp. 2018) and S. C. Code Ann. § 12-43-220(c)(2)(ii)(B)(Supp. 2018), deal with things that are different in fact. The fact that the General Assembly has treated different factual situations differently is not an absurd result and the Beaufort County Assessor points to no authority to suggest that it is, or to any authority prohibiting the General Assembly from declaring disparate treatment for things that are different.

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[5] *CFRE, LLC v. Greenville County Assessor, supra.; Montgomery v. Spartanburg County Assessor, supra.*

[6] The three Administrative Law Court cases cited by the Beaufort County Assessor do not address the point of law that is raised by J. Annette Oakley in this appeal.

[7] *Montgomery v. Spartanburg County Assessor, supra.*

CONCLUSION

The application of J. Annette Oakley for the 4% Residential Assessment Ratio met the requirements set out in the plain language of S. C. Code Ann. § 12-43-220(c)(ii)(Supp. 2018). There is no ambiguity in the text of the statute, thus the Order of the Hon. S. Phillip Lenski finding ambiguity is erroneous. J. Annette Oakley urges the Court to reverse the November 7, 2018, Order of the Hon. S. Phillip Lenski granting Summary Judgment in favor of the Beaufort County Assessor, and enter judgment in favor of J. Annette Oakley finding that she is entitled to receive the 4% Residential Assessment Ratio.

Respectfully Submitted:

COLTRANE & WILKINS, LLC

By: _____

Curtis L. Coltrane
South Carolina Bar Number: 1344
Post Office Box 6808
Hilton Head Island, SC 29938
(843) 785-5551
(843) 785-5552 (facsimile)
curtis@coltraneandwilkins.com

Hilton Head Island, South Carolina

This 4th day of March, 2019.

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Appellate Case Number 2018-002153
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J. ANNETTE OAKLEY,

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Respondent.

CERTIFICATE OF MAILING

I, Audrey S. Wanich, paralegal at Coltrane & Wilkins, LLC, certify that, on this date, I caused to be served one copy of theInitial Reply Brief of Appellant by depositing a copy of the same in the United States Mail, with proper first-class postage affixed thereon, addressed as follows:

Stephen P. Hughes, Esq.
Howell, Gibson & Hughes, P. A.
Post Office Box 40
Beaufort, SC 29902

COLTRANE & WILKINS, LLC

By: _____

Audrey S. Wanich, Paralegal
Post Office Box 6808
Hilton Head Island, SC 29938
(843) 785-5551

Hilton Head Island, South Carolina

This 4th day of March, 2019.

COLTRANE & WILKINS, LLC
ATTORNEYS AT LAW

POST OFFICE DRAWER 6808
HILTON HEAD ISLAND, SC 29938
(843) 785-5551
(843) 785-5552 (FAX)

Curtis L. Coltrane
E-Mail: curtis@coltraneandwilkins.com
Certified Circuit Court Mediator
Certified Circuit Court Arbitrator
Certified Federal Court Mediator

Curtis L. Coltrane*
John W. Wilkins
*Also Member Virginia Bar

March 4, 2019

Hon. Jenni A. Kitchings
Clerk of the South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Joyce Annette Oakely v. Beaufort County Assessor
Appellate Case No: 2018-2153

Dear Ms. Kitchings:

Enclosed, you will find an original and a copy of the "Initial Reply Brief of Appellant" in connection with the above-referenced case. Also enclosed is an original and a copy of a a Certificate of Mailing showing service on Stephen P. Hughes, attorney for the Beaufort County Assessor.

At this time, I would ask that the enclosed be filed in your office, and that the enclosed copies be time-stamped and returned to me in the self-addressed, postage-paid envelope. I am,

Sincerely,

COLTRANE & WILKINS, LLC

Curtis L. Coltrane

CLC/asw
cc: Stephen P. Hughes, Esq.
Enclosures as stated

COLTRANE & WILKINS, LLC
Attorneys at Law
P.O. Box 6808
Hilton Head Island, SC 29938

TO:

Hon. Jenni A. Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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