THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

APPELLATE CASE NO.: 2019-000358
ADMINISTRATIVE LAW COURT CASE NO.: 16-ALJ-07-0386-CC

Trident Medical Center, LLC, d/b/a Trident Medical Center.....Respondent,

v.

South Carolina Department of Health and Environmental Control, and Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley County,.....Respondents below,

Of which Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley County is the.....Appellant.

RESPONDENT'S RETURN TO APPELLANT'S MOTION TO ASCERTAIN ORDER FOR APPEAL, EXTEND TIME FOR INITIAL FILINGS AND CORRECT CAPTION

Respondent Trident Medical Center, LLC, d/b/a Trident Medical Center ("Trident") hereby responds to Appellant Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley County's [sic] ("Roper") Motion to Ascertain Order for Appeal, Extend Time for Initial Filings and Correct Caption. Appellant seeks to ascertain whether the Amended Final Order, filed approximately two weeks after the deadline established in SCALC, Rule 29.D, is void for lack of jurisdiction. Trident respectfully submits that the Administrative Law Court ("ALC") retained jurisdiction to file the Amended Final Order and that the interests of judicial

economy require that the Amended Final Order be the order subject to this appeal.[1] In support of its position, Trident submits the following:

1. Appellant argues that, because the ALC issued its Amended Final Order after the thirty (30) day timeline for ruling on Appellant's Motion for Reconsideration had passed, the ALC lacked jurisdiction to issue the Amended Final Order and that, consequently, the Amended Final Order is null and void. *See* SCALC, Rule 29.D(2).

2. The timelines provided for in Rule 29.D of the SCALC, however, do not speak to jurisdiction, and nothing in SCALC, Rule 29.D deprives the ALC of jurisdiction. The ALC's jurisdiction ends upon service of the Notice of Appeal. *See* SCACR, Rule 205.

3. Rule 205 of the SCACR provides that

> ***[u]pon the service of the notice of appeal*, the appellate court shall have exclusive jurisdiction over the appeal**; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Id. (emphasis added). Thus, the South Carolina Appellate Court Rules make clear that jurisdiction ends only upon the filing of the Notice of Appeal. Appellant filed its Notice of Appeal on March 5, 2019, well after the Amended Final Order was issued on February 21, 2019.

4. While not authoritative, the editor's notes to SCALC, Rule 29.D confirm that jurisdiction ends only upon filing of the Notice of Appeal, as the notes state, in pertinent part, "A motion for reconsideration made **after a petition for judicial review** has been filed is untimely because **jurisdiction then resides in the Court of Appeals.**" *See* SCALC, Rule 29, 2014 Revised Notes (emphasis added).

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[1] Trident has no objection to Appellant's request to correct the case caption or to extend the time for initial filings; therefore, those matters are not discussed in this memorandum.

5. Appellant cites *Leviner v. Sonoco Products Company*, 339 S.C. 492, 530 S.E.2d 127 (2000) in support of the contention that the ALC was deprived of jurisdiction to issue the Final Amended Order outside of the prescribed timeline for ruling on the Motion for Reconsideration. However, *Leviner* is inapposite for a number of reasons. Neither party in *Leviner* moved to alter or amend the initial order. The judge issued the amended order of his own volition. *Id.* at 493, 530 S.E.2d at 128. The Supreme Court found that the judge could not *sua sponte* issue an amended order unless done with the ten (10) day time period, set forth in SCRCP, Rule 59(e), by which a party must move to alter or amend the judgment. *Id.*

6. Notably, in *Leviner*, the judge's amended order completely altered the initial decision. *Id.* at 493, 530 S.E.2d at 127. Pursuant to the initial form order, the judge remanded the case back to the Workers' Compensation Commission. *Id.* In the amended order, the judge vacated the Commission's previous ruling and found the claimant totally disabled. *Id.* Here, the ALC's Amended Final Order did not alter the final decision in any way. It merely expounded upon the court's basis for reaching that decision. Thus here, unlike in *Leviner*, no party, including Appellant, is prejudiced by the Amended Final Order.

7. Similarly, in *Heins v. Heins*, 344 S.C. 146, 153, 543 S.E.2d 224, 227 (Ct. App. 2001), also cited by Appellant, the husband, who was found in contempt, never sought reconsideration of that finding; yet, the court *sua sponte* reversed its ruling. The wife in *Heins* had filed a Rule 59(e) motion with regard to a separate finding, but "neither the Wife's subsequent Rule 59(e), SCRCP motion nor Husband's reply [could] be read to have brought [the contempt] issue before the court for reconsideration." *Id.* Hence, the finding that the family court judge did not have the authority "to alter or amend a judgment, *sua sponte*, once the judgment is more than 10-days-old." *Id.* at 157, 543 S.E.2d at 229 (underline added).

8. In *Heins*, the new order was issued months after the initial order and reversed the court's finding that the husband was in contempt. *Id.* It also reversed the court's previous order that the husband pay a portion of the wife's attorneys' fees and instead required the wife to pay the husband's attorneys' fees incurred in defense of her motion for reconsideration, a motion that had nothing to do with the contempt finding. *Id.* at 151, 543 S.E.2d at 226.

9. Like *Leviner*, *Heins* is distinguishable because the court amended its order on its own initiative, not in response to a party's motion to alter or amend the judgment, and the amended order substantially altered the original judgment to a party's prejudice. The *Leviner* and *Heins* cases indicate that a court's right to *sua sponte* alter a ruling is limited to the ten day timeline set forth in SCRCP, Rule 59(e), as if the court itself were subject to the requirement to file a motion to alter or amend its own judgment.

10. The limitation on a court's right to *sua sponte* alter or amend its own judgment supports the need for finality in court proceedings, thereby allowing the parties to proceed with appellate review should they so choose. *See id.* at p. 155 – 56, 543 S.E.2d at 229 ("'[T]he interest of the parties and society in the finality of judgments, and the legitimate expectation of the parties concerning the judgment *to the extent it is not questioned by the parties*, speak against pulling the rug from under the plaintiff [seven] months after she filed her motion to correct errors in the remedy granted.'" (quoting *Burnam v. Amoco Container Co.*, 738 F.2d 1230, 1100 (11th Cir. 1984) (emphasis added)).

11. *Heins* notes that the ruling in *Leviner* "was founded in large part upon the Supreme Court's ruling in *Doran v. Doran*, 288 S.C. 477, 343 S.E.2d 618 (1986)." *Heins*, 344 S.C. at 156 – 57, 543 S.E.2d at 229. In discussing *Doran*, the *Heins* court notes that the trial court's authority to alter or amend its own decision *sua sponte* is limited because "'a trial judge

loses jurisdiction to modify an order **after the term** at which it is issued. . . . **Once the *term ends*, the order is no longer subject to any amendment or modification**. . . .'" *Heins*, 344 S.C. at 157, 543 S.E.2d at 229 (quoting *Doran v. Doran*, 288 S.C. 477, 478, 343 S.E.2d 618, 618 (1986)). Unlike circuit court judges, ALC judges are not subject to terms, and once assigned, the ALC judge oversees a contested case from start to finish. *See* SCALC, Rule 9.

12. Again, the case before this court is distinguishable from the above-referenced cases on numerous grounds. First, Appellant filed a Motion for Reconsideration with the ALC. The ALC did not *sua sponte* issue an amended order where no party had moved for amendment, nor did the ALC reverse its findings on an issue that was not properly before it by way of a party's motion. Second, the ALC's Amended Final Order does not alter the ALC's initial ruling. The Amended Final Order merely augments and expands upon the basis for the ALC's findings in the original Final Order.[2] The very purpose of a Rule 59(e) motion is to allow the court the opportunity to reconsider issues and correct alleged mistakes. *Smith v. Smith*, 425 S.C. 119, 819 S.E.2d 769, fn. 4 (Ct. App. 2018) ("Because the family court did not have the opportunity to rule upon this issue or correct any alleged mistakes in its final order, we find this argument is unpreserved for our review."). Third, unlike circuit court judges, ALC judges are not subject to terms; therefore, an ALC judge cannot lose jurisdiction to modify an order because the term has ended. Finally, Appellant had ample notice of the provisions of the Amended Final Order as it was issued well in advance of Appellant's filing of its Notice of Appeal. In fact, Appellant included the Amended Final Order in its Notice of Appeal.

[2] For example, the Amended Final Order includes additional findings of fact that address the regulatory framework at issue in the case, as well as additional information on the history of Bon Secours' St. Francis Xavier Hospital's diagnostic cardiac catheterization lab and the utilization volumes at that lab, which were fundamental issues before the ALC. *See* Final Amended Order, pp. 5 – 13.

13. On appeal,

> [t]he review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision **or remand the case for further proceedings**; or it may reverse or modify the decision if the substantive rights of the petition have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C.Code Ann. § 1-23-610(B) (emphasis added).

14. With regard to agency decisions, remand is proper where the agency

> has failed to make essential findings of fact, or the findings made are so indefinite or general as to afford no reasonable basis upon which the appellate court can determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings.

Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 125, 127 S.E.2d 288, 292 (1962). Similarly, detailed findings of fact are fundamental to the court's review of the ALC's decision, and remand for further proceedings may be required if the order on appeal lacks sufficient detail for the court to determine whether the ALC's decision was, in fact, substantially supported by the evidence and an appropriate application of the law. *See, e.g., Sierra Club v. S.C. Dept. of Health & Envtl. Control*, 287 S.C. 424, 435, 693 S.E.2d 13, 18 – 19 (Ct. App. 2010) ("We remand this issue to the ALC and instruct it to apply its factual findings to the technical requirements of these regulations. . . . We cannot determine whether the ALC erred without a specific ruling.").

15. Here, the ALC's Amended Final Order sets forth its findings of fact in greater detail and further explains the ALC's application of those facts to the law to reinforce the reasoning behind the ALC's original decision. Thus, the Final Amended Order facilitates this court's review and potentially alleviates the need for remand for further proceedings, all of which serve the interests of judicial economy by avoiding piecemeal litigation. *See, e.g., Bone v. U.S. Food Servs.*, 399 S.C. 566, 576, 733 S.E.2d 200, 205 (2012) (discussing review of final agency decisions in the interest of judicial economy and informed appellate review). *See also Good v. Hartford Acc. & Indem. Co.*, 201 S.C. 32, __, 21 S.E.2d 209, 213 (1942) ("The rule in restriction of piecemeal appellate procedure, dating back to the common law, is based upon sound reason and practical utility. If it were otherwise, endless delays would be encountered. . . .").

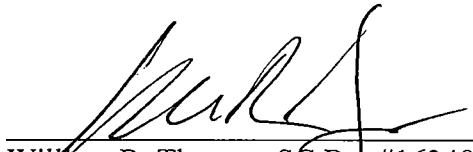
16. Serving the interests of judicial economy is particularly compelling when, as here, there is no prejudice to the parties. Utilizing the Final Amended Order does not change the nature of the Appellant's appeal, as there is no change to the ALC's final decision. The Final Amended Order only provides a better understanding of the reasoning behind that decision. Furthermore, Appellant was not prejudiced by the "untimeliness" of the ALC's issuance of the Final Amended Order, as the Final Amended Order was issued thirteen (13) days prior to Appellant filing its Notice of Appeal. In fact, Appellant included the Final Amended Order as part of its Notice of Appeal.

17. In sum, the timelines in SCALC, Rule 29.D are not jurisdictional, and the ALC maintains jurisdiction over contested cases until the Notice of Appeal is filed with the Court of Appeals. *See* SCACR, Rule 205. Consequently, the ALC's Final Amended Order, which did not alter the ALC's final decision in this matter, is valid. The Final Amended Order provides a

more robust reflection of the underlying facts and the ALC's application of those facts in drawing its conclusions of law. Therefore, utilizing the Final Amended Order as the basis for this appeal provides this Court with the opportunity for more informed appellate review, reducing the possibility of remand, all of which serves judicial economy without prejudice to any party, including Appellant.

WHEREFORE, based upon the foregoing, Trident respectfully urges this Court to find the ALC's February 21, 2019 Final Amended Order to be valid and to be the order subject to this appeal.

Respectfully submitted,



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March 25, 2019
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

APPELLATE CASE NO.: 2019-000358
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South Carolina Department of Health and Environmental Control, and Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley County,.....Respondents below,

Of which Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley County is the.....Appellant.

PROOF OF SERVICE

I certify that, on March 25, 2019, I served Respondent's Return to Appellant's Motion to Ascertain Order for Appeal, Extend Time for Initial Filings, and Correct Caption on all parties of record by hand delivering a copy of same, addressed as follows:

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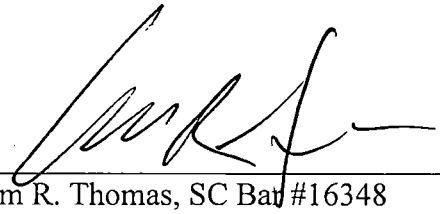

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March 25, 2019

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: **Trident Medical Center, LLC, d/b/a Trident Medical Center vs. South Carolina Department of Health and Environmental Control, and Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley County**
Appellate Case No.: 2019-000358

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of *Respondent's Return to Appellant's Motion to Ascertain Order for Appeal, Extend Time for Initial Filings and Correct Caption*, for filing with your office, in connection with the above-reference matter. Please return a file stamped copy of the Return and Proof of Service with the courier.

By copy of this letter and as evidenced by the Proof of Service filed herewith, I am serving a copy of the Return on counsel of record.

Sincerely,

William R. Thomas

WRT:vm
Enclosures

cc: James G. Long, III, Esquire (*w/ encl. via hand-delivery*)
Jennifer J. Hollingsworth, Esquire (*w/ encl. via hand-delivery*)
Ashley C. Biggers, Esquire (*w/ encl. via hand-delivery*)