

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

SC Court of Appeals

Docket No. 07-ALJ-04-00517-AP

Fred Gatewood..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2014-001199

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the ALC err in denying Gatewood's Motion to Supplement Record for section II(A)(C) of the motion because the documents proposed in those subsections had been received or considered by SCDC, or proffered but excluded, pursuant to ALC Rules 58B and D?
2. Did the ALC err in holding §24-1-295 governed deductions from Gatewood's gross wages because §24-3-40 was the governing statute?
3. Did the ALC err in holding §24-1-295 governed deductions from Gatewood's gross wages because §24-1-295 does not apply retroactively to Gatewood's pre-August 1, 2007 work?
4. Did the ALC err in applying §24-1-295 to Gatewood's pre-August 1, 2007 work because it violated due process?
5. Did the ALC err in applying §24-1-295 to Gatewood's pre-August 1, 2007 work because it impaired the obligations of contracts?
6. Did the ALC err in holding, pursuant to §24-1-295, that security and overhead were "other required deductions" in the 1998 contract because the clear and unambiguous terms of the contract indicate these costs were to be paid by SCDC at its expense?
7. Did the ALC err in ruling that overtime was not preserved for review because it was preserved, SCDC waived the issue preservation argument, the ALC raised the issue sua sponte, and Gatewood was entitled to overtime on the merits?
8. Did the ALC err in not granting Gatewood's request for pre and post

judgment interest, and to petition for costs and attorney fees, because this ruling was based on the ALC's erroneous ruling that SCDC could deduct security and overhead costs from Gatewood's \$4.00 per hour gross wage under §24-1-295?

9. Did the ALC err in declining to consider the issue of whether SCDC should have to process grievance for all workers even if they had not personally filed because this was a stated issue in Gatewood's appeal and the ALC did not state it was manifestly without merit?

10. Did the ALC err in declining to enjoin SCDC from further wage violations because such ruling was appropriate in these circumstances?

STATEMENT OF THE CASE

This appeal involves inmate Fred Gatewood's grievance for past due wages under South Carolina law. Gatewood worked in the Lieber/Williams Technologies (WTI) work program between 2004 and at least 2009. When Gatewood worked, S.C. Code §24-3-430(D), the "prevailing wage" statute, had been replaced by a budget proviso which allowed SCDC to pay inmates a negotiated wage which could be less than the prevailing wage (Statutes at Large, No. 66, §37.31, effective July 2001). Similar budget provisos were passed until 2007 (Darrell Williams, Class Representative, et al. v. SCDC, et al. 641 S.E. 2d 885, 886, n. 2 (S.C., 2007)). In 2007, §24-1-295 was passed and contained language that was very similar to the previous budget provisos.

In 2002-2003, Gatewood and other inmates filed a class action in Circuit Court for back wages earned in the program (Darrell Williams, #219730, et al. v. SCDC, et al. Case No. 02-CP-18-134 (Dorchester County, 2002)).

On August 23, 2004, the Supreme Court issued decisions in Adkins, et al. v. SCDC 360 S.C. 413, 602 S.E. 2d 51 (S.C., 2004) and Wicker v. SCDC 360 S.C. 421, 602 S.E. 2d 56 (S.C., 2004). These decisions held that inmates could file prevailing wage grievances and appeal to the Administrative Law Court.

On September 27, 2004, Gatewood retained undersigned counsel to file grievance. On or about October 18, 2004, Gatewood filed his step 1 grievance with SCDC (R. p. 46). On October 28, 2004, SCDC issued its step 1 response, which was received by Gatewood on November 2, 2004 (R. p. 40). On February 3, 2006 and/or April 19, 2007, Gatewood filed his Amendment/Exhibits to grievance with SCDC (R. p. 50). On May 14, 2007, SCDC issued its step 2 final decision, which was received by Gatewood on May 22, 2007 (R. p. 42). Both SCDC decisions denied the grievance as untimely and also on the merits.

On June 5, 2007, counsel filed Gatewood's appeal in the ALC (R. p. 56). Some 196 other inmates followed this same process. These appeals were consolidated in the ALC under the caption, Francis Ackerman, #266928, et al. v. SCDC Dock. No. 07-ALJ-04-00444, etc.

The ALC ordered the consolidated appeal to be briefed in three levels. After briefing and receiving the ALC's decision for Level One, counsel briefed the Level Two issue of timeliness of Gatewood's and others' grievances. On March 2 and 16, 2012, the ALC issued its decision that Gatewood's grievance was timely filed and should be briefed on the merits. All others were held untimely filed.

On March 29, 2012, all inmates filed Notice of Appeal in the Court of

Appeals of the ALC's March 2 and 16 orders, and a previous order. This appeal was captioned, Francis Ackerman, #266928, et al. v. SCDC Appellate Case No. 2012-210588.

On April 16, 2012, Gatewood filed his merits brief in the ALC as ordered. On June 19, 2012, the ALC issued its order that it had no jurisdiction to continue with Gatewood's merits briefing. On July 18, 2012, Gatewood filed Notice of Appeal in the Court of Appeals of the ALC's June 19 order.

On July 23, 2012, the Court of Appeals remanded the appeal in Francis Ackerman, #266928, et al. v. SCDC to the ALC to issue its Second Amended Order. On July 26, 2012, the ALC issued and filed its Second Amended Order. This order also directed the parties to merits brief Gatewood's grievance.

On August 22, 2012, inmates filed Notice of Appeal in the Court of Appeals in Francis Ackerman, #266928, et al. v. SCDC of the ALC's July 26 Second Amended Order, and a previous order. Gatewood did not appeal the portion of the Second Amended Order that he timely filed his grievance and the parties were to brief his grievance on the merits.

On August 24, 2012, Gatewood re-filed his merits brief with the ALC. On September 5, 2012, the ALC returned the brief unfiled because the matter had been appealed to the Court of Appeals and was no longer pending in the ALC.

On March 26, 2013, the Court of Appeals dismissed Gatewood's appeal to that Court.* On April 4, 2013, Gatewood filed a Petition for Rehearing of the dismissal. On July 5, 2013, the Court of Appeals denied the petition.

On August 26, 2013, the Court of Appeals remitted Gatewood's case to the

* This appeal was Appellate Case No. 2012-212574 filed on July 18, 2012.

ALC. On September 17, 2013, Gatewood filed his Motion to Supplement the Record in the ALC (R. p. 93). On October 21, 2013, SCDC filed its response to Gatewood's Motion to Supplement the Record (R. p. 105).

On October 29, 2013, in a teleconference with counsel, the ALC ruled it could proceed with merits briefing (Level Three) on the issue of Gatewood's entitlement to a \$4.00 per hour wage. However, the ALC stated it could not consider back wage calculations for Gatewood, and indicated such calculations would probably have to be made by SCDC on remand, which, if Gatewood were unsatisfied, could be re-appealed to the ALC.

On November 12, 2013, the ALC issued an order denying Gatewood's September 17, 2013 Motion to Supplement the Record (R. p. 25).

On February 19, 2014, Gatewood filed his Level Three brief in the ALC (R. p. 113). On April 7, 2014, SCDC filed its responsive brief (R. p. 127). On April 17, 2014, Gatewood filed his reply brief (R. p. 154).

On April 23, 2014, SCDC filed its Motion to Strike Argument From Appellant's Reply Brief (R. p. 170).

On April 29, 2014, the ALC issued its order affirming SCDC's denial of Gatewood's grievance (R. p. 29).

The amount involved on appeal has not been determined. In Gatewood's ALC brief, he requested a remand to SCDC to calculate his back wages at a gross wage rate of \$4.00 per hour (R. p. 124).

ARGUMENT

1. **The ALC erred in denying Gatewood's Motion to Supplement the Record for section II(A)(C) of the motion because the documents proposed in those subsections had been received or considered by SCDC, or proffered but excluded, pursuant to ALC Rules 58B and D.**

The standard of review is as follows. Review must be confined to the record. The appellate court may not substitute its judgment for that of the ALC as to 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 appellant have been prejudiced because the ALC's finding, conclusion, or decision is: (a) in violation of constitutional or statutory provisions; (b) in excess of the 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 §1-23-610(B)).

The proposed documents in Gatewood's motion, section II(A)(C), were Gatewood's pay stubs and time cards (A); and Appendix 1, page 12, to Gatewood's ALC Level Two brief (C) (R. p. 104).^{*} Counsel does not have the documents in section II(A).

^{*} Gatewood's work and grievance file dates are designated for the record in Appendix 1, p. 12; R. p. 104; SCDC's spreadsheet, p. 11; R. p. 61; and updated "Exhibit F", pp. 123-125; R. pp. 58-60. These records show Gatewood's pay dates to be at least October 18, 2004 to September 1, 2008, and March 2 to April 13, 2009. Gatewood contends he worked again for 90 days in 2011. Appendix 1, p. 12, SCDC's Sept. 6, 2011 spreadsheet, p. 11, and updated "Exhibit F", pp. 123-125, were filed in or proposed for the ALC record in Francis Ackerman, #266928, et al. v. SCDC Dock. No. 07-ALJ-04-00444, etc.

In its order, the ALC stated (R. p. 26):

As an initial matter, during the conference call the Court held on October 29, 2013..(I)t was also determined and agreed that the matter before this Court is an appeal, not a contested case, and as such, this Court cannot make new findings of fact. Rule 58(D) of the South Carolina Administrative Law Court Rules (SCALCR) begins with the phrase "(w)here applicable, the record of **the contested case** (emphasis in original) shall consist of.." Because Appellant, in Section II(A)(B)(C) and (E) of his Motion, seeks to supplement the Record on Appeal with documents that were not received or considered in the administrative hearing before the Department, the Court must deny Appellant's Motion to Supplement Record with respect to these sections of his Motion.

Respectfully, undersigned neither recalls, nor do call notes indicate, that "contested case" was mentioned on October 29. Also, it was not mentioned in the Motion to Supplement or SCDC's response.

Gatewood contends the ALC appeal was a "contested case" under the ALC rules. And further, the proposed documents had been considered by SCDC under Rule 58B or proffered but excluded under Rule 58D, and thus properly includable in the ALC record.

ALC Rule 2E defines "contested case" as follows:

Contested Case is defined in Section 1-23-505. It is a case for which a hearing is conducted pursuant to Article 3, Chapter 23 of Title 1, the South Carolina Administrative Procedures Act, and includes hearings conducted by the Administrative Law Court pursuant to Section 1-23-600(A), hearings **required by due process** under the South Carolina or United States Constitutions, or as **otherwise provided by law**.

Moreover, in Wicker v. SCDC 360 S.C. 421, 424-425, 602 S.E. 2d 56, 58, n. 1, the Supreme Court stated:

We find the state's statutory mandate that inmates be paid the prevailing wage creates such an interest, which may not be denied without **due process**. Piatt v. McDougall, supra.

Accordingly, in this **very limited circumstance**¹ (emphasis in original), we hold the DOC's failure to pay in accordance with the statutes is reviewable by the ALJ.

¹We note that our holding today is extremely limited and is not to be viewed as **expanding the jurisdiction of the ALJD** in any other circumstance.

Finally, ALC Rule 58 reads, in part:

Where applicable, the record of the **contested case** shall consist of:

..

B. All evidence received or considered;

..

D. All proffers of proof of excluded evidence;

An SCDC admission from inmates' class action states that, after July 2000, pay rate and hours information on SCDC spreadsheets is not accurate, and pay stubs and time cards must be consulted for that information (R. pp. 182-183).

Gatewood filed his step 1 on or about October 18, 2004 (R. p. 46). His step 2 is stamp-dated November 4, 2004 (R. p. 48). SCDC responses were received on November 2, 2004 (R. p. 47), and May 22, 2007 (R. p. 48). Thus, Gatewood's administrative hearing spanned the period 2004-2007. Gatewood contends SCDC must have consulted his pay stubs and time cards to pay him during this period since they were the only accurate documents available. This conclusion is supported by Gatewood's final decision which states that his "participation and pay records were reviewed" before SCDC's final decision (R. p. 42).

Gatewood contends the above evidence indicates that SCDC most probably considered his pay stubs and time cards during pendency of his administrative hearing. As a result, these documents should fall within Rule 58B.

Gatewood's ALC appeal was required by due process (Wicker). For that reason, Gatewood contends the ALC appeal was a "contested case" under Rules 2E and 58, and Rule 58D should cover proffers made to the ALC.

Inmates proffered Exhibit 1 and Appendix 1 for inclusion in the ALC record (R. pp. 90, 92). At least regarding Exhibit 1, the request was denied (R. p. 8). And, Gatewood repeated the proffer (R. pp. 96-97). This motion was also denied (R. p. 26).

Gatewood contends that, since Appendix 1, p. 12, has been proffered and excluded by the ALC, it should have come in the ALC record under Rule 58D.

Gatewood submits that the ALC ruling excluding the above documents prejudiced his substantive rights because it was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record (pay stubs and time cards); and was affected by other error of law (pay stubs and time cards, and Appendix 1, p. 12)(S.C. Code §1-23-610(B)(d)(e)).

2. The ALC erred in holding §24-1-295 governed deductions from Gatewood's gross wages because §24-3-40 was the governing statute.

In the ALC, the primary issue for decision was whether Gatewood was entitled to a \$4.00 per hour gross wage (R. p. 32). The ALC agreed that Gatewood was so entitled (R. p. 36). However, the ALC held that, based on the contract terms between SCDC and Williams Technologies (WTI), security costs and overhead, including health, safety, and welfare, constituted "other required deductions" under §24-1-295 that were

deductible from the \$4.00 wage (R. p. 36).

Initially, Gatewood contends the ALC erred in raising this issue which was not briefed by the parties. (State v. Austin 409 S.E. 2d 811 (SC App, 1991).

On the merits, Gatewood contends that §24-3-40, not §24-1-295, governed deductions from wages, and deductions for security and overhead, including health, safety and welfare, were not allowable under §24-3-40. In 1995, the legislature enacted §24-3-430 as part of Article 3 of Chapter 24 of the Code.

Subsections (A)(B) and (H) of §24-3-430 read, in part:

(A) The Director of the Department of Corrections may establish a program involving the use of inmate labor..in private industry for the manufacturing and processing of goods..or the provision of services..

(B) The director may enter into contracts necessary to implement this program..

..
(H) The earnings of an inmate authorized to work at paid employment pursuant to this section must be paid directly to the Department of Corrections and applied as provided under **Section 24-3-40.**

In 1995, Section 24-3-40 read, in part:

(A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or **in a prison industry program provided under Article 3 of this chapter** shall pay the prisoner's wages directly to the Department of Corrections.

The Director of the Department of Corrections shall deduct the following amounts from the **gross wages** of the prisoner.

Section 24-3-40(A) then lists specific allowable deductions for restitution/victim assistance; child support/room and board/prisoner purchases of incidentals; benefit of prisoner; and taxes. There is no catch-all for "other required deductions", and no listed deduction for security, overhead, or health, safety and welfare of inmates.

In 1998, SCDC and WTI signed a contract to set up this work program.

On page one, the second clause states (R. p. 73):

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of **Section 24-3-310 Code of Laws of South Carolina, 1976 as amended**; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein;

The contract states that it "shall terminate" (R. p. 81) if Section 24-3-310 or any provision of Chapter 24 of the Code is materially changed or repealed (R. p. 82). SCDC also warrants that it complies with Chapter 24 (R. p. 83). Finally, a "bullet sheet" preceding the contract is entitled, "Williams Technology Transmissions Service Contract" (R. p. 72).

In Darrell Williams, Class Repr., et al. v. SCDC, et al. 641 S.E. 2d 885 (S.C., Feb. 26, 2007), the Supreme Court affirmed the Circuit Court's dismissal of inmates' class action. The class action concerned the same work program as the present case. In Williams, 641 S.E. 2d at 887, the Court stated how inmates are paid and deductions made from wages:

The contract provides that WTI will pay DOC a flat rate of \$4.00 per hour per inmate and the DOC is responsible to pay inmate workers and handle payroll deductions. **Of even greater significance is the fact that the legislature has specifically mandated how inmate wages for prison industry labor are to be handled. Section 24-3-40 (Supp. 2005) provides:**

Disposition of wages of prisoner allowed to work at paid employment. (emphasis in original)

(A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment..in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. (Emphasis in original)

This section also includes **specific deductions** from inmate wages that are to be made by the Director of DOC, including restitution to victims, payment to the State Office of Victim Assistance, child support, and state and federal taxes..

In Torrence, et al. v. SCDC, et al. 646 S.E. 2d 866, 867 (S.C., May 7, 2007), inmates alleged (1) SCDC's prison industries partner, Insilco, paid SCDC \$7.17 per hour for their labor but SCDC paid inmates only \$5.25 per hour; and (2) SCDC improperly diverted \$1.92 from the \$7.17 and deposited it into an SCDC "surplus fund". Inmates sought a declaratory judgment against SCDC for violating §24-3-430 and §24-3-40. At 646 S.E. 2d 868-869, the Court stated:

The Legislature specifically authorized inmate labor in private industry via S.C. Code Ann. section 24-3-430... Moreover, section 24-3-430(H) expressly directs that "(t)he earnings of an inmate authorized to work at paid employment pursuant to this section **must be paid directly to the (DOC) and applied as provided under Section 24-3-40**" (Emphasis in original)

Section 24-3-40 governs the disposition of prisoner wages and provides in pertinent part:

(A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment..in a prison industry program..shall pay the prisoner's wages directly to the (DOC).

The Director of the Department of Corrections shall deduct the following amounts from the gross wages of the prisoner:

The Court then summarized the listed deductions in §24-3-40(A) for restitution, child support, inmate purchase of incidentals, benefit of prisoner, and taxes. At 646 S.E. 2d 870, n. 4, the Court stated that if appellants proved their allegation that SCDC diverted funds and disbursed to inmates based on the lower rate, it would be a violation of the statutory requirement to disburse from gross wages.

In 2007, the General Assembly enacted §24-1-295, effective August 1, 2007. Section 24-1-295 states, in pertinent part:

The Director of the Department of Corrections may enter into contracts with private sector entities that allow inmate labor to be provided for **prison industry service work** and export work that involves exportation of products. However, the Director of the Department of Corrections shall deduct the following from the gross earnings of the inmates engaged in prison industry **service work** in addition to any **other required deductions**:

Section 24-1-295 then lists specified deductions for restitution/victim's compensation fund (1)(2); child support/room and board/purchase of incidentals (3); purchase of incidentals (4); benefit of prisoner (5); and taxes (6).

Gatewood contends that §24-3-40, not §24-1-295, governs deductions from gross wages. First, the contract seeks to fulfill the purposes of §24-3-310 (R. p. 73). Section 24-3-310 is the "Declaration of Intent" section of Article 3, entitled "Prison Industries", and was in effect when this contract was signed. The contract also relies on compliance with Chapter 24 of the Code, of which §24-3-430 is part (R. p. 82).

Second, §24-3-430(H) incorporates and requires compliance with §24-3-40. Section 24-3-40 has no catch-all for "other required deductions", and no listed deductions for security and overhead. Third, in Williams and Torrence, the Supreme Court clearly stated that deductions from inmate wages are governed by §24-3-40(A). Williams involved the same work program as the present case.

Fourth, §24-1-295 was not effective until August 1, 2007. However, Gatewood started work almost three years prior to August 1, 2007. Thus, §24-1-295 could only apply to Gatewood's work, if at all, after August 1, 2007. See issues 3-5. Gatewood's work dates are in "Exhibit F", R. pp. 58-60.

The ALC stated §24-3-40 does not apply because it covers private sector programs that, unlike those services covered by §24-1-295, involve manufacturing and processing of goods **or the provision of services** or other enterprise considered to enhance the general welfare (R. p. 33). The ALC concluded that §24-3-40 does not apply because this was a **service work contract** and deductions from wages for service work are governed by §24-1-295, not §24-3-40 (R. p. 35).

Thus, the ALC acknowledges that §24-3-40 covered programs involving the "provision of services", but inexplicably held that §24-3-40 did not apply because this was a "service work contract". Gatewood contends that the two are one and the same. Gatewood agrees this was a service work program. However, Gatewood contends the ALC's conclusion is contrary to (1) §24-3-40's* express application to the "provision of services", and (2) Williams' application of §24-3-40 to this specific work program, and Torrence's similar rulings.

The ALC stated that, even if §24-3-40 applies, Gatewood's gross wages would still sustain the deductions listed therein (R. p. 33). Gatewood agrees, however, the deductions could not be for security, overhead, and health, safety, and welfare. These are the costs cited by the ALC as a basis to invoke the "other required deductions" clause in §24-1-295. Gatewood contends these costs are not authorized deductions in §24-3-40, and would also violate the rulings in Williams and Torrence.

Gatewood submits the ALC's conclusion that §24-1-295 governed Gatewood's

* By way of §24-3-430(A)(H).

deductions prejudiced his substantive rights because it violates the statutes in §§24-3-430(A)(H), 24-3-40(A), and effective date in §24-1-295; is affected by other error of law as set forth in Williams and Torrence; and is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, including the contract and Gatewood's work records (S.C. Code §1-23-610(B)(a)(d)(e)).

3. The ALC erred in holding §24-1-295 governed deductions from Gatewood's gross wages because §24-1-295 does not apply retroactively to Gatewood's pre-August 1, 2007 work.

The ALC applied §24-1-295's "other required deductions" clause to Gatewood's claim (R. p. 36). This application included Gatewood's work from 2004 to August 1, 2007, the effective date of §24-1-295. Gatewood contends this was an improper retroactive application of the statute and is thus ineffective. See Gatewood's work dates (R. pp. 58-60).

In State v. Brown 402 S.C. 119, 740 S.E. 2d 493, 496 (S.C., 2013), the Supreme Court held that a statute is not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt. See also Edwards v. SLED 395 S.C. 571, 720 S.E. 2d 462, 466 (S.C., 2011) (Absent specific provision or clear legislative intent to the contrary, statutes are to be construed prospectively rather than retroactively unless statute is remedial or procedural); S.C. Department of Revenue v. Rosemary Coin Machines, Inc. 339 S.C. 25, 528 S.E. 2d 416, 418 (S.C., 2000) (There is a presumption that statutes are considered prospectively rather than retroactively in their operation unless there is a specific provision or clear legislative intent to the contrary); Carolina Power & Light Co. v. Pageland 321 S.C. 538, 471 S.E.

2d 137, 140 (S.C., 1996); Carolina Chemicals, Inc. v. SCDHEC 290 S.C. 498, 351 S.E. 2d 575, 578-579 (S.C. App., 1986).

Here, Gatewood contends the ALC improperly applied §24-1-295 retroactively to Gatewood's work from 2004 to August 1, 2007, and this application was contrary to the principles stated in the above decisions.

Gatewood submits the ALC's application of §24-1-295 to his pre-August 1, 2007 work prejudiced his substantive rights because it violated the effective date provision in §24-1-295; was affected by other error of law as declared in the above decisions; and was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, including Gatewood's work dates (S.C. Code §1-23-610(B)(a)(d)(e)).

4. The ALC erred in applying §24-1-295 to Gatewood's pre-August 1, 2007 work because it violated due process.

The ALC applied §24-1-295's "other required deductions" clause to Gatewood's claim, which included Gatewood's work from 2004 to August 1, 2007, the effective date of §24-1-295 (R. p. 36). Gatewood contends this application divested him of his right to wages which had vested when the wages were earned, and thus violated due process as set forth in the United States Constitution, Amendment 14, and South Carolina Constitution, §3. See Gatewood's work dates (R. pp. 58-60).

The South Carolina Constitution, §3, states, "...nor shall any person be deprived of life, liberty, or property without due process of law." A similar provision is found in the United States Constitution, Amendment 14.

The term, "vested rights", is defined as follows in Black's Law Dictionary, Fifth Edition, p. 1402:

In constitutional law, rights which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or canceled by the act of any other private person, and which it is right and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare. **Such interests as cannot be interfered with by retrospective laws;** interests which it is proper for state to recognize and protect and of which individual cannot be deprived arbitrarily without injustice.

"Divest" means to deprive; to take away; to withdraw; and is usually spoken of an authority, power, property, or title, as in an estate being divested (Black's Law Dictionary, Revised Fourth Edition, page 538).

In Russo v. Sutton 310 S.C. 200, 422 S.E. 2d 750, 753, n. 5 (S.C., 1992), the Supreme Court noted that the legislature cannot create a statute which applies retroactively to divest vested rights. See also First Presbyterian Church of York v. York Depository 203 S.C. 410, 27 S.E. 2d 573, 579 (S.C., 1943) (Though a statute may be retroactive for certain purposes, a retroactive provision which affects vested interests in property is invalid); Degenhart v. Burriss 360 S.C. 497, 502, 662 S.E. 2d 96 (S.C. App., 2004) (Legislature cannot create a statute which applies retroactively to divest vested rights); Dunham v. Davis 91 S.E. 2d 716, 718 (S.C., 1956) (Even a curative or validating statute which is necessarily retroactive in effect is subject to the constitutional limitation that a party cannot be deprived of property without due

process of law).

Under the ALC order, the application of §24-1-295 enables SCDC to deduct from Gatewood's wages expenses for security and overhead, including costs for health, safety, and welfare, as "other required deductions" under the statute and SCDC/WTI contract. These expenses were not deductible under §24-3-40, which was in effect when Gatewood worked from 2004 to August 1, 2007, the effective date of §24-1-295. Thus, Gatewood's pay is less when §24-1-295 is applied than it would be if §24-3-40 applied. Gatewood contends that §24-1-295 works a deprivation, or taking, of his wages, the right to which vested when he earned such wages before §24-1-295 became law. This taking, in turn, results in a violation of due process under the above constitutional provisions and case decisions.

Gatewood submits that the ALC's application of §24-1-295 to his pre-August 1, 2007 work prejudiced his substantive rights because it violated due process in the United States Constitution, Amendment 14 and South Carolina Constitution, §3; was affected by other error of law as declared in the above cases; and was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, including Gatewood's work dates (S.C. Code §1-23-610(B)(a)(d)(e)).

5. **The ALC erred in applying §24-1-295 to Gatewood's pre-August 1, 2007 work because it impaired the obligations of contracts.**

The ALC applied §24-1-295's "other required deductions" clause to Gatewood's claim, which included Gatewood's work from 2004 to August 1, 2007, the effective date of §24-1-295 (R. p. 36).

Gatewood contends that this application impaired the obligations of contracts, and thus violates South Carolina Constitution, §4.*

The South Carolina Constitution, §4, states, "(N)o..law impairing the obligation of contracts..shall be passed.." In Bartley v. Bartley Logging Co. 359 S.E. 2d 55, 56-57 (S.C., 1987), the Supreme Court held that an amendment to the workers compensation law allowing paraplegics to receive workers compensation benefits for life could not be retroactively applied without impairing contractual rights.

In Wolper v. City Council of City of Charleston 336 S.E. 2d 871, 873-876 (S.C., 1985), plaintiff challenged the constitutionality of a city ordinance authorizing a tax increment financing plan for redevelopment of waterfront property. Plaintiff argued the rights of general bondholders were impaired by the redevelopment bonds because the increased revenue diverted for repayment of redevelopment bonds would have been available for retirement of the general obligation bonds. The Supreme Court disagreed, holding the same tax base was available for retirement of general obligation bonds during the redevelopment project as was available before the redevelopment bonds were issued.

In S.C. Juris. (1993), vol. 19, Const. Law, §107, it is noted that the passage of a statute that substantially deprives bondholders of any rights to which they were entitled under laws in force at the time of issuance of such bonds, violates the contract clause of the Constitution.

Finally, in Tindale v. Byars 59 S.E. 2d 337, 340 (S.C., 1950), plaintiff

* See Gatewood's work dates (R. pp. 58-60).

challenged, as an impairment of contracts, a statute purporting to disaffirm a prior statute causing the county to assume the debt of former school districts. The Supreme Court held there was no impairment of contracts, since there was no difference to the bondholders in the liability of the county as such and the consolidated school district.

The common thread through the above authorities is a change in the law causing increased cost, deprivation of rights, loss of revenue, or change in liability of contracting parties. Here, the ALC's application of §24-1-295 added "other required deductions" to the list of statutory allowable deductions from Gatewood's gross wages. The ALC held that this addition included SCDC expenses for security and overhead, and health, safety, and welfare of inmates. None of these were permissible deductions under prior law in §24-3-40(A). The impact of the ALC ruling on the contract was considerable.

Under the 1998 contract, security costs were payable by SCDC "at its expense" (R. p. 77). With the ALC ruling, security can be deducted from the \$4.00 per hour which WTI pays. Also under the contract, WTI paid SCDC \$4.00 per hour for "work performed" (R. p. 78). With the ruling by the ALC, the \$4.00 payment covers work **plus security and overhead, including health, safety, and welfare of inmates.** The end result is a substantial reduction in SCDC's liability under the contract, and a corresponding reduction in Gatewood's pay. This is because the new deductions under §24-1-295 are paid from Gatewood's \$4.00 gross wage instead of from SCDC's own resources.

For the above reasons, Gatewood contends the ALC's application of §24-1-295 to his pre-August 1, 2007 work substantially impaired the obligations of contracts in violation of South Carolina Constitution §4, and the case decisions discussed herein.

Gatewood submits that the ALC's application of §24-1-295 prejudiced his substantive rights because it substantially impaired the obligations of the 1998 contract, pursuant to §4 of the constitution; was affected by other error of law as declared in the above cases; and was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, including the 1998 contract and Gatewood's work dates in the record (S.C. Code §1-23-610(B)(a)(d)(e)).

- 6. The ALC erred in holding, pursuant to §24-1-295, that security and overhead were "other required deductions" in the contract because the clear and unambiguous terms of the contract indicate that these costs were to be paid by SCDC at its expense.**

The ALC held that, pursuant to §24-1-295, security costs and overhead, including costs for health, safety, and welfare, constituted "other required deductions" in the 1998 contract (R. p. 36). Gatewood contends the clear and unambiguous terms of the contract indicate that these items were to be paid by SCDC at its own expense, and not from the \$4.00 gross wage WTI paid to SCDC.

The cardinal rule of contract interpretation is to ascertain and give effect to the parties' intentions as determined by the contract language (Alexander's Land Co., LLC v. M & M & K Corp. 390 S.C. 582, 703 S.E. 2d 207, 215 (S.C., 2010)). If the contract's language is clear and unambiguous, the

language alone determines the contract's force and effect (Schulmeyer v. State Farm Fire and Cas. 353 S.C. 491, 579 S.E. 2d 132, 134 (S.C., 2003)). Generally, if the terms of a contract are clear and unambiguous, a court must enforce the contract according to its terms regardless of its wisdom or folly (Southern Atlantic Financial Services, Inc. v. Middleton 356 S.C. 444, 590 S.E. 2d 27, 29 (2003)).

A meaning cannot be given to a contract other than that expressed, hence, words cannot be read into a contract which impart an intent wholly unexpressed when the contract was executed (Park Regency, LLC v. R & D Development of the Carolinas, LLC 402 S.C. 401, 741 S.E. 2d 528, 534 (S.C. App., 2012)). A court is without authority to consider the parties' secret intentions, and thus words cannot be read into a contract to impart an intent unexpressed when the contract was executed (Matsell v. Crowfield Plantation Comm. Serv. Ass'n, Inc. 393 S.C. 65, 710 S.E. 2d 90, 93 (S.C., App., 2011)).

When a party does not argue that contract provisions are ambiguous, there is no need for the court to look beyond the four corners of the contract to discern the parties' intentions (Sherlock Holmes Pub., Inc. v. City of Columbia 389 S.C. 77, 697 S.E. 2d 619, 622 (S.C. App., 2010)). The parties to a contract may not circumvent the requirements of a statute by redefining its plain and unambiguous terms (Richland Horiz. Prop. Regime Homeowners Assoc., Inc. v. Sky Green Holdings, Inc. 392 S.C. 194, 708 S.E. 2d 225, 227 (S.C. App., 2011)). If a contract provision contravenes an applicable statute, that provision is invalid and the statute prevails (Wilkinson ex rel. Wilkinson v. Palmetto State Trans. Co. 371 S.C. 365, 638 S.E. 2d 109, 116 (SC App., 2006)).

In 1998, SCDC contracted with WTI to set up this work program (R. p. 84).

The contract states, in pertinent part:

6. Payment for Inmate Services: SCDC will invoice Williams on a bimonthly basis for **inmate labor**..

..

4. Security: **At its expense**, SCDC shall be responsible for the security of the inmate labor force and the security of Williams' employees and agents.

..

1. Payment for Services: Williams agrees to pay SCDC \$4.00 per hour per inmate **for work performed**, including training hours and hours in excess of the inmate's normal shift. **SCDC shall be responsible to pay** inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction..

..

i. Failure of Williams to pay promptly to SCDC any **inmate wages** due or supervision pass through costs hereunder for a period of fifteen (15) days after written notice from SCDC to Williams of such default;

(R. p. 77; R. p. 77; R. p. 78; R. p. 82).

Thus, under the contract, SCDC invoices WTI for "inmate labor". WTI, in turn, pays SCDC \$4.00 per hour per inmate for "work performed". And, the contract is terminated (R. p. 81) if WTI fails to pay SCDC promptly for "inmate wages". The contract does not say that WTI is invoiced for, or that it pays SCDC, for labor and security/overhead.

Concerning security, the contract says SCDC is responsible for security "(A)t its expense". As for security and overhead, SCDC "shall be responsible" to cover security costs and overhead.

From the above, Gatewood contends the contract is clear that SCDC pays for security at its own expense, not out of the \$4.00 per hour WTI pays for wages. The contract is also clear that the \$4.00 is for "labor", "work", or

"wages", and no other expense. It follows that the \$4.00 payment does not encompass security and overhead. Finally, the contract is clear in what it does not say, that security and overhead are encompassed within the \$4.00. Gatewood contends that the clear and unambiguous terms of the contract are that security and overhead are paid by SCDC at its own expense, and not out of the \$4.00 payment WTI paid for wages.

The ALC stated it would not consider Gatewood's argument that §3.2.4 of the contract applied so that security costs are not deductible under §24-3-40, because Gatewood did not raise this specific argument in his ALC opening brief (R. p. 36). Gatewood contends that he did substantially raise this argument to preserve it for review.

A party need not use the precise name of a legal doctrine to preserve it for review, so long as the **argument** has been preserved on that ground (Herron v. Century Buick 719 S.E. 2d 640, 642 (S.C., 2011)).

In the Conclusion to his ALC brief, Gatewood requested a remand to SCDC to calculate back wages at a \$4.00 per hour gross wage. Gatewood stated that deductions should be taken out from his \$4.00 gross wage under §24-3-40, citing Torrence. Gatewood specifically stated that, "(N)o deduction should be made from Gatewood's gross wages unless expressly authorized by §24-3-40" (R. pp. 124-125). Neither §24-3-40 nor Torrence allows security or overhead expenses as a deduction. Thus, Gatewood contends that his ALC brief substantially raised the argument that security costs are not deductible under §24-3-40, and the issue was preserved for ALC review.

If this Court does not believe security costs were adequately raised, Gatewood contends that he properly discussed it in reply to new argument in SCDC's brief. In J. Toal, Appellate Practice in South Carolina, Second Edition, page 215, it states, "(A)s the name suggests, the purpose of the reply brief is to reply to any **new argument** the respondent may have set forth in his brief". See also, State v. Wakefield 473 S.E. 2d 831, 832 (S.C. App., 1996)(Since the State addressed, in its brief, the denial of defendant's Motion for Directed Verdict, the Court of Appeals would consider the merits of the issue even though defendant did not raise it in his opening brief, but only in his reply brief).

In SCDC's ALC responsive brief, it stated (R. p. 137):

4. Security: At its expense, the Department shall be responsible for the security of the inmate labor force and the security of (WTI's) employees and agents. (Emphasis in original)

..

5. Section 3.3 of the Contract (Emphasis in original)

Section 3.3 is entitled "Mutual Duties of the Parties," and, in relevant part, it provides as follows (Ackerman 5-6-11, p. 365):

1. Payment for Services: (WTI) agrees to pay (the Department) **\$4.00 per hour per inmate** for work performed including training hours and hours in excess of the inmate's normal shift. (The Department) shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked..

..

Thus, Section 3.3 clearly and unequivocally confirms that the Department invoiced WTI at the rate of \$4.00 per inmate labor hour and that, out of the \$4.00 per inmate labor hour rate at which it invoiced WTI, the Department was obligated to pay not only the hourly wages of the inmates who voluntarily participated in the project but also security costs and overhead, which included any costs associated with the health, safety and welfare of the inmates..

In response, Gatewood stated in his reply brief (R. p. 159):

SCDC notes that in §3.2 of the contract, SCDC is to pay for security "at its expense" (SCDC brief, 11). SCDC then takes the seemingly contradictory position that security costs and other matters were to come out of the \$4.00 per hour invoiced rate (SCDC brief, 11).

SCDC contends §3.3 of the contract confirms that SCDC invoiced WTI at the rate of \$4.00 per inmate labor hour and that, out of the \$4.00, SCDC was "obligated" to pay hourly wages of inmates, and security costs and overhead, which included costs for health, safety and welfare of inmates, taxes and other payroll deductions (SCDC brief, 11-12). Gatewood contends taking out any of these expenses not listed in §24-3-40 violated that statute and Torrence.

Elsewhere in his reply brief, Gatewood discussed §3.2.4 of the contract at pp. 4, 9, and deductions from gross wages at pp. 3-6, 8-10 (R. pp. 156-159, 161-163).

On April 23, 2014, SCDC filed a Motion to Strike Argument From The Appellant's Reply Brief concerning Gatewood's reliance on Torrence (R. p. 170).

In its order, the ALC commented on SCDC's Motion to Strike as follows (R. p. 35):

First, Respondent arguably raised arguments in its brief, specifically on pp. 11-12, as to what was included in deductions pursuant to the contract, which could have given rise to the need for an elaboration on Torrence in response.

Gatewood contends that the above ALC brief excerpts, and the ALC's comments, demonstrate that SCDC raised and discussed §3.2.4 in its responsive brief, entitling Gatewood to respond in his reply brief.

The ALC cites §3.3.1 of the contract (R. p. 36) which:

..allows for increases to the per-hour **wage** rate based on increases to the cost of prison overhead, thus reasonably **implying** that the per-hour **wage** rate **takes into account** a deduction for the cost of overhead.

First, Gatewood notes that the ALC recognized the per-hour rate was for wages, not wages plus expenses. The ALC also recognized that the contract is clear and unambiguous (R. p. 36). Therefore, the language alone determines the contract's force and effect, and a court must enforce the contract according to its terms regardless of its wisdom or folly (Schulmeyer v. State Farm Fire and Cas. and Southern Atlantic Financial Services, Inc. v. Middleton).

The terms of the 1998 contract state the \$4.00 payment is for work or wages, not wages plus overhead. Moreover, the terms do not state that the wage rate "takes into account" a deduction for overhead. A meaning cannot be read into a contract which imparts an intent wholly unexpressed therein (Park Regency, LLC v. R & D Development of the Carolinas, LLC). Gatewood contends the ALC ruling is contrary to these principles by "implying" a meaning that is unexpressed, namely that the \$4.00 wage rate "takes into account" a deduction for overhead.

The ALC states Gatewood seems to argue in his reply brief that, because SCDC is responsible to pay security costs and overhead pursuant to §§3.2.4 and 3.3.1, these are out of pocket expenses for SCDC, but under that theory, SCDC would also have to pay inmates out of pocket instead of from gross wages since SCDC is also responsible to pay inmates under §3.3.1, and that would be an absurd interpretation (R. p. 36).

Gatewood contends the contract should be enforced according to its expressed terms. And further, the source of funds for inmates' pay is the \$4.00 WTI payment since it is "for work performed" (R. p. 78). The contract is also clear that SCDC pays for security "at its expense", and thus not out of the \$4.00 payment (R. p. 77). For overhead, the contract does not state the source of funds, but only that SCDC is to "cover" it. See §3.3.1, R. p. 78. Gatewood contends that, because the \$4.00 payment is expressly stated "for work performed", that excludes overhead and other expenses.

Gatewood submits that the ALC's holding, pursuant to §24-1-295, that security and overhead were "other required deductions" in the contract prejudiced his substantive rights because it was affected by other error of law as declared in the cases discussed herein; and was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, including the 1998 contract (S.C. Code §1-23-610(B)(d)(e)).

- 7. The ALC erred in ruling that overtime was not preserved for review because it was preserved, SCDC waived the issue preservation argument, the ALC raised the issue sua sponte, and Gatewood was entitled to overtime on the merits.**

The ALC ruled that Gatewood did not raise overtime in his step 1 and 2 grievances and the issue was not preserved for review (R. p. 37). Gatewood contends that overtime was preserved, SCDC waived the issue preservation argument, the ALC raised issue preservation sua sponte, and Gatewood was entitled to overtime on the merits.

In J. Toal, Appellate Practice in South Carolina, Second Edition, p. 59, the article cites with approval Kiawah Resort Ass'n v. S.C. Tax Commission 318 S.C. 502, 458 S.E. 2d 542, 544 (S.C., 1995) (Issues not raised to or ruled upon by administrative agency will not be addressed on appeal by Circuit Court or Supreme Court). The opinion in that case says, "raised to and ruled upon". A similar rule is stated in 73A C.J.S. (2004), Pub. Adm. Law and Procedure, §471.

And in vol. 5, Am Jur 2d (2007), Appellate Review, §514, it states:

§514. Waiver of Issues Not Argued. An appellate court will generally not consider issues that have not been briefed.

(citing, Comm. v. Spotz 18 A 3d 244, 323 (S.Ct. Penn., 2011) (Simple sentence in defendant's brief regarding failure to raise under relaxed waiver doctrine issue of direct appellate counsel's failure to raise jury instructions issue, did not constitute a developed or intelligible argument and thus, the issue was waived on appeal from denial of post-conviction relief).

And finally, in J. Toal, Appellate Practice in South Carolina, Second Edition, p. 55, it states the following principle with approval from State v. Austin 306 S.C. 9, 19, 409 S.E. 2d 811, 817 (S.C. App., 1991):

Appellate courts in this State, like well behaved children, do not speak unless spoken to and do not answer questions they are not asked.

Here, it is correct that Gatewood did not raise overtime in his grievances. However, SCDC raised and denied overtime to the extent Gatewood had demanded it, in its step 1 (R. p. 40) and step 2 (R. p. 44) decisions.

Moreover, Gatewood raised overtime in his ALC Notice of Appeal (R. p. 56). And, Gatewood briefed overtime on the merits (R. p. 119). In its brief, SCDC conceded inmates could perform overtime, but argued overtime was not ripe for review (R. p. 146). SCDC did not raise or brief issue preservation (R. pp. 146-147).

Gatewood contends overtime was preserved for review by the ALC because SCDC raised and denied overtime in its decisions. Although Gatewood had not demanded overtime in his grievances, the fact that SCDC raised and denied it should be sufficient to preserve the issue for review (J. Toal, Appellate Practice in South Carolina, Second Edition, p. 59; 73A C.J.S. (2004), Pub. Adm. Law and Proc., §471).

Gatewood further contends that, in the ALC, SCDC waived issue preservation by failing to argue it in its brief (vol. 5, Am Jur 2d (2007), Appellate Review, §514; Comm. v. Spotz). Gatewood also contends the ALC erred in raising issue preservation sua sponte (J. Toal, Appellate Practice in South Carolina, Second Edition, p. 55).

Finally, Gatewood contends he was entitled to overtime on the merits. In SCDC v. Cartrette 694 S.E. 2d 18, 20-22 (S.C. App., 2010) and SCDC v. Tomlin 694 S.E. 2d 25, 27-29 (S.C. App., 2010), the Court of Appeals held that inmates are entitled to overtime pay under §24-3-430(D).

SCDC did not argue that Gatewood was not entitled to overtime for hours worked in excess of his normal shift. SCDC argued the issue was not ripe

for adjudication until the ALC ruled on the \$4.00 per hour wage (R. p. 146). This, the ALC did, as discussed in issue 2 herein. Gatewood contends that, if this Court rules the issue was preserved, and also rules that §24-1-295 did not apply to any part of Gatewood's work (issues 2-6), the Court should also rule that Gatewood is entitled to overtime for any and all hours worked in excess of his normal shift (SCDC v. Cartrette and SCDC v. Tomlin).

Gatewood submits that the ALC's ruling that overtime was not preserved for review prejudiced his substantive rights because it was affected by other error of law, as discussed in the authorities cited herein; and was clearly erroneous in view of the relevant, probative, and substantial evidence on the whole record summarized herein (S.C. Code §1-23-610(B)(d)(e)).

- 8. The ALC erred in not granting Gatewood's request for pre and post-judgment interest, and to petition the ALC for costs and attorney fees, because this ruling was based on the ALC's erroneous ruling that SCDC could deduct security and overhead costs from Gatewood's \$4.00 gross wage under §24-1-295.**

The ALC agreed with Gatewood on the primary issue of entitlement to a \$4.00 per hour gross wage (R. p. 36). However, the ALC further held that §24-1-295 applied to allow SCDC to deduct security and overhead expenses from the \$4.00 wage (Id.). The ALC held that, in light of its ruling, Gatewood was not entitled to interest, costs and attorney fees (R. p. 38).

If this Court believes the ALC erred in applying §24-1-295, Gatewood contends he would be the prevailing party on the primary issue and thus

entitled to petition the ALC for costs and attorney fees. He would also be entitled to pre and post judgment interest on any back wages due.

Gatewood signed a fee contract with counsel in which counsel would be paid a percentage of any recovery, or S.C. Code §15-77-300(A) would apply in appropriate circumstances. That statute allows an award of attorney fees to a prevailing party contesting state action if the defendant agency acted without substantial justification in pressing its claim and there are no special circumstances making an award unjust.

Moreover, in McDowell v. DSS, 304 S.C. 539, 543, 405 S.E. 2d 830, 833 (S.C., 1991), the Supreme Court held that a plaintiff who petitions for judicial review in Circuit Court of a DSS decision is entitled to attorney fees because it is a "civil action" under §15-77-300.

Here, in his grievance Gatewood requested pre and post judgment interest, costs and attorney fees (R. p. 46). SCDC denied these requests in its initial response (R. p. 41) and final decision (R. p. 44). SCDC also denied the wage rate Gatewood had requested (Id.).

In the ALC, SCDC denied that Gatewood was entitled to the \$4.00 per hour gross wage (R. p. 131). Also, SCDC contended that security and overhead expenses were encompassed within the \$4.00 wage (R. p. 145).

Gatewood contends that, but for the ALC's ruling that §24-1-295 applies, Gatewood would have received a favorable decision. Therefore, if this Court reverses the ALC order under one or more of issues 2-6, Gatewood contends he

is the prevailing party, entitling him to petition for costs and attorney fees in the ALC (Douan v. Charleston County Council 645 S.E. 2d 241, 243 (S.C., 2007) (Prevailing party is party who successfully prosecutes an action by prevailing on the main issue and in whose favor the decision is rendered, the key factor being the degree of success obtained by the party seeking attorney fees). Gatewood also contends he would be entitled to pre and post-judgment interest on any back pay due.

If this Court reverses the ALC for its ruling pursuant to §24-1-295, Gatewood submits the ALC's ruling that he was not entitled to pre and post-judgment interest, costs and attorney fees, prejudiced his substantive rights because it violates S.C. Code §15-77-300; and was affected by other error of law as discussed in McDowell and Douan (S.C. Code §1-23-610(B)(a)(d)).

9. **The ALC erred in declining to consider the issue of whether SCDC should have to process grievance for all workers even if they had not personally filed because this was a stated issue in Gatewood's appeal and the ALC did not state that it was manifestly without merit.**

In its order, the ALC held that, because this case "...does not involve the grievances of other workers in the program..who never filed grievances" the ALC would not consider this issue (R. p. 30). Gatewood contends that he raised this issue in the ALC in his Statement of Issues on Appeal (R. p. 113), and argued it in his brief (R. p. 123). Furthermore, the ALC did not state that the issue was manifestly without merit (R. p. 30). Therefore, Gatewood contends the ALC should have considered the issue.

ALC Rule 60B(1), Statements of the Issues on Appeal, states in part, "(O)rdinarily, no point will be considered that is not set forth in the statement of issues on appeal". Moreover, ALC Rule 65 states that:

The Administrative Law Judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit.

Here, because Gatewood named this issue in his Statement of Issues on Appeal, argued it, and the ALC did not find it to be manifestly without merit, Gatewood contends the ALC erred in declining to address it.

Gatewood submits that the ALC's refusal to address this issue prejudiced his substantive rights because it was made upon unlawful procedure; and was affected by other error of law in the ALC rules cited herein (S.C. Code §1-23-610(B)(c)(d)).

10. The ALC erred in declining to enjoin SCDC from further wage violations because such ruling was appropriate in the circumstances.

The ALC held that this is a wage appeal and not an injunction action, and Gatewood never raised this issue in his step 1 or 2 or notice of appeal to the ALC (R. p. 38). Gatewood contends that injunctive relief is appropriate and should have been granted.

In S.C. Code §1-13-90(d)(9), it states that in complaints asserting violations of §1-13-80, unlawful employment practices, the court may enjoin the respondent employer from engaging in such practices. By analogy to the rule in §1-13-90, Gatewood contends the ALC should have enjoined SCDC from future violations as part of its relief to Gatewood.

Gatewood submits that the ALC's refusal to enjoin SCDC prejudiced his substantive rights because it was affected by other error of law (S.C. Code §1-23-610(B)(d)).

CONCLUSION

In conclusion, Gatewood respectfully requests this Court to reverse the ALC order and hold as follows:

1. The documents Gatewood proposed for the ALC record as described in section II(A)(C) of his Motion to Supplement are to be included in the ALC record.
2. Section 24-3-40 governs deductions from Gatewood's wages, not §24-1-295.
3. Section 24-1-295 does not govern deductions from Gatewood's wages up to August 1, 2007 because §24-1-295 cannot apply retroactively to pre-August 1, 2007 work.
4. Section 24-1-295 does not govern deductions from Gatewood's wages up to August 1, 2007 because it would divest Gatewood of his previously vested right to wages, and thus violate due process.
5. Section 24-1-295 does not govern deductions from Gatewood's wages up to August 1, 2007 because it would impair the obligations of contracts, in violation of South Carolina Constitution, §4.
6. Section 24-1-295's "other required deductions" clause did not apply because the clear and unambiguous terms of the contract indicate that security and overhead were to be paid by SCDC at its expense.

7. The issue of overtime compensation was preserved for ALC review and Gatewood was entitled to overtime pay if earned.

8. Gatewood's ALC request for pre and post-judgment interest, and to petition for costs and attorney fees, should have been granted.

9. The ALC should have considered the issue of whether SCDC must process grievance for all workers.

10. The ALC should have enjoined SCDC from further wage violations as part of its relief to Gatewood.

11. Gatewood respectfully requests a remand to the ALC to:

(a) include in the record those documents listed in Gatewood's Motion to Supplement Record II(A)(C);


(b) allow Gatewood to petition for costs and attorney fees;

(c) consider the issue of SCDC having to process grievance for all workers;

(d) enjoin SCDC from future wage violations;

(e) remand to SCDC to calculate Gatewood's back wages at \$4.00 per hour, less any deductions applicable to Gatewood under §24-3-40(A); calculate any overtime pay earned at \$6.00 per hour; calculate pre and post-judgment interest at 8 3/4%; and pay these amounts, plus costs and attorney fees as directed by the ALC; all as set forth in Gatewood's ALC brief, pp. 12-13.

Respectfully submitted,



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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

Docket No. 07-ALJ-04-00517-AP

Fred Gatewood..... Appellant,

v.

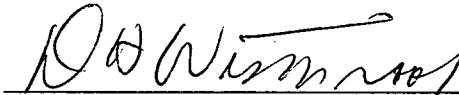
South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2014-001199

PROOF OF SERVICE

I certify that I have served 1 copy of the final Brief of Appellant and final Reply Brief of Appellant, and 1 copy of the Proof of Service and Certificate, on Respondent SCDC by depositing them in the U.S. Mail, postage 1st class prepaid, on December 11, 2014, addressed to its attorneys of record, Lake Summers, Esq. and Katherine Phillips, Esq., of Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Ste. 200, Columbia, SC 29201.

December 11, 2014.



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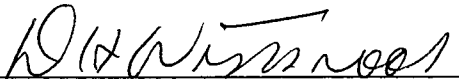
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CERTIFICATE OF COUNSEL

The undersigned certifies that Appellant's final Brief of Appellant
and final Reply Brief comply with SCACR 211(b).



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