

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2019-000995

Amber Geohaghan

Appellant

v.

South Carolina Department of Employment and Workforce and
South Carolina Department of Social Services,

Respondents.

INITIAL REPLY BRIEF

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SC Court of Appeals

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ARGUMENTS

The question presented in this case is whether DEW and the ALC could have decided that Appellant lacked good cause to resign her employment without deciding what the term “good cause” means. That question must be answered in the negative.

Appellant submits that the meaning of the term “good cause” as it is used in S.C. Code Ann. § 41-35-120(1) is a question of law and that the ALC erred when it upheld DEW’s decision that Appellant lacked good cause to resign under a substantial evidence standard of review. In Stone Mfg. Co. v. S. C. Emp’t Sec. Com., 219 S.C. 239, 64 S.E. 2d 644 (1951), the South Carolina Supreme Court considered the meaning of the term “good cause” in Section 5(a) of the South Carolina Unemployment Compensation Law Section 7035-85(a), Code of 1942, the predecessor to the statute at issue in this case, S.C. Code Ann. § 41-35-120(1). In order to resolve the meaning of that term, the Stone Court resorted to “the cardinal rule of statutory construction”, that is, “determining and giving effect to the intent of the legislature.” Stone, 219 S.C. at 244, 64 S.E.2d at 645 (1951). Questions of statutory interpretation are questions of law. *See e.g.* Hopper v. Terry Hunt Constr., 373 S.C. 475, 646 S.E.2d 162 (Ct. App. 2007); CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011). It follows that Stone Mfg. stands for the proposition that the meaning of good cause in S.C. Code Ann. § 41-35-120(1) is a question of law.

Here, however, the ALC held that the meaning of good cause in S.C. Code Ann. § 41-35-120(1) has already been established and, as a result, all that remained to determine whether Appellant had good cause to resign was for DEW to make factual findings regarding the

existence of good cause. The ALC then applied a substantial evidence standard of review to DEW's finding that Appellant lacked good cause to resign. Order Denying Motion for Rehearing, May 16, 2019, p.2; Amended Order, May 16, 2019, p. 4. Because the meaning of the term "good cause" in S.C. Code Ann. § 41-35-120(1) is a question of law, the ALC erred in failing to apply a *de novo* standard of review to Respondent DEW's finding that Appellant lacked good cause to resign.

I. RESPONDENTS' ATTEMPTS TO AVOID THE HOLDING IN STONE MFG. ARE UNAVAILING.

There is no dispute that questions of statutory interpretation are questions of law. (DSS Initial Br., p.3); (DEW Initial Br., p. 10). Instead, Respondents seek to avoid the implications of Stone Mfg. by, in the case of DEW, denying that the case is relevant here and, in the case of DSS, arguing that the Stone Mfg. Court went further than it did. Both positions lack merit.

DEW argues that Stone Mfg. is not binding precedent and does not even inform this Court's analysis. (DEW Initial Br., p. 10). In support of its position, DEW first points to the fact that Stone Mfg. was decided before the APA was enacted. However, DEW fails to explain how the APA's enactment could have affected the result in Stone Mfg. or undermined its precedential value. If, as the Stone Mfg. Court held, the meaning of good cause in the South Carolina Unemployment Compensation Law is a matter of statutory interpretation and a question of law, that holding is unaffected by the APA which preserves *de novo* appellate review of such questions. S.C. Dep't of Revenue v. Blue Moon of Newberry, Inc., 397 S.C. 256, 260, 725 S.E.2d 480, 483 (2012) ("We will correct the decision of the ALC if it is affected by an error of

law, S.C. Code Ann. § 1-23-380(5)(d) (Supp. 2010), and questions of law are reviewed de novo.”)

DEW also asserts that Stone Mfg. is not informative here because it interpreted a different statute from S.C. Code § 41-35-120(1). (DEW Initial Br., 10). The Stone Mfg. Court interpreted the phrase “voluntarily without good cause” in the predecessor to S.C. Code Ann. § 41-35-120(1). Stone Mfg. Co., 219 S.C. at 243, 64 S.E.2d at 645. The statute at issue in the instant case uses the phrase “voluntarily, without good cause” in the same context as its predecessor. S.C. Code Ann. § 41-35-120(1). The statute at issue here is derived from the statute at issue in Stone Mfg. and uses language virtually identical to its predecessor. South Carolina Courts have regularly relied on cases interpreting earlier statutes when they contained similar language. *See e.g. Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 563 S.E.2d 331 (2002); State ex rel. Condon v. City of Columbia, 339 S.C. 8, 17, 528 S.E.2d 408, 412 (2000). Indeed, as early as 1918 the South Carolina Supreme Court held that, where a statute had been interpreted by the Court and subsequently amended by the legislature, the Court must assume that the legislature knew of the Court’s interpretation and used certain language in the amended statute intentionally and with the Court’s interpretation in mind. Stone v. Greenville, 111 S.C. 78, 81, 96 S.E. 520, 521 (1918). Further, where the statute at issue is derived from and is virtually identical to predecessor statutes, this Court has deemed cases interpreting those predecessor statutes to be controlling authority. Reed v. Medlin, 284 S.C. 585, 589, 328 S.E.2d 115, 118 (Ct. App. 1985). The legislature’s addition of a comma to S.C. Code Ann. § 41-35-120(1) does not render Stone Mfg. irrelevant. Instead, the Stone Mfg. Court’s treatment of the

meaning of good cause in the South Carolina Unemployment Compensation statute as a question of law remains both informative and binding here.

DEW's argument that Stone Mfg. is neither binding nor informative also fails for another reason. The ALC based its decision to apply a substantial evidence standard of review on its holding that the meaning of the term "good cause" had already been decided. Order Denying Motion for Rehearing, May 16, 2019, p. 1. The only South Carolina authority that the ALC cited for this proposition was Stone Mfg. In arguing that Stone Mfg. is neither binding nor informative, DEW removes the lynchpin of the ALC's decision while at the same time arguing that it should be affirmed. DEW cannot have it both ways.

While DEW seeks to undermine Stone Mfg., DSS attempts to draw conclusions from it which do not follow. DSS argues that the ALC was correct when it held that the meaning of good cause in S.C. Code Ann. § 41-35-120(1) was "settled" and that the ALC properly applied that settled legal standard to the factual record before it. (Initial Br. of Resp., p. 4). DSS cites no authority for the proposition that the meaning of a statutory term becomes settled for all time and all cases once the statute in question has been interpreted a single time. Nor does DSS offer any cogent reason why resort to legislative intent was necessary to determine the meaning of good cause in Stone Mfg. but that analysis is unnecessary in the instant case.

Further, DSS' position on the meaning of good cause is inconsistent with its position that the meaning of that term is settled. DSS argues that, by relying on Stone Mfg., Appellant is seeking to transform any cause connected with employment into good cause. (Resp. Br., p. 5). Yet, Stone Mfg. is the only South Carolina authority on the meaning of good cause in the context

of a person's entitlement to unemployment benefits after voluntarily resigning. If the meaning of good cause in that context is settled, then it was the Stone Mfg. Court that settled it and "good cause" simply means "a cause attributable to or connected with [a] claimant's employment." Stone Mfg., 219 S.C. at 247, 64 S.E.2d at 647 (1951). In order to say that "good cause" means anything more than that, a court or administrative tribunal must engage in statutory interpretation and must also be subject to *de novo* review on appeal.

DSS cannot have it both ways. If the meaning of good cause is settled, then that term means just what the Stone Mfg. Court said it means and cause for resignation need only be attributable to or connected with a claimant's employment in order to be good cause. Respondents do not seem to dispute that Appellant's cause for resigning was attributable to or connected with her employment and the record contains no finding to the contrary. As a result, if the meaning of good cause is settled, as the ALC held, then Appellant is entitled to unemployment benefits without disqualification. However, if there is more to be said on the meaning of good cause than the Stone Mfg. Court said, then the meaning of that term is a question of statutory interpretation and a question of law. Because the ALC treated this question as one of fact and granted DEW unwarranted deference under a substantial evidence standard of review, its decision must be reversed.

II. RESPONDENT DEW INCORRECTLY PRESUMES THAT THE EXISTENCE OF A QUESTION OF FACT PRECLUDES THE EXISTENCE OF A QUESTION OF LAW.

DEW argues that the ALC was correct in its use of a substantial evidence standard of review on the question of whether Appellant had good cause to resign because whether the facts of a case were properly applied to a statute is a question of fact. (DEW Initial Br., p. 11). Appellant does not dispute that a determination as to whether certain facts meet a statutory definition is itself a question of fact subject to substantial evidence review on appeal. However, ascertaining the meaning of that statutory term is still a question of law subject to *de novo* review.

The case of Bursey v. Dept. of Health & Envir. Control demonstrates the appropriate framework for analyzing a question similar to that presented here. 369 S.C. 176, 631 S.E.2d 899 (2006), *overruled on other grounds by Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). In Bursey, the South Carolina Supreme Court addressed whether a utility's activities met an exception to a statutory permitting requirement and held that this was a mixed question of fact and law. There was a question of law in determining the meaning of the statutory term, and a question of fact in determining whether the activities in question met that definition. Bursey, 369 S.C. at 184, 631 S.E.2d at 904. The Bursey Court went on to apply different standards of review to these questions. First, on the meaning of the statutory term, the Court applied the APA's "affected by an error of law" standard of review. Second, on the issue

of whether the utility's activities fell within the meaning of the statutory term, the Court applied a substantial evidence standard of review. Id.

The same kind of inquiry is necessary here. The meaning of the term "good cause" in S.C. Code Ann. § 41-35-120(1) is simply not ascertainable without resort to legislative intent and other canons of statutory interpretation. The only South Carolina court to have analyzed the question presented here engaged in just such an inquiry. Stone Mfg., 219 S.C. at 244, 64 S.E.2d at 645 (1951). As a result, the ALC erred when it failed to engage in that inquiry and granted DEW unwarranted deference.

III. RESPONDENTS MISINTERPRET THE RECORD AND APPELLANT'S ARGUMENTS.

DSS states that whether Appellant had a justified fear for her safety that was connected with her employment was a question of fact that DEW resolved against Appellant and that the ALC found sufficient evidence in the record to support this finding. (DSS Initial Br., p. 6). This statement is inaccurate. The DEW Appellate Tribunal explicitly found that Appellant's concerns for her safety were justified. Appellate Tribunal Decision, p.2, mailed July 6, 2018. Neither the DEW Appellate Panel nor the ALC took issue with this finding and it has not been challenged on appeal. Appellate Panel Decision, mailed August 29, 2018; Amended Order, filed May 16, 2019. It cannot be disputed for the first time now.

Second, DEW asserts that Appellant does not disagree with the DEW Appellate Panel or the ALC in their interpretation of S.C. Code Ann. § 41-35-120(1) and that "the [DEW Appellate]

Panel, the ALC, Appellant, and DEW are all in agreement on the law to be applied.” (DEW Initial Br., p. 11). This is not the case. Indeed, fully half of Appellant’s argument to the ALC was that she had good cause to resign as a matter of law based on the undisputed fact that her fear for her safety was justified. Appellant’s Brief to ALC, November 13, 2018, pp. 7-8. In support of her argument, Appellant cited numerous cases from other states holding that genuine fear for one’s safety constitutes good cause to resign or renders such resignation involuntary. *Id.*, pp. 7-8. The ALC rejected Appellant’s argument, instead deferring to the DEW Appellate Panel’s decision that Appellant lacked good cause to resign. Amended Order, May 16, 2019, p. 7. That this appeal involves primarily the appropriate standard of review on the question of good cause does not change the fact that Appellant has consistently argued for a different interpretation of the meaning of good cause in S.C. Code Ann. § 41-35-120(1) than the DEW Appellate Panel and the ALC applied.

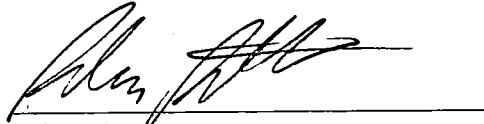
CONCLUSION

This Court should reverse the judgment of the Administrative Law Court and find that Appellant is entitled to unemployment benefits without disqualification. In the alternative, this Court should remand this case to the Administrative Law Court because that court erroneously applied a substantial evidence standard of review to the question of whether Appellant had good cause to resign.

(signature to follow)

Respectfully submitted,

January 2, 2020

A handwritten signature in black ink, appearing to read 'Adam Protheroe', is written over a horizontal line.

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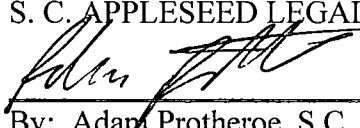
I certify that I have served the **INITIAL REPLY BRIEF** on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on the date below addressed to their attorneys of record:

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**RE: Amber Geohaghan v. SC Dept. of Soc. Serv. and S.C.D.E.W.
Appellate Case No. 2019-000995**

Dear Ms. Kitchings:

Please find enclosed the original and one copy of Appellant's Initial Reply Brief along with a Certificate of Service. Please file the original and return one clocked copy to me. By copy of this letter I am serving these documents upon the parties or counsel listed below.

With kind regards, I am

Sincerely,



Adam Protheroe
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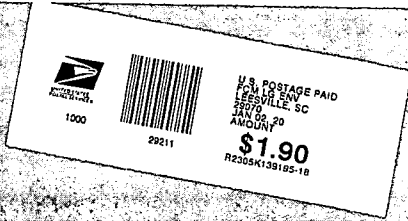
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