THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case No. 2017-002455
Case No. 16-ALJ-30-0410-CC

Wayne's Automotive Center, Inc., ... Appellant-Respondent,

v.

South Carolina Department of Public Safety, ... Respondent-Appellant.

REPLY BRIEF OF RESPONDENT-APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

ARGUMENTS

I. The Administrative Law Court erred in finding that Wayne's Automotive Center was justified in holding the cargo until the owner or its designee or insurer was prepared to take possession where such a ruling is contrary to Section 56-5-3635(F), which was clearly violated by Wayne's Automotive Center and supports the disciplinary action imposed.

The Respondent-Appellant South Carolina Department of Public Safety ("SCDPS") contends that the suspension and removal of the Appellant-Respondent Wayne's Automotive ("Wayne's") from the Wrecker Rotation List was further warranted based upon Wayne's deliberate refusal to comply with S.C. Code Ann. § 56-5-3635(F), which provides: "The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must release any personal property that does not belong to the owner of the vehicle to the owner of personal property." *See*, S.C. Code Ann. § 56-5-3635(F).

In its brief, Wayne's appears to offer two arguments in response. First, Wayne's contends that SCDPS failed to consider and apply the first sentence of S.C. Code Ann. § 56-5-3635(F), which provides: "After the vehicle is in the possession of the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop, the owner of the vehicle as demonstrated by providing a certificate of registration has one opportunity to remove from the vehicle any

personal property not attached to the vehicle." *See*, S.C. Code Ann. § 56-5-3635(F). Relying on that provision, Wayne's insists that it was lawfully entitled and justified to hold the cargo because it was not provided a "certificate of registration" showing "who had title to the cargo in question." This is a meritless argument on several levels.

First, Wayne's has certainly not shown nor argued that, when it finally did release the cargo on March 7, 2016, it was provided a "certificate of registration" for the dog food. Instead, it released the cargo only upon receiving payment from Premier Transportation.

Second, the first sentence of S.C. Code Ann. § 56-5-3635(F) applies only to the removal of the property of the vehicle owner, not the property of a third party. The second sentence of the statute applies to the release of "any personal property that does not belong to the owner of the vehicle," i.e. the cargo in this instance.

Third, the reference in the statute to "certificate of registration" is obviously a reference to the ownership *of the vehicle* and not to the ownership of the cargo. There is no evidence that dog food even carries a "certificate of registration." Thus, the first sentence of S.C. Code Ann. § 56-5-3635(F) does not justify or excuse what obviously was Wayne's actions in unlawfully holding the cargo hostage until its bill

was paid.[1] Instead, it is clear that Wayne's has violated S.C. Code Ann. § 56-5-3635(F), as had been determined by SCDPS as a basis for the disciplinary action taken against Wayne's.

As a second argument, Wayne's has backed away to some extent from its position in the Administrative Law Court that the dog food is "commercial property" which is somehow not "personal property." Now, Wayne's argues instead that the dog food is not "personal property" because it does not fit the examples of "personal items" described in Regulation 38-600(C)(6), where the regulation refers to "personal items *such as* medicines, medical equipment, keys, clothing, and tools of the trade, child restraint systems and perishable items." *See*, S.C. Code of Regulations R. 38-600(C)(6). (Emphasis added). The use of the term "such as" shows that this was not intended to be an exhaustive list but rather a mere list of examples. *See*, *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395, 397 (1994) (use of term "include" suggests that list is not exhaustive). At any rate, the inclusion of the term "perishable items" in the list would cover the dog food in this case. By Sherry Corbett's own admission, the 40,000+ pounds of dog food was perishable and contained an expiration date. (R. 529-530, 1048).

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[1] Wayne's intentions in holding the cargo are unmistaken. On February 16, 2016, Sherry Corbett emailed Bob Watson at 9:52 a.m. stating that "[t]he cargo, trailer, and tractor will be released when monies are paid for services already rendered as previously stated to the company representative and the insured on site the day of casualty." (R. 1041). There was never a request for a "certificate of registration" for the dog food to be released. That is nothing less than a *post hoc* rationalization offered by Wayne's that is disingenuous and beyond credulity.

In sum, the evidence in the record is clear, undisputed and overwhelming to show Wayne's was requested on numerous occasions to release the tractor-trailer's cargo and refused to do so until payment of the tow bill was made. That is a clear violation of S.C. Code Ann. § 56-5-3635(F). The Administrative Law Court erred in its interpretation and application of S.C. Code Ann. § 56-5-3635(F).[2]

II. The Administrative Law Court erred in analyzing the reasonableness of the charges on the final "corrected" invoice submitted by Wayne's Automotive Center after the initiation of the investigation rather than the reasonableness of the charges on the invoice submitted with Premier Transportation's complaint that triggered the investigation.

In its analysis of the reasonableness of the invoices submitted by Wayne's, the Administrative Law Court ruled that it was only appropriate to evaluate the reasonableness of the final "corrected" invoice submitted by Wayne's which was ultimately paid by Premier Transportation after the complaint was lodged to SCDPS and "corrections" were made as a result. The Court reasoned that "Petitioner prepared and submitted revised bills as directed; therefore, it cannot be held responsible for alleged violations that it subsequently corrected." (R. 19).

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[2] In its brief, Wayne's also suggests that SCDPS did not sustain its burden of proving a violation of S.C. Code Ann. § 56-5-3635(F). In addition to not submitting the non-existence "certificate of registration" for the dog food, Wayne's, in a conclusory and unclear manner, complains of a lack of evidence of "related matters, including, but not limited to, insurance, hold harmless provisions, and tax consequences." *See*, Wayne's Respondent's Brief, p. 6. Wayne's fails to show, however, the relevance of such "related matters."

SCDPS disagrees. The applicable regulations require that the "[f]ees charged for rotation list calls *shall be reasonable* and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private person." *See*, S.C. Code of Regulations R. 38-600(F)(2). (Emphasis added). The regulation does not require the fees that are ultimately paid – after complaint and negotiation – to be reasonable. It requires the fees that are charged by the towing company to be reasonable. In its brief, Wayne's complains that the invoice charging the $69,017.19, which was the one evaluated by SCDPS, was unfairly judged because Wayne's had not had the benefit of Lt. King's report when that invoice was submitted. Yet, it is the *initial* responsibility of Wayne's to charge reasonable fees. That does not become its responsibility only after a complaint is made by the trucking company and SCDPS evaluates the charges as part of its investigation.

In its opening brief, SCDPS also complained that the Administrative Law Court's decision to evaluate only the final "corrected" invoice was not supported by any legal authority. In its brief, Wayne's counters in a conclusory manner to cite several "authorities" to support that ruling, including Biblical references to the Matthew 21:28-31 (which was also included by footnote in the ALC Final Order) and the "Golden Rule" as articulated in the Gospels of Matthew and Luke. Biblical parables, however, are not proper bases or authorities for upholding a legal ruling.

Case in point is the rejection of the "Golden Rule" as an argument that can be made to a jury. *See*, *Brown v. State*, 383 S.C. 506, 680 S.E.2d 909 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738 (2004).

Wayne's also cites to the cases of *Joseph v. South Carolina Department of Labor, Licensing and Regulation*, 417 S.C. 436, 790 S.E.2d 763 (2016) and *Home Health Service, Inc. v. South Carolina Tax Commission*, 312 S.C. 324, 440 S.E.2d 375 (1994), without providing any substantive analysis to demonstrate how those decisions are supporting authority for the Administrative Law Court's ruling in this case.[3] At any rate, those cases address whether an agency's internal memorandum or position statement should be treated like a regulation, which has the force and effect of law. S.C. Code Ann. § 1-23-10(4) provides that a regulation is an "agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law." *See*, S.C. Code Ann. § 1-23-10(4). That analysis, however, has no bearing in the case at bar. The requirement by SCDPS that a towing company responding to a rotation charge only reasonable fees *is established by regulation*, specifically Regulation 38-600(F)(2),

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[3] It is well settled that "an issue is deemed abandoned on appeal, and therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority." *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285, n.3 (Ct. App. 1993). *See also*, *Glasscock, Inc. v. United States Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001). This appellate rule should be equally applicable to an argument made in a conclusory manner by a respondent.

which does have the force and effect of law and may be properly enforced against Wayne's. Those cases, in short, do not provide any support for the ruling of the Administrative Law Court -- contrary to Wayne's apparent suggestion.

In conclusion, SCDPS requests that this Court find that it was correct in evaluating the reasonableness of the charges included in the $69,017.19 invoice rather than the charges included in the final invoice for $48,633.19 that Premier ultimately paid. Moreover, it is appropriate to evaluate the unreasonable charges included in the $69,017.19 invoice that support and justify the disciplinary action imposed by SCDPS, including the examples set forth in SCDPS's opening brief that were rejected in error by the Administrative Law Court because they had been deducted, altered or otherwise "corrected" in the final invoice.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent-Appellant South Carolina Department of Public Safety respectfully requests that this Court affirm the suspension and removal of Wayne's Automotive from the Wrecker Rotation List but also requests that the Court correct the legal and factual errors identified in its cross-appeal.

Respectfully submitted,

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September 24, 2018

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondent-Appellant South Carolina Department of Public Safety certifies that the Final Reply Brief complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondent-Appellant South Carolina Department of Public Safety certifies that the Final Reply Brief complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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