

decided, or actions to be taken before the ALC and the Court should clarify the effect of its Order is to overturn the Department's decision and to end the case so the parties can move forward with an appeal. LMC has no objection to Providence's request for clarification regarding the impact of the Order on the pending contested case and whether it voids the Department's amendment of the conditions of COPA-97-01.

In response to the parties' requests, the Court now clarifies the effect of its Order. In this matter, PHM seeks to purchase Providence's assets and bring them within the coverage of its existing COPA, COPA-97-01. The Department reviewed the transaction and determined Providence's assets could be included under the COPA by amending it to add additional conditions. LMC contested the Department's decision to amend the COPA to include Providence's assets under its coverage. LMC and PHM both filed motions for summary judgment. As a result of this Court's legal analysis of the parties' summary judgment motions, the Court determined as a matter of law that PHM's acquisition of the Providence assets did not qualify for a new COPA and the assets could not be brought under the existing COPA through an amendment. Neither party had advocated for the legal interpretation the Court ultimately decided was correct, and therefore, the Court denied both parties' motions for summary judgment. Nevertheless, the ultimate effect of the Court's interpretation of the law nullified the Department's decision to amend and/or add additional conditions to the COPA to allow the Providence assets to be covered under it. As a result, there are no further facts or legal arguments to develop and the Court's Order is essentially a final order. *See Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010) ("A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.").

PHM Motion to Reconsider

PHM filed its Motion to Reconsider pursuant to Rule 29(D) of the Rules of Procedure for the Administrative Law Court (SCALC Rules) and Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP). SCALC Rule 29(D) provides, in part, that a party "may move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision." Generally, an order denying summary judgment is an interlocutory order, and not a final order, making a motion for reconsideration procedurally inappropriate. *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 338, 574 S.E.2d 502, 511 (Ct. App. 2002) ("Generally,

the denial of a motion for summary judgment is not immediately appealable.”). However, because the Court has clarified that the effect of its Order is to end the case, like a final order, the Court will consider the parties’ motions to reconsider. *See Charlotte-Mecklenburg Hosp. Auth.*, 387 S.C. at 267, 692 S.E.2d at 895 (“A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.”); S.C. Code Ann. § 1-23-610(A)(1) (Supp. 2019) (“For judicial review of a **final decision** of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge.” (emphasis added)).

Sua Sponte Argument

In its Motion to Reconsider, PHM argues the Court improperly raised and ruled upon issues *sua sponte* that PHM had neither notice nor opportunity to address, which is an error of law. Specifically, PHM requests the Court reconsider, alter, and amend its Order by striking the following findings and conclusions from its Order because they were raised *sua sponte* by the Court:

- The Court *sua sponte* raised the issue that the proposed transaction is not the kind of transaction regulated by the COPA Act.
- The Court *sua sponte* raised the issue and concluded that the specific issue in this case is whether an amendment to the existing COPA is appropriate under the facts of this case.
- The Court *sua sponte* raised the issue that the proposed transaction completely changed the nature of the original cooperative agreement.
- The Court *sua sponte* raised the issue that the existing COPA is only applicable to the assets owned by the sponsoring organizations when the COPA was issued.
- The Court *sua sponte* raised the issue that a single hospital operating pursuant to a COPA approved joint operating agreement cannot acquire new assets and have the new assets protected under the existing COPA.
- The Court *sua sponte* raised the issue that the proposed transaction did not comply with the purposes of the COPA Act.

All of these issues that PHM asserts the Court raised *sua sponte* were necessary and vital considerations to the Court’s analysis of the issues raised by the parties in their summary judgment motions. *Contra Henry v. Chambron*, 304 S.C. 351, 355, 404 S.E.2d 518, 520 (Ct. App. 1991)

(“The circuit court also erred in finding Chambron violated a restriction requiring architectural review of proposed home plans. The alleged violation was not raised by the pleadings, nor was it tried by consent.”). For example, in its motion for summary judgment, LMC argued the proposed transaction required a new COPA application. In evaluating this argument, the Court had to consider whether the type of transaction at issue warranted a new COPA application and that legal analysis necessarily included analyzing whether the transaction represented a cooperative agreement, which is the foundational document upon which a COPA is granted. Therefore, the Court’s determination that this transaction was not regulated by the COPA Act because it could not qualify as a cooperative agreement under the Act, sprang directly from its analysis of LMC’s argument on summary judgment. Similarly, the Court finds it particularly absurd to suggest that “whether an amendment to the existing COPA is appropriate under the facts of this case” was an issue raised *sua sponte* by the Court when, again, one of LMC’s primary summary judgment arguments was that a new application rather than an amendment was necessary in this case. LMC thus specifically raised this issue. The Court likewise concludes that all of the issues the Court allegedly raised *sua sponte* were either directly raised by the parties or were necessary derivative legal considerations of the issues raised by the parties.

Further, PHM’s Motion to Reconsider suggests this Court was bound to choose one of the parties’ legal theories to resolve the case whether or not the theory was correct or, in the alternative, the Court was forbidden to engage in statutory construction, such as analyzing and considering the purpose of the COPA Act, when the purpose of the COPA Act was not a specific issue raised by the parties. However, a court is not required to choose one of the legal interpretations advocated by the parties in resolving a legal issue. To hold otherwise could nonsensically force the Court to choose between two legally incorrect interpretations, which would not only create bad precedent but would defile the very purpose of the Court to objectively interpret the law as it is written by the legislature, not as it is interpreted by the parties. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.”); *McClanahan v. Richland Cty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002) (“All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.”). To the

extent PHM suggests the Court must confine its analysis to the parties' interpretations to the exclusion of analyzing the law for itself, the Court's heartily rejects such an argument.

In sum, the Court did not consider any statute or regulation that was not raised and addressed by the parties. Rather, the Court interpreted the implications of those statutes and regulations differently than the parties when applied to the facts of this case. A court's duty is to properly apply the law and, in exercising that function, a court must be free to make impartial decisions based solely on fact and law.

Interpretation of the COPA Laws

PHM argues the Court committed errors of law when it misapprehended or misinterpreted the COPA Act, the COPA Regulations, and COPA-97-01. First, PHM asserts the Court misapprehended the relationship between the existing cooperative agreement and conditions of the existing COPA. Specifically, PHM asserts that the intention of the existing cooperative agreement is to create a vertically, horizontally, and geographically integrated health care delivery system that allows for new assets to be added. PHM argues the Court's decision in its Order "legislates that a COPA is a stagnant determination based on the original application and cannot later be modified to add additional assets." This is a gross misinterpretation of the Court's holding.

The Court never held that a cooperative agreement and/or COPA could not be amended to include additional assets. The Court's determined that Providence's assets could not be included under the existing COPA based upon applying the law **to the facts of this case**. The Court is aware that PHM previously incorporated a new greenfield hospital under the COPA and the Court's Order neither addressed that addition of assets nor made a blanket determination stating that no assets could ever be added to the COPA's coverage. Moreover, the Order specifically noted that there was no controversy over the Department's general authority to approve amendments to COPAs.

Ultimately, the Court interpreted the meaning of the words of the statutes and regulations and reached a legal conclusion as to what the legislature meant by its use of that wording. The Court did not by any means apply a meaning beyond the words and phrases utilized by the General Assembly. In fact, although PHM asserts the Court's Order was legislating, PHM offered no explanation to support its assertion other than the Court applying its independent reasoning to reach a legal conclusion in this case.

Second, PHM argues the Court misapprehended the Department's authority under section 508 of Regulation 61-31 to evaluate the proposed change to the COPA when the Court determined the addition of the Providence assets would completely change the nature of the original cooperative agreement. The Court finds it thoroughly considered the application of § 508 and there is nothing to alter or amend.

Finally, PHM argues the Court failed to rule on two issues that were raised in summary judgment which it should have addressed. First, PHM asserts the Court failed to rule on LMC's assertion that the Department interpretation of the phrase "another review" in § 508 was arbitrary, capricious, and manifestly contrary to law. Second, PHM asserts the Court failed to rule on LMC's assertion that, as-applied, section 508 is void for vagueness. As the Court explained in its Order, it did not address these issues because, after having concluded that an amendment under § 508 was not appropriate in this case, the Court did not need to make a determination regarding those issues. The Court continues to decline to engage in an analysis of § 508 that would merely be an exercise in dicta.

LMC's Response

LMC agrees the effect of the Court's Order was to overturn the Department's decision that is the subject of this contested case. However, LMC notes in its response that "[t]he denial of a motion for summary judgment does not bar a party from making a later motion for summary judgment based on matters not involved in the decision on the first motion." *Crosswell Enterprises, Inc. v. Arnold*, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992). And, "[i]f the first motion for summary judgment is unsuccessful the court has the power to permit a second motion for summary judgment prior to trial." *Id.* LMC submits that a second motion for summary judgment may be appropriate on one of the legal arguments it raised in its Petition for Administrative Review, Request for Contested Case Hearing, and its Prehearing Statement, namely: "DHEC does not have the authority to 'update' or 'amend' the ongoing conditions of COPA-97-01, originally issued to [Baptist Health System] and [Richland Memorial Hospital] on October 6, 1997, in order to include PHM's proposed acquisition of [the Providence] assets."

LMC did not specifically frame any of its issues in its summary judgment motion like it framed the issue above, nor has LMC filed a new motion for summary judgment on this issue or specifically requested the Court give it leave to do so. As stated above, although the Court's legal reasoning in resolving the issue was different than LMC's legal reasoning, the Court's Order

resolves this issue LMC previously raised in its prehearing statement because the Court found an amendment to the COPA was not an appropriate vehicle for covering the Providence assets under the facts of the case. Accordingly, a second motion for summary judgment is unnecessary to resolve this issue LMC previously raised. Moreover, all parties appear to agree that the effect of the Court's Order is to end the controversy and overturn the Department's decision in this case. Therefore, there is simply no reason to hold a contested case hearing or otherwise prolong the case when it is ripe for appeal.

ORDER

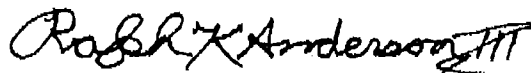
IT IS THEREFORE ORDERED that PHM's Motion to Clarify this Court's Order Denying Cross-Motions for Summary Judgment issued on November 2, 2020 is GRANTED.

IT IS FURTHER ORDERED that Providence's Motion to Reconsider is GRANTED to the extent it requested clarification of the effect of this Court's Order Denying Cross-Motions for Summary Judgment issued on November 2, 2020.

IT IS FURTHER ORDERED that this Court's Order Denying Cross-Motions for Summary Judgment that was issued on November 2, 2020, effectively ended the contested case before the Court and the parties shall treat it as a final order for the purposes of appeal.

IT IS FURTHER ORDERED that PHM's Motion to Reconsider is DENIED.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

December 7, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Perez
Judicial Law Clerk

December 7, 2020
Columbia, South Carolina

EXHIBIT B

*Order on Motion to Clarify and Motions to
Reconsider (Amended Final Order)
20-ALJ-07-0108-CC*

*Ralph King Anderson, III
Chief Administrative Judge
December 7, 2020*