STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2018-001868
Case No. 18-ALJ-07-0003-CC

South Carolina Department of Health and Environmental Control,

Appellant/Respondent,

v.

James W. Davenport,

Respondent/Appellant.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL'S SUPPLEMENTAL BRIEF IN LIGHT OF *TOWN OF ARCADIA LAKES V. S.C. DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL*

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INTRODUCTION

Pursuant to the Court's March 24, 2021 letter, the South Carolina Department of Health and Environmental Control ("DHEC" or "Department") submits this supplemental brief in light of the Court's decision in *Town of Arcadia Lakes v. S.C. Dep't of Health & Envtl. Control*, Op. No. 5803 (S.C. Ct. App. Filed Feb. 2, 2021) (Shearhouse Adv. Sh. No. 5 at 53) (Pet. for Reh'g Den., Mar. 25, 2021). The Court's holding in *Arcadia Lakes* that a contested case before the Administrative Law Court ("ALC") is not a "civil action," as used in the State Action Statute ("the SAS"), S.C. Code Ann. Section 15-77-300, is supported by a plain reading, its context in the S.C. Code of Laws, and precedent distinguishing civil and administrative cases. Moreover, the General Assembly has not conferred upon the ALC authority to award attorney's fees and costs.

In this matter, the ALC awarded attorney's fees to James Davenport pursuant to the SAS for fees incurred during a contested case hearing. In light of *Arcadia Lakes*, the Department respectfully requests the Court reverse the ALC's orders awarding attorney's fees.

ARGUMENT

The relevant section of the SAS reads:

> In any *civil action* brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:
>
> (1) the court finds the agency acted without substantial justification in pressing its claim against the party; and
>
> (2) the court finds that there are no special circumstances that would make the award of attorney's fees unjust.

S.C. Code Ann. § 15-77-300(A) (emphasis added). In *Arcadia Lakes*, the Court considered the question of whether a contested case before the ALC is a "civil action" and answered it was not. The Court was correct for the following reasons.

I. The Court properly interpreted the SAS, utilizing the plain meaning of "civil action."

A plain reading of the SAS supports the Court's holding. "The primary purpose in interpreting statutes is to ascertain and effectuate the intent of the legislature." *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010). "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). As a result, courts will "give words their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). In *Arcadia Lakes*, the Court properly determined "[a] plain reading of the words 'civil action' does not encompass contested administrative cases; a civil action 'is a proceeding in a judicial court, not an administrative court.'" In this matter, the ALC determined "the customary meaning of civil action is simply a judicial proceeding conducted to determine one's private or civil rights." (R. p. 72). The ALC overlooked, however, that it does not oversee judicial proceedings.

The ALC is an agency within the executive branch of government, not the judicial branch. *See* S.C. Code Ann. § 1-23-500. As prescribed by statute, the ALC is the forum for administrative review of administrative decisions. *See Amisub of South Carolina, Inc. v. S.C. Dep't of Health & Envtl. Control*, 403 S.C. 576, 585-86, 743 S.E.2d 786, 791-92 (2013). The Supreme Court recognized that a contested case before the ALC is "an administrative proceeding." *Pres. Soc'y of Charleston v. S.C. Dep't of Health & Envtl. Control*, 430 S.C. 200, 216, 845 S.E.2d 481, 489 (2020), *reh'g denied* (Aug. 7, 2020). Further, the administrative process begins with the DHEC's review of the matter and "continues until the administrative review process concludes with a contested case hearing [before the ALC] . . . ." *Id.* The ALC's final determination is then subject to judicial review. *See* S.C. Code Ann. § 1-23-610 (providing for "[j]udicial review of final

decision of administrative law judge"). "The ALC has no authority to decide civil matters . . . ." Randolph R. Lowell, *South Carolina Administrative Practice and Procedure*, 166-67 (3rd ed. 2013). In this matter, the ALC improperly awarded fees for an administrative proceeding, not a "civil action."

II. The Court's holding is supported by precedent.

State and federal precedent regarding the SAS and the Equal Access to Justice Act ("the EAJA")[1] are supportive of the *Arcadia Lakes* Order. As noted, the Supreme Court in *McDowell v. S.C. Dep't of Soc. Servs.*, 304 S.C. 539, 405 S.E.2d 830 (1991), concluded a hearing before the Department of Social Services was not subject to the SAS because it was an "administrative" case. 304 S.C. at 543. However, judicial review of the administrative decision in circuit court did qualify for fees pursuant to the SAS. *Id.* There is no South Carolina precedent upholding an award of fees pursuant to the SAS for administrative proceedings. In federal jurisprudence, the term "civil action" in the EAJA has also been held to not encompass "administrative actions." *See* 24 U.S.C. § 2412; *see W. Watersheds Project v. U.S. Dep't of the Interior*, 677 F.3d 922 (9th Cir. 2012).

III. The Court's holding is supported by the history and statutory framework of Title 15.

The context of the term "civil action" in the S.C. Code of Laws further supports the Court's holding in *Arcadia Lakes*. "[W]ords in a statute must be construed in context," and "the meaning of a particular terms in a statute may be ascertained by reference to words associated with them in the statute." *Eagle Container Co. v. Cty. Of Newberry*, 379 S.C. 564, 570, 666 S.E.2d 892, 895-96 (2008). The General Assembly specifically provided for sanctions in "civil or administrative action[s]" in the South Carolina Frivolous Civil Proceedings Act ("the FCPA"). S.C. Code Ann. § 15-36-10(A). As noted in *Arcadia Lakes*, the original FCPA applied to "[a]ny person who

[1] As stated in *Arcadia Lakes*, the EAJA, 24 U.S.C. § 2412(d)(1), is the federal analog to the SAS and has been referenced by the Supreme Court in analyzing the SAS.

[took] part in . . . any civil proceeding." S.C. Code Ann. § 15-36-10 (2005), *amended by* § 15-36-10 (Supp. 2010). While the General Assembly rewrote the FCPA in 2005 and specified that it applied to "civil or administrative action[s]", the General Assembly did not make a similar revision to the SAS when it was amended in 2010. *See* Act No. 125, 2010 S.C. Acts 1104. Finally, while not dispositive, but certainly persuasive, the General Assembly considered amending the SAS to include "administrative proceedings," but declined to do so. *See* H.R. 3383, 112th Leg., 1st Sess. (S.C. 1997). This history and context of Title 15 of the S.C. Code of Laws leads to the conclusion that the General Assembly did not intend for the SAS to apply to contested case hearings before the ALC.

IV. The Court's holding is in accordance with the principles strictly construing waivers of sovereign immunity and attorney's fees statutes.

The Court's holding in *Arcadia Lakes* is consistent with the principle that waivers of sovereign immunity should be liberally construed in favor of limiting liability of the government. *See, e.g., Staubes v. City of Folly Beach*, 331 S.C. 192, 205, 500 S.E.2d 160, 167-68 (Ct. App. 1998) (holding the exceptions under the Tort Claims Act must be construed liberally in favor of limiting liability) and *Ardestani v. Immigration and Naturalization Serv.*, 502 U.S. 129, 137 (1991) (stating "[t]he EAJA renders the United States liable for attorney's fees for which it would not otherwise be liable, and thus amounts to partial waiver of sovereign immunity. Any such waiver must be strictly construed in favor of the United States." (citations omitted)). Moreover, as recognized by the Supreme Court, "[a] statute allowing attorney fees is in derogation of the common law and must be strictly construed." *Belton v. State*, 339 S.C. 71, 74, 529 S.E.2d 4, 5 (2000). By use of the term "civil action," the General Assembly intended for the SAS to apply to proceedings before the judiciary, not administrative agencies such as the ALC. Expanding "civil

action" to proceedings before agencies of the executive branch would defy the above principles and be contrary to the intent of the General Assembly.

V. The ALC lacks authority to award fees pursuant to the SAS.

As a creature of statute, "[t]he ALC possesses only such jurisdiction as has been conferred upon it by statute and only such powers as have been conferred upon it by law." Lowell, *supra*, at 169; *see also Amisub*, 403 S.C. at 585 ("The General Assembly has the authority to limit the subject matter jurisdiction of a court it has created; therefore, it can prescribe the parameters of the ALC's powers.") and *S.C. Dep't of Consumer Affairs v. Foreclosure Specialists, Inc.*, 390 S.C. 182, 700 S.E.2d 468 (Ct. App. 2010) (observing the ALC does not have the authority to exceed its statutorily granted powers). The General Assembly granted the ALC authority to award sanctions in Title 1 of the S.C. Code of Laws:

> .... If the presiding administrative law judge determines at the conclusion of the proceeding that the case was frivolous or taken solely for the purpose of delay, the judge may impose sanctions as the circumstances of the case and discouragement of like conduct in the future may require, including sanctions authorized in the Frivolous Proceedings Act, Chapter 36, Title 15, and as otherwise prescribed by law.

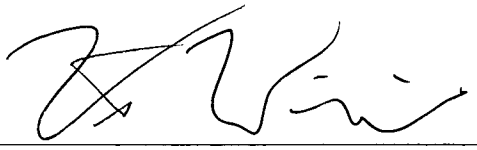
Id. § 1-23-670; *see also* SCALC Rule 72 ("If the presiding administrative law judge determines that a contested case, appeal, motion, or defense is frivolous or taken solely for purposes of delay, the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require."). The General Assembly, however, has not similarly conferred upon the ALC authority to award attorney's fees in accordance with the SAS. Accordingly, the ALC possesses no such authority to award attorney's fees.

CONCLUSION

The Court in *Arcadia Lakes* correctly held that contested case hearings before the ALC are not "civil actions," as used in the SAS. Therefore, the Department respectfully requests the Court

reverse the ALC's orders awarding attorney's fees to James Davenport and order the immediate return of such sum to the Department, with interest.

Respectfully submitted,



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