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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

THE HONORABLE RALPH KING ANDERSON, III
ADMINISTRATIVE LAW COURT JUDGE

Appellate Case No. 2023-001047

Charleston Advancement Academy High School..... Appellant,

v.

South Carolina Public Charter School District Board of Trustees.....Respondents.

APPELLANT, CHARLESTON ADVANCEMENT ACADEMY HIGH SCHOOL'S PETITION FOR REHEARING

PLEASE TAKE NOTICE THAT PURSUANT to Rules 221 and 240(i), SCACR, Appellant, Appellant Charleston Advancement Academy High School (hereinafter referred to as "CAA"), hereby petitions this Court for an Order rehearing its Order of August 31, 2023, holding that the appeal of this matter is interlocutory and not immediately appealable on the basis that the Court overlooked or misapprehended the following matters:

The provisions of Sections 14-3-330(2)(a) and (4), CODE OF LAWS OF SOUTH CAROLINA, 1976, are applicable to the instant appeal.

Citing *Bone v. U.S. Food Serv.*, 399 S.C. 566, 733 S.E.2d 200 (2012), this Court determined that the provisions of Section 14-3-330, Code of Laws of South Carolina, 1976, do

not apply to appeals from the Administrative Law Court[1]. In so doing, the Court misconstrues the holding in *Bone v. U.S. Food Serv., supra.*

In dismissing the appeal, this Court construes the holding in *Bone v. U.S. Food Serv., supra*, as a determination that Section 1-23-610(A)(1), CODE OF LAWS OF SOUTH CAROLINA, 1976, completely supplants the provisions of Section 14-3-330. The Court's manifest error is ignoring the following language in *Bone v. U.S. Food Serv., supra.*: "In agency appeals, the APA is controlling over general provisions *that conflict with its terms*." *Id.* at 576, 733 S.E.2d at 205.

In *Bone v. U.S. Food Serv., supra*, involved a workers' compensation action in which the South Carolina Workers' Compensation Commission affirmed the finding of the single Commissioner's determination that the claimant "failed to meet her burden of showing that she had sustained an injury by accident arising out of and in the course of her employment." *Id.* at 568, 733 S.E.2d at 201. The claimant appealed to the Circuit Court which found that the claimant "had sustained a compensable injury, and it reversed and remanded the matter to the Commission for further proceedings consistent with" its determination. *Id.* at 569, 733 S.E.2d at 201. The employer appealed and the Court of Appeals dismissed the appeal on the grounds that the Circuit Court's order was an unappealable interlocutory order. *Id.* In affirming the Court of Appeals dismissal of the appeal, the Supreme Court explained that:

> Because of lingering confusion in this area that has arisen after the passage of the Administrative Procedures Act (APA), we shall review this precedent to provide clarification and a unified approach to appeals involving administrative agencies.
>
> As an initial point of reference, we note our long-standing rule that the APA governs the review of administrative agency matters *and is controlling over any provisions that conflict with its terms*.

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[1] Counsel for CAA was aware of this opinion at the time CAA's July 10, 2023, *Memorandum of Appealability* was prepared. As will be explained, Counsel did not believe then and does not believe now that this opinion is determinative of the appealability of the order subject to this appeal.

Id. at 570, 733 S.E.2d at 202.

The fallacy in this Court's dismissal of the instant appeal is demonstrated by the following language in *Bone v. U.S. Food Serv., supra*:

> The procedure urged by Employer, which would postpone a remand to the agency for a final decision and instead allow an appeal from an interlocutory order and then a second appeal after the final agency decision, would result in piecemeal appeals in agency cases that would adversely affect judicial economy and compromise informed appellate review. The APA's requirement of review of a final decision, and its statutory mandate for the exhaustion of administrative remedies serves (1) to protect the administrative agency's authority and (2) to promote efficiency, and we agree with the Court of Appeals that the order of remand in the current matter is not immediately appealable.
>
> To the extent Employer argues this result is untenable because the law of the case doctrine would preclude later review of the matter of compensability, this assertion is without merit. The law of the case doctrine applies where a party does not challenge an issue on appeal when there has been an opportunity to do so. Where the party is not yet able to appeal due to the lack of a final judgment, the issue is not precluded by the law of the case doctrine as there was no prior opportunity for appeal.

Id. at 575 – 576, 733 S.E.2d at 205 (citation omitted)[2].

In the instant appeal, the only issue appealed was the order denying the motion for stay/injunction; the appeal of the revocation of CAA's charter remains with the Administrative law Court for determination, and, as noted in CAA's August 21, 2023, *Brief in Opposition to The Motion to Lift Stay*, CAA's Reply Brief is due September 5, 2023, and Oral Argument is set for just over a week from now on September 13, 2023. In other words, permitting the immediate appeal of the order denying the motion for a stay and/or injunction in no way adversely affects

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[2] The Court cites *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772, 779 (2004) for the proposition of "the need for 'further[ing] the goals of avoiding piecemeal appeals and fostering informed appellate review,'" and *Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 42, 21 S.E.2d 209, 213 (1942), for the proposition that "[t]he rule in restriction of piecemeal appellate procedure, dating back to the common law, is based upon sound reason and practical utility. If it were, otherwise, endless delays would be encountered—delays which are unnecessary in cases ... which can be decided upon an appeal from [ ] final judgment...."

judicial economy or compromises informed appellate review. In fact, it does the opposite in that it effectively precludes later review of the matter.

For all intents and practical purposes, the Administrative Law Court's order denying the motion to stay and/or for injunction is a final order within the meaning of Section 1-23-610(A)(1) and an "order affecting a substantial right made in an action" which "in effect determines the action and prevents a judgment from which an appeal might be taken . . ." within the meaning Section 14-3-330(2)(a), CODE OF LAWS OF SOUTH CAROLINA, 1976. If the order denying the motion to stay and/or for an injunction is not immediately appealable it effectively precludes later review of the order. Whereas in *Bone v. U.S. Food Serv.*, *supra*, the appealability of the Circuit Court's order was in no way affected by an appeal of the Commission's Order following the remand the same is not true here[3].

If the Administrative Law Court's Order denying the motion for a stay and/or injunction is not reviewed at this point, and CAA must wait until the Administrative Law Court has fully disposed of the appeal of the revocation of CAA's charter, CAA's charter is immediately revoked. Once CAA's charter is revoked, CAA is shut down. If the Administrative Law Court's Order denying CAA's motion for a stay and/or injunction is not immediately appealable, review of the order is prevented. Subsequent review of the Administrative Law Court's order denying the motion will at that point be moot and no longer a justiciable controversy thus rendering it unreviewable since the charter will have already been revoked and review and reversal of the order would be a pointless and meaningless exercise. *See Jackson v. State*, 331 S.C. 486, 490,

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[3] In *Bone v. U.S. Food Serv.*, *supra*, the employer was have not deprived of the opportunity to have this Court or the Supreme Court review the Circuit Court's Order reversing the Commission finding that the claimant had failed to meet her burden of establishing she had sustained a compensable injury on an appeal following the Commission's final order following remand and, if appropriate, reversing the Circuit Court's Order and reinstating the Commission's initial determination of non-compensability.

n.2, 489 S.E.2d 915, 917, n.2 (1997) (justiciability encompasses several doctrines including mootness; mootness is the "doctrine of standing set in a time frame"); *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996) (appeal of a lower court's order may not be maintained unless there exists a justiciable controversy). Generally, the appeal of an issue which is moot or academic will not be permitted and no adjudication of an issue will be made if there remains no actual controversy. *Jackson v. State*, *supra*. An issue becomes "moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 334, 346, 195 S.E.2d 713, 715 (1973).

As noted, the provisions of Section 14-3-330(2)(a) and (4) are superseded by Section 1-23-610(A)(1) only to the extent its provisions conflict with Section 1-23-610(A)(1). *See Bone v. U.S. Food Serv.*, *supra.* Here there is no conflict in the terms of the two statutes when applied in instant action. Further, the order under appealed is final as to the issue being appealed and a final decision of the Administrative Law Court as to the issue being appealed, and, therefore, appeal of the same is not barred by but rather permitted by Section 1-23-610(A)(1) under the situation presented by the facts of this case. Determining that the order subject to the instant appeal is an unappealable interlocutory order renders the issues subject to this appeal incapable of review under the ripeness/justiciability doctrine. Accordingly, as this Court overlooked and misapprehended the Supreme Court's holding in *Bone v. U.S. Food Serv.*, *supra*, and the appealability of the Administrative Law Court's denial of the motion to stay/injunction, CAA's petition for rehearing should be granted and the matter subject to this appeal held to be appealable.

Appeal of the order is permitted under Section 14-3-330(2)(a), CODE OF LAWS OF SOUTH CAROLINA, 1976.

This Court incorrectly held that the Order of the Administrative Law Court denying the motion to stay and/or injunction is not an appealable interlocutory order under Section 14-3-330(2)(a), because the administrative law court's "denial of the motion to stay does not determine the action or prevent a judgment from which an appeal might be taken because the parties may appeal the judge's ruling on the merits of Respondent's decision to revoke Appellant's charter." While technically accurate, the Court's holding ignores completely the actual effect of the Administrative Law Court's denial of the motion. In holding that the Administrative Law Court's denial of the motion to stay and/or for injunction does not affect a substantial right which in in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, the Court fails to appreciate the exigency of the situation presented by the denial of the motion and the practical effect of deciding that the order in issue is an unappealable interlocutory order.

CAA is a school. As such, it is much like a business in that once shut down, it is not possible for a Court to fashion a remedy which will place it back into the position it was in prior to being shut down[4]. It will lose students, faculty, and staff which it is unlikely to recover. Its students – who are already engaged in the current school year - will lose the benefit of their efforts thus far and will be set back in their educational pursuits, time that they can never recover. Given CAA's at-risk student population, it is likely that many or most of its students will simply drop out of school as many have done previously, never to return this time. Unlike a business, however,

[4] This is why issuance of a temporary restraining order suspending the general and ordinary business of an individual, partnership, association or corporation is prohibited. *See* Rule 65(e), S.C.R.CIV.P.

the damage done cannot be corrected in whole or in part with monetary damages, which the Administrative Law court has no authority to award in any event.

Failure to permit immediate appeal of the order denying the motion for stay and/or injunction is essentially a death sentence for CAA. While posthumous reversal of the South Carolina Public Charter School District's (hereinafter referred to as the "SCPCSD") wrongful revocation of CAA's charter is likely, the issue of the denial of the motion for stay/injunction will at that point be moot and incapable of review and the irreversible damage to CAA will be complete. Thus, the only conclusion to be drawn is that the Administrative Law Court's denial of the motion to stay determines the action and prevents a judgment from which an appeal might be taken under and is consequently an immediately appealable order affecting a substantial right under Section 14-3-330(2)(a) and a final order under Section 1-23-610(A)(1). Thus, CAA's petition for rehearing must be granted.

Appeal of the order is permitted under Section 14-3-330(4), CODE OF LAWS OF SOUTH CAROLINA, 1976.

This Court incorrectly held that the Order of the Administrative Law Court denying the motion to stay and/or injunction is not an appealable interlocutory order under Section 14-3-330(4) because the appeal is from the Administrative Law Court and the Administrative Law Court addressed CAA's motion to stay but not its motion for an injunction. This holding too overlooks or misapprehends the issues before the Court.

First, as addressed in CAA's July 10, 2023, *Memorandum of Appealability* this statute should be construed broadly to encompass denials of motions for injunction broadly. This Court's failure to do so was erroneous for the reasons stated therein.

Further, that the Administrative Law Court failed to address CAA's motion for injunction does not render inapplicable Section 14-3-330(4). It is undeniable that CAA moved for a

temporary restraining order and a preliminary injunction before the Administrative Law Court in this matter. That is an unchallenged fact. As the order failed to address the motion for injunction, it is an order denying or refusing an injunction. Accordingly, the Administrative Law Court's order subject to this appeal which fail to address CAA's motion for an injunction was manifest error and puts the issue squarely within the purview of Section 14-3-330(4).

CONCLUSION

For the foregoing reasons this Court must grant CAA's petition for rehearing and find the Administrative Law Court's order denying CAA's motion to Say and/or for an injunction immediately appealable.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

THE HONORABLE RALPH KING ANDERSON, III
ADMINISTRATIVE LAW COURT JUDGE

Appellate Case No. 2023-001047

Charleston Advancement Academy High School..... Appellant,

v.

South Carolina Public Charter School District Board of Trustees.....Respondents.

PROOF OF SERVICE

We hereby certify that we have served Appellant, Charleston Advancement Academy High School's, Motion for Extension in the above-captioned matter by electronic mail on September 5, 2023, to the below named parties at their address of record:

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VIA E-MAIL AND UNITED STATES MAIL
The Honorable Jenny Abbott Kitchings, Clerk
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Re: ***Charleston Advancement Academy High School v. South Carolina Public Charter School District Board of Trustees*, Appellate Case No. 2023-001047**

Dear Ms. Kitchings:

Enclosed herewith for filing please find *Appellant, Charleston Advancement Academy High School*'s *Petitions for Rehearing*, in connection with the above matter. A check in the amount of $50.00 for the filing fee for the enclosed Petition is being placed in the mail today. By copy of this letter I am serving counsel for Respondent with a copy of the same via e-mail.

With warmest personal regards, I am

Yours very truly,

Edward K. Pritchard, III
Attorney for Appellant, Charleston Advancement Academy High School

enclosures

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