The Supreme Court of South Carolina

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N O T I C E

IN THE MATTER OF CHAD BRIAN HATLEY, PETITIONER

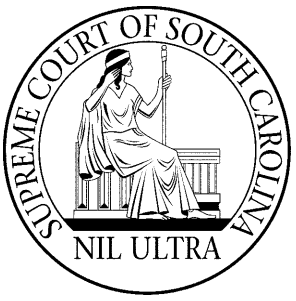
Petitioner was definitely suspended from the practice of law for two (2) years. *In the Matter of Chad Brian Hatley*, 400 S.C. 470, 735 S.E.2d 488 (2012). Petitioner has now filed a petition seeking to be reinstated.

Pursuant to Rule 33(e)(2) of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413 of the South Carolina Appellate Court Rules, notice is hereby given that members of the bar and the public may file a notice of their opposition to or concurrence with the petition. Comments should be mailed to:

Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

These comments should be received within sixty (60) days of the date of this notice.

Columbia, South Carolina
May 29, 2019



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 22
May 29, 2019
Daniel E. Shearouse, Clerk
Columbia, South Carolina
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Petitioner,

v.

Frederick Scott Pfeiffer, Respondent.

Appellate Case No. 2018-001153

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Pickens County
J. Cordell Maddox Jr., Circuit Court Judge

Opinion No. 27891
Heard March 6, 2019 – Filed May 29, 2019

REVERSED

Attorney General Alan Wilson, Senior Assistant Deputy Attorney General S. Creighton Waters, and Senior Assistant Attorney General Brian T. Petrano, all of Columbia, for Petitioner.

Ralph Gleaton, of Gleaton Law Firm, PC, and William G. Yarborough III, of William G. Yarborough III, Attorney at Law, both of Greenville, for Respondent.

JUSTICE KITTREDGE: The State's appeal from the grant of Frederick Scott Pfeiffer's second Rule 29(a), SCRCrimP, motion presents the following question: after the disposition of an initial Rule 29(a) motion, and more than ten days after imposition of the sentence, does the trial court have jurisdiction to hear a second Rule 29(a) motion? We answer the question by holding the trial court lacks jurisdiction to hear a second Rule 29(a) motion, unless the second motion challenges something that was altered from the original sentence as a result of the initial Rule 29(a) motion.

I.

On September 18, 2013, Pfeiffer pled guilty to criminal conspiracy and two counts of securities fraud. The State and Pfeiffer entered into a negotiated plea. It is uncontested that the trial court sentenced Pfeiffer in accordance with the negotiated plea agreement.

A dispute quickly arose with the South Carolina Department of Correction's interpretation of the sentencing sheets. To resolve any confusion, Pfeiffer timely filed his first Rule 29(a) motion to correct the clerical errors, which resulted in an October 8, 2013 hearing. Without objection, the trial court entered an amended sentence clarifying the sentencing sheets. The "amended sentence" did not substantively alter the original sentence; the amended sentencing sheets merely removed any concern the Department of Corrections had with interpreting the original sentence.

Additionally, also on October 8, 2013, Pfeiffer's codefendant was sentenced. Pfeiffer believed his sentence was unduly harsh in comparison to his codefendant's sentence. As a result, on October 17, twenty-nine days after the original sentence, Pfeiffer filed a second Rule 29(a) motion seeking a reduced sentence based on the codefendant's lighter sentence. As noted, there has never been any suggestion Pfeiffer's original sentence was contrary to the negotiated plea agreement. Rather, the negotiated plea specifically allowed the State to control the order and timing of Pfeiffer and his codefendant's pleas and sentencing proceedings. Specifically, the plea agreement provided that the "State retain[ed] the right to call the order of plea and/or sentencing for Mr. Pfeiffer and any codefendant."

The State argued that Pfeiffer's second motion was untimely because more than ten days had elapsed since the original sentencing and the second motion was in no manner related to the first. The trial court, however, found the motion was timely,

and granted Pfeiffer's second motion by reducing his sentence. The court of appeals affirmed, and we granted the State's petition for writ of certiorari. *See State v. Pfeiffer*, Op. No. 2018-UP-130 (S.C. Ct. App. filed Mar. 28, 2018).

II.

We find the second Rule 29(a) motion was untimely. In a criminal case, once the term of court ends, the trial court lacks jurisdiction to consider additional matters unless a party files a timely post-trial motion. *State v. Campbell*, 376 S.C. 212, 215–16, 656 S.E.2d 371, 373 (2008). Rule 29(a), SCRCrimP, provides that a post-trial motion "shall be made within ten (10) days after the imposition of the sentence." Successive Rule 29(a) motions are generally not permitted. However, where a second Rule 29(a) motion is related to the disposition of the first Rule 29(a) motion, the trial court retains authority to hear and dispose of the subsequent motion, provided the subsequent motion is filed within ten days of the disposition of the prior post-trial motion. That did not occur here. *Cf. Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) ("[A] second motion for reconsideration . . . is appropriate only if it challenges something that was altered from the original judgement as a result of the initial motion for reconsideration." (discussing *Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1, 3–4, 518 S.E.2d 56, 58 (Ct. App. 1999))).

Because Pfeiffer's second Rule 29(a) post-trial motion was in no manner related to the first Rule 29(a) motion, the trial court lacked jurisdiction to hear the second motion.[1] The original sentence, as clerically amended on October 8, 2013, is reinstated.

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[1] We find manifestly without merit Pfeiffer's argument that the State waived its right to appeal due to the existence of an appeal waiver clause concerning Pfeiffer in the negotiated plea agreement. The negotiated plea deal contained an appeal waiver clause, providing that "Mr. Pfeiffer hereby waives any entitlement to and agrees never to pursue . . . any and all other methods of direct or collateral review of these convictions and sentences." *See United States v. Guevara*, 941 F.2d 1299, 1299–300 (4th Cir. 1991) (holding the Government was precluded from appealing a sentence where the defendant explicitly waived his right to appeal); *Spoone v. State*, 379 S.C. 138, 142, 665 S.E.2d 605, 607 (2008) (finding this Court generally follows federal precedent as it pertains to plea agreements). Assuming the appeal waiver clause applies to the State, a waiver of appeal cannot reach the

REVERSED.

BEATTY, C.J., HEARN, JAMES, JJ., and Acting Justice James E. Lockemy, concur.

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circumstances presented in this case, with the trial court attempting to exercise jurisdiction where there was no jurisdiction. *Campbell*, 376 S.C. at 215, 656 S.E.2d at 373 (finding a trial court loses jurisdiction at the end of a criminal case). The second Rule 29(a) motion was, therefore, outside the scope of the negotiated agreement. Moreover, as stated, the negotiated plea agreement expressly authorized the State "to call the order of plea and/or sentencing for Mr. Pfeiffer and any codefendant." *See United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004) (finding a court will not enforce waivers of appellate rights beyond the scope of the agreement).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King, Appellants,

v.

Keith S. Wellin, Respondent.

Appellate Case No. 2016-001141

Appeal From Charleston County
Roger L. Couch, Circuit Court Judge
Irvin G. Condon, Probate Court Judge

Opinion No. 5608
Heard October 17, 2018 – Filed January 4, 2019
Withdrawn, Substituted and Refiled May 29, 2019

REVERSED

Robert H. Brunson, Merritt Gordon Abney, and Patrick Coleman Wooten, all of Nelson Mullins Riley & Scarborough, LLP, of Charleston, and Allen Mattison Bogan, of Nelson Mullins Riley & Scarborough, of Columbia, for Appellants.

Robert H. Hood, Mary Agnes Hood Craig, and James Bernard Hood, all of Hood Law Firm, LLC, of Charleston, for Respondent.

Tiffany Nicole Provence, of Provence Messervy, LLC, of Summerville, for Edward G.R. Bennett in his capacity as Special Conservator for Keith S. Wellin.

KONDUROS, J.: Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King (collectively, Appellants) appeal the circuit court's order affirming the probate court's order that required the Wellin Family 2009 Irrevocable Trust to pay approximately $50 million to Synovus Bank as Special Conservator II for their father, Keith S. Wellin (Wellin). We reverse.[1]

FACTS/PROCEDURAL BACKGROUND

Wellin amassed considerable wealth in his lifetime primarily consisting of shares of stock in Berkshire Hathaway, Inc. He had three children—Peter, Cynthia, and Marjorie—with his first wife and remarried three times. Wellin married his fourth wife, Wendy, in 2002. In 2003, Wellin established Friendship Partners, LP and transferred 896 shares of Berkshire Hathaway Class A stock to Friendship Partners. Wellin, individually was a limited partner in Friendship Partners, initially owning limited partnership units representing 98.9% of the partnership. In 2007, Wellin transferred his limited partnership units to a trust, the Florida Revocable Trust, for which he was both trustee and sole lifetime beneficiary. A separate entity, Friendship Management, LLC, was the general partner in Friendship Partners with managerial control and the remaining ownership interest. Cynthia was the manager of Friendship Management. In 2009, Wellin established the Wellin Family 2009 Irrevocable Trust (the Trust), an intentionally defective grantor trust.[2] He named Appellants as trustees and beneficiaries of the Trust.[3] Shortly after forming the Trust, Wellin, through the Florida Revocable Trust, sold limited partnership units, representing a 98.9% interest in Friendship Partners, to

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[1] As will be seen, the parties to this action are involved in related, ongoing litigation in other forums. Our opinion only addresses the narrow issues presented in this appeal.

[2] This type of trust allows the Trust to be disregarded for federal income tax purposes so that the grantor continues to be taxed on any income realized by the Trust thereby increasing the total assets available for the Trust's beneficiaries.

[3] Trust beneficiaries include Wellin's lineal descendants beyond his three children.

the Trust in exchange for a Promissory Note (the Note) issued by the Trust for approximately $50 million with provisions for periodic interest.

As time went on, Appellants began to believe Wendy was influencing Wellin and manipulating his finances to her advantage. In early 2013, Wellin gifted $10 million to each of his children and to Wendy as well. Later that year, Wellin filed an action in federal district court seeking to set aside those gifts to Appellants, but not to Wendy, and to set aside the 2009 transactions that benefited his children and lineal descendants via the Trust (*Wellin I*). Appellants filed an action in probate court seeking the appointment of a conservator to protect Wellin's assets.

In August 2013, the probate court appointed Edward Bennett as a special conservator, pending mediation or a full hearing, with the role of "ensur[ing] that transfers of assets are not made without fair and adequate consideration." In November of 2013, Wellin, through Bennett, delivered a document to Appellants purporting to exercise a right under the Trust to substitute certain assets in exchange for Trust assets of equal value. To effectuate this swap, Wellin forgave the Note by marking it "Paid in Full," in exchange for a 58% limited partnership in Friendship Partners. Appellants, as trustees, rejected this swap transaction.

The district court issued a temporary restraining order (TRO) in *Wellin I* enjoining Appellants from selling the Berkshire Hathaway stock. However, that TRO was dissolved. In December 2013, Friendship Partners liquidated its assets, consisting primarily of the Berkshire Hathaway stock, which was valued at approximately $157 million. The proceeds were distributed to the Trust.[4] Wellin filed an action in probate court alleging various breaches of duty against Appellants in selling the stock and distributing the majority of the proceeds to themselves (*Wellin II*). The probate court granted a TRO enjoining the Appellants from disposing of or exercising any control over any proceeds related to the liquidation, but that case was removed to the federal district court and the TRO was dissolved. The Trust tendered a check for $50 million to Bennett as payment for the Promissory Note, which was not due until 2021. Bennett rejected the payment, taking the position the Note ceased to exist after it was marked "Paid in Full" as part of the swap

[4] Appellants maintain this was done to prevent the Trust from incurring significant tax liability.

transaction. Bennett also demanded the Trust pay Wellin $92 million representing the value of a 58% interest in Friendship Partners.

Thereafter, in January 2014, Bennett filed an "Application for Guidance" pursuant to section 62-5-416(b) of the South Carolina Code (Supp. 2018), asking the probate court for guidance as to whether he had authority to pursue the $92 million on Wellin's behalf. The court conducted a hearing at which extensive arguments were made by counsel for Bennett, counsel for Appellants, and counsel for Wellin. At the hearing, Bennett stated he was seeking to clarify whether he, as conservator, had authority to pursue the $92 million. As the hearing progressed, Bennett eventually asked the probate court to require the Trust to pay at least the $50 million, represented by the Note, so those funds could be protected for Wellin's benefit pending the outcome of the district court litigation.

At the hearing, Appellants admitted Wellin was entitled to $50 million under the Note if the Note was then extinguished and even stated they would be willing to pay the funds into the court. The probate court ordered the Trust to pay $50 million to Synovus Bank as a secondary conservator. Appellants filed a motion to reconsider, arguing the Promissory Note was an asset of Wellin's estate, but the $50 million was not. They maintained that accordingly, the probate court lacked jurisdiction to issue an order affecting the actual funds. They also argued the court lacked personal jurisdiction over the Trust as the children were appearing in their individual capacities in the conservatorship action, they had not been afforded due process in the absence of Bennett filing a summons and complaint seeking the $50 million, and the request should be dismissed pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure because the same claims were being litigated in district court.[5]

Appellants also filed a motion for voluntary dismissal of the conservatorship action pursuant to Rule 41 of the South Carolina Rules of Civil Procedure. The probate court denied the motion finding Rule 41, dealing with dismissals prior to the filing of an Answer, did not apply to this case as a petition for a conservatorship does not require an Answer.

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[5] Immediately following the probate court's order in this case, Wellin filed in the probate court a petition for the return of assets (the $92 million), which was then removed to the district court (*Wellin III*).

The probate court ultimately denied Appellants' motion to alter or amend its order finding Appellants had listed the Note as an asset of Wellin's estate and admitted Wellin was entitled to payment of it. The probate court further found the Trust was subject to the court's jurisdiction because the Trust had appeared and made arguments in the matter. The probate court also concluded a sufficiently similar matter was not currently pending in district court, so dismissal under Rule 12(b)(8) was not appropriate.

Appellants appealed to the circuit court which affirmed the probate court *in toto*. However, Appellants presented a new argument regarding mootness to the circuit court as Wellin died in September 2014 during the pendency of the appeal to the circuit court. The circuit court determined Wellin's death did not moot the appeal regarding the propriety of the order as the outcome of the appeal could have collateral consequences to the parties in that it would require Wellin's estate to seek the same sort of protection and weighed against judicial economy. This appeal followed.

STANDARD OF REVIEW

In a probate appeal, the circuit court, court of appeals, or supreme court shall hear and determine the appeal according to the rules of law. S.C. Code Ann. § 62-1-308(i) of the South Carolina Code (Supp. 2018). "[I]f the action is at law, the circuit court should uphold the findings of the probate court if there is any evidence to support them; if the action is equitable, the circuit court may make findings in accordance with its own view of the preponderance of the evidence." *In re Estate of Weeks*, 329 S.C. 251, 260, 495 S.E.2d 454, 459 (Ct. App. 1997).

LAW/ANALYSIS

Appellants contend the circuit court erred in affirming the probate court's determination it had authority to order payment of the $50 million into a protective trust. Appellants maintain the money was not part of Wellin's estate under section 62-5-402(2) of the South Carolina Code (Supp. 2018). We agree.

The probate court's jurisdiction is limited as it owes "its present existence to creation by statute, rather than the Constitution, and as such, can exercise only

such powers as are directly conferred upon it by legislative enactment and such as may be necessarily incident to the execution of the powers expressly granted." *Greenfield v. Greenfield*, 245 S.C. 604, 610, 141 S.E.2d 920, 923 (1965).

Section 62-5-402(2) provides in pertinent part:

> After the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has:
>
> . . .
>
> (2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents . . . .

Although section 62-5-402(2) confers jurisdiction "to determine how the estate of the protected person . . . must be managed, expended, or distributed," the $50 million at issue was not part of Wellin's estate. The Note and the actual payment due thereunder are two related but distinct assets. The Note itself gives Wellin the right to demand payment of the $50 million providing all the terms of the Note are met. Although Appellants admit the Note is valid, the $50 million in payment would have only passed into Wellin's estate when the money was tendered and the Note was accepted, and marked satisfied. In this case, Wellin's position in the district court litigation and the swap transaction prevented Bennett from accepting the tender of payment by the Trust. Therefore, the $50 million was not part of Wellin's estate to be managed or protected, and the probate court erred in requiring it be deposited with Synovus Bank.

Even had the $50 million been part of Wellin's estate, the probate court lacked authority to issue the disputed order based on Bennett's failure to file a petition and summons with the probate court pursuant to section 62-5-416 of the South Carolina Code (Supp. 2018).

Section 62-5-416 deals with requests for orders in a conservatorship action. It provides:

> (a) Upon filing a petition and summons with the appointing court, a person interested in the welfare of a person for whom a conservator has been appointed may request an order (1) requiring bond or security or additional bond or security, or reducing bond, (2) requiring an accounting for the administration of the trust, (3) directing distribution, (4) removing the conservator and appointing a temporary or successor conservator, or (5) granting other appropriate relief. The petition and summons must be served upon the conservator and other persons as the court may direct.
>
> (b) Upon application to the appointing court, a conservator may request instructions concerning his fiduciary responsibility. A denial of the application by the court is not an adjudication and does not preclude a formal proceeding.
>
> (c) After notice and hearing as the court may direct, the court may give appropriate instructions or make any appropriate order.

Appellants contend the Application for Guidance filed by Bennett under subsection (b) was not merely an application for guidance but a request for substantive relief requiring more than an informal application. Wellin characterizes the application as seeking a determination as to whether Bennett has a duty to pursue the $92 million Wellin may be entitled to from the proceeds of the Friendship Partners' liquidation. However, an actual reading of the application reveals Bennett is seeking more than a determination of his duty as special conservator. The application requests the probate court hold a hearing under subsection (c) and render two determinations: (1) Was Wellin's substitution of the assets effective? and (2) Was Wellin's release of his substitution power effective to turn off grantor

trust status? Rendering determinations on these issues would exceed providing guidance as to Bennett's duty.

While subsection (c) affords the probate court authority to issue an appropriate order dealing with the consequence of a hearing, it does not render meaningless the requirements of subsection (a) when the application in question is clearly seeking more from the probate court than instruction. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (stating statutes should be read so that no particular section is rendered superfluous).

Finally, even if the probate court had subject matter jurisdiction and authority to issue the disputed order, the order required action by the Trust, which had not been made party to the conservatorship action.

"Although a court commonly obtains personal jurisdiction by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance." *Ex parte Cannon*, 385 S.C. 643, 658, 685 S.E.2d 814, 822 (Ct. App. 2009) (quoting *Stearns Bank Nat'l Ass'n v. Glenwood Falls, L.P.*, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007)). "A defendant may waive any complaints he may have regarding personal jurisdiction by failing to object to the lack of personal jurisdiction and by appearing to defend his case." *Id*. (quoting *State v. Dudley*, 354 S.C. 514, 542, 581 S.E.2d 171, 186 (Ct. App. 2003)).

In *Ex parte Cannon*, Cannon argued the circuit court lacked personal jurisdiction over him because he had only appeared in the case in his capacity as a personal representative, not a trustee. *Id*. at 657-58, 685 S.E.2d at 822. However, this court concluded "[b]y appearing and arguing the merits of the action multiple times before the circuit court, . . . Cannon consented to the circuit court's personal jurisdiction and waived any defense of lack of personal jurisdiction." *Id*. at 660, 685 S.E.2d at 823. In this case, Appellants, in their individual capacities, brought the conservatorship action. The Trust was never made a party to the conservatorship action. While Appellants participated in the singular hearing on Bennett's Application for Guidance, they objected to the probate court treating the Trust as a party, arguing the probate court did not "have jurisdiction over the asset. The [T]rust is not even a party to this proceeding. The owner of the asset is not here." Again, Appellants argued the probate court lacked "jurisdiction to order us to pay that note, because the party's not here who owns – who has the $50 million.

That's not my clients individually, that's the [T]rust." Admittedly, Appellants' attorney at times participated in the exchange among the parties regarding depositing the $50 million into the court. However, we conclude that conduct did not rise to the level of a waiver of personal jurisdiction on behalf of the Trust when Appellants continued to voice their objections.

Based on all of the foregoing, the order of the circuit court affirming the probate court is

REVERSED.[6]

MCDONALD and HILL, JJ., concur.

[6] We decline to rule on Appellants' remaining issues on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address the remaining issues when a prior issue was dispositive).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Darius Wardlaw, Respondent,

v.

South Carolina Department of Social Services,
Appellant.

Appellate Case No. 2017-000425

Appeal From Greenville County
Alex Kinlaw, Jr., Family Court Judge

Opinion No. 5652
Heard May 6, 2019 – Filed May 29, 2019

AFFIRMED

Christopher C. Jackson and Shawn L. Reeves, both of Columbia, for Appellant.

Bruce W. Bannister and Luke A. Burke, both of Bannister, Wyatt & Stalvey, LLC, of Greenville, for Respondent.

SHORT, J.: South Carolina Department of Social Services (DSS) appeals the order of the family court that granted Darius Wardlaw a temporary restraining order (TRO) requiring DSS to remove Wardlaw from the Central Registry of Child

Abuse and Neglect (Registry) pending further administrative review. DSS argues (1) the family court's order is not moot, (2) the family court was without subject matter jurisdiction to entertain Wardlaw's motion for temporary relief prior to the exhaustion of administrative remedies, (3) the family court was without authority to issue its order, and (4) the order is void ab initio because it was issued in violation of Rule 65(c), SCRCP. We affirm.

FACTS

DSS initiated an investigation into an incident of alleged physical abuse by Wardlaw at the Avalonia Group Home, a home for high-risk minors, and indicated physical abuse based on its administrative review of the claim. DSS found the student suffered bruises and abrasions to his face. Upon this administrative finding of physical abuse on September 22, 2016, DSS immediately entered Wardlaw's name on the Registry, and Wardlaw was terminated from his employment. Wardlaw appealed to the DSS Office of Administrative Appeals pursuant to South Carolina Code Section 63-7-1230 (2010). His hearing was not set until January 2017. While the administrative appeal was pending, Wardlaw filed this action in family court, moving for a TRO and writ of mandamus.[1]

At a December 12, 2016 hearing before the family court, Wardlaw alleged the student involved had attempted suicide the day prior to the day of the alleged abuse. On the day in question, the student refused to sit in the center of the group room away from the walls, which he could use to self-injure. Per DSS regulatory requirements, Wardlaw used restraint to pull the student away from the wall. According to Wardlaw, the student was then checked for injuries and released.

Wardlaw argued DSS's failure to set the administrative hearing until January violated his due process rights and section 63-7-1230, which requires expedited appellate review. DSS argued because Wardlaw also raised the constitutionality of the statute, he was required to serve the South Carolina Attorney General's Office, and his failure to do so was "fatal going forward." Wardlaw argued the hearing

[1] The family court consolidated the case for a hearing with *Butler v. South Carolina Department of Social Services*, Op. No. 2019-UP-190 (S.C. Ct. App. filed May 29, 2019).

was not on the merits, but merely for temporary relief pending the resolution of his administrative appeal; therefore, the constitutionality of the statute was not at issue.

DSS next argued the statute does not define "expedited" as it is defined in other instances, such as the revocation of a passport due to the failure to pay child support, which requires a hearing within thirty days. The family court asked DSS, "[Y]ou would agree that . . . this Court has the discretion to make a determination at least on a temporary basis as to what is deemed expedited . . . ?" DSS responded, "[Y]ou're the judge and you make the decision." DSS later argued it was a "jurisdictional issue because of the statutory requirement . . ." and there was no jurisdiction until the exhaustion of administrative appeals.

Wardlaw argued his appeal was not expedited as required under the statute. The incident occurred on August 5, 2016, and the investigative finding was made on September 26, 2016. Wardlaw's name was entered on the Registry on the date of the investigative finding, and he was immediately terminated from his job. The hearing was not set until January 2017. DSS argued that considering DSS's "huge number of cases" and the limited number of hearing officers, the appeal was expedited.

By order filed January 18, 2017, the family court found it had subject matter jurisdiction. The court declined to address the issue of the constitutionality of section 63-7-1230. The court found DSS did not set the date of Wardlaw's review until 82 days after his request for review. The court further found, "82 days between a request and a scheduled hearing is too lengthy a gap in time to be considered expeditious as required by the statute." Thus, the family court found DSS failed to provide expedited review pursuant to section 63-7-1230. The court granted a TRO, restraining DSS from keeping Wardlaw's name on the Registry until the allegation of physical abuse was substantiated.

The DSS initial finding of physical abuse was reversed on administrative appeal. DSS appealed the family court's order to this court.

STANDARD OF REVIEW

"In appeals from the family court, this [c]ourt reviews factual and legal issues de novo." *Simmons v. Simmons*, 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011).

Questions of law are subject to de novo review, and the appellate court may decide such questions without any deference to the trial court. *S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 6, 809 S.E.2d 223, 226 (2018).

LAW/ANALYSIS

I. MOOTNESS

Both parties argue the family court's order should be reviewed by this court despite being moot. We agree.

Mootness has been defined as follows: "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [an] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). Generally, courts will not address moot issues. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 25-26, 630 S.E.2d 474, 477 (2006). In this case, the issue of temporary removal of Wardlaw's name from the Registry is moot because the administrative appeal is completed.

However, exceptions to the mootness doctrine exist, and we find this case fits within the exception allowing courts to examine matters that are capable of repetition, yet evade review. *See S.C. Dep't of Mental Health v. State*, 301 S.C. 75, 76, 390 S.E.2d 185, 185 (1990) (addressing an appeal despite its mootness because it raised a question that is capable of repetition, but which usually becomes moot before it can be reviewed). Therefore, we find it appropriate for this court to address DSS's appeal.

II. SUBJECT MATTER JURISDICTION AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

DSS argues the family court lacked subject matter jurisdiction to entertain Wardlaw's motion for temporary relief because Wardlaw had not yet exhausted his administrative remedies. We find the family court had subject matter jurisdiction over the matter, and DSS failed to preserve the issue of exhaustion of administrative remedies.

Subject matter jurisdiction refers to a court's power to adjudicate a case. *State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). It is "the power of a court to hear and determine cases of the general class to which the proceedings in question belong." *Id.* "The family court has exclusive jurisdiction to hear matters concerning the abuse and neglect of children." *S.C. Dep't of Soc. Servs. v. Meek*, 352 S.C. 523, 528, 575 S.E.2d 846, 848 (Ct. App. 2002). This case involved the alleged abuse of a child under Wardlaw's care. Thus, we find the family court had subject matter jurisdiction to hear the case.

As to exhaustion of administrative remedies, we find the issue is not preserved for appellate review. Subject matter jurisdiction "is distinct from the doctrine of exhaustion of administrative remedies, which 'is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional.'" *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 100, 674 S.E.2d 524, 529 (Ct. App. 2009) (quoting *Ward v. State*, 343 S.C. 14, 17 n.5, 538 S.E.2d 245, 246 n.5 (2000)). The "failure to exhaust administrative remedies goes to the prematurity of a case, not subject matter jurisdiction." *Ward*, 343 S.C. at 17 n.5, 538 S.E.2d at 246 n.5. Although subject matter jurisdiction may be raised at any time, exhaustion of administrative remedies must be raised to and ruled upon by the trial court to be preserved for appellate review. *Compare Gentry*, 363 S.C. at 100, 610 S.E.2d at 498 (stating "issues related to subject matter jurisdiction may be raised at any time"), *and Food Mart v. S.C. Dep't of Health & Envtl. Control*, 322 S.C. 232, 233-34, 471 S.E.2d 688, 688-89 (1996) (vacating the portion of the court of appeals "opinion to the extent it addresse[d] whether petitioner was required to exhaust its administrative remedies" because the issue was "procedurally barred from any appellate review because it was neither raised by the parties nor ruled on by the trial court below"). Because this issue was neither ruled upon by the family court nor raised in a post-trial motion, it is not preserved for our review. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (stating for an issue to be preserved for appeal it must have been raised to and ruled upon by the lower court); *Elam v. S.C. Dep't of Transp*., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("A party *must* file [a Rule 59(e)] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.").

III. STATUTORY MANDATE

DSS argues it was required by statute to enter Wardlaw's name on the Registry and the family court was without authority to require DSS to act in contravention of its statutory mandate. DSS further argues section 63-7-1230 does not define the term "expedited," and there is no provision in the statute providing for the family court's remedy of removal of names from the Registry if the statutory requirement for an expedited hearing is violated.

Wardlaw argues the final administrative order exonerating him was not issued until March 3, 2017, and without the family court's intervention, he would have been out of work and wrongfully listed on the Registry for 160 days. He also argues this court should affirm the family court's order on the ground that section 63-7-1230 is unconstitutional. Finally, he argues the family court had the statutory authority to enter its TRO.

Initially, we find DSS waived the issue of whether the family court had the authority to address whether it met the statutory requirement for an expedited hearing. The family court specifically asked DSS, "[Y]ou would agree that . . . this Court has the discretion to make a determination at least on a temporary basis as to what is deemed expedited . . . ?" DSS responded, "[Y]ou're the judge and you make the decision." Again at oral argument before this court, DSS acknowledged the family court had the authority to order it to immediately hold the administrative hearing. DSS argues, however, the family court lacked the authority to order it to remove Wardlaw's name from the Registry pending the administrative hearing. We disagree.

First, we find no error by the family court in concluding eighty-two days is not expedited as contemplated by the statute. The question of legislative intent is primary when a court is construing an undefined term in a statute. *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n*, 424 S.C. 542, 549, 819 S.E.2d 124, 127 (2018). We find the intent of section 63-7-1230 is to protect children. *See* S.C. Code Ann. § 63-7-1230 (2010) (providing for the immediate entry in the Registry of the name of a person administratively determined to have harmed or threatened to harm a child). However, the requirement in the statute for an expedited hearing recognizes the competing intent to protect parties from being wrongfully placed on the Registry at such an early investigative stage. *Id.* (requiring "expedited review in the appellate process"). As seen in removal actions, which have the competing interests of protecting children and the parents' liberty interest in familial relations,

the legislature clearly contemplates competing interests. *See* S.C. Code Ann. § 63-7-710 (A) (2010) (requiring a probable cause hearing to be held within seventy-two hours of when a child is taken into emergency protective custody); § 63-7-710 (E) (providing a hearing on the merits must be held within thirty-five days of removal). DSS itself noted at the hearing before the family court that it was required to hold a hearing within thirty days if the child support services division of DSS attaches someone's bank account or attempts to revoke someone's passport. We find our Legislature recognized that under section 63-7-1230, the party accused of abuse has no opportunity to be heard until the administrative hearing. Thus, the Legislature mandated an expedited review. We find no error by the family court in concluding eighty-two days did not satisfy that statutory mandate.

Finally, we likewise find the family court had the authority to order DSS to remove Wardlaw's name from the Registry pending the administrative hearing. "The family court has exclusive jurisdiction to hear matters concerning the abuse and neglect of children." *S.C. Dep't of Soc. Servs. v. Meek*, 352 S.C. 523, 528, 575 S.E.2d 846, 848 (Ct. App. 2002). South Carolina Code Section 63-3-530 provides exclusive jurisdiction to the family court "to issue orders compelling public officials and officers to perform official acts under Title 63, the Children's Code . . . ." S.C. Code Ann. § 63-3-530 (36) (2010). We find no error by the family court in ordering the removal of Wardlaw's name from the Registry pending his administrative review as the remedy it imposed for DSS's failure to provide an expedited hearing.

IV. RULE 65(c), SCRCP

DSS argues the family court's order violates Rule 65(c), SCRCP, because Wardlaw did not provide security. During oral argument before this court, DSS conceded it failed to preserve this issue for appellate review. *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

CONCLUSION

Accordingly, the order of the family court is

AFFIRMED.[2]

LOCKEMY, C.J., and MCDONALD, J., concur.

[2] We decline to address Wardlaw's argument that section 63-7-1230 is unconstitutional.