The Supreme Court of South Carolina

REQUEST FOR WRITTEN COMMENTS

The South Carolina Bar has proposed amending Rule 4 of the South Carolina Rules of Civil Procedure (SCRCP) to provide for a method of service on an individual defendant in a foreign country.

After a review of the Bar's submission, the Court is considering modifying the Bar's proposed amendment[1] for submission to the General Assembly in accordance with Article V, Section 4A of the South Carolina Constitution. The proposed changes are set forth in the attachment.

Persons or entities desiring to submit written comments should submit their comments to the following email address, rule4comments@sccourts.org, on or before December 1, 2021. Comments should be submitted as an attachment to the email as either a Microsoft Word document or an Adobe PDF document.

Columbia, South Carolina
November 10, 2021

[1] The version approved by the Bar's House of Delegates is available at: https://www.scbar.org/media/filer_public/dc/56/dc56e1e7-33f0-46b6-aa37-e89f16300fe5/july_30_2021_materials.pdf.

Rule 4(e), SCRCP, would be amended to provide:[2]

> **(e)** **Serving an Individual in a Foreign Country.** Unless a statute provides otherwise, an individual—other than a minor or an incompetent person—may be served at a place not within any judicial district of the United States:
>
> > **(1)** by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
> >
> > **(2)** if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
> >
> > > **(A)** as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;
> > >
> > > **(B)** as the foreign authority directs in response to a letter rogatory or letter of request; or
> > >
> > > **(C)** unless prohibited by the foreign country's law, by:
> > >
> > > > **(i)** delivering a copy of the summons and of the complaint to the individual personally; or
> > > >
> > > > **(ii)** using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or
> >
> > **(3)** by other means not prohibited by international agreement, as the court orders.

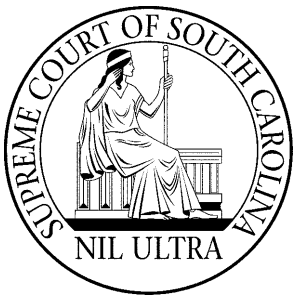
[2] Subsequent paragraphs in Rule 4 would be re-lettered to reflect the addition of any new paragraphs.

Rule 4(h), SCRCP, would be amended to provide:

> **(h) Proof of Service Without the State.** When the service is made out of the State the proof of such service may be made, if within the United States, by affidavit before:
>
> > **(1)** Any person in this State authorized to make an affidavit;
> >
> > **(2)** A commissioner of deeds for this State;
> >
> > **(3)** A notary public who shall affix thereto his official seal; or
> >
> > **(4)** A clerk of a court of record who shall certify the same by his official seal~~; and,~~
> >
> > ~~**(5)** If made without the limits of the United States, before a consul, vice-consul or consular agent of the United States who shall use in his certificate his official seal~~.

Rule 4(i), SCRCP, would be amended to provide:

> **(i) <u>Proof of Service on an Individual in a Foreign Country.</u>** <u>Service not within the United States must be proved as follows:</u>
>
> > <u>**(1)** if made under Rule 4(e)(1), as provided in the applicable treaty or convention; or</u>
> >
> > <u>**(2)** if made under Rule 4(e)(2) or (e)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.</u>



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 39
November 10, 2021
Patricia A. Howard, Clerk
Columbia, South Carolina
www.sccourts.org

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The Supreme Court of South Carolina

In the Matter of William E. Hopkins, Jr., Respondent.

Appellate Case No. 2021-000261

ORDER

By opinion dated July 7, 2021, this Court disbarred Respondent. *In re Hopkins*, Op. No. 28042 (S.C. Sup. Ct. filed Jul. 7, 2021) (Shearouse Adv. Sh. No. 23 at 9). Thereafter, this Court granted Respondent's petition for rehearing following the discovery that our July 7, 2021 decision was made without the benefit of existing mitigating evidence, which was submitted to the Office of Disciplinary Counsel (ODC), but which ODC failed to provide to the Commission on Lawyer Conduct or to this Court. *In re Hopkins*, S.C. Sup. Ct. Order dated Aug. 19, 2021. The matter was reheard on October 11, 2021, and after careful consideration of all mitigating evidence, we hereby substitute the attached opinion for the previous opinion, which is withdrawn.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

James, J., not participating.

Columbia, South Carolina
November 10, 2021

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of William E. Hopkins, Jr., Respondent.

Appellate Case No. 2021-000261

Opinion No. 28042
Submitted June 17, 2021 – Filed July 7, 2021
Withdrawn, Substituted, and Refiled November 10, 2021

DEFINITE SUSPENSION

Disciplinary Counsel John S. Nichols and Deputy Disciplinary Counsel Carey Taylor Markel, both of Columbia, for the Office of Disciplinary Counsel.

Joseph Preston Strom, Whitney Boykin Harrison, and John R. Alphin, all of Columbia, for Respondent.

PER CURIAM: In this attorney disciplinary matter, Respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, Respondent admits misconduct and consents to any sanction set forth in Rule 7(b), RLDE. We accept the Agreement and definitely suspend Respondent from the practice of law for a period of three years.

I.

Respondent was admitted to practice in 1993 and has no prior disciplinary history. Respondent admits he transferred money from his trust account to cover payroll and operating expenses for his law firm eleven times from November 30, 2017, to July 13, 2018, in the total amount of $95,981.46. Respondent acknowledges he

was using client money to keep his law firm afloat and states he always intended to repay the money. Respondent began to repay the trust account on June 26, 2018, and completely repaid the account on September 30, 2018. The trust account has been reconciled, and all monies have been repaid. Respondent has turned over all accounting and bookkeeping functions to a licensed Certified Public Accountant and has given all trust account responsibilities to another lawyer in the firm. Respondent has also completed the Legal Ethics and Practice Program Ethics School, Trust Account School, and Advertising School. Throughout the disciplinary investigation, Respondent was responsive and fully cooperative.

Respondent admits his conduct violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.15 (requiring the safekeeping of property) and Rule 8.4 (prohibiting misconduct). Respondent further admits he failed to comply with Rule 417, SCACR (establishing financial recordkeeping requirements). Respondent admits his conduct constitutes grounds for discipline under Rule 7(a)(1), RLDE, Rule 413, SCACR (prohibiting violations of the Rules of Professional Conduct). In light of Respondent's admissions of misconduct, we accept the Agreement, and turn now to the issue of the appropriate sanction.

II.

In connection with the Agreement, Respondent submitted an affidavit in mitigation, which revealed that, at the time of the misconduct, Respondent was suffering from undiagnosed mental and physical health conditions which caused cognitive and neurological deficits.[1] Specifically, Respondent submitted a report

[1] Following the issuance of our withdrawn July 7, 2021 opinion in this matter, Respondent filed a petition for rehearing urging the Court to reconsider the sanction in light of the mitigating evidence he provided to ODC. It was thereafter discovered that ODC never submitted this mitigating evidence to the Commission on Lawyer Conduct (Commission) or this Court. Indeed, ODC admits it "inexplicably" failed to include Respondent's affidavit in mitigation with the other case file materials when the matter was submitted to the Commission for review and recommendation under Rule 21(c), RLDE, Rule 413, SCACR. Due to ODC's failure, neither the Commission nor this Court had the benefit of reviewing Respondent's mitigating information in considering the Agreement and the appropriate sanction. In ODC's return and at rehearing, Disciplinary Counsel has

from Dr. Robert McCarthy, a PhD, Licensed Professional Counselor, and Certified Clinical Mental Health Counselor, who diagnosed Respondent with persistent depressive disorder and Attention-Deficit/Hyperactivity Disorder (ADHD), a neurological brain disorder characterized by inattention and impulsivity that interferes with one's functioning. As a result of these diagnoses, Respondent has undertaken a course of clinical treatment known as Low Energy Neurofeedback (LENS). Since 2018, Respondent has received more than fifty LENS treatments, which have improved his symptoms. Respondent testified at rehearing that he is committed to his treatment and plans to continue it indefinitely.

Respondent also consulted with psychiatrist Donna S. Maddox, M.D., and underwent a physical examination, cognitive tests, and blood tests. Dr. Maddox diagnosed Respondent with a motor tic disorder, an unspecified neurocognitive disorder secondary to B12 deficiency, pernicious anemia, hypothyroidism, and depression. Respondent now takes multiple medications to treat his conditions. Of the five listed diagnoses, all but the motor tic disorder have negative effects on cognitive function. In her report, Dr. Maddox opined, to a reasonable degree of medical certainty, "[i]t is likely that [Respondent's] neurocognitive impairment [] contributed to the poor judgment and decision-making."

At the rehearing, Respondent testified credibly that he is remorseful and regrets he did not recognize and treat his symptoms sooner, rather than withdrawing and isolating himself from the support of family, friends, and colleagues. Respondent explained that at the time of the misconduct, "personally and professionally, I was spiraling. It is so unfortunate it took a catastrophe like this for me to get the help I needed." Respondent testified that he plans to continue treatment "for the rest of [his] life" and believes he can make positive contributions to the legal profession if he is allowed to practice law again. Respondent also submitted five character affidavits from long-serving and well-respected members of the Bar, who acknowledged Respondent's misconduct and attested to Respondent's remorse, good character, fitness to practice law, and long history of service to the community and the legal profession.

Although these mitigating circumstances do not, in any way, excuse Respondent's misconduct, we find Respondent adequately demonstrated his undiagnosed mental

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assured this Court that ODC and the Commission have both implemented new internal procedures to avoid omissions of this type in the future.

and physical conditions contributed to his commission of unethical conduct, and therefore, we consider these circumstances in determining the proper sanction to be imposed.

III.

In light of Respondent's admitted misconduct and related mitigating circumstances, we find a definite suspension of three years is the appropriate sanction. Accordingly, we definitely suspend Respondent from the practice of law for a period of three years, retroactive to July 7, 2021.[2]

DEFINITE SUSPENSION

BEATTY, C.J., KITTREDGE, HEARN and FEW, JJ., concur. JAMES, J., not participating.

[2] We note Respondent has previously filed an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR, and there are no outstanding costs related to the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct.

The Supreme Court of South Carolina

In the Matter of Darren S. Haley, Respondent.

Appellate Case No. 2021-000059

ORDER

By opinion dated August 11, 2021, this Court publicly reprimanded Respondent as reciprocal discipline following his public reprimand in North Carolina. *In re Haley*, Op. No. 28048 (S.C. Sup. Ct. filed Aug. 11, 2021) (Howard Adv. Sh. No. 27 at 19). Respondent thereafter filed a petition for rehearing. After careful consideration of Respondent's petition, we grant the petition for rehearing, dispense with further briefing, and substitute the attached opinion for the opinion previously filed in this matter.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
November 10, 2021

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Darren S. Haley, Respondent.

Appellate Case No. 2021-000059

Opinion No. 28048
Submitted July 21, 2021 – Filed August 11, 2021
Withdrawn, Substituted, and Refiled November 10, 2021

PUBLIC REPRIMAND

Disciplinary Counsel John S. Nichols and Deputy Disciplinary Counsel Carey Taylor Markel, both of Columbia, for the Office of Disciplinary Counsel.

Darren S. Haley, of Greenville, Pro Se.

PER CURIAM: By order of the Grievance Committee of the North Carolina State Bar dated May 14, 2019, Respondent was reprimanded for violating the North Carolina Rules of Professional Conduct.[1] The order was forwarded to this

[1] The order states that in 2017, Respondent submitted a motion in Mecklenburg County Superior Court seeking to be admitted *pro hac vice* in North Carolina to represent a client in a criminal matter. In the motion, Respondent failed to reveal that in 2005, this Court suspended him from the practice of law for thirty days and

Court by the Office of Disciplinary Counsel (ODC) on January 19, 2021. Thereafter, pursuant to Rule 29(b), RLDE, ODC and Respondent were notified by letter of the Clerk of this Court that they had thirty days to inform the Court of any claim that imposition of the identical discipline in South Carolina is not warranted. On February 18, 2021, Respondent submitted a response arguing a private reprimand was the appropriate sanction given his lack of "intent to defraud."

We find a public reprimand is the appropriate sanction to impose as reciprocal discipline, as none of the reasons set forth in Rule 29(d), RLDE, exist to justify different discipline in this matter.

PUBLIC REPRIMAND.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

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that in 2006, reciprocal discipline was imposed in Virginia, where he is also licensed to practice law. *See In re Haley*, 366 S.C. 363, 622 S.E.2d 538 (2005) (publicly reprimanding Respondent for a lack of diligence and communication and failing to consult with his client). The order concluded Respondent violated Rules 3.3(a) (false statement of fact to a tribunal); 8.4(c) (conduct involving dishonesty); and 8.4(d) (conduct prejudicial to the administration of justice) of the North Carolina Rules of Professional Conduct. Respondent was reprimanded for the violations.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Cathy J. Swicegood, Petitioner,

v.

Polly A. Thompson, Respondent.

State Ex Rel Alan Wilson, Attorney General, Intervenor.

Appellate Case No. 2020-001351

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Greenville County
The Honorable W. Marsh Robertson, Family Court Judge

Opinion No. 28067
Submitted October 27, 2021 – Filed November 10, 2021

VACATED IN PART AND AFFIRMED IN RESULT

John G. Reckenbeil, of Law Office of John G. Reckenbeil, L.L.C., of Mauldin; and J. Falkner Wilkes, of Greenville, for Petitioner.

Margaret A. Chamberlain, of Chamberlain Law Firm, LLC, of Greenville; and Melissa Hope Moore, of Fountain Inn, for Respondent.

PER CURIAM: Petitioner seeks a writ of certiorari to review the decision of the court of appeals in *Swicegood v. Thompson*, 431 S.C. 130, 847 S.E.2d 104 (Ct. App. 2020). We grant the petition, dispense with further briefing, vacate the decision in part, and affirm the decision in result.

The court of appeals based its decision that the parties did not establish a common law marriage on its findings that: (1) section 20-1-15 of the South Carolina Code (2014), which prohibited same-sex marriage, operated as an impediment to the formation of a common law marriage between same sex couples; and (2) Petitioner and Respondent lacked the requisite intent and mutual agreement to enter a legally binding common law marriage as a matter of law.

In *Obergefell v. Hodges*, 576 U.S. 644, 675–76 (2015), the Supreme Court held "same sex couples may exercise the fundamental right to marry," and all state laws challenged in that case were "invalid to the extent they exclude same sex couples from civil marriage on the same terms and conditions as opposite sex couples." Although recognizing that *Obergefell* must be applied retroactively, the court of appeals held section 20-1-15 constituted "a pre-existing, separate, independent rule of state law, having nothing to do with retroactivity," which formed an "independent legal basis" for the finding that Petitioner and Respondent did not establish a common law marriage. *See Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749, 756 (1995).

Our state's restriction on same sex marriage in section 20-1-15 was rendered *void ab initio* by *Obergefell* and, therefore, must be treated as though it never existed. *See Norton v. Shelby Cnty.*, 118 U.S. 425, 442 (1886) ("An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; . . . it is, in legal contemplation, as inoperative as though it had never been passed."); *Bergstrom v. Palmetto Health All.*, 358 S.C. 388, 399, 596 S.E.2d 42, 47 (2004) ("Generally, 'when a statute is adjudged to be unconstitutional, it is as if it had never been.'" (quoting *Atkinson v. S. Express Co.*, 94 S.C. 444, 453, 78 S.E. 516, 519 (1913))). Accordingly, the statute cannot serve as an impediment to the recognition of a same sex marriage predating *Obergefell.* Because the court of appeals erred in holding the statute constituted an impediment, we vacate that portion of the court of appeals opinion, but affirm the ultimate result reached by the court of appeals that no common law marriage was established.

VACATED IN PART AND AFFIRMED IN RESULT.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Modesta Brinkman, David Brinkman, James Coleman, Carl Foster, Karen Foster, Robert Collins and Pamela Collins, Appellants,

v.

Weston & Sampson Engineers, Inc., City of Columbia, South Carolina, North American Pipeline Management and Layne Inliner, Defendants,

Of Which the City of Columbia, South Carolina, is the Respondent.

Appellate Case No. 2018-000948

Appeal from Richland County
G. Thomas Cooper, Jr., Circuit Court Judge,
Jocelyn Newman, Circuit Court Judge

Opinion No. 5870
Heard March 2, 2021 – Filed November 10, 2021

AFFIRMED

John Adams Hodge and Sharon A. Hodge, both of John Adams Hodge & Associates, LLC, of Columbia; and Geoffrey Kelly Chambers, of Green Cove Springs, Florida; all for Appellants.

William Michael Hemlepp, Jr., and Dana M. Thye, of City Attorney's Office, both of Columbia, for Respondent.

LOCKEMY, C.J.: In this civil action, property owners Modesta and David Brinkman, Carl and Karen Foster, James Coleman, and Robert Collins (collectively, Owners)[1] appeal the circuit court's grant of summary judgment in favor of the City of Columbia (the City) as to Owners' claims under section 16-11-780 of the South Carolina Code (2015).[2] Owners argue the circuit court erred in (1) finding section 16-11-780 inapplicable, (2) failing to find the City liable because it had actual and constructive knowledge of the existence of historical and archaeological resources on Owners' properties, (3) finding no preservation or conservation authorities had designated the bridge abutments on Owners' properties as archaeological resources or structures, (4) concluding a designation on the National Register of Historic Places was necessary, (5) misstating the statutory requirements of section 16-11-780(C), and (6) finding the City was immune from liability pursuant to the "utility worker exception" of section 16-11-780(K)(3). We affirm.

FACTS

Owners each own real property on Castle Road on the banks of the Broad River in Richland County. The City owns and operates sewer lines that run beneath portions of Owners' properties and possesses a permanent, fifteen-foot-wide easement across the properties for the purpose of maintaining the sewer line. In the fall of 2014, the City began a sewer rehabilitation project, which required access to the sewer line beneath Owners' properties.

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[1] The circuit court dismissed Pamela Collins from the case.

[2] *See* § 16-11-780(C) ("It is unlawful for a person to wilfully, knowingly, or maliciously enter upon the lands of another or the posted lands of the State and disturb or excavate a prehistoric or historic site for the purpose of discovering, uncovering, moving, removing, or attempting to remove an archaeological resource"); *see also* § 16-11-780(I) (allowing a private landowner to "bring a civil action for a violation of this section").

According to Owners, two bridge abutments stood on a portion of their property located outside of the easement. Owners claimed these abutments, which were made of carved rock, were built in the 1700s and were "the oldest existing structures in the Midlands."

The City hired several contractors, including Weston & Sampson Engineers, Inc., North American Pipeline Management (NAPM), and Layne Inliner, to perform various aspects of the rehabilitation work. While the City and the contractors were clearing the land to begin work on the sewer line, they destroyed the stones that allegedly comprised the bridge abutments. Thereafter, the City acquiesced to Owners' request that all work cease. Owners then commenced this action against the contractors and the City, alleging various causes of action, including destruction of archaeological resources in violation of section 16-11-780.[3]

Dr. Johnathan Leader, State Archaeologist of South Carolina, testified in a deposition that David Brinkman contacted him around 2008 to discuss the existence of a historic bridge abutment on his property. Dr. Leader testified he visited the property at Brinkman's request and observed "a bridge abutment with tool marks and other materials commensurate with late 17[00s], early 1800s." Dr. Leader stated he believed "it was a historic abutment from the appropriate time period and it was likely to be the Compty bridge abutment." However, he explained "additional excavation" and review of "other properties across the river" would have been the "next step." In addition, although Brinkman submitted an application in 2008 to the South Carolina Department of Archives and History seeking to add the site to the National Register of Historic Places, the Department stated a great deal more research and archaeological investigation was needed before a positive determination of eligibility could be made. The Department also "question[ed] whether there was a sufficient amount of physical remains from the ferry and bridge site to convey in any tangible way the history of th[e] area."

The record contains a screenshot from the website, "ArchSite." Dr. Leader testified ArchSite was a multi-agency website that allowed access to the archaeological resources database. He explained that when ArchSite received information about historic sites, it would verify the information and post it to the

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[3] Owners alleged various other causes of action, which the circuit court stayed pursuant to Rule 205, SCACR. Owners later settled with each of the contractors as to all claims, and the contractors were dismissed from this action.

website. The image in the record shows a rendering of part of the Broad River and Castle Road, and it includes the notation "Historic Areas: Broad River Ferry and Bridge Site" and lists the Brinkmans' address.

The City and NAPM filed separate motions for summary judgment. The circuit court granted NAPM's motion as to Owners' claims for violation of section 16-11-780. The circuit court concluded that because the statute required "an intent to enter [the properties] for the sole purpose of disturbing[or]destroying a known []archaeological resource," Owners were required to provide "some evidence that NAPM knowingly violated the terms of the statute." The circuit court likewise granted the City's motion for summary judgment as to Owners' claims for violation of section 16-11-780. The circuit court found (1) "no governing preservation or conservation authority [had] recognize[d] the alleged archaeological structures as either archaeological resources or historical structures," and (2) subsection 16-11-780(K)(3)[4] exempted the City from liability. The circuit court incorporated by reference the conclusions of law from the order granting NAPM's motion for summary judgment. This appeal followed.

STANDARD OF REVIEW

"When reviewing an order granting summary judgment, the appellate court applies the same standard as the [circuit] court. Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006) (citation omitted); *see also* Rule 56(c), SCRCP (providing the court shall grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"). "In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). "The [circuit] court should grant summary judgment against a party who fails to make a showing sufficient to establish the existence of an essential element of the party's case." *Fender &*

[4] (providing that "[n]othing contained in this section shall limit or interfere with . . . (3) the lawful acts of a utility worker acting in the scope of and in the course of his employment").

Latham, Inc. v. First Union Nat'l Bank of S.C., 316 S.C. 48, 50, 446 S.E.2d 448, 449 (Ct. App. 1994).

"Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) (quoting *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)).

LAW AND ANALYSIS[5]

Section 16-11-780(C) provides,

> It is unlawful for a person to *wilfully, knowingly, or maliciously enter* upon the lands of another or the posted lands of the State and disturb or excavate a prehistoric or historic site *for the purpose of* discovering, uncovering, moving, removing, or attempting to remove an archaeological resource. Each unlawful entry and act of disturbance or excavation of a prehistoric or historic site constitutes a separate and distinct offense.

(emphases added); *see also* S.C. Code Ann. § 16-11-780(D)-(H) (setting forth criminal penalties for violation of this section).

The statute defines an archaeological resource as:

> [A]ll artifacts, relics, burial objects, or material remains of past human life or activities that are at least one hundred years old and possess either archaeological or commercial value, including pieces of pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, rock carving, intaglios, graves, or human skeletal materials.

[5] Owners' appellate brief raises six issues on appeal. Because Issues I-V all pertain to the applicability of section 16-11-780(C), we address these issues together here.

§ 16-11-780(A)(1). The statute authorizes private landowners to bring a civil action for violation of the statute. *See* § 16-11-780(I) ("The landowner, in the case of private lands . . . may bring a civil action for a violation of this section to recover the greater of the archaeological resource's archaeological value or commercial value, and the cost of restoration and repair of the site where the archaeological resource was located, plus attorney's fees and court costs.").

Owners argue the circuit court erred in concluding section 16-11-780 did not apply to the City's conduct. Owners contend the circuit court erred by concluding the statute required a person to act with the *sole* purpose of harming an archaeological resource. They next assert the adverbs "wilfully, knowingly or maliciously" modified only the words "enter upon the lands of another" and the statute did not require knowledge that the site was historic or that it contained an archaeological resource. Owners further argue the statute did not require the City to know that the stones were an archaeological resource but only required that the City act with the purpose of moving the stones. We disagree.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Grier*, 397 S.C. at 535, 725 S.E.2d at 695 (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Sloan*, 371 S.C. at 499, 640 S.E.2d at 459.

Viewing the evidence and drawing all reasonable inferences therefrom in the light most favorable to Owners, no evidence showed the City cleared the land "for the purpose of" discovering, uncovering, moving, removing, or attempting to remove an archaeological resource. Pursuant to a plain reading of section 16-11-780(C), a person must disturb a historic site "for the purpose of" moving, removing, or attempting to remove an archaeological resource. § 16-11-780(C). "'Purpose' is the highest level of *mens rea* known in criminal law . . . ." *State v. Jefferies*, 316 S.C. 13, 19, 446 S.E.2d 427, 431 (1994); *see also United States v. Bailey*, 444 U.S. 394, 405 (1980) ("In a general sense, 'purpose' corresponds loosely with the common-law concept of specific intent, while 'knowledge' corresponds loosely with the concept of general intent."). "*Purpose* is the result desired by the actor."

Snakenberg v. Hartford Cas. Ins. Co., 299 S.C. 164, 172, 383 S.E.2d 2, 7 (Ct. App. 1989); *see also Purpose*, *Black's Law Dictionary* (11th ed. 2019) (defining "purpose" as "[a]n objective, goal, or end"). Thus, to violate the statute, a person must desire the result of moving or removing an archaeological resource. The desire to accomplish such a result necessarily requires knowledge of the existence of an archaeological resource, and the City could not have desired the result of moving or removing an archeological resource without such knowledge. When the incident occurred, the City and its contractors were attempting to clear the easement to provide access to the sewer lines. Regardless of whether the objects were in fact archaeological resources, Owners provided no evidence that the City had any knowledge of the historical nature of the site or that it contained an archaeological resource. Notwithstanding the entry on ArchSite, Owners failed to show the City was obligated to consult this resource.[6] Additionally, although Owners argue the workers disturbed the abutment despite James Coleman's warnings to two on-site workers, Coleman's testimony was that he shouted to the workers and said there was a valued monument on the property, but he did not specify whether this occurred before or after the workers destroyed the stones. Further, he testified he was not certain the worker operating the bulldozer even heard him.

We can draw only one reasonable inference based on the record: in clearing the property and thus destroying the stones, the City was acting with the sole, legitimate purpose of clearing its easement to allow it to repair the sewer line. Thus, the City's destruction of the alleged archaeological resource, although unfortunate, did not violate the statute because no evidence showed it did so "for the purpose of" destroying an archaeological resource. We therefore conclude there is no genuine issue of material fact as to Owners' claim for violation of the statute and the City was entitled to judgment as a matter of law. *See* Rule 56(C), SCRCP.

Further, we acknowledge the circuit court incorrectly inserted the word "sole" into the statutory language; however, because we find the City's actions did not violate the statute, we reject Owners' contention the circuit court's interpretation requires reversal. *See Grier*, 397 S.C. at 535, 725 S.E.2d at 695 ("Questions of statutory

[6] We note the ArchSite entry indicates the site is "not eligible or requires evaluation." Thus, we question whether the ArchSite entry contained sufficient information to conclude the property was historic.

interpretation are questions of law, which we are free to decide without any deference to the court below." (quoting *CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881)).

Finally, we reject Owners' arguments that the City was liable through actual and constructive knowledge of archaeological resources on Owners' property and that the circuit court erred in determining no preservation or conservation authorities had designated the objects as archaeological resources and in finding designation on the National Register of Historic Places was required. Owners correctly state that the statute does not expressly require an object to be designated on the National Register of Historic Places to constitute an archaeological resource. However, the circuit court made no finding that section 16-11-780(C) required such designation. Further, as we stated, regardless of whether any preservation or conservation authorities designated the objects as archaeological resources, Owners failed to demonstrate the City was or should have been aware of such designation. Thus, no evidence showed the City had either actual or constructive knowledge of the existence of archaeological resources on the property, and we find no error.

For the foregoing reasons, we conclude Owners failed to show the existence of any genuine issue of material fact and the City was entitled to judgment as a matter of law as to Owners' claims under section 16-11-780(C), and we affirm.[7]

CONCLUSION

Based on the foregoing, the circuit court's order granting summary judgment in favor of the City is

AFFIRMED.

HUFF and HEWITT, JJ., concur.

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[7] Because our decision on this issue is dispositive, we decline to address Owners' remaining issue of whether the circuit court erred in finding the City was exempt from liability pursuant to subsection 16-11-780(K)(3). *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating it was not necessary to address the appellant's remaining issues in light of the court's disposition of the case).