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Jun 01 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Erin D. Dean, Special Referee

Case No.: 2019-CP-07-00818
Appellate Case No. 2021-00321

Mare Baracco..... Appellant-Respondent,

v.

Beaufort County.....Respondent-Appellant.

MEMORANDUM IN OPPOSITION TO MOTION TO TRANSFER APPEAL

The Respondent-Appellant, BEAUFORT COUNTY, by and through its undersigned counsel, respectfully submits this Memorandum in opposition to the Appellant-Respondent's *Motion to Transfer Appeal* dated May 24, 2022 (the "*Motion*").

June 1, 2022

s/ E. Richardson LaBruce

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*Attorney(s) for Respondent-Appellant Beaufort
County*

Ms. Baracco (the “*Petitioner*”) has moved this Court under Rule 204(b), SCACR, for direct certification of her appeal to the Supreme Court. In accordance with Rule 204(b), SCACR: “Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance.”

The Petitioner’s Motion fails to identify which particular legal issues pending before the Court of Appeals are of “significant public interest” or “major importance” to justify the deviation from the normal appellate process. Rather, the Petitioner broadly bases her motion to transfer “on the important statewide issues raised and the unfairness of the financial disparity between the parties.” (Pet. Memo, p. 1). To the best knowledge of Beaufort County (the “*County*”), any financial disparities between the parties is not a proper basis upon which an appeal may be certified for review by the Supreme Court.

While the County acknowledges that the *South Carolina Freedom of Information Act* (the “*Act*”) may present issues of significant public interest, it denies that the Petitioner’s appellate issues meet such a heightened standard. The only two questions raised by the Petitioner on appeal that may qualify as novel issues of statutory interpretation were not presented to the trial court nor preserved for appellate review. (Final Resp. Brief of Beaufort County, pp. 15-17). The remaining issues raised by the Petitioner on appeal are precisely the subset of cases historically allocated to the Court of Appeals: Requests to correct alleged abuses of discretion by the trial court (*e.g.*, reviewing determinations regarding the privileged nature of documents).

Unfortunately, the Motion and supporting memorandum of the Petitioner require additional response due to claims that are neither pertinent nor appropriate for a Rule 204(b), SCACR, analysis. The Petitioner continues to devote substantial portions of her pleadings to (i) raising irrelevant claims of alleged past County misconduct for the sole purpose of painting routine

bureaucratic actions as sinister and (ii) arguing that actions from other local governments (*e.g.*, the Isle of Palms, Charleston County, etc.) justify aggressively penalizing Beaufort County in this case. From the outset of this action, the Petitioner has steadfastly refused to focus on the limited legal issues presented for consideration. As stated by the County in August of 2020 to the Special Referee in response to two letters from the Petitioner:

The County understands that Ms. Baracco's history with former County employees and representatives likely influences her perception of actions taken by the County. As is evident from the pleadings and the correspondence on file, the Plaintiff appears to sincerely believe that ill motivations and/or personal vendettas drive the decisions made by Beaufort County and its counsel in this case. In support of her arguments, the Plaintiff offers comparisons to clear constitutional violations (*e.g.*, discussion of Chairman Tim Scott); vague evidence of past confidential settlements; unsubstantiated claims (*e.g.*, alleged wholesale deletions of Gruber e-mails with Regecz); and, speculation regarding former Beaufort County employees (*i.e.*, the resignation of Bill Lisbon), all of which are irrelevant to the matter at hand.

Despite the Plaintiff's allegations otherwise, the County's decisions and actions in this matter have been neither punitive nor retaliatory. Rather, the County has consistently indicated its willingness to produce the requested documentation, provided that the Plaintiff reimburse County taxpayers for the costs of compliance. As previously discussed, if it is determined that any redactions were improperly made or fees improperly estimated, such errors were the result of vague provisions within the Freedom of Information Act, a complex balancing of public interests,

attempted compliance with limited and strict timelines, and the difficulty in responding to overwhelmingly burdensome requests, not personal animus.

While I am motivated to correct and address certain claims and insinuations made in the Plaintiff's earlier correspondence - in particular those that question the integrity of dedicated public servants and, to a somewhat lesser extent given the perfunctory inclusion of "That is not a swipe at Mr. LaBruce," my own - those statements are wholly irrelevant and immaterial to the issues at hand. This matter should be decided on the relevant facts and the appropriate law, not inappropriate commentary between the parties and their counsel.

(R. pp. 97-100, 102-03, 115).

Despite the Petitioner acknowledging that the issues involved in this appeal are solely legal and that any "evidence of animus" is immaterial and "unnecessary in evaluating this, or any other F.O.I.A. case," she continues to use this action as an opportunity to vilify the County and its employees (R. p. 154).

Additionally, throughout this action the Petitioner has raised new issues, many of which were abandoned shortly thereafter, in an effort to find a single brick upon which to build her claim for attorneys' fees under the Act. These new claims have been made for the first time during trial, on motion for reconsideration, and even on appeal. (R. p. 131, 156) Many of these new claims are completely without legal support and merit (*e.g.*, raising on appeal that the closing of a real estate transaction eliminates the attorney-client exemption of the Act).

The very nature of the one-sided penalty provisions of the Act incentivizes individuals to lobby as many potential violations as possible against the public body in the hope that a single claim lands, while providing no corresponding disincentive. As a result, the County has been

forced to incur substantial expense in playing its own game of legal whack-a-mole. For the Petitioner to now claim that her oversized expenses are the result of the County's actions should fail under the slightest scrutiny. The County's focus has always been on the legal issues presented by this action. (R. pp. 60-62). But the County does not get to sit in the driver's seat in a FOIA case. The County only possesses the ability to respond to the various allegations and insinuations posed by the Petitioner. The Petitioner's expenses are directly related to (i) the complexity of the claims presented this case, (ii) the ever-changing positions espoused by Petitioner, and (iii) the Petitioner's own refusal to focus on the substantive legal issues presented this case.

For all of the foregoing reasons, Beaufort County respectfully requests that this Court deny the Petitioner's Motion.

Respectfully submitted,

June 1, 2022

s/ E. Richardson LaBruce
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Beaufort County,

Respondent-Appellant.

PROOF OF SERVICE

I certify that I have served the Memorandum in Opposition to Motion to Transfer Appeal, by emailing a copy of it to Thomas R. Goldstein, Attorney for Appellant, at email tgoldstein@cobblaw.net on June 1, 2022.

June 1, 2022

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□ Court Certified Mediator
▪ Court Certified Arbitrator / Mediator

June 1, 2022

Hon. Jenny A. Kitchings,
Clerk of Court
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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Re: Mare Baracco v. Beaufort County; 2019-CP-07-00818
Appellate Tracking No.: 2021-00321
Our File No. 6868.002 – Beaufort County

Dear Ms. Kitchings,

I am filing an electronic version of the Memorandum in Opposition to Motion to Transfer Appeal along with a Proof of Service. I understand that I am not required to file a paper copy of the Memorandum in Opposition to Motion to Transfer Appeal. I am, however, sending a paper copy to opposing counsel (unless he tells me he does not want me to do that). Please let me know if I need to do anything other than electronic filing on the Memorandum in Opposition to Motion to Transfer Appeal. I thank you in advance for your attention.

With best regards, I am

Sincerely yours,

/s/ E. Richardson LaBruce

E. Richardson LaBruce
FINGER, MELNICK & BROOKS, P.A.

ERL/

Enclosure: Memorandum in Opposition to Motion to Transfer Appeal (digital copy)

cc: T. Goldstein