

RECEIVED

Jul 27 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2020-001135
Case No. 2015-CP-40-01805

Wendy Brawley Respondent-Appellant,

v.

Richland County, South Carolina, ...Appellant-Respondent.

**FINAL CROSS-APPELLANT'S REPLY BRIEF OF
RESPONDENT-APPELLANT WENDY BRAWLEY**

Shaun C. Blake, Esq.
Jenkins M. Mann, Esq.
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
Tel: 803-256-1268

COUNSEL FOR RESPONDENT-APPELLANT

TABLE OF CONTENTS

Table of Authorities	i
Argument	1
A. Judge Newman never dismissed Plaintiff’s claim for relief under Paragraph 37(c).	1
B. Mrs. Brawley’s request for relief was raised to and ruled upon by Judge Benjamin, and so the sole issue on cross-appeal is preserved for review by this Court.	3
Conclusion	5

TABLE OF AUTHORITIES

Cases

<u>Coward Hund Const. Co. v. Ball Corp.</u> , 336 S.C. 1, 518 S.E.2d 56 (Ct.App.1999).	4
<u>Elam v. S.C. Dep't of Transp.</u> , 361 S.C. 9, 602 S.E.2d 772 (2004)	4

Statute

S.C. Code Ann. § 30-4-100.....	1
--------------------------------	---

ARGUMENT

In its Response, Richland County continues its pursuit of obfuscation rather than sound reasoning. Therefore, Mrs. Brawley briefly replies to address Richland County's arguments.

A. Judge Newman never dismissed Plaintiff's claim for relief under Paragraph 37(c).

The Complaint contains a First Cause of Action labeled "Declaratory Judgment" and Second Cause of Action labeled "Temporary and Permanent Injunction." These two causes of action are occasionally referenced by their labels in the record as convenient shorthand, e.g., Richland County's counsel referring to Mrs. Brawley's Second Cause of Action as the "injunctive relief cause of action." (Sept. 5, 2019 Transcript, p. 304, R. 569.) A cursory reading of Mrs. Brawley's Second Cause of Action reveals that the only relief sought thereunder was the issuance of a temporary and permanent injunction to stop the sewer project from proceeding by preventing Richland County from sending surveys, negotiating easements, and conducting a third reading regarding the Lower Richland Sewer Project. (Complaint, ¶ 40, R. 111). Judge Clifton Newman dismissed this Second Cause of Action as beyond the scope of a court's power under the South Carolina Freedom of Information Act. (Aug. 14, 2015 Form 4, R. 1; Aug. 23, 2016 Order, R. 7.)

In contrast, Mrs. Brawley's First Cause of Action for Declaratory Judgment seeks a declaration that she is "entitled to immediately receive full and complete responses" to her FOIA requests. (Complaint, Paragraph 37(c), R. 110.) To the extent that this relief may be labeled "coercive" is of no substantive consequence to the issue on cross-appeal; the South Carolina Freedom of Information Act plainly allows Mrs. Brawley to seek an order requiring Richland County to fully respond to a FOIA request within her cause of action for declaratory judgment. S.C. Code Ann. § 30-4-100(A) ("A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter....")

Mrs. Brawley's request for relief in paragraph 37(c) of her Complaint was not addressed by Judge Newman in his dismissal of the Second Cause of Action. Judge Newman plainly stated:

In summary, the Court concludes that the temporary and injunctive relief, as pled in **paragraph 40** of the Plaintiffs' Complaint, is beyond the scope of the relief contemplated or allowed under S.C. Code Ann. § 30-4-100(a). The Court therefore grants the Motion to Dismiss with respect to the Plaintiff's claim for injunctive relief.

(Aug. 23, 2016 Order, p. 4-5, R. 7-8.) (emphasis added). Richland County creates confusion by directing this Court's attention to the wrong order issued by Judge Newman. Specifically, at page 5 of its Response, Richland County ignores Judge Newman's August 23, 2016, Order and refers to Judge Newman's subsequent Order on Richland County's Motion for Summary judgment as the "formal order" Judge Newman entered clarifying his August 14, 2015 Form 4.

However, even in this Order on Richland County's Motion for Summary Judgment, Judge Newman plainly preserved Mrs. Brawley's claim for relief in paragraph 37 of her Complaint as the claim remaining for trial:

the only claim that remains for trial is the claim by the Plaintiff Wendy Brawley related to the FOIA request dated September 9, 2014, which sought "a copy of the application and supporting documentation Richland County submitted to the USDA Rural Development for grant and loan funding for the Lower Richland Sewer Project."

(Oct. 24, 2016 Order, p. 3, R. 11.) Richland County cannot credibly pretend Judge Newman dismissed Plaintiff's claim for relief under Paragraph 37(c) of her Complaint.

Mrs. Brawley does not appeal Judge Newman's dismissal of her Second Cause of Action seeking injunctive relief. Richland County's argument that Mrs. Brawley has failed to preserve a challenge to Judge Newman's dismissal of her Second Cause of Action merely sets up and attacks a strawman.

B. Mrs. Brawley's request for relief was raised to and ruled upon by Judge Benjamin, and so the sole issue on cross-appeal is preserved for review by this Court.

At trial, Mrs. Brawley specifically raised her request for the relief she sought in paragraph 37(c) of her Complaint:

Your Honor, we are here today asking that the Court issue a declaratory judgment ordering that they produce all responsive documents to Ms. Brawley's September 9, 2014, FOIA request, and that they award her attorney's fees and costs associated with having to bring this action for the production of those same documents.

(Sept. 5, 2019 Transcript, p. 9, R. 274.) In support of this claim for relief, an entire day of trial was spent demonstrating that Richland County had failed to search and produce the records sought under paragraph 37(c) of Mrs. Brawley's Complaint. (Sept. 5, 2019 Transcript, R. 291-307; 320-346; 362-499; 525-537.)

Attempting to create ambiguity where none existed, Richland County mischaracterizes the undersigned's statement to Judge Benjamin at trial. Richland County's Response, p. 5. Specifically, Richland County fails to include the full statement of its counsel, which reads:

MR. LINDEMANN: Your Honor, may I just make a record? My point was this case is about documents that were submitted to the USDA. If this wasn't submitted to the USDA, this is not a document that we should have produced to her. That is the point that I made. Now, this whole argument -- I will just remind the Court, Judge Newman has already decided the claims for injunctive relief. This claim is solely for declaratory relief. So it deals with the documents that they have received and did they receive them prior to bringing a lawsuit or should they have received them prior to bringing a lawsuit.

MR. BLAKE: I say Bingo to that.

(Sept. 5, 2019 Transcript, p. 269, R. 534.) (emphasizing the portions of Richland County's counsel's statement omitted from its Response.)¹ Even Richland County's counsel's statements at trial, when

¹ Judge Newman overruled the objection ultimately overruled the objection and allowed the inquiry into documents that Richland County failed to search for and produce to continue. (Tr. pp. 267-270, R. 532-535.)

read without its selective editing, remove any doubt over whether Mrs. Brawley raised at trial the issue of her entitlement to the records Richland County failed to produce to her. Indeed, in closing arguments, Mrs. Brawley's counsel specifically pointed out to the trial court that Richland County improperly characterizes the effect of Judge Newman's prior dismissal of her Second Cause of Action:

But the declaratory relief doesn't -- the fact that this case no longer includes a temporary injunction to stop the Richland project from going forward, that does not control the fact that there are still other documents that the Court can declare were responsive to the FOIA within the county's control but not produced to Representative Brawley, which is what we spent the majority of today on.

(Sept. 5, 2019 Transcript, pp. 284-85, R. 549-550.)

Following trial, Judge Benjamin ruled upon and granted Mrs. Brawley the relief sought in paragraph 37(c) of her Complaint by declaring Richland County obligated to "conduct a reasonable examination of its records for any heretofore unidentified, responsive documents and produce those to Mrs. Brawley within **15 days** of the date of this order." (Feb. 13, 2020 Final Order, p. 12, R. 23) (emphasis in original). It is precisely because Judge Benjamin ruled upon this issue in Mrs. Brawley's favor that at Richland County challenged the ruling in its Motion to Alter or Amend.

Richland County's position that Mrs. Brawley needed to file a Rule 52(b)/59(e) Motion in response to an Order granting its Rule 52(b)/59(e) Motion is simply incorrect; such a requirement would result in parties filing successive motions for reconsideration each time the court grants a motion for reconsideration and result in confusion over the time period to file a notice of appeal. *See Coward Hund Const. Co. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999) (quoting James F. Flanagan, *South Carolina Civil Procedure* 475 (2d ed. 1996) ("Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on the issue so raised.")); *Elam v. S.C.*

Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (finding that only if an issue is raised but not ruled upon, the party who raised the issue must file a Rule 59(e), SCRPC, motion to preserve the issue for appellate review).

Here, Mrs. Brawley raised her position on the claims surviving and at issue at trial. Judge Benjamin initially agreed with Mrs. Brawley and granted her the relief sought at trial. The sole error Mrs. Brawley raises in her cross-appeal is Judge Benjamin's partial grant of Richland County's misleading Motion to Alter or Amend her judgment. (Motion to Alter or Amend Order dated Feb. 24, 2020 pp. 1-2, R. 208-209.) Therefore, Richland County cannot credibly claim that this issue was not raised and ruled upon by Judge Benjamin so as to preserve it for appellate review.

CONCLUSION

Based upon the same reasoning stated in Judge Benjamin's February 13, 2020 Order and the confusion that arose subsequently due to Richland County's Motion to Alter or Amend, this Court should reverse Judge Benjamin's grant of Richland County's Motion to Alter or Amend dated February 24, 2020 and instruct the trial court to reinstate Judge Benjamin's February 13, 2020 declaration to Richland County to search for and produce the Loan Records to Mrs. Brawley upon remittitur.

Respectfully submitted,

s/ Shaun C. Blake
Shaun C. Blake, Esq.
Jenkins M. Mann, Esq.
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
Tel: 803-256-1268

COUNSEL FOR RESPONDENT-APPELLANT

July 20, 2022

RECEIVED

Jul 27 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2020-001135
Case No. 2015-CP-40-01805

Wendy Brawley Respondent-Appellant,

v.

Richland County, South Carolina, ...Appellant-Respondent.

CERTIFICATE OF COUNSEL

I certify that the Final Cross-Appellant's Reply Brief of Respondent-Appellant Wendy Brawley complies with the requirements of Rule 211(b), SCACR.

s/ Shaun C. Blake
Shaun C. Blake, S.C. Bar 76349
Attorney for Respondent-Appellant

July 20, 2022