

RECEIVED

AUG 03 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2023-000104

Paul Roy Osmundson.....Appellant

v.

School District 5 of Lexington and Richland Counties.....Respondent

BRIEF OF *AMICI CURIAE*

South Carolina Broadcasters Association and South Carolina Press Association

Jay Bender, S.C. Bar No. 651
Baker, Ravenel & Bender, L.L.P.
3710 Landmark Dr., Suite 400
Post Office Box 8057
Columbia, SC 29202
803.799.9091
Attorneys for *Amici Curiae*
South Carolina Broadcasters Association
South Carolina Press Association

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2023-000104

Paul Roy Osmundson.....Appellant

v.

School District 5 of Lexington and Richland Counties.....Respondent

BRIEF OF *AMICI CURIAE*

South Carolina Broadcasters Association and South Carolina Press Association

Jay Bender, S.C. Bar No. 651
Baker, Ravenel & Bender, L.L.P.
3710 Landmark Dr., Suite 400
Post Office Box 8057
Columbia, SC 29202
803.799.9091
Attorneys for *Amici Curiae*
South Carolina Broadcasters Association
South Carolina Press Association

TABLE OF CONTENTS

| | |
|------------------------------------|---|
| STATEMENT OF ISSUES ON APPEAL..... | 1 |
| STATEMENT OF THE CASE..... | 1 |
| STANDARD OF REVIEW..... | 1 |
| ARGUMENT..... | 1 |
| CONCLUSION..... | 5 |
| CERTIFICATE OF COMPLIANCE..... | 5 |

TABLE OF AUTHORITIES

CASES

Lambries v. Saluda County Council, 409 S.C. 1, 760 S.E.2d 785 (2014).....1, 3
Lemmons v. Macedonia Water Works, Inc., 431 S.C. 186, 847 S.E.2d 471 (Ct. App. 2020).....4

STATUTES

S.C. Code Ann. §§ 30-4-10 (1991).....3
S.C. Code Ann. § 30-4-100(A)(2017).....1,2,3,4
S.C. Code Ann. § 30-4-15 (1987).....3,4
S.C. Code Ann. § 28-2-240(A)(4) (1976).....4
Rule 3, SCRCP.....4
Rule 8, SCRCP.....4

STATEMENT OF ISSUES ON APPEAL

- I. Whether the circuit court erred in granting Respondent's Motion to Dismiss based on the fact that a hearing on Appellant's claim for injunctive relief was not held within ten day of service on all parties.
- II. Whether the circuit court erred in denying Appellant's Motion for Reconsideration.

Amici Curiae South Carolina Broadcasters Association and South Carolina Press Association will address only issue I. in this brief.

STATEMENT OF THE CASE

Amici adopt the statement of the case advanced by Appellant.

STANDARD OF REVIEW

In a case such as this where a novel issue of law regarding the interpretation of a statute is presented this court is free to decide the question with no particular deference to the lower court, and its decision is to be based on the interpretation which would best comport with the law and public policies of the state. *Lambries v. Saluda County Council*, 409 S.C. 1, 760 S.E.2d 785 (2014).

ARGUMENT

Appellant initiated a civil action under the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §§ 30-4-10, *et seq.* (1991), seeking a declaration that Respondent had violated the Act, and that injunctive relief was appropriate under the provisions of Section 30-4-100(A). The court below dismissed Appellant's action on grounds that "no hearing had been held within the allotted timeframe."

The right of a citizen to seek injunctive relief under the FOIA was established in the earliest version of the Act which was adopted as Act no. 593, 1978 S.C. Acts 1736 which provided:

Section 11. (a) Any citizen of the State may apply to the circuit court for injunctive relief to enforce the provisions of this act in appropriate cases provided such application is made no later than sixty days following the date which the alleged violation occurs or sixty days after ratification of such act in public session, whichever comes later. The court may order equitable relief as it sees fit.

The General Assembly amended this section of the FOIA in Act 118 of 1987 to enlarge the time for the initiation of suits, specified that declaratory judgment was an available remedy, and that a violation of the FOIA was an irreparable injury:

SECTION 8. Section 30-4-100 of the 1976 Code is amended to read:

“Section 30-4-100. (a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists....”

Section 30-4-100(a) was again amended by Act 67 of 2017 to provide for expedited consideration of FOIA complaints, and charged the chief administrative judge of the circuit court with a duty to schedule an initial hearing within ten days of service on all parties, stating:

SECTION 4. Section 30-4-100 of the 1976 Code is amended to read:

“Section 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 in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later. Upon the filing of the request for declaratory judgment or injunctive relief related to provision of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all

parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy exists at law....” [Emphasis supplied].

The decision by the court below to dismiss the action because “no hearing was held within the allotted timeframe” ignored both the plain language of the statute, and the policy behind the FOIA which was articulated by the General Assembly in Section 30-4-15:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

Interpretation of a statute is a matter of law, and as the Supreme Court of South Carolina held in overruling this court’s decision in *Lambries v. Saluda County Council*:

Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). In a case raising a novel issue of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court. *Sloan v. S.C. Bd. Of Physical Therapy Exam’rs*, 370 S.C. 452, 466, 636 S.E.2d 598, 605 (2006). The appellate court is free to decide the question based on its assessment of which interpretation and reasoning would best comport with the law and public policies of this state and the Court’s sense of law, justice, and right. *Id.* at 467, 636 S.E.2d at 605-606.

Lambries v. Saluda County Council, *supra*, 760 S.E.2d at 788.

Nothing in the pertinent provision of Section 30-4-100(A) imposes a duty on a plaintiff to schedule a hearing. The threshold event in the statute is “the filing of the request for declaratory

judgment or injunctive relief related to provisions of this chapter....” A request for declaratory judgment or injunctive relief is filed as a complaint in a civil action. Rules 3 and 8, SCRCP. Once the threshold act has occurred the statute commands that “the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties.” “Must” imposes a mandatory duty. *Lemmons v. Macedonia Water Works, Inc.*, 431 S.C. 186, 847 S.E.2d 471 (Ct. App. 2020). No action to schedule a hearing is required of the plaintiff under the plain language of the statute.

In contrast to the mechanism created by the General Assembly to assign priority status automatically to complaints under the FOIA, the General Assembly requires the parties in a condemnation action take steps to demand that the action be given precedence over other civil cases for trial. If the condemnor elects to proceed with a trial after a landowner has rejected the amount of compensation tendered for the taking the condemnor must file an affidavit that includes, *inter alia*, “whether the condemnor demands that the trial be given priority over other cases.” S.C. Code Ann. § 28-2-240(A)(4) (1976). There is no similar requirement imposed on a plaintiff in Section 30-4-100(A).

The language of the current version of Section 30-4-100(A) is clear, and the evolution of the section from its 1978 adoption to the present indicates that the General Assembly has provided citizens with increasingly greater ability to seek declaratory judgments and injunctive relief, and seek that relief quickly. Prompt consideration of complaints seeking relief for violations of the FOIA is entirely consistent with the State’s policy of providing citizens an opportunity to learn of the activities of public officials “at a minimum cost or delay.” S.C. Code Ann. § 30-4-15 (1987). Had the General Assembly chosen to do so it could have placed the burden on a plaintiff, as it did in condemnation proceedings, to take steps beyond the filing of an

FOIA action to seek a priority for the suit. The General Assembly imposed the duty of scheduling an expedited hearing in FOIA actions on the chief administrative judge. Nothing in the history or language of the FOIA supports the decision of the court below to shift that burden to a plaintiff in order to justify the dismissal of the claim.

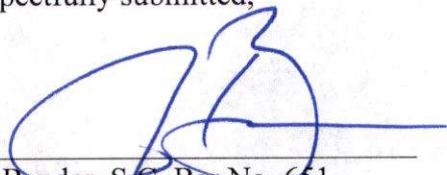
CONCLUSION

The decision of the court below to dismiss Appellant's complaint on grounds that the chief administrative judge of the circuit had not scheduled a hearing within the time specified by the law is at variance with both the plain, unambiguous language of the statute and the policy of the State of South Carolina to facilitate citizens' ability to learn of government activity at a minimum cost or delay. The dismissal of Appellant's complaint should be reversed.

CERTIFICATE OF COMPLIANCE

This brief complies with the requirements of Rules 208(b) and 211, SCACR.

Respectfully submitted,



Columbia, South Carolina

July 31, 2023

Jay Bender, S.C. Bar No. 651
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Dr., Suite 400
Post Office Box 8057
Columbia, SC 29202
803.799.9091
ATTORNEYS FOR *AMICI CURIAE*
SOUTH CAROLINA BROADCASTERS ASSOCIATION
SOUTH CAROLINA PRESS ASSOCIATION
jbender@brblegal.com

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
AUG 03 2023
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case no. 2023-000104

Ex parte South Carolina Broadcasters Association and South Carolina Press Association

In re.

Paul Roy Osmundson.....Appellant,

vs.

School District 5 of Lexington and Richland Counties.....Respondents

BRIEF OF AMICI CURIAE

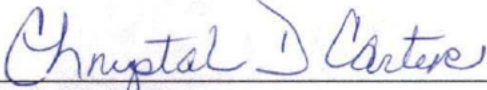
PROOF OF SERVICE

I, Chrystal D. Carter, Legal Assistant to Jay Bender, of Baker, Ravenel & Bender, L.L.P., certify that I have served the Brief of Amici Curiae South Carolina Broadcasters Association and South Carolina Press Association on this 1st day of August, 2023 on the following counsel:

James Edward Bradley, Esq.
Moore Bradley Myers, AP
PO Box 5709
West Columbia, SC 29171

Joel W. Collins, Jr., Esq.
Collins & Lacy, PC
1330 Lady Street, Suite 6
Columbia, SC 29201

Thomas William McGee, III, Esq.
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, SC 29201



Chrystal D. Carter