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May 03 2024

SC Court of Appeals

In the State of South Carolina
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2020-000080

Herman Perry Holcomb,

Respondent,

v.

City of North Augusta and
Mayor and City Council of
North Augusta,

Appellants.

**RESPONDENT HOLCOMB'S RETURN IN OPPOSITION TO MOTION FOR AWARD
OF ATTORNEY'S FEES AND COSTS**

Pursuant to Rule 240 and 213 of the South Carolina Appellate Court Rules, Respondent, Herman Perry Holcomb ("Holcomb"), responds and files this return in opposition to the Motion For Award of Attorney's Fees and Cost filed by the City of North Augusta and Mayor and City Council of North Augusta in the above-captioned matter. In support, Holcomb assert as follows:

Rule 222 (a), SCRAP requires that "[w]hen a judgement is reversed, costs shall be taxed against the respondent unless the court orders otherwise." (emphasis supplied). It is within this Court's discretion whether to award the requested fees and costs. *See Austin v. Strokes-Craven*

Holding Corp. 406 S.C.187, 199; 750 S.E.2d 78, 85 (2013). Under the circumstances of this appeal, a manifest injustice would be done by awarding attorneys fees and costs.

As evident from the record and facts of this case, Holcomb pursued the FOIA case as a public interest minded citizen, in what was clearly a belief that what he was doing was in the interest of the public's right to know about the facts underlying decisions of great public importance. He pursued the case to victory in the Court of Common Pleas. That victory is documented in a detained and well-reasoned order issued by Judge Newman, which unfortunately was reversed on appeal. Holcomb, still believing in the correctness of his position, petitioned for certiorari. That petition was denied a few weeks ago.

Holcomb was 89 years old and retired. The record as a whole makes it clear this case was not pursued for personal gain but for what he believed was in the public interest. Last week Mr. Holcomb passed away. *See* Exhibit A (Facebook acknowledgement of his passing, 60 comments omitted). We grieve the passing of this passionate activist who spent his golden years pursuing what he thought was just and right. Given the foregoing circumstances, we request that this honorable Court exercise its discretion to decline to award the requested fees and costs.

WHEREFORE, the Estate of Respondent Holcomb respectfully requests that the Court deny the Motion for Award of Attorney's Fees and Costs on Behalf of the Appellants.

Respectfully submitted,

May 3, 2024



Dionè C. Carroll, Esq.

S.C. Bar 78185

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Aiken, South Carolina 29801

(803) 514-2557

Attorney for Appellee/Respondent

Exhibit A

Richard's Post



Richard Fletcher

Admin · 2 days ago · 🌐



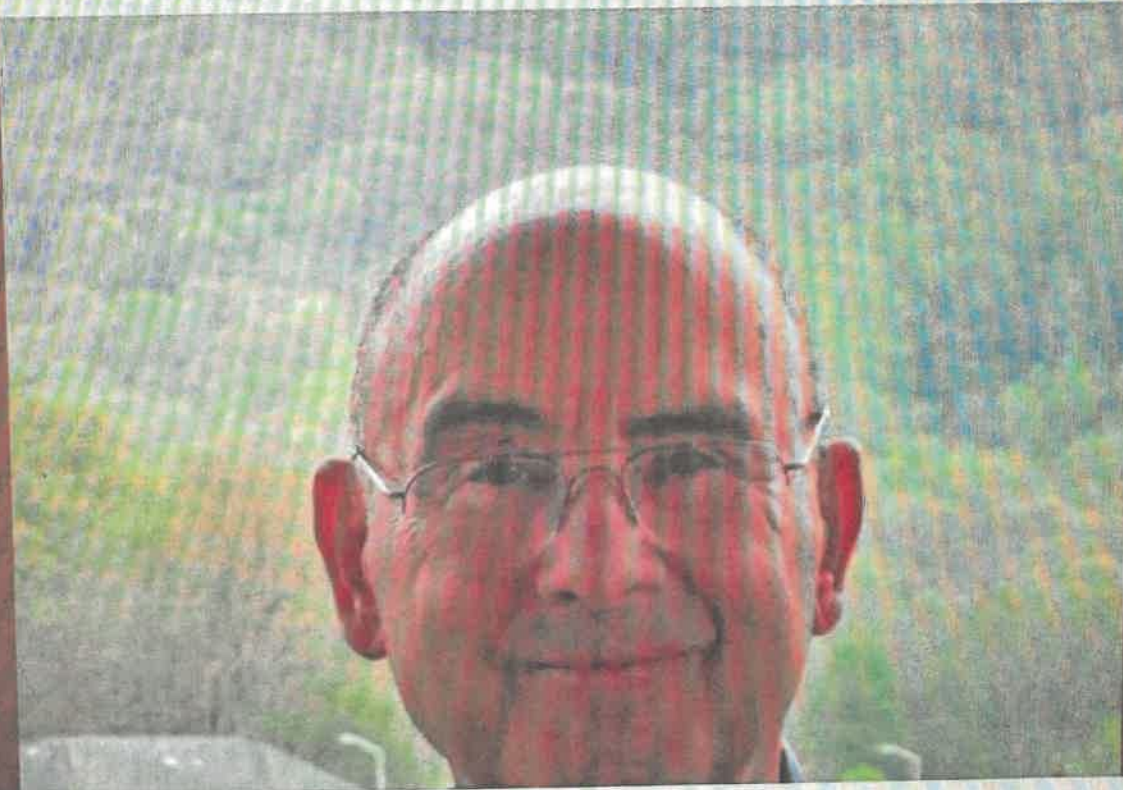
GOODBYE PERRY HOLCOMB

I received a message this afternoon that longtime North Augustan, chemist, and community activist, Perry Holcomb passed away.

It is ironic that just last evening the city attorney briefed the city council during a study session that Holcomb's lawsuit over an alleged FOIA violation had run its full course of appeals and that the city prevailed.

Perry Holcomb was very smart, a man of principle, and he was tenacious. My nickname for him was Professor Perry.

Godspeed Prof. Perry, my friend.



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PROOF OF SERVICE

I certify that I have served Respondent Holcomb's Return in Opposition to Motion for Award of Attorney's Fees and Cost. City of North Augusta and Mayor and City Council of North Augusta, by and through their attorney of record, Danny C. Crowe, via electronic mail (danny@crowelafave.com) and by having a copy of the brief sent via USPS, postage prepaid, on May 3, 2024 to Danny C. Crowe, Crowe LaFave, LLC, Post Office Box 1149, Columbia, South Carolina 29202.

I further certify that I have served Respondent Holcomb's Return in Opposition to Motion for Award of Attorney's Fees and Cost on the Municipal Association of South Carolina, by electronic mail, and by having a copy of it deposited in the United States Mail, postage prepaid, on May 3, 2024, addresses to their attorney of records. Bryan Eric Shytle, Esquire,

Municipal Association of South Carolina, Post Office Box 12109, Columbia, South Carolina
29211; and served by email to eshytle@masc.sc.

May 3, 2024

/s/Dionè C. Carroll
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