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May 24 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 20-CP-22-00930
CASE NO. 20-CP-22-00931
CASE NO. 20-CP-22-00932

M. Baron Stanton,Appellant,

v.

Town of Pawleys Island,.....Respondent.

and

Franklin D. Beattie, as trustee of the Franklin D. Beattie
Preservation Trust,Appellant,

v.

Town of Pawleys Island,.....Respondent.

and

Sunset Lodge, LLC,Appellant,

v.

Town of Pawleys Island,.....Respondent.

**APPELLANTS' RETURN IN OPPOSITION TO TOWN'S
MAY 14, 2024 MOTION FOR COSTS**

Appellants respectfully request that the Court exercise its discretion under Rule 222(a), SCACR to deny the Respondent Town's May 14, 2024 request for attorney's fees.

The circumstances of this appeal and its disposition

This appeal arises from the second time the Town, while funding the litigation with government money, unsuccessfully sued three private citizens for condemnation.

In the instant cases, in 2020, the Appellants ("Landowners") sought, among other relief, to preclude any further such government-funded lawsuits against them. They sought to finally resolve the underlying ongoing controversy. The controversy was over easements requested by the Town, in return for zero payment, allowing unlimited public access to the Landowners' land and improvements, and the ability to destroy owned improvements with impunity. The Town called these easements easements "to put sand on the beach."

Under the peculiar procedure for condemnation suits, the Landowners were not allowed to bring countersuits for declaratory and other relief within the actions the Town brought against them.

They were, rather, required, at their own private expense, to bring their own three separate suits in order to, among other things, stop the Town's three suits. They did so in the instant matter, as they had already done once before.

The first set of suits the Town had commenced against the Landowners, for same thing, were still pending when the Town sued the Landowners for the second time. When the Town conclusively lost its first set of such suits in 2021 before a different lower court judge, the Town unilaterally purported to withdraw its second set of such suits.

The Town then requested the lower court to dismiss the Landowners' separately brought second set of countersuits as "moot," without addressing the permanency of the Town's putative

withdrawal of its suits, or the permanency of the relief sought in the Landowners' instant challenge suits and other matters in the Landowners' suits.

The Landowners opposed. The lower court granted the Town's motion in 2021 on the basis that the entire controversy underlying the Landowners' independent civil actions was "moot," and that all issues in the Landowners' entire independent civil actions were "moot." The Landowners filed this consolidated appeal.

This Court affirmed. However, this Court did not publish its anonymously written per curiam opinion. As a consequence, this Court also declared that this Court's opinion would have no value in any other litigation by any other parties, and could not be cited in litigation of other parties.

The Landowners petitioned this Court for rehearing and later asked the S.C. Supreme Court to review this Court's unpublished opinion on a petition for certiorari.

The Landowners respectfully submitted that not only was the unpublished opinion wrong, but also that it did not identify, address or decide issues which would have been dispositive of the appeal.

For example on the matter of incorrectness, but not by way of limitation, the Landowners contended that, under law as well as everyday understanding, a controversy is not "moot" if one of the parties, here, the Town, is continuing to state that the controversy still exists, regardless of whether that party intends to sue yet a third time concerning the same controversy.

Here, however, the Town also continued in 2021 to state that the Town intended to sue yet a third time concerning the same controversy if the Landowners did not capitulate.

For further example on the matter of incompleteness, but not by way of limitation, the Landowners also contended that it was impossible for the Town's putative unilateral withdrawal of its own second set of suits to render the subject second set of Landowner suits "moot" if the

withdrawal itself was not allowed.

That is, the applicable statutes stayed all acts and proceedings in the Town's suit during the pendency of a separate action challenging aspects of the Town's suit, and thus, once the Landowners responded with a challenge action, the statutes did not allow the Town to withdraw its suit without Landowner consent. This Court did not decide, discuss, mention, or refer to this issue in the anonymous unpublished opinion.

This Court denied the request for reconsideration, with no discussion. The Supreme Court declined to grant certiorari, with no discussion. Declining certiorari is not an affirmance and also establishes no Supreme Court precedent or other precedent at all.

Argument

This Court has discretion not to award the Town fees. Rule 222(a), SCACR ("Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed").

Under the circumstances, it is not fair to award the Town, a government-funded litigant, attorney's fees. The appeal involved an infrequently addressed subject area and meritorious important and novel issues. This Court's opinion was not published.

Dispositive issues separately identified by the Landowners were not separately decided with stated reasoning. At the time of dismissal for "mootness" in 2021, the Town was still planning to sue for the same thing for a third time and had acknowledged this in the record. The Town was still publicly planning to do so as of March 9, 2023 and is still planning to do so as of March and April 2024.

The first two unsuccessful suits brought by the Town with government funds in 2020 were already expensive for the Landowners as private litigants. The Town's third suit on the same thing will also be expensive for the Landowners.

For these and other reasons apparent in the record and briefs, it would be inequitable to award fees to the Town. The Landowners would be happy to supply any additional information this Court might request.

Respectfully submitted,

s/M. Baron Stanton
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ATTORNEY FOR APPELLANTS

Date: May 24, 2024

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CERTIFICATE OF SERVICE

I, M. Baron Stanton, do hereby certify that I have, on this date, served the foregoing final **Appellants' Return in Opposition to Town's May 14, 2024 Motion for Costs** upon the Respondent by causing a copy to be e-mailed in accordance with current rules to

will@belserpa.com. The postal mailing address of the above addressee is:

William C. Dillard, Jr., Esquire
Post Office Box 96
Columbia, SC 29202

s/M. Baron Stanton

M. Baron Stanton

Date: May 24, 2024