

Sep 09 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH CIRCUIT
COUNTY OF GEORGETOWN)	
)	CASE NO.: 2021-CP-22-00928
)	
Richard A. Butts, individually and on behalf)	
of all others similarly situated,)	
)	
Plaintiff,)	
)	
vs.)	ORDER GRANTING PLAINTIFF'S
)	MOTION FOR
)	PARTIAL SUMMARY JUDGMENT
)	
Miriam Mace, in her official capacity as)	
Treasurer of Georgetown County, and)	
Georgetown County, South Carolina,)	
)	
Defendants.)	

Plaintiff Richard A. Butts, individually and on behalf of all others similarly situated, (“Plaintiff”) filed a Motion for Partial Summary Judgment seeking a declaratory judgment that the retroactivity language contained in Section 2(E) of Act No. 236, 2022 S.C. Acts (hereinafter “Act 236”) is unconstitutional as applied to this case, which was pending at the time of Act 236’s effective date. Defendant Miriam Mace, in her official capacity as Treasurer of Georgetown County, and Defendant Georgetown County, South Carolina (collectively “Defendants”) opposed the Motion.

On April 16, 2024, the Court held a hearing via WebEx on Plaintiff’s Motion for Partial Summary Judgment. Having fully reviewed the Parties’ briefing on this issue and considered the Parties’ oral arguments, the Court GRANTS Plaintiff’s Motion for Partial Summary Judgment and finds that the retroactivity provision found in Section 2(E) of Act 236 is unconstitutional as applied to this case for the reasons set forth below.



FACTUAL BACKGROUND

Plaintiff filed this lawsuit on November 5, 2021, seeking refunds for himself and all others who paid a uniform “Road User Fee” that Defendants began imposing on all vehicles registered in Georgetown County in 2001. Plaintiff alleges that fee was \$15 per vehicle registered in the County when it was first imposed in 2001, before the County raised the fee to \$30 per vehicle in 2008, then to \$50 per vehicle in 2018, where it remains today.

On June 30, 2021, the South Carolina Supreme Court issued its opinion in *Burns v. Greenville County Council*, 435 S.C. 583 (2021), which held that Greenville County’s road fee was invalid because it did not meet the statutory requirements imposed by Sections 6-1-300(6) and 6-1-330(A) of the South Carolina Code. After the *Burns* decision, Plaintiff alleges that Georgetown County neither repealed its substantially similar Road User Fee ordinance, nor refunded any of the road fees it collected. Thereafter, Plaintiff filed this lawsuit demanding that Georgetown County refund the Road User Fees that Plaintiff and putative Class members paid.

On June 22, 2022, Act 236 was signed into law more than seven months after Plaintiff filed the present lawsuit. In relevant part, Act 236 expanded the law governing service or user fees in South Carolina and included a provision that purports to make the expanded law retroactive to service or user fees imposed after December 31, 1996.

Following Act 236’s enactment, Defendants filed a Motion for Judgment on the Pleadings claiming that “in light of Act 236, this Court should declare the Road User Fee is valid under South Carolina law” and “[b]ecause Act 236 applies retroactively, this Court should further rule that Plaintiff cannot recover money damages for Defendants’ collection of the Road User Fee in the past.” (Defs.’ Motion for Judgment on the Pleadings, ¶ 4.) On January 6, 2023, the Honorable William H. Seals, Jr., denied Defendants’ motion for judgment on the pleadings. (Order Denying Defs.’ Motion for Judgment on the Pleadings.) Judge Seals then denied Defendants’ motion to

reconsider. (Order Denying Defs.’ Motion for Reconsideration.)

On May 17, 2023, the Supreme Court issued an Order assigning this case and all other similar cases pending at the time of Act 236’s effective date to this Court (the “Consolidation Order”). The Consolidation Order explicitly applied to “all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236.” The Supreme Court recognized that this consolidation “will promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary.” *Id.* To this end, this Court is “vested with exclusive jurisdiction to hear and dispose of the above cases ... which have been or may be filed in South Carolina relating to Act No. 236” and empowered to “decide all matters pertaining to these cases.” *Id.*

On September 6, 2023, Plaintiff filed an Amended Class Action Complaint, which seeks a declaration that “Section 2(E) of the Act is unconstitutional and unlawful, as applied to this case, which was filed and pending at the time of the Act’s effective date.” (Am. Compl., ¶ 50(d).) On September 21, 2023, Defendants filed an Answer to the Amended Complaint, along with a Motion to Dismiss. On September 21, 2023, Plaintiff filed a Motion for Partial Summary Judgment, seeking a ruling that Act 236 is unconstitutional as applied to this case, which was pending on the effective date of Act 236. This motion is directed at Defendants’ thirteenth affirmative defense asserting that “Plaintiff’s action is barred in whole or in part by 2022 S.C. Acts No. 236.” (Ans. to Am. Compl., ¶ 59.)

STANDARD OF REVIEW

“Summary judgment is appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” *Harris v. Anderson Cty. Sheriff’s Office*, 381 S.C. 357, 360 (2009). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is

completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250 (2006). “The mere fact that a case involves a novel issue does not render summary judgment inappropriate.” *Houck v. State Farm Fire and Cas. Ins. Co.*, 366 S.C. 7, 11 (2005).

ANALYSIS

A. South Carolina’s Separation of Powers Clause.

Article I, section 8 of the South Carolina Constitution states:

“In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and *no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.*”

S.C. Const. art. I, § 8 (emphasis added).

Despite several legislative attempts, the Supreme Court of South Carolina has consistently held that legislative acts that attempt to retroactively overrule the Supreme Court’s prior interpretation of a statute violate Article I, section 8 of the South Carolina Constitution. *Lindsay v. Nat’l Old Line Ins. Co.*, 262 S.C. 621, 628 (1974) (“Under our State Constitution which provides . . . for the separation of the legislative, executive and judicial powers of the government, the General Assembly does not have authority to [legislatively reverse a decision of the Supreme Court].”); *Steinke v. S.C. Dep’t of Labor, Licensing, & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999) (discussed *infra*); *Simmons v. Greenville Hosp. Sys.*, 355 S.C. 581, 586 S.E.2d 569 (2003) (extending the holding in *Steinke*, and discussed *infra*); *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 596 (2005) (citing *Lindsay*, 262 S.C. at 629) (holding that “judicial interpretation of a statute is determinative of its meaning and effect, and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively.”).

B. Act 236's Retroactivity Language is Unconstitutional as Applied to this Case.

“Subject to constitutional limitations, the legislature has plenary power to amend a statute. However, a judicial [interpretation] of a statute is determinative of its meaning and effect, and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively.” *Steinke*, 336 S.C. at 402, 520 S.E.2d at 157 (citing *Lindsay v. Nat'l Old Line Ins. Co.*, 262 S.C. 621, 628-29, 207 S.E.2d 75, 78 (1974)) (alteration in original). “This implicates the doctrine of separation of powers.” *Id.* (citing S.C. Const. art. I, § 8).

In *Steinke*, following the deaths of two bungee jumpers, the plaintiffs brought wrongful death actions against the South Carolina Department of Labor, Licensing, and Regulation (“LLR”). After the jury awarded the beneficiaries \$1 million in actual damages, the LLR appealed. *Id.* at 382. On appeal, the LLR argued, among other things, that the trial judge erred by failing to grant remittitur pursuant to a provision of the 1997 budget act that re-enacted statutory caps to liability formerly found in the South Carolina Tort Claims Act. *Id.* at 401 (citing Act. No. 155, 1997 Acts 1571-72, 1611) (the specific provision stated, “[e]xcept where otherwise provided, this section takes effect [June 14, 1997] and **applies to claims or actions pending on that date or thereafter filed**, except where final judgment has been entered before that date.”) (emphasis added).

To answer that question, the Court looked to its earlier decision in *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395 (1994) and the action by the Legislature immediately thereafter. *Id.* at 402. In *Southeastern Freight Lines*, the Court held that limitations on liability within the Tort Claims Act had been impliedly repealed by the Legislature’s subsequent enactment of inconsistent provisions in the Uniform Contribution Among Tort-Feasors Act (Uniform Contribution Act) that called for unlimited, pro rata liability. *Id.* (citing *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395 (1994)). In response, the Legislature passed legislation providing that the Tort Claims Act reinstated the statutory caps,

“except for causes of action that have been filed in a court of competent jurisdiction before July 1, 1994.” *Id.* (citing, Act No. 497, 1994 Acts 5793 (effective July 1, 1994)). “Thus, any case filed before July 1, 1994, is not subject to the \$250,000 cap for individual claims contained in the Tort Claims Act.” *Id.* Importantly, the legislature limited the reach of its legislation to cases that were not yet filed at the time of the Supreme Court’s decision in *Southeastern Freight Lines*.¹

Because the *Steinke* plaintiffs’ complaint was filed on June 29, 1994—two days before the limits were reinstated by Act No. 497, 1994 Acts 5793 (effective July 1, 1994)—the liability limits reimposed by the legislature did not apply. *Id.* However, the legislature’s later amendment in 1997 retroactively imposed liability limits to cases like *Steinke* that were filed prior to the 1994 amendment. *Id.* That is the constitutional issue that the Court addressed, *i.e.*, could the legislature overrule the Court’s decision in *Southeastern Freight Lines*. *Id.* Citing the separation of powers doctrine and *Lindsay*,² the Court held that there were no statutory liability limits on claims at the time of its decision in *Southeastern Freight Lines* and “[t]he Legislature may not retroactively overrule this Court’s interpretation of the statutes in *Southeastern Freight Lines*.” *Id.* at 403.

Four years later in *Simmons*, the Supreme Court reaffirmed its decision in *Steinke* and extended its holding to protect from retroactive legislation not only lawsuits filed prior to the effective date of the new law, *but also those claims that arose or accrued prior to the effective date*. 355 S.C. at 588, 586 S.E.2d at 572. (“The Legislature had authority to reinstate the caps, but it could only do so prospectively, with respect to those claims that **arose or accrued** after the

¹ Later in *Simmons* the Supreme Court would explore whether retroactive legislation could affect claims that had already arisen or accrued, but had not yet been filed.

² In *Lindsay*, the Court held that the Legislature’s attempt to declare by a retroactive amendment that insurance companies were entitled to investment credits—after the Court had previously held that they were *not* entitled to credits—violated the separation of powers doctrine. 262 S.C. at 628-29, 207 S.E.2d at 78 (1974).

effective date of the reenactments.”) (emphasis in original). In *Simmons*, the plaintiffs filed suit against the defendant hospital in May of 1998 for negligence in the care and treatment of their minor child in 1992. *Id.* at 583. After answering the complaint, the parties agreed to settle the plaintiffs’ claims for \$1.5 million. *Id.* Believing its liability was limited to the \$250,000 cap imposed by S.C. Code § 15-78-120(a)(1), the defendant only tendered \$250,000. *Id.* at 583-84. Thereafter, the plaintiffs filed for declaratory judgment to determine the applicability of the cap. *Id.* at 584. The trial court found that the \$250,000 cap applied, and plaintiffs appealed. *Id.*

On appeal, the Supreme Court, based on its prior decision in *Steinke*,³ addressed “whether the liability caps within the 1994 and 1997 Acts are applicable to claims which **arose or accrued** prior to each Act’s effective date, but which were not **filed** until after the effective date.” *Id.* at 587 (emphasis in original). Defendant argued that because *Steinke* emphasized the filing date in its holding, that date of filing was the only significant date for determining retroactivity. *Id.* However, the Court disagreed, holding:

At the time Appellants’ claim arose — when [plaintiffs’ minor child] was infected shortly after his birth in 1992 — there were no statutory caps in place under the rule of *Southeastern*. **Therefore, the Legislature’s attempt to reach back and change the status of such claims that arose prior to the Legislature’s 1994 reinstatement of the liability caps in § 15-78-120(a)(1), and of § 15-78-120 in toto in 1997, is, by definition, retroactive, and violates the doctrine of separation of powers.** *Steinke; Lindsay*. The Legislature had authority to reinstate the caps, but it could only do so prospectively, with respect to those claims that arose or accrued after the effective date of the reenactments.

Id. at 587-88 (emphasis added).

³ Specifically, the Court referenced the statement in *Steinke* that, “[t]he Legislature may, of course, do what it did in 1994, which was to resolve the statutory conflict and reinstate the statutory caps in *future cases*.” *Simmons*, 355 S.C. at 587 (quoting *Steinke*, 336 S.C. at 402) (emphasis in original). Because *Steinke* was filed before the effective date of the 1994 Act, the date of accrual was not significant to the Court’s decision.

In light of the Supreme Court of South Carolina’s unanimous decision in *Burns* holding that a similar road fee was invalid because it did not meet the statutory requirements of S.C. Code §§ 6-1-300(6) and 6-1-330(A), Plaintiff’s Complaint seeks a refund of any fees collected under Defendant’s Road User Fee ordinance. In *Burns*, the Supreme Court held:

Therefore, as to both Ordinance 4906 and Ordinance 4907, we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that the “government service or program . . . benefits the [fee] payer in some manner different from the members of the general public.”

...

Greenville County Ordinances 4906 and 4907 purport to impose a “uniform service charge” on those who are required to pay it. We find the charges are taxes. State law prohibits local government from imposing taxes unless they are value-based property taxes or are specifically authorized by the General Assembly. Neither is true for these two ordinances. Therefore, the ordinances are invalid.

Burns, 433 S.C. at 589-90.

After the filing of this lawsuit, Act 236 was signed into law, thereby amending S.C. Code §§ 6-1-300(6) and 6-1-330(A). Specifically, Act 236 amended section 6-1-300(6) by removing the particularized benefit language—the entire basis for the *Burns* decision—and replaced it with language allowing service or user fee revenue to “be used to the benefit of the payers, even if the general public also benefits.” Act No. 236, § 2(A). Act 236 also includes a provision that purports to retroactively authorize the imposition of service or user fees that the Supreme Court unanimously declared illegal in *Burns*. Act No. 236, § 2(E) (“This SECTION takes effect upon approval by the Governor and applies retroactively to any service or [user] fee imposed after December 31, 1996.”).

Lindsay and its progeny are clear that legislative provisions like § 2(E) of Act 236, which seek to retroactively authorize conduct that has been deemed illegal by the Supreme Court, violate the separation of powers clause of the South Carolina Constitution. *See Lindsay*, 262 S.C. 621, 207

S.E.2d 75; *Southeastern Freight Lines*, 313 S.C. 466, 443 S.E.2d 395; *Steinke*, 336 S.C. 373, 520 S.E.2d 142; *Simmons*, 355 S.C. 581, 586 S.E.2d 569.

Like in *Lindsay*, the *Burns* Court's interpretation of S.C. Code § 6-1-300(6), in a case involving a similar service or user fee, is determinative of the statute's meaning, "and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively." *Lindsay*, 262 S.C. at 629. Like in *Steinke*, Plaintiff's claims were being litigated prior to the Act's effective date (June 22, 2022). Indeed, the instant lawsuit was filed more than seven months before Act 236 became effective. Moreover, like in *Simmons*, Plaintiff's and putative class members' claims all accrued prior to the Act's effective date. Therefore, pursuant to the Supreme Court's decisions in *Lindsay*, *Steinke* and *Simmons*, the Court finds that the retroactivity provision in section 2(E) of Act 236 is unconstitutional because, if applied to this case, it would overturn the Supreme Court's interpretation of section 6-1-300(6) in *Burns*.

Defendants have pointed to no genuine issues of material fact that would preclude the Court from granting Plaintiff's Motion for Partial Summary Judgment. Instead, Defendants would have this Court accept a narrow, tortured reading of both *Steinke* and *Burns*. Defendants' substantive arguments regarding the constitutionality of § 2(E) of Act 236 are a red herring. Initially, Defendants' argument that Plaintiff misapplies the Supreme Court's decision in *Steinke* is belied by the text of that decision. Indeed, in *Steinke*, the Supreme Court asked and answered the very question that Plaintiff asks this Court to rule on: "May the Legislature by a retroactive amendment overrule this Court's prior interpretation of a statute? *We conclude the Legislature may not.*" *Steinke*, 336 S.C. at 402 (emphasis added).

While ignoring that conclusion in *Steinke*, Defendants argue that the Supreme Court's Order in *Burns* "solely invalidated a Greenville County road maintenance fee," and thus, the

decision has no bearing on Defendants' Road User Fee and "there is no 'retroactive overruling issue' created by Act 236." (Def's Memo. in Opp. at 9.) The Court does not dispute that the *Burns* court invalidated Greenville County's road fee ordinance. However, Defendants' argument ignores how the Supreme Court arrived at that decision.

Before determining the validity of Greenville County's ordinances, the Court necessarily interpreted S.C. Code § 6-1-300(6) and explained how that statute applied to the ordinances. *Burns*, 433 S.C. at 589 (holding, "we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that government service or program ... benefits the payer in some manner difference from the members of the general public."). Whether *Burns* invalidated all road user fees, or just Greenville County's, is irrelevant under *Steinke*.

It is the Supreme Court's *interpretation of S.C. Code § 6-1-300(6)*, not the application of that interpretation to a particular ordinance, that Act 236 attempts to unconstitutionally overrule by removing the particularized benefit language and adding that the amendment "applies retroactively to any service or [user] fee imposed after December 31, 1996." Act No. 236, § 2(E). Therefore, Defendants' attempts to distinguish its road fee ordinance from the road fee ordinance at issue in *Burns* fails to create a genuine issue of material fact for the purposes of summary judgment. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (confirming the correct standard of review on summary judgment is whether there is a "genuine issue of material fact" not a "mere scintilla").

Finally, Defendants' argument that "*Burns* simply involved a declaratory judgment on a narrow issue" and that "*Burns* did not create any rights or remedies available to Plaintiff" is equally unavailing. Whether *Burns* created a right or remedy for Plaintiff has no bearing on the present motion. Plaintiff's Amended Complaint, filed September 21, 2023, specifically "request[s] a declaratory judgment from this Court that Section 2(E) of Act No. 236, 2022 S.C. Acts, is

unconstitutional as applied to this case...” (Am. Compl. ¶ 52.) Because that is exactly what Plaintiff’s motion requests, each of Defendants’ arguments on the merits are unavailing. Accordingly, Defendants have failed to establish any genuine issue of material fact that § 2(E) of Act 236 is unconstitutional as applied to this case.

C. Defendants’ procedural defenses are unavailing.

Defendants claim a ruling on Plaintiff’s Motion for Partial Summary Judgment is premature because there are other potentially dispositive legal issues in this case and other road fee cases—one of which is currently before the Court of Appeals. *Thompson v. Killian*, C/A No. 2021-CP-02-02323 (Aiken County), Appellate Case No. 2023-000442.

The Court finds a ruling on the as-applied constitutionality of Act 236 is prudentially proper, under the facts and circumstances of this case, due to the Consolidation Order. The purpose of the Consolidation Order was “to dispose of all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236.” The Court finds a ruling on the Motion for Partial Summary Judgment “will promote the effective and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary.” A final, appealable ruling on Act 236 will allow this threshold legal issue, along with the legal issues in *Thompson v. Killian*, to be addressed by our appellate courts at the same time.⁴

The Court further finds that a ruling is procedurally proper notwithstanding Defendants’ pending Motion to Dismiss the Amended Complaint. Defendants have answered the Amended Complaint and raised Act 236 as an affirmative defense. Therefore, the pleadings are closed and a summary judgment ruling is proper. Rule 56(a), SCRCP (“[a] party seeking to ... obtain a

⁴ Plaintiff has consented to an immediate appeal of this Order so that the constitutionality of Act 236’s retroactivity provision can be addressed by the appellate courts concurrently with the other dispositive legal issues currently on appeal in *Thompson v. Killian*, C/A No. 2021-CP-02-02323 (Aiken County), Appellate Case No. 2023-000442.

declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.”).

Finally, the Court finds the Governor, the President of the Senate, and the Speaker of the House are not necessary parties to this case. Plaintiff does not challenge the facial constitutionality of Act 236, nor does he challenge the prospective application of the law. Plaintiff merely seeks a determination that the retroactivity provision of Act 236 is unconstitutional as applied to this case. *Knotts v. S.C. Dep't of Nat. Res.*, 348 S.C. 1, 9, 558 S.E.2d 511, 515 (2002) (“We recognize the principle that a statute may be constitutionally valid in part while unconstitutionally invalid in part.”). Rule 4(d)(4)(B), SCRCP requires only that the Attorney General be served with a copy of the pleadings, which the record reflects has occurred.

CONCLUSION

For the foregoing reasons, Plaintiff’s Motion for Partial Summary Judgment on Act 236 is GRANTED.

AND IT IS SO ORDERED.

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Georgetown Common Pleas

Case Caption: Richard A Butts VS Administrator Georgetown County , defendant, et al
Case Number: 2021CP2200928
Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134