RECEIVED

Jan 31 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Opinion No. 6090
(S.C. Ct. App. filed September 25, 2024; withdrawn, substituted, and refiled January 2, 2025)

Wendy Brawley .....Respondent-Appellant,

v.

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

RESPONDENT-APPELLANT WENDY BRAWLEY'S PETITION FOR A WRIT OF CERTIORARI

Shaun C. Blake, Esq.
Jenkins M. Mann, Esq.
L. Cody Smith, Esq.
MANN BLAKE & JACKSON
Mailing: PO Box 11803, Columbia, SC 29211
Columbia Office: 1619 Sumter Street (29201)
Tel: 803-256-1268

COUNSEL FOR RESPONDENT-APPELLANT

Other Counsel of Record:
Andrew F. Lindemann, Esq.
LINDEMANN LAW FIRM, P.A.
PO Box 6923
Columbia, SC 29260
Tel: (803) 881-8920

COUNSEL FOR APPELLANT-RESPONDENT

INDEX

QUESTION PRESENTED

Did the Court of Appeals err by conflicting with this Court's prior decisions, failing to heed the abuse of discretion standard of review as stated in Horton v. Jasper Cty. Sch. Dist., 423 S.C. 325, 815 S.E.2d 442 (2018), and reversing and remanding the trial judge's discretionary award of attorneys' fees when the trial judge's award strictly adhered to this Court's establish precedent in Horton and Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (1992), was supported by specific findings following six months of deliberation and two substantive post-trial hearings, and was founded upon an itemized evidentiary record that included rates, detailed time entries, and receipts?

STATEMENT OF THE CASE

Respondent-Appellant ("***Mrs. Brawley***") filed suit on March 25, 2015, under then-current S.C. Code Ann. § 30-4-100 against Appellant-Respondent ("***Richland County***") due to its failure to comply with the South Carolina Freedom of Information Act ("***FOIA***"). (Complaint, R. 102-129.) Specifically, Mrs. Brawley sought the following declarations as a First Cause of Action:

a. As a result of the Richland County's conduct, including its belated response, Mrs. Brawley's FOIA requests are considered approved;

b. Richland County has failed to properly and fully reply to Mrs. Brawley's FOIA requests dated September 9, 2014;

c. Mrs. Brawley is entitled to immediately receive full and complete responses; and

d. Mrs. Brawley is entitled to recover costs and reasonable attorneys' fees associated with compelling the Defendants complete responses in an amount approved by this court upon a finding that Plaintiffs are entitled to prevail under S.C. Code Ann. 30-4-100(b).

(the "***Declaratory Relief***") (Complaint ¶ 37, R. 110-111.)

As a Second Cause of Action, Mrs. Brawley sought an injunction to prohibit Richland County from: sending surveys to residents that make any representation that Richland County will

provide all residents that reside within 200 feet of the proposed Phase I sewer line a full waiver of tap or connection fees; entering into negotiations with residents of Hopkins and Lower Richland for the acquisition of easements; or providing a third public reading to the Lower Richland Sewer Project being debated in Richland County at that time (the "***Injunctive Relief***"). (Complaint ¶ 40, R. 111.)

1. Judge Newman's dismissal of Mrs. Brawley's claim for Injunctive Relief less than five months after the case was filed in 2015.

On August 11, 2015, the Hon. Clifton Newman signed a Form 4 dismissing Mrs. Brawley's request for injunctive relief. (Aug. 11, 2015 Form 4, R. 1.) On August 27, 2015, Mrs. Brawley filed a Motion to Compel responses to her requests for production seeking access to Richland County's records that were the subject of her FOIA requests. (Aug. 27, 2015 Motion to Compel and Exhibit, R. 141-148.)

Richland County prepared for Judge Newman an explanatory Order Granting Dismissal of Plaintiff's Claim for Injunctive Relief to sign at a subsequent hearing on its motion for summary judgment on August 23, 2016. (Aug. 23, 2016 Order, R. 4-8.) In signing this order, Judge Newman explained that the dismissal of Mrs. Brawley's Second Cause of Action for Injunctive Relief was due to the Second Cause of Action raising non-justiciable political questions beyond the subject matter jurisdiction of the trial court and the scope of remedies under S.C. Code Ann. § 30-4-100(a).

2. The trial of Mrs. Brawley's claim for Declaratory Relief in 2019.

The matter was ultimately tried before the Hon. DeAndrea Gist Benjamin on September 5, 2019. (Sept. 5, 2019 Transcript, R. 266-570.) Judge Benjamin signed and filed a Final Order on the Merits on February 13, 2020, finding for Mrs. Brawley, concluding Richland County had violated FOIA, and awarding under FOIA Mrs. Brawley the production of the public records that constituted the supporting documentation that Richland County submitted to the United States

Department of Agriculture (USDA) Rural Development for grant and loan funding for the Lower Richland Sewer Project (the "***Loan Records***"). (Feb. 13, 2020, Final Order, R. 12-25.) On February 24, 2020, Richland County filed a Motion to Amend this Final Order. (Feb. 24, 2020, Motion to Alter, R. 208-216.)

3. Judge Benjamin's hearings and detailed considerations of her award of Attorney's Fees and Costs to Mrs. Brawley.

After consideration of Richland County's Motion to Amend her judgment, Judge Benjamin issued an amended Order on July 16, 2020, which modified her Final Order regarding Mrs. Brawley's entitlement to receive the Loan Records under FOIA. As argued in Mrs. Brawley's cross-appeal, this modification was an error arising out of an obvious misreading of Judge Newman's August 23, 2016 Order, which disposed of Mrs. Brawley's Second Cause of Action for Injunctive Relief and not her claim First Cause of Action for Declaratory Relief. In Judge Benjamin's July 16, 2020 Order, she reaffirmed Mrs. Brawley's entitlement to recover reasonable attorneys' fees and costs under FOIA. (July 16, 2020 Order, R. 29-38.) Therefore, on July 27, 2020, Mrs. Brawley filed an Affidavit of Attorneys' Fees and Costs. (Affidavit of Attorneys' Fees and Costs, R. 220-223.)

On August 11, 2020, Richland County filed a Memorandum Opposing Award of Attorneys' Fees and Costs. (Aug. 11, 2020 Memo, R. 255-259.) Then, on August 17, 2020, and prior to the Circuit Court issuing an order regarding the amount of attorney's fees to be awarded to Mrs. Brawley, Richland County filed its initial notice of appeal. Upon receipt and in response, Mrs. Brawley filed her initial notice of cross-appeal, and she pursued a contested Motion to Hold Appeal in Abeyance at the South Carolina Court of Appeals so that Judge Benjamin would have an opportunity to set the amount of Mrs. Brawley's attorneys' fees and costs awarded in the post-

trial orders. The Court of Appeals granted Mrs. Brawley's Motion to Hold Appeal in Abeyance over Richland County's objection on October 2, 2020.

On October 19, 2020, Mrs. Brawley submitted a memorandum in reply to Richland County's August 11, 2020, opposition to Mrs. Brawley's affidavit of attorney's fees and costs. (Oct. 19, 2020 Memorandum and Exhibits, R. 224-240.) On November 9, 2020, Judge Benjamin conducted the first of her hearings to determine the reasonable amount of attorneys' fees and costs to award Mrs. Brawley. (Transcript, R. 715-757.) During this hearing, Judge Benjamin asked to review Mrs. Brawley's attorneys' detailed billing records. Following Judge Benjamin's timely receipt of the law firm invoice and third-party receipts, Richland County filed its Objections to Plaintiff's Billing Records on November 23, 2020. (Nov. 23, 2020 Objection, R. 260-265.)

After considering Richland County's second written opposition to the documentation submitted in support of Mrs. Brawley's request for reasonable attorneys' fees and costs, Judge Benjamin filed a **54-page** Order Awarding Plaintiff Attorneys' Fees and Costs on November 30, 2020 (Nov. 30, 2020 Order Awarding Fees and Costs, R. 39-93.)

Richland County filed another Motion to Alter or Amend on December 10, 2020. (R. p. 241-248.) After considering Richland County's written opposition to Judge Benjamin's award of reasonable attorneys' fees and costs to Mrs. Brawley, Judge Benjamin held yet another hearing on Richland County's Motion to Alter and Amend and on the amount to Mrs. Brawley in award of attorneys' fees and costs. (Jan. 8, 2021 Transcript, R 758-801.) Finally, after spending six months deliberating Mrs. Brawley's reasonable attorneys' fees and costs, Judge Benjamin filed her Amended Order Awarding Plaintiff Attorneys' Fees and Costs on January 19, 2021. (Jan. 19, 2021 Amended Order, R. 94-101.)

4. Appellate History of the Case.

Following Judge Benjamin's Amended Order on January 19, 2021, the parties timely filed amended notices of appeal and cross-appeal in February 2021. Following full briefing by the parties on both Richland County's appeal and Mrs. Brawley's cross-appeal, the Court of Appeals heard oral argument on May 7, 2024. The Court of Appeals issued Opinion No. 6090 on September 25, 2024. Mrs. Brawley timely filed her Petition for Rehearing *En Banc* on October 10, 2024. The Court of Appeals denied Mrs. Brawley's Petition for Rehearing on November 14, 2024.

On November 23, 2024, Richland County notified the Court of Appeals of an error in the Court's docket regarding Richland County's Petition for Rehearing. On November 27, 2024, the Court of Appeals instructed Mrs. Brawley in writing that her deadline to file a Petition for a Writ of Certiorari based on the denial of her Petition for Rehearing would be held in abeyance while the Court of Appeals addressed the issue relating to Richland County's Petition for Rehearing. On January 2, 2025, the Court of Appeals withdrew, substituted, and refiled Op. No. 6090. This Petition is filed and served within thirty days of the Court of Appeals' final decision following her Petition for Rehearing.

ARGUMENT

Mrs. Brawley's Petition for a Writ of Certiorari should be granted under Rules 242(b)(1) and (b)(3), SCACR, because Opinion 6090 modifies and conflicts with this Court's prior decisions, which have long established the framework our trial judges employ when exercising discretion and setting a "reasonable" award of attorneys' fees. Opinion 6090 deviates from Dedes v. Strickland, 414 S.E.2d 134 (S.C. 1992), as relied upon by Judge Benjamin, and similar binding precedent by requiring a vague, "more detailed framework" to be used by our trial courts; a framework that appears to elevate the "degree of success obtained" factor over the other five Dedes

factors in derogation of this Court's prior decisions. (Opinion p. 10, citing Hensley v. Eckerhart, 461 U.S. 424 (1983).)

The Court of Appeals correctly affirmed Judge Benjamin's judgment that Richland County violated FOIA and finding of Mrs. Brawley's status as a prevailing party, both prerequisites for her award of attorney's fees and costs under FOIA.

However, the Court of Appeals erred by failing to pay heed to the abuse of discretion standard as it reversed Judge Benjamin's award of fees and costs and remanded the award to the trial court for a **third** substantive hearing on the reasonable fees and costs owed by Richland County. If Mrs. Brawley's Petition for a Writ of Certiorari is not granted and the issue of reasonable attorneys' fees is remanded, only further, unwarranted delay will result. *See* Horton v. Jasper Cty. Sch. Dist., 423 S.C. 325, 332, 815 S.E.2d 442, 445 (2018) (citing Sloan v. Friends of the Hunley, Inc., 393 S.C. 152, 158, 711 S.E.2d 895, 898 (2011) (reversing the circuit court's award of attorneys' fees under the FOIA and modifying the fee award "[r]ather than delay the matter further by remand")).

A. The Opinion errs by reversing and remanding Judge Benjamin's award of attorneys' fees because Judge Benjamin strictly adhered to established precedents, made specific written findings, and based her determination on a substantial evidentiary record.

"The specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." Horton, 423 S.C. at 329, 815 S.E.2d at 444. "An abuse of discretion occurs when there is an error of law or a factual conclusion that is without evidentiary support." Greenville Bistro, LLC v. Greenville Cty., 435 S.C. 146, 160, 866 S.E.2d 562, 569 (2021).

The Court of Appeals fails to characterize Judge Benjamin's putative error as either an error of law or a factual conclusion that is without evidentiary support. Instead, the Court of Appeals identifies "two problems" it has with Judge Benjamin's award. (Opinion, p. 8.) First, the Court of Appeals states it "cannot discern" **how** Judge Benjamin reached her final award. (Id., the "***Discernment Problem***".) Second, the Court of Appeals states that Judge Benjamin's **award seems high** based on the Opinion's selective recounting of the activities of Mrs. Brawley's legal team in the underlying case. (Id., p. 9, the "***Justification Problem***".) Neither "problem" has merit, is in accord with the abuse of discretion standard, or justifies a remand that will require another circuit court judge to undertake the same inquiry into attorney time and expenses that Judge Benjamin conducted for a period of six months back in 2020 after she conducted the 2019 trial.

i. The Record and Judge Benjamin's Orders enable this Court to discern how Judge Benjamin applied the Dedes factors and exercised her discretion in awarding "reasonable" fees and costs.

The Court of Appeal's Discernment Problem is resolved by reviewing the substance of Judge Benjamin's written Orders awarding Mrs. Brawley reasonable fees and costs. Judge Benjamin's 54-page initial award (R. pp. 39-93) plainly detail how she came to the final amount of attorneys' fees and costs awarded to Ms. Brawley. Likewise, in her written, eight-page "Amended Order Awarding Plaintiff Attorney's Fees and Costs," Judge Benjamin advises this Court that she first looked to S.C. Code Ann. § 30-4-100, which provides: "If the person or entity prevails in part, **the court may in its discretion** award him reasonable attorney's fees or an appropriate **portion of those attorney's fees**." (R. p. 98, emphasis in original.)

Next, Judge Benjamin advises this Court that she looked to this Court's binding precedent in Dedes v. Strickland, 414 S.E.2d 134 (S.C. 1992) to determine how she was to exercise her discretion. (R. p. 98.) Judge Benjamin states that her understanding of Dedes required her to

consider the following six factors: the "nature, extent, and difficulty of the legal services rendered; the time and labor necessarily devoted to the case; the professional standing of counsel; the contingency of compensation; the customary fees charged in the locality for similar services; and the beneficial result obtained." (R. p. 98). Notably, these are the same standards initially recognized by the Court of Appeals in Opinion 6090. (Opinion, p. 9.)

Judge Benjamin advises this Court that she then considered each of the six Dedes factors based on the record before her, and she made specific written findings based on that record. (R p. 99; Order dated January 19, 2021 p. 5.) When identifying the record before her, Judge Benjamin reminds this Court that she "held multiple hearings and considered the oral arguments of counsel" on the issue of reasonable attorneys' fees and costs. (R. p. 99). Moreover, Judge Benjamin assured this Court that she conducted a "careful review" of the detailed billing entries submitted by Ms. Brawley's counsel. (R. p. 99). Judge Benjamin advises this Court that, although she does not interpret this Court's precedent as requiring her to make a specific evidentiary finding as to each billing entry, her determination did apply a 50% reduction to those time entries submitted to her for services rendered prior to August 15, 2015. (R. pp. 94, 99.)

This Court's precedent in Horton, provides that "the trial court should make specific findings of fact on the record for each of these factors. 423 S.C. at 330, 815 S.E.2d at 445. Accordingly, Judge Benjamin specifically addressed each of the six Dedes factors in both of her Orders. (R. pp. 40; 98-99). First, Judge Benjamin advises this Court that she looked to the beneficial result obtained for Ms. Brawley, and she specifically found that Ms. Brawley's legal team was successful in securing a production of documents by Richland County. (R. pp. 98-99.)

Second, Judge Benjamin advises this Court that she considered the nature, extent and difficulty of services rendered, and she specifically found that Ms. Brawley's counsel was required

to conduct hearings before the trial court, pre-trial motions, a bench trial, and post-trial motions on behalf of Ms. Brawley. (R. pp. 98-99). This is more detailed than findings that this Court has previously held to be satisfactory. *See*, *e.g.* Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989) (noting that the trial court has simply "determined that Baron had to expend considerably more time and effort on the case because the defendants had transformed a simple collection action into complex litigation.")

Third, Judge Benjamin advises this Court that she considered the standing and experience of Ms. Brawley's attorneys, and she specifically found that both of them were partners at Rogers Lewis Jackson Mann & Quinn, LLC, when this case began, and both had practiced civil litigation exclusively since 2006. (R. p. 99.)

Fourth, Judge Benjamin advises this Court that she considered the fact that Ms. Brawley's counsel undertook this matter on a contingency basis and handled it without any payment or reimbursement for years. (R. p. 99.)

Fifth, Judge Benjamin advises this Court that she considered the rates charged by Ms. Brawley's counsel, and she specifically found those rates to be customary civil litigation rates for partners, associates, and paralegals in this area of practice. (R. p. 99.) To address Richland County's challenge to her initial Order awarding Mrs. Brawley fees and costs, Judge Benjamin's amended award further explained that she reviewed the law firm invoice to determine the work performed by supervised paralegals and found that work to be reasonable. (R. p. 97.)

Sixth, Judge Benjamin advises this Court that she considered the details of the billing records of Ms. Brawley's counsel, and she specifically found that those billing records reflected 305 hours of work conducted on Mrs. Brawley's case. (R. p. 99.) Following her second hearing on the issue of reasonable attorney's fees, Judge Benjamin added the specific finding that the law firm

billing records "do not include all hours devoted to the case." (R. p. 99, FN 3.) This is significant in light of this Court's precedent previously holding that a trial judge properly exercises discretion in awarding "reasonable" fees and costs when it notes that the billing records appear to be a conservative estimate. Taylor by Taylor v. Medenica, 331 S.C. 575, 581, 503 S.E.2d 458, 461 (1998).

Moreover, Judge Benjamin did not simply issue an award equal to the invoice and receipts submitted by Mrs. Brawley's attorneys. In the Conclusion of her Order, Judge Benjamin advises this Court that she did not choose to award Ms. Brawley's counsel the $91,591.96 stated on the law firm invoice. (R. p. 99). The Court of Appeals expresses confusion over the additional $419.25 reduction between Judge Benjamin's initial order awarding Mrs. Brawley attorneys' fees and costs and her final award of attorneys' fees and costs. (Opinion p. 9.) However, this is a red herring. The Court of Appeals ignores that: (1) Judge Benjamin's Amended Order expressly states that even the $91,591.96 appearing on the law firm invoice and receipts was not reflective of all the work performed on the engagement; and (2) that Judge Benjamin had already declined to award Ms. Brawley the $91,591.96 stated on the invoice in her **initial** award.

In other words, Opinion 6090 errs by looking only to the $81,264.96 in fees and costs stated in the initial Affidavit (R. p. 223) and comparing that to Judge Benjamin's final award, rather than looking at the entire evidentiary record regarding fees, costs, and work performed under the engagement and acknowledging that Judge Benjamin's initial 54-page written award of attorneys' fees and costs **already reduced the law firm's invoice by more than 11% of the fees and costs submitted**. (R. pp. 39-93.)

After "carefully considering" each of the billing entries submitted, and discounting further those occurring before Judge Newman's dismissal of the claim for injunctive relief in 2015, Judge

Benjamin exercised her discretion to award only a **portion** - $77,980.75 - of the attorneys' fees and a **portion** of the costs - $2,864.96 - that Ms. Brawley submitted. There is no ambiguity as to how Judge Benjamin decided what she believed to be a "reasonable" award of attorneys' fees and costs. Rather, the Discernment Problem is really the Court of Appeal's critique of the adequacy of this Court's precedent and this Court's instructions to trial judges on how to exercise discretion.

Judge Benjamin's process of relying on the statute, referring to binding Supreme Court precedent, conducting the six-step inquiry this Court instructed her to conduct, and recording specific findings as to each of the six Dedes factors is precisely what this Court required of Judge Benjamin. Under this Court's precedent, Judge Benjamin's process is the same as would be required of any trial court on remand in this case. Therefore, the Discernment Problem does not identify any abuse of discretion by Judge Benjamin.

ii. The Record contains ample justification for Judge Benjamin's exercise of discretion to award Ms. Brawley $77,980.75 in attorneys' fees and costs of $2,864.96; the Justification Problem is merely the Court of Appeals substituting its discretion for Judge Benjamin's discretion.

The Court of Appeal's Justification Problem, as detailed in Opinion 6090, is summarized as follows: (1) in Horton, this Court found that $35,611.50 in fees and $1,096.56 in costs – the amount actually sought by the prevailing party – were appropriate, and so Judge Benjamin's award seems high to the Court of Appeals; and (2) the Court of Appeals feels that the discovery conducted prior to trial was not "extensive" discovery in the Court of Appeal's opinion. (Opinion, p. 9.)

As to the Opinion's comparing Judge Benjamin's award to this Court's award in Horton, the Court of Appeals ignores the fact that the rates Ms. Brawley submitted for Mr. Blake and Mr. Mann are only **$5** higher than the rates requested by Mr. Twombly and awarded by this Court in Horton. The meaningful difference between Horton and this case are the total hours considered in Horton of **135.3 hours** (423 S.C. at 328, 815 S.E.2d at 443), and the total the hours submitted to

and considered by Judge Benjamin in this case of **305 hours**. (R. pp. 44-67, 99.) Opinion 6090 never references or considers the facts that distinguishes the difference in the amount of the two awards. Rather, the Court of Appeals just substitutes its own discretion for Judge Benjamin's and concludes that her award should have been closer to the award in Horton.

The only other information Opinion 6090 provides about the Court of Appeal's Justification Problem is that the Court of Appeal's disagrees with Judge Benjamin's use of the adjective "extensive" to describe the discovery conducted before the 2019 trial. However, the Opinion's statement that "the additional responsive documents were provided relatively early in the litigation without any significant adversarial proceedings" is wholly unsupported by the Record. The additional responsive documents to Ms. Brawley's FOIA requests were **never** located and provided – a finding repeatedly confirmed by Judge Benjamin at the conclusion of the trial and in her Amended Order on July 16, 2020. (R. pp. 30-31, 34-35.)

Aside from the semantics of "extensive," Opinion 6090 never addresses the actual content of the Record that Judge Benjamin relied upon as her justification for her award, and the Opinion overlooks the fact that Judge Benjamin attached as "Exhibit A" to her initial award the 24-page law firm invoice and 25 pages of actual receipts for costs advanced. (R. pp. 43-93). By failing to address the substance of the Record, the Court of Appeals has failed to apply the abuse of discretion standard, which permits reversal only when there is an absence of any evidentiary support in the record. Horton, 423 S.C. at 331, 815 S.E.2d at 445. ("In the absence of any evidence to support the rate, we find the circuit court abused its discretion" by reducing the attorney's rate to $100 per hour.)

Here, the Record reveals that Judge Benjamin received a four-page Affidavit of Attorneys' Fees and Costs from Jenkins Mann, Esq. (R. 220-223) outlining the nature of the services provided

to Ms. Brawley in the case. The Affidavit outlines and describes 23 categories of work performed for Ms. Brawley. (Id.) While the Court of Appeals only considered its concept of "extensive" in the context of "discovery," Judge Benjamin considered a Record that showed Ms. Brawley's counsel did much more than conduct "discovery" in this case. The Record shows counsel:

- conducted in-person client meetings.
- performed document review and public records review in connection with FOIA request.
- performed legal research and case assessment.
- prepared the written lawsuit.
- responded to Richland County's efforts to have the case dismissed in its entirety.
- attended the hearing on Richland County's motion to dismiss.
- engaged in extensive correspondence with Richland County's counsel.
- conducted and served written discovery on Richland County.
- performed an in-person attorney review with Ms. Brawley of thousands of pages of records produced by Richland County.
- prepared and resolved discovery motions.
- prepared written opposition to the County's motion for summary judgment.
- attended court and argued against the County's motion for summary judgment.
- prepared for and attended mediation.
- engaged in "extremely lengthy" post mediation settlement efforts, including the preparation of proposed settlement agreements.
- attended status conferences with the trial court.

- prepared and served numerous witness subpoenas each of the four (4) times the case was scheduled for trial.
- prepared all trial documents, including the Trial Brief for Judge Benjamin and the Trial Exhibits.
- met with and prepared Ms. Brawley to testify at trial.
- prepared for the opening trial presentation, witness examination, and trial motions practice.
- prepared the proposed Order on the Merits for Judge Benjamin.
- substantively addressed the County's propose Order on the Merits and post-trial motions.

Moreover, Judge Benjamin did not simply rely on the attorneys' fees affidavit in reaching her final award. Judge Benjamin received into evidence a 24-page, single-spaced invoice from Mrs. Brawley's legal counsel detailing $88,425.50 of legal services provided by the law firm to Ms. Brawley in pursuit of her case. To describe each detailed entry here would require extensively more pages than permitted for this Petition. However, the Record has 23 pages of unredacted, detailed time entries, **explaining to the tenth of an hour each legal service, the amount of fees associated with it, and the rate charged for it**. Moreover, the Record reveals that Richland County offered no evidence to contradict or support a lower hourly rate than the rates supported by the either the Affidavit of Attorney's Fees or the law firm's invoice.

The invoice Judge Benjamin received also details every cost advanced by Mrs. Brawley's legal counsel, totaling $3,166.46. (R. p. 66-67.) However, Judge Benjamin did not simply rely on the detailed invoice; Judge Benjamin received 25 pages of third-party receipts and invoices substantiating the $3,166.46 advanced by Mrs. Brawley's attorneys. (R. pp. 68-93.)

Further, Judge Benjamin did not simply accept Ms. Brawley's attorneys' Affidavit, billing records, and supporting third party invoices and make her decision based on that evidence alone. Rather, in addition to receiving this documentary evidence, Judge Benjamin conducted two (2) live hearings during her six-month deliberation over the amount of reasonable attorneys' fees and costs.

Judge Benjamin conducted her first hearing on the issue of reasonable fees and costs on November 9, 2020. During that hearing, Judge Benjamin inquired into the substance of the attorneys' fees sought by Ms. Brawley. Judge Benjamin confirmed through inquiry that the attorneys' fees submitted did **not** include time that Ms. Brawley's attorneys spent working for the dismissed non-profit plaintiff. (R. pp. 720-721.) Judge Benjamin also confirmed that most of the work spent on behalf of Respondent-Appellant was spent in pursuit of the FOIA request that was the subject of trial, not the FOIAs that were resolved early in the case. (R. p. 721.) Judge Benjamin considered all the County's arguments against the attorneys' fees and costs, and she considered Ms. Brawley's rebuttal of those arguments. The more than forty (40) pages of argument and counter-argument Judge Benjamin conducted on November 9, 2020, is a part of the Record and serves as part of the justification of her award. (R. pp. 715-757.)

Moreover, when the County objected to Judge Benjamin's initial award of attorneys' fees and costs, she did not simply disregard the County's concerns by issuing a Form 4 in support of her prior ruling. Rather, Judge Benjamin held a second substantive hearing into the matter of attorneys' fees and costs on January 8, 2021. During this hearing, Judge Benjamin accepted additional argument and counterargument, and she inquired into specific billing issues appearing on the detailed invoice records. (R. pp. 758 – 801.) Judge Benjamin stated that she was **not**

awarding fees for time entries regarding the appeal, which highlights another error in Opinion 6090. (R. pp. 784-785; Opinion, p. 12.)

During this hearing Judge Benjamin discovered that some of the entries for client meetings included the time counsel spent driving from downtown Columbia, South Carolina, to Hopkins, South Carolina, to conduct client meetings in 2015. (R. p. 786.) Judge Benjamin also discovered that the law firm invoice submitted to her was not intended to reflect the 305 hours of time Rogers Lewis Jackson Mann & Quinn, LLC had in the file at the time Mr. Mann signed the attorney's fees affidavit the prior year; rather, the detailed billing submitted to the court was printed from software **after** approximately 30 hours of time was removed from the invoice because of redundant billing by staff or excessive time on a task. (R. pp. 789-791.)

In short, Opinion 6090 reflects the fallacy of "cherry picking." The Opinion focuses solely on the Court of Appeal's disagreement with Judge Benjamin over whether "discovery" was "extensive" or not in this case. However, a proper review of the entire Record, as required by an application of this Court's abuse of discretion standard of review, demonstrates that the Court of Appeals failed to apply that standard and simply substituted its discretion for Judge Benjamin's in Opinion 6090. Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) ("on appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each [Dedes] factor.")

There is nothing more Judge Benjamin could do – short of doing a task by task, billing entry by entry written analysis – to prepare an order evidencing the exercise of discretion when determining "reasonable" attorneys' fees and costs award. Even Richland County agrees Judge Benjamin was not required to conduct that level of justification. (R. p. 797). Therefore, the Court of Appeals' decision to reverse and remand Judge Benjamin's award was error.

B. Opinion 6090 conflicts with the prior decisions of this Court by creating new factors and modifying the Dedes factors, elevating "the degree of success obtained" over all other factors, and requiring new and more detailed findings than those required by this Court's precedents.

Opinion 6090 contradicts this Court's longstanding precedent instructing trial judges how to exercise discretion in determining reasonable attorney's fees and costs as provided for in S.C. Code Ann. § 30-4-100. Opinion 6090 concedes it demands a "more detailed framework" than this Court has ever adopted. (Opinion, p. 10.) In Opinion 6090, the Court of Appeals shifts the focus away from the six-factor analysis that this Court has historically left to our trial courts. For this reason, adherence to the doctrine of *stare decisis* requires granting Mrs. Brawley's Petition for a Writ of Certiorari under Rule 242(b)(1) & (3). *See* State v. One Coin-Operated Video Game Mach., 321 S.C. 176, 181, 467 S.E.2d 443, 446 (1996) ("*Stare decisis* exists to 'insure a quality of justice which results from certainty and stability.'")

First, Opinion 6090 purports to elevates the "degree of success obtained" – which appears to be different than the "beneficial result" factor long recognized by this Court – over any of the Dedes factors. (Opinion p. 10, citing Hensley v. Eckerhart, 461 U.S. 424 (1983).) Here, the Opinion directly contradicts this Court's established precedent in FOIA cases. *See* Horton, 423 S.C. at 330, 815 S.E.2d at 444-45 (quoting Baron Data Sys., Inc., 297 S.C. at 384, 377 S.E.2d at 297 ("We have previously held that a court should consider all six factors in making its decision, and we have explained 'none of these six factors is controlling.'")

Second, in adopting this "degree of success obtained" factor, Opinion 6090 creates an obligation for trial courts to make "proportional" findings that relate to the "degree of success obtained." (Opinion p. 11.) This Court has never required trial courts to make findings that "proportion" its determination of a reasonable attorney's fees and costs award under a state statute to the "degree of success" obtained by the party being awarded "reasonable" fees and costs at the

trial judge's discretion. *See, e.g.*, Baron Data Sys., Inc., 297 S.C. at 385, 377 S.E.2d at 297 (reiterating that "the amount of recovery is but one factor to be considered in determining reasonable attorney's fee" and collecting cases from other jurisdictions where the reasonable attorneys' fees awarded exceeded the verdict obtained for the client).

Third, Opinion 6090 creates an obligation for trial courts to issue an order that reflects an actual calculation of the "number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." This requirement directly contradicts the more flexible standard previously endorsed in this Court's precedent; for example:

> We have reviewed the affidavits submitted by counsel and agree they are somewhat deficient. One affidavit includes approximately 78 hours of time for work performed prior to the filing of Mrs. Taylor's second amended complaint. *See* footnote 3. Moreover, the affidavits do not specifically state the time spent on the UTPA claim against CIBL.
>
> In spite of these deficiencies, we conclude there is evidence which supports the approximately 1500 hours of time spent by Mrs. Taylor's attorneys on this matter. The affidavits note the time spent by other attorneys and some legal professionals was not submitted for reimbursement. The judge who presided over the majority of this matter stated the submitted time was, in his view, conservative. Furthermore, time spent is but one factor to consider in setting a reasonable attorney's fee.

Taylor by Taylor, 331 S.C. at 581, 503 S.E.2d at 461. Opinion 6090 would require a more detailed findings, calculations, and analysis than even that made by this Court in Horton when it reversed and awarded reasonable attorneys' fees and costs in that FOIA action.

Failing to award Mrs. Brawley the attorney's fees and costs for the time and efforts expended to fully advance her interest, which includes defending contentions by Appellate that attorney's fees are not warranted, would run counter to the mandates of FOIA. FOIA should be liberally construed to carry out the legislative purpose of guaranteeing the public reasonable access to certain activities of the government. Pope v. Wilson, 427 S.C. 377, 384-385, 831 S.E.2d 442,

446 (Ct. App. 2019). Sloan, 393 S.C. at 157, 711 S.E.2d at 897 (quoting Litchfield Plantation Co. v. Georgetown County Water & Sewer Dist., 314 S.C. 30, 34, 443 S.E.2d 574, 576 (1994) (Toal, J., concurring in part, dissenting in part) ("A governmental agency should not be allowed to stonewall an FOIA request without some penalty for its actions.") Creating a new framework for awarding "reasonable" attorneys' fees and costs and remanding for further proceedings (and inevitably, further appeal by Richland County) a FOIA case **ten** years into its litigation will only serve to dissuade parties from bringing FOIA complaints for even the most obvious violations. Judge Benjamin properly exercised her discretion to award full attorney's fees and costs to plaintiffs, and specifically in this case, to achieve the overarching purpose of FOIA and "make it possible for citizens . . . to learn and report fully the activities of their public officials at a minimum cost or delay …." S.C. Code Ann. § 30-4-15.

CONCLUSION

Respondent respectfully requests that this Court grant this Petition for a Writ of Certiorari and reinstate the Circuit Court's final Order awarding Respondent reasonable attorney's fees and costs.

Respectfully submitted,

s/ Shaun C. Blake
Shaun C. Blake, Esq.
Jenkins M. Mann, Esq.
L. Cody Smith, Esq.
MANN BLAKE & JACKSON
Mailing: PO Box 11803, Columbia, SC 29211
Columbia Office: 1619 Sumter Street (29201)
Tel: 803-256-1268

COUNSEL FOR RESPONDENT-APPELLANT

January 31, 2025