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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Roger M. Young, Sr., Circuit Court Judge

Case No. 2021-CP-38-1268

Carroll Brown, individually and on behalf of all others similarly situated, Respondent,

v.

Harold M. Young, in his official capacity as Orangeburg County
Administrator; Matt Stokes, in his official capacity as Orangeburg County
Treasurer; Orangeburg County; and Orangeburg County Council,..... Appellants.

NOTICE OF APPEAL

The Appellants Harold M. Young, in his official capacity as Orangeburg County Administrator, Matt Stokes, in his official capacity as Orangeburg County Treasurer, Orangeburg County, and Orangeburg County Council hereby appeal the Order on Defendants' Motion for Summary Judgment and/or for Entry of Declaratory Judgment and for Rule 54(b) Certification issued by Circuit Court Roger M. Young, Sr. filed January 30, 2025.

The Appellants' counsel received written notice of entry of the Order on Defendants' Motion for Summary Judgment and/or for Entry of Declaratory Judgment and for Rule 54(b) Certification filed January 30, 2025, on that same date.

s/ Andrew F. Lindemann

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February 5, 2025

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Fee violates the requirements of S.C. Code Ann. § 6-1-630 and is an illegal tax. The Plaintiff seeks a declaratory judgment to that effect. The Plaintiff seeks monetary relief in the form of a refund of the Road Maintenance Fees collected and retained including a ten times multiplier. The Plaintiff asserts three causes of action seeking that monetary relief: (1) an equitable claim for quantum meruit/unjust enrichment against all Defendants; (2) a claim for a violation of S.C. Code Ann. § 8-21-30 against the Defendant Stokes only; and (3) a claim for the violation of Article I, § 3 of the South Carolina Constitution against all Defendants.

On June 30, 2022, Circuit Court Judge Edgar W. Dickson issued an Order Granting in Part Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings. With his Order, Judge Dickson dismissed with prejudice all but Plaintiff's Fourth Cause of Action for declaratory relief. The Plaintiff subsequently filed a Rule 59(e) motion which remains pending.

The South Carolina General Assembly enacted 2022 Act No. 236, and it was signed into law by Governor Henry McMaster on June 22, 2022. Act No. 236 amends S.C. Code Ann. § 6-1-630(A), to provide:

A local governing body, by ordinance approved by a positive majority, is authorized to charge and collect a service or user fee. ... A fee adopted or imposed by a local governing body prior to December 31, 1996, remains in force and effect until repealed by the enacting local governing body, notwithstanding the provisions of this article.

2022 Act No. 236, § 2(B).

Additionally, Act 236 amended S.C. Code Ann. § 6-1-300(6) to define "service or user fee" to mean "a charge required to be paid in return for a particular government service or program. 'Service or user fee' also includes 'uniform service charges.' The revenue generated from the fee must: (a) be used to the benefit of the payers, even if the general public also benefits; (b) only be used for the specific improvement contemplated; (c) not exceed the cost of the improvement; and

(d) be uniformly imposed on all payers." 2022 Act No. 236, § 2(A). Finally, Section 2(E) of Act No. 236 states that Section 2 "applies retroactively to any service or fee imposed after December 31, 1996." 2022 Act No. 236, § 2(E).

On May 17, 2023, the Chief Justice of the South Carolina 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 "Order").² The 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 issuing the Order "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.*

In the Georgetown County case of *Butts v. Mace*, Civil Action Number 2021-CP-22-00928, the plaintiffs in that action filed a Motion for Partial Summary Judgment requesting that this Court, under the authority granted by the Chief Justice in the Order, issue a declaratory judgment declaring that the retroactivity language contained in Section 2(E) of Act No. 236 is unconstitutional. On June 25, 2024, an Order Granting Plaintiff's Motion for Partial Summary Judgment was issued in the *Butts* case granting partial summary judgment to the Plaintiffs in that action finding that Section 2(E) of Act No. 236 is unconstitutional. That Order and a subsequent Order denying a Rule 59(e) motion in *Butts* have been appealed to the South Carolina Supreme Court.

² The Chief Justice's Order has been referred to as a "consolidation order" but these cases have not been consolidated, and Defendants have not sought consolidation pursuant to Rule 42(a), SCRCP.

The Orangeburg Defendants are not parties to the *Butts* case and admit they have no standing to challenge orders entered into in the *Butts* case. Nonetheless, the Orangeburg Defendants filed their motion seeking an Order declaring that the retroactivity language contained in Section 2(E) of Act No. 236 is constitutional and granting summary judgment to the Orangeburg Defendants on their mootness defense. The Orangeburg Defendants argued that defense counsel in the *Butts* case made a number of the pertinent arguments, but did not argue that the authority on which this Court relies on *Butts*, namely *Lindsay v. National Old Line Ins. Co.*, 262 S.C. 621, 207 S.E.2d 75 (1974), and *Steinke v. South Carolina Dept. of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999), was wrongly decided or is otherwise no longer “good law” and should be overruled.³ Both *Lindsay* and *Steinke* remain the law in South Carolina, and the Court stands by its decision in *Butts* and incorporates that legal analysis herein. See, *Carson v. Southern Railway*, 68 S.C. 55, 46 S.E. 525, 529 (1903) (circuit court is bound by decisions of the Supreme Court). This Court is bound by those decisions. Accordingly, the Court DENIES the Orangeburg Defendants’ motion.

The Orangeburg Defendants also ask this Court to enter and certify final judgment on the constitutional question pursuant to Rule 54(b), SCRCP, so as to allow for an immediate appeal to be joined or consolidated with the currently pending appeal filed in *Butts*. The Plaintiff does not oppose the relief.

Rule 54(b) provides in pertinent part:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim . . . , the court may direct the entry of a

³ The Orangeburg Defendants specifically contend that *Lindsay* and *Steinke* should be overruled in light of authority from the United States Supreme Court addressing the application of the separation of powers doctrine under the same circumstances. The Orangeburg Defendants also contend that the *Lindsay* decision was misapplied by the Supreme Court in *Steinke* and in subsequent cases decided since 1999, as was explained by former Justice Costa Pleicones in his dissent in *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 598, 614 S.E.2d 629 (2005). The Plaintiff disputes these arguments.

final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

Rule 54(b), SCRCP. *See, Ashenfelder v. City of Georgetown*, 389 S.C. 568, 698 S.E.2d 856, 860 (Ct. App. 2010) (“The process of directing entry of judgment on one or more, but less than all, claims under Rule 54(b) is referred to as certification”).

In light of the unique posture of this case, the appeal already pending in the *Butts* case, the intent and spirit of the Chief Justice’s Order, and the finality of this Court’s ruling herein, this Court finds that there is no just reason for delay and that it is appropriate to enter direct entry of judgment and certify this Order and enter a declaratory judgment that the retroactivity provision of Act No. 236 is unconstitutional. That will allow for an immediate appeal to the Appellate Courts.

AND IT IS SO ORDERED.

[S-SIGNATURE FOLLOWS]



Orangeburg Common Pleas

Case Caption: Carroll Brown VS Harold M. Young , defendant, et al

Case Number: 2021CP3801268

Type: Order/Summary Judgment

It is so ordered.

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