THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2025-000174
Case No. 2015-CP-40-1805

Wendy Brawley, ... Petitioner-Respondent,

v.

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

RESPONDENT-PETITIONER RICHLAND COUNTY'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The Petitioner-Respondent Wendy Brawley brought this action pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq*.[1] Brawley presented four separate FOIA requests to the Respondent-Petitioner Richland County at the meeting of Richland County Council held on the evening of September 9, 2014. (R. 114-117). Brawley was sent correspondence regarding her FOIA requests on September 12, 2014 and October 1, 2014. (R. 129, 573). Thereafter, by letter dated October 3, 2014, the County provided a response to three of the four FOIA requests, and by letter dated October 8, 2014, the County provided a response to the fourth FOIA request. (R. 574).

Wendy Brawley and her co-Plaintiff -- Hopkins and Lower Richland Citizens United, Inc. ("HLRCU") -- brought this FOIA action in an attempt to enjoin the Lower Richland Sewer Project. In their Complaint, the Plaintiffs sought the following temporary and permanent injunctive relief:

> a. Enjoining Defendant 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;
>
> b. Enjoining Defendant from entering into negotiations with residents of Hopkins and Lower Richland for the acquisition of easements; and
>
> c. Enjoining Defendant from providing third reading to the Lower Richland Sewer Project.

See, Complaint, ¶ 40. (R. 111). The County filed a motion to dismiss, which Circuit Court Judge Clifton Newman granted by Order entered August 14, 2015. (R. 1-2). Judge Newman

[1] This is governed by the Freedom of Information Act as it was codified in 2014, which was prior to the amendments to FOIA as adopted as part of 2017 Act No. 67, which became effective on May 19, 2017.

ruled that the injunctive relief as sought by the Plaintiffs is not relief contemplated or allowed under FOIA.

Later, after the parties had the opportunity to conduct discovery, Richland County filed a motion for summary judgment. By Order filed October 24, 2016, that motion was granted in part and denied in part by Judge Clifton Newman. (R. 9-16). Judge Newman resolved three of the four FOIA requests in the County's favor. Additionally, the Plaintiff HLRCU was dismissed for lack of standing by that Order.

The fourth FOIA request sought the production of "a copy of the application and supporting documentation Richland County submitted to the USDA Rural Development for grant and loan funding for the Lower Richland Sewer Project." (R. 572). In his Order filed October 24, 2016, Judge Newman determined that "there appears to be a genuine issue of material fact in dispute that precludes the resolution of this claim at the summary judgment stage." (R. 10).

The case was tried before former Circuit Court Judge DeAndrea Benjamin without a jury on September 5, 2019. By Order filed February 13, 2020, Judge Benjamin ruled in favor of Wendy Brawley and found a FOIA violation by the County. (R. 12-24). The County subsequently filed a motion to alter or amend order pursuant to Rule 52(b) and Rule 59(e), SCRCP. (R. 208-216). By Order filed July 16, 2020, Judge Benjamin granted in part and denied in part that motion. (R. 29-38). The trial court agreed that the claim for injunctive relief had previously been dismissed by Judge Newman, but the judge allowed the award of declaratory relief to stand.

The County filed a Notice of Appeal on August 17, 2020, and Brawley filed a Notice of Appeal on the same date.

In the interim, on July 17, 2020, Brawley's counsel had filed an affidavit claiming an award of attorney's fees and costs. (R. 220-223). No motion was filed. Judge Benjamin held a hearing on the request for attorney's fees and issued an Order Awarding Plaintiff Attorney's Fees and Costs, filed November 30, 2020, awarding a combined $81,264.96 in attorney's fees and costs to Brawley. (R. 39-42). The County filed a motion to alter or amend order seeking reconsideration of the Order Awarding Plaintiff Attorney's Fees and Costs. (R. 241-248). After an additional hearing, Judge Benjamin issued an Amended Order Awarding Plaintiff Attorney's Fees and Costs, filed January 19, 2021, awarding $77,980.75 in attorney's fees and $2,864.96 in costs to Brawley. (R. 94-101).

The County then filed an Amended Notice of Appeal, and this appeal proceeded in the Court of Appeals. After oral argument, the Court of Appeals issued a published opinion on September 25, 2024. In its opinion, the Court of Appeals reversed the award of attorney's fees and remanded for proper consideration of the award in accordance with the opinion.

As a result of the filing of petitions for rehearing by both sides, the Court of Appeals withdrew the previous opinion and substituted a new opinion which did not substantively alter the Court's rulings on the attorney's fees issues. The parties have both filed a petition for writ of certiorari – the County as to liability issues and Brawley as to the attorney's fees and costs issues.

ARGUMENTS

In its published opinion, the Court of Appeals reversed the trial court's award of attorney's fees and costs and remanded for further findings. The Court recognized that the trial court had made two different awards. First, in the original award, the trial court awarded a total of $81,264.96 in attorney's fees and costs, without allocating those amounts to fees and costs. (R. 41). Thereafter, in the amended award, the trial court awarded a total of $80,845.71 in attorney's fees and costs, and that figure was allocated as $77,980.75 in fees and $2,864.96 in costs.

In addressing Richland County's challenges to the reasonableness and fairness of those awards, the Court of Appeals identified "[t]wo problems prevent us from affirming the fee award in this case." (Slip Op. at 8). As the Court explained, "[f]irst, we cannot discern how the circuit court came to the amounts in the original or amended awards." (Slip Op. at 8). In effect, although the trial court claims that it made deductions "relating to Plaintiff's injunctive relief claim, Defendant's Motion to Dismiss, and appellate matters" (R. 99) in the amended award, the court never substantiated or provided any monetary amounts for any of those deductions. To the contrary, as the Court of Appeals acknowledged, "[a]ll of these claimed deductions somehow resulted in a new award of $80,845.71, which was only $419.25 less than the original award. We find it impossible to see how the above-described deductions totaled only $400." (Slip Op. at 9).

According to the Court of Appeals, "[o]ur second issue is that we strain to find justification for an award of roughly $80,000 in fees and costs for a FOIA case where there was minimal discovery and where the public body never argued that any of the materials Brawley requested were exempt from disclosure." (Slip Op. at 9). The Court of Appeals further explained:

> To this same point, the order awarding fees included a finding that Brawley secured responsive documents after several hearings, "extensive discovery," and a number of pre- and post-trial motions. This directly contradicts the record in a number of respects. The additional responsive documents were provided relatively early in the litigation without any significant adversarial proceedings.

(Slip Op. at 9).

Critically, the Court of Appeals applied the correct standard of review which is an abuse of discretion standard. "Under South Carolina law, the determination of the amount of attorney's fees awarded pursuant to a statute is addressed to the sound discretion of the trial court and will not be reversed absent an abuse of that discretion." *O'Shields v. Columbia Automotive, LLC*, 435 S.C. 319, 867 S.E.2d 446, 454, n.10 (Ct. App. 2021). "An abuse of discretion occurs when the [circuit court's] ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support." *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565, 566 (1987). As the opinion demonstrates, the Court of Appeals did focus on errors of law, the lack of evidentiary support for certain factual conclusions, and abuses of discretion (or the failure to exercise discretion).

In her petition for writ of certiorari, Wendy Brawley argues that the Court of Appeals failed to adhere to prior decisions of this Court, specifically *Dedes v. Strickland*, 307 S.C. 155, 414 S.E.2d 134 (1992), and *Horton v. Jasper County School District*, 423 S.C. 325, 815 S.E.2d 442 (2018). In effect, Brawley contends that the Court of Appeals substituted its judgment for that of the trial court and applied a different framework than precedents permit. A careful review of the Court of Appeals' detailed and well-reasoned analysis demonstrates that Brawley's position lacks merit and that the issuance of a writ of certiorari is not warranted.

Brawley focuses on the six factors that this Court has identified for a trial court to consider in any award of attorney's fees. Those six factors are: "(1) nature, extent, and difficulty

of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Horton*, 815 S.E.2d at 444. In a nutshell, Brawley states that the trial court made findings as to each of those factors, and that is all that is required. According to Brawley, if those findings were made, the trial court's discretion in awarding attorney's fees escapes any further review. However, it is not that simple – particularly within the context of a FOIA case. Moreover, the case at bar is not a routine FOIA case, as the Court of Appeals was apt to recognize.

Remarkably, Brawley never addresses the impact that the enabling statute allowing for an award of attorney's fees in a FOIA case plays on the applicable analysis. Importantly, S.C. Code Ann. § 15-78-100(b) is the enabling statute allowing for a discretionary award of attorney's fees:

> If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. *If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.*

S.C. Code Ann. § 30-4-100(b) (Supp. 2014). (Emphasis added). As the highlighted language indicates, a court must initially determine whether the party seeking attorney's fees qualifies as a prevailing party, and if so, then the court must determine the extent to which the party prevailed. The explicit statutory enabling language stresses the requirement that the attorney's fees award be "reasonable" and, to that end, further authorizes the trial court, in a case where the plaintiff prevails *only in part*, to apportion the fees so that fees are awarded only for the work on which the plaintiff actually prevailed.

This language alone, and the analysis it authorizes, immediately distinguishes this case from *Dedes* and *Horton*. *Dedes* is of little help here because it is not a FOIA case. Brawley cites *Dedes*

only for the six-factor test. Incidentally, in *Dedes*, this Court does not limit an attorney's fees analysis to those six factors, and in fact, acknowledges that "the master gave ample consideration to the foregoing *and other factors* in determining the attorneys' fees award." *Dedes*, 414 S.E.2d at 137. (Emphasis added). In contrast to *Dedes*, *Horton* is a FOIA case. However, *Horton* is distinguishable from the case at bar because it was a case where the plaintiff prevailed in full and not in part. In fact, this Court did not even cite to the second sentence of S.C. Code Ann. § 30-4-100(b) in the opinion; that case was decided based solely on the first sentence of the enabling statute, and in effect, this Court concluded that the plaintiff was entitled to his claimed attorney's fees. Indeed, the only issue on appeal did not even pertain to the reasonableness of the fees awarded, but rather "whether the circuit court abused its discretion in selecting the hourly rate of $100." *Horton*, 815 S.E.2d at 444. Unlike in *Horton*, the hourly rate is not at issue in this appeal. Rather, the reasonableness of the fee award is what is at issue.

As a result, it should be obvious that the Court of Appeals in the present case did not overlook, overrule, or take any umbrage with the *Dedes* and *Horton* precedents. Instead, the Court of Appeals faced a much different analysis – one that required the Court to apply the second sentence of the S.C. Code Ann. § 30-4-100(b) and to analyze what would be a reasonable fee based on the fact that Brawley prevailed on only a minor part of her claims. Specifically, the County asserted on appeal that even if Brawley was the prevailing party on one of the four FOIA claims, errors were made by the trial court in not making greater deductions in the amounts awarded.

Accordingly, the procedural history of this case is critical to understanding the Court of Appeals' decision. As the record bears out, the Plaintiffs, which included the dismissed Hopkins and Lower Richland Citizens United, Inc. ("HLRCU"), brought this FOIA action in an attempt to

enjoin the Lower Richland Sewer Project. In the Complaint, the Plaintiffs sought the following temporary and permanent injunctive relief:

> a. Enjoining Defendant 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;
>
> b. Enjoining Defendant from entering into negotiations with residents of Hopkins and Lower Richland for the acquisition of easements; and
>
> c. Enjoining Defendant from providing third reading to the Lower Richland Sewer Project.

See, Complaint, ¶ 40. (R. 111). As Judge Clifton Newman agreed, the injunctive relief as sought by the Plaintiffs is not relief contemplated or allowed under FOIA. Judge Newman granted the County's motion to dismiss *in toto* by Order entered August 14, 2015. (R. 1-2). Noticeably absent in the Complaint is any claim for injunctive relief seeking the documents that Brawley contends had not been provided by the County. Initially, in its Order entered February 13, 2020, the trial court granted such injunctive relief despite it never being sought in the Complaint, but that was corrected in the Order entered on July 16, 2020, where the trial court "remove[d] the injunctive relief requiring Richland County to provide the documents to the Plaintiff." (R. 30).

S.C. Code Ann. § 30-4-100(a) allows a court to issue "a declaratory judgment and injunctive relief to enforce the provisions of this chapter." Therefore, the available relief is limited to the enforcement of the provisions of FOIA. Based upon existing precedent, a court may presumably invalidate an ordinance that was enacted in violation of FOIA's open meeting requirements or order the disclosure of public records that are not exempt from disclosure and have been wrongfully withheld. However, in this case, Brawley sought injunctive relief that

does not enforce the provisions of FOIA and which is much broader than the relief contemplated or allowed under S.C. Code Ann. § 30-4-100(a). Therefore, it is clear that Brawley's claims for injunctive relief -- which was the heart of this litigation -- were denied in August 2015. The County prevailed *in toto* on the injunctive relief claims. (R. 1-2, 4-8). Thus, Brawley never received any injunctive relief, and that was affirmed by the Court of Appeals and is the law of the case. Brawley has not requested a writ of certiorari on the denial of any injunctive relief.

That left *only* the declaratory relief claims for further adjudication. As explained above, those claims involved four separate and distinct FOIA requests. In those four requests, Wendy Brawley sought documents as follows:

> (1) a copy of the minutes from the Richland County Council meeting when funds were approved by Council for waivers of tap on fees for the Lower Richland Sewer Project;
>
> (2) a copy of the minutes from Richland County Council's meeting when the Council gave Third Reading Approval for the Lower Richland Sewer Project;
>
> (3) a copy of Richland County's USDA Rural Development Application for Loan and Grant Funding Lower Richland Sewer Project; and
>
> (4) a copy of Richland County's MOU with City of Columbia regarding the sewer services agreement.

See, Complaint, Ex. 1. (R. 114-117). Those four FOIA claims were considered by Judge Clifton Newman on Richland County's motion for summary judgment which was heard on August 23, 2016. As Judge Newman found:

> At the commencement of the hearing, counsel for the Plaintiffs conceded that the County fully responded to three of the four FOIA requests, specifically the request seeking a copy of the minutes from the Richland County Council meeting when funds were approved by Council for waivers of tap on fees for the Lower Richland Sewer Project, the request seeking a copy of the minutes from Richland County Council's meeting when the Council gave

> Third Reading Approval for the Lower Richland Sewer Project, and the request seeking a copy of Richland County's MOU with City of Columbia regarding the sewer services agreement. As a result, summary judgment is granted to the Defendant Richland County with respect to those three FOIA requests.

(R. 10).

Thus, Judge Newman granted summary judgment on three of the four FOIA claims at issue. In fact, Brawley conceded those three claims after well over a year of litigation. Thus, Brawley was not the prevailing party on the *entirety of her injunctive relief claim* and on 75% of her declaratory judgment claims, and she received none of the relief that was actually sought in the Complaint.

Based on the rulings at trial which are the subject of the County's petition for writ of certiorari, Brawley would qualify as a prevailing party – but only in part. That triggers the analysis under the second sentence of S.C. Code Ann. § 30-4-100(b), which requires a trial court to consider if a "reasonable fee" should take into account that the plaintiff prevailed only in part, and in such circumstances whether an apportioned award is appropriate. The six-factor test from *Dedes* and *Horton* requires the trial court to consider "beneficial results obtained," meaning that a reasonable award of fees should be commensurate with the beneficial results obtained by the plaintiff. There is no existing case law that describes the analysis for applying the second sentence of S.C. Code Ann. § 30-4-100(b) or, for that matter, for applying the "beneficial results obtained" factor.[2] The Court of Appeals obviously recognized that when it wrote, "[w]e were not able to locate a binding precedent that establishes a more detailed framework for deciding a request of fees under FOIA." (Slip Op. at 10).

[2] Despite the lack of existing case law, Brawley attempts to assert the doctrine of s*tare decisis*, which has no application in this context.

Thus, the Court of Appeals, at the urging of *both parties*, looked at the leading case of *Hensley v. Eckerhart*, 461 U.S. 424 (1983), which is compelling authority in evaluating how a court should assess the reasonableness of attorney's fees being claimed by a prevailing party who prevails only in part. Notably, the Court of Appeals states in its opinion that during oral argument "the parties agreed" that *Hensley* "provides useful guidance." (Slip Op. at 10). Yet now, in this Court, Brawley reverses course and contends that the Court of Appeals' mere mention of *Hensley* is somehow reversible error. Despite the preservation dilemma at hand for Brawley, there is no good reason to disregard *Hensley*, which does provide excellent guidance for the "beneficial results obtained" factor and the second sentence of S.C. Code Ann. § 30-4-100(b), particularly in the absence of other binding precedent.

The Court of Appeals correctly noted that very point in that *Hensley* addresses the important factor of the "results obtained." (Slip Op. at 10). As the Court of Appeals cited, the Supreme Court explained in *Hensley* as follows:

> The product of reasonable hours times a reasonable rate does not end the inquiry. *There remain other considerations that may lead the district court to adjust the fee upward or downward, including the important factor of the "results obtained."* This factor is particularly crucial where a plaintiff is deemed "prevailing" even though he succeeded on only some of his claims for relief. In this situation two questions must be addressed. First, did the plaintiff fail to prevail on claims that were unrelated to the claims on which he succeeded? Second, did the plaintiff achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award?

Hensley, 461 U.S. at 433. (Emphasis added). (Slip Op. at 10).

Interestingly, this language from *Hensley* was cited by the Court of Appeals in its decision in *O'Shields v. Columbia Automotive, LLC*, 435 S.C. 319, 867 S.E.2d 446 (Ct. App. 2021). Admittedly, the *O'Shields* case involved claims on which North Carolina substantive law was

applicable. The Court of Appeals, nonetheless, recognized that "[i]n North Carolina cases discussing reasonable attorney's fees, no matter the outcome, the touchstone is *Hensley*." 867 S.E.2d at 456. South Carolina courts should view *Hensley* the same way. Moreover, it should be mentioned that this Court affirmed the Court of Appeals' decision in *O'Shields*, and "affirm[ed] the balance of the court of appeals' decision pursuant to Rule 220, SCACR." *O'Shields v. Columbia Automotive, LLC*, 443 S.C. 29, 902 S.E.2d 375, 376, n.1 (2024). In *O'Shields*, the Court of Appeals concluded that "the circuit court retains discretion – after making a decision about apportionment – to reduce the amount of fees based on the partial or limited success of the litigation, whether the claims are related or not." *O'Shields*, 867 S.E.2d at 457. That effectively describes a relevant test for applying the second sentence of S.C. Code Ann. § 30-4-100(b) and for applying the "beneficial results obtained" factor.

In her petition, Brawley attempts to argue that the "beneficial results obtained" factor is somehow different from the "degree of success obtained" nomenclature used in *Hensley*. The terms, however, certainly appear to be synonymous or at least describing the same concept. Brawley also argues that the Court of Appeals has "created" an "obligation for trial courts to make 'proportional' findings that relate to 'degree of success obtained.'" *See*, Petition, p. 17. Yet, in reality, that analysis is mandated by the second sentence of S.C. Code Ann. § 30-4-100(b) when a prevailing party has only prevailed in part. That is not anything the Court of Appeals "created." Brawley proceeds to claim: "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*, Petition, pp. 17-18. However, as mentioned previously, this Court has never been called upon to rule on an attorney's fees award made

pursuant to the second sentence of S.C. Code Ann. § 30-4-100(b), which expressly allows for a proportional analysis. There is no other rational way to construe the language "or an appropriate portion thereof." *See*, S.C. Code Ann. § 30-4-100(b).

Accordingly, the Court of Appeals concludes that "[a] reasonable fee award must include only 'reasonably expended' hours and must be proportional to the degree of success obtained." (Slip Op. at 11). Moreover, the Court acknowledges that "it is important to ensure [the] award is reasonable." (Slip Op. at 11). Those propositions are not radical or contrary to S.C. Code Ann. § 30-4-100(b) or the six-factor test or any South Carolina precedent. In fact, to support that very point, the Court of Appeals cites *Horton*, where this Court wrote: "[w]hen a trial court's decision is made on a sound evidentiary basis and is adequately explained with specific findings -- *as the law requires* -- we defer to the trial court's discretion." *Horton*, 815 S.E.2d at 445. (Emphasis added). (Slip Op. at 11-12). Yet, in reference to the trial court's original and amended awards, the Court of Appeals found that "there is no adequate explanation of the amount originally granted or the deductions made in the amended order, and the amount awarded is difficult to justify." (Slip Op. at 12). In essence, there were not sufficient findings made to support the attorney's fees award, and that requires a remand.

The Court of Appeals is correct in that conclusion. As Richland County argued below, it is questionable whether the trial court even considered within its discretion the partial or limited success of the litigation in determining the reasonable fees. Of course, it is well settled that a circuit court's failure to exercise discretion is itself an abuse of discretion. *See*, *Samples v. Mitchell*, 329 S.C. 105. 495 S.E.2d 213, 216 (Ct. App. 1997) ("[w]hen the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred"); *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439, 441

(Ct. App. 1990) ("[i]t is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly").

Yet, without providing specific findings, the trial court states that "after careful review, the Court has deducted attorney's fees and expenses relating to Plaintiff's injunctive relief claim, Defendant's Motion to Dismiss, and appellate matters." (R. 99). Additionally, without specifying the amount, the trial court also applied "a fifty-percent (50%) reduction in attorney's fees and costs incurred prior to August 10, 2015 to be fair and reasonable to account for time allocated to the representation of dismissed co-Plaintiff HLRCU." (R. 99-100).[3] Most critically, there is no indication, however, that the trial court even considered the fact that the County prevailed on three out of four of the FOIA requests at issue and/or that Brawley received no prospective relief. (Slip Op. at 11) ("this case did not result in Brawley receiving any prospective relief"). The trial court did not mention those mitigating points nor state that downward adjustments were even considered on those bases. As prevailing South Carolina law makes clear, the failure to exercise discretion is itself an abuse of discretion. As the Court of Appeals suggests, the absence of specific findings did not allow for a meaningful review to confirm what, if any, exercise of discretion even took place.

One clear example of an abuse of discretion that is evident from the record involves Brawley's claim for attorney's fees and costs related solely to appellate matters, specifically the appeals filed by the County and Brawley on August 17, 2020, including the preparation of appellate documents, motions, other filings, and appeal-related research. Those appeals are obviously still pending. Brawley has not been determined to be the prevailing party on appeal. Thus, it was improper for Brawley to have even claimed appeal-related fees in the trial court. Likewise, the costs

[3] The parameters of this deduction itself are questionable in that the co-Plaintiff HLRCU was actually dismissed by Order filed October 24, 2016. (R. 9-10).

associated with an appeal, as set forth in Rule 222(b), which include trial transcript costs and filing fees, are recoverable only from the appellate courts under Rule 222, SCACR. It is similarly improper for Brawley to seek the recovery of costs of $819.75 for a trial transcript and $250 for the filing fee for her appeal. In its Amended Order, the trial court states that it has deducted attorney's fees and costs relating to "appellate matters." (R. 99). The court did not specify the amount of fees that it deducted for appellate matters; however, it can be determined that the total amount of costs deducted from the total in billing expenses is a mere $301.50 ($3,166.46 minus $2,864.96 equals $301.50). Yet, it is also clear that the appellate costs that are improper total at least $1,069.75, for the filing fee and trial transcript. Thus, it is obvious that the trial court abused its discretion in allowing for appellate costs. It is just as likely – given the absence of any findings or specific amounts being deducted – that an abuse of discretion was also made with regard to attorney's fees charged for appellate matters. The trial court proclaims that "it is not required to make evidentiary findings as to each bill entry." (R. 99). While that may be true, the trial court did not provide sufficient findings to allow for meaningful review as to whether discretion was properly exercised or exercised at all. On this additional basis, the award of attorney's fees and costs was properly reversed and remanded for proper findings. The Court of Appeals agreed with the County on this and points out that "[w]e could not determine what appellate-related costs the circuit court actually deducted here, if any. Though the circuit court said it was deducting such costs, the court did not specify what amounts were deducted." (Slip Op. at 12).

In sum, the County's concerns are legitimate, and the record indicates that the trial court abused its discretion in not making a downward adjustment for work on the three out of four FOIA requests which she clearly lost at the summary judgment stage or the injunctive relief claim which was improperly sought under FOIA in the first place. The trial court similarly

abused its discretion by failing to recognize the fact that the co-Plaintiff HLRCU was actually dismissed on October 24, 2016; yet, the trial court limited that fifty-percent reduction only to fees incurred through the much earlier date of August 10, 2015. Finally, as the Court of Appeals acknowledged, the record does not support "an award of roughly $80,000 in fees and costs for a FOIA case where there was minimal discovery and where the public body never argued that any of the materials Brawley requested were exempt from disclosure." (Slip Op. at 9).

Suffice it to say, the Court of Appeals presents a correct analysis pursuant to the second sentence of S.C. Code Ann. § 30-4-100(b), which expressly allows for a proportional analysis. The issuance of a writ of certiorari is not warranted on the attorney's fees and costs issues, and certainly not without also granting certiorari on the liability issues. Instead, if liability ultimately is affirmed, the issue of attorney's fees and costs is best addressed on remand.

CONCLUSION

Based on the foregoing discussion, the Respondent-Petition Richland County respectfully requests that this Court deny the Petitioner-Respondent Wendy Brawley's petition for writ of certiorari as to the attorney's fees and costs issues. Richland County does, however, renew its request for the issuance of a writ of certiorari as to the liability issues.

Respectfully submitted,

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