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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2025-000174

Wendy Brawley .....Petitioner-Respondent,

v.

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

PETITIONER-RESPONDENT WENDY BRAWLEY'S RETURN TO RESPONDENT-PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

Petitioner-Respondent Wendy Brawley ("Mrs. Brawley") respectfully submits this response in opposition to the Petition for Writ of Certiorari filed by Respondent-Petitioner Richland County, South Carolina (the "County"). The South Carolina Court of Appeals correctly affirmed the trial court's finding that the County violated the South Carolina Freedom of Information Act ("FOIA") and that Mrs. Brawley was entitled to an award of attorneys' fees. The County's petition fails to demonstrate any compelling reason for this Court to grant its Petition.

I. The Court of Appeals properly addressed the County's issues on appeal.

The County argues that the Court of Appeals misapplied Futch v. McAlister Towing of Georgetown, Inc., 335 S.C. 598, 518 S.E.2d 591 (1999), to avoid deciding two of the four legal errors raised by the County on appeal. However, the Court of Appeals was not required to specifically address every sub-issue raised by the County on Appeal because the Court of Appeal's resolution of the overarching common issue was dispositive. Specifically, while the County contends the first three (3) issues it raised on appeal are distinct issues, the Court of Appeals addressed these by resolving the overarching, common issue subsuming those three (3) issues – whether Mrs. Brawley established that the County violated FOIA. Therefore, the Court of Appeals committed no error in not separately addressing each sub-issue. *See* Garrard v. Charleston Cty. Sch. Dist., 439 S.C. 596, 599, 890 S.E.2d 567, 568 (2023) (declining to "address remaining issues when the resolution of one issue is dispositive"); S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control, 434 S.C. 1, 17 n.10, 862 S.E.2d 72, 80 (2021) (declining to address other arguments after reaching one that is dispositive).

II. The Court of Appeals correctly affirmed Judge Benjamin's judgement that the County violated FOIA by failing to produce records responsive to Mrs. Brawley's FOIA request.

A. The Burden of Proof

The County contends incorrectly that the Court of Appeals should have reversed Judge Benjamin's judgement alleging she improperly "switched" the burden of proof. Citing 37A Am. Jur. 2d Freedom of Information Acts § 514, Judge Benjamin noted that, "since the requesting party (Plaintiff) did not have the documents, 'placing the burden of proof upon the agency puts the task of justifying the withholding of the records on the only party able to explain the withholding.'" However, Judge Benjamin did not shift the burden of proof to the County. R. pp. 30-31. Instead, Judge Benjamin correctly concluded, based on the record established by Mrs. Brawley at trial through the County's witnesses and documents, that the County neglected to provide all applicable reasonably responsive documents to her FOIA Request that were in the County's possession. R. pp. 19-22.

Specifically, the trial court found, based on the evidence presented at trial: "The record demonstrates Richland County failed to provide the application and supporting documents in their possession in response to the Loan Documentation FOIA Request." R. p. 20. Judge Benjamin further stated:

> In a civil case, proof of circumstances warranting a given inference is sufficient to prove a fact. See generally, Eickhoff v. Beard-Laney, 20 S.E.2d 153, 155 (S.C. 1942). (citing Leek v. New South Exp. Lines, 192 S.C. 527, 7 S.E.2d 459). "In the absence of a statute or a valid contractual provision to the contrary, circumstantial evidence is regarded by law as competent to prove any given fact in issue in a civil case and is sometimes as cogent and irresistible as direct and positive testimony." Id. (quoting AM. JUR, Volume 20 at 259-260) (emphasis included in original) (see also, Graves v. CAS Med. Sys., Inc., 401 S.C.63, 80, 735 S.E.2d 650, 658 (2012) (providing "the general rule is any fact can be shown through circumstantial evidence, and it is up to the trier of fact to determine whether it alone is worth as much merit as direct evidence."). **The testimony in the present case provides that the loan application documentation involved numerous submittals and**

> **documents, that Richland County Utilities Department generally kept copies of important documents, that supporting documentation was likely within Richland County's files and that these very same documents were present in the Defendant's files when Ms. Brawley was allowed to search it in February 2016. No evidence or testimony was presented by Richland County to the contrary.**

R. pp. 21-22 (emphasis added).

The County raised these same issues of burden flipping in its Feb. 24, 2020, Motion to Alter, at which time Judge Benjamin clarified that Mrs. Brawley had met her burden in eliciting testimony that established the County failed to produce documents in its possession at the time the County responded to her Loan Documentation FOIA Request. (R. pp. 33-35.) Judge Benjamin's conclusion is supported by the evidence in the Record. (R. p. 480, l. 6-15; p. 496, l. 16-24.) The Record supports the Court of Appeals' affirmation of Judge Benjamin's determination that Mrs. Brawley had met her burden of proof to establish that the County violated FOIA.

B. Scope of the FOIA Request

The County argues the Court of Appeals erred in refusing to consider and evaluate the scope of the FOIA request. This argument lacks merit.

Ms. Brawley's FOIA Request sought "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." The County's employee, Andy Metts, provided testimony that established there was no ambiguity in the scope of the FOIA:

> Q. But, again, the only role USDA, the project had was processing the application and deciding whether to give Richland County money, correct?
>
> A. Yes.
>
> Q. They had no other role in the project other than processing the application and deciding whether to give Richland County money, correct?
>
> A. Correct.

Q. So anything that Richland County gave them was in support of its application for the USDA to give Richland County money, correct?

A. Correct.

(e.g., R. p. 532, l. 5-16.) Additional testimony presented at trial demonstrated that the County understood various and voluminous materials were submitted to the USDA over a prolonged period in support of the application. (R. p. 398; pp. 407-10; pp. 415-20; pp. 423-27; p. 440; and p. 462) Moreover, testimony establishes Richland County likely kept copies of materials supporting the application in its files. (R. p. 394, p. 406, pp. 415-16, and pp. 476-77.)

Further, Judge Benjamin not only found that the County could understand the plain meaning of the Loan Documentation FOIA Request, but also found the County did understand the request and still failed to produce documents which the County knew to be responsive:

> Mr. Metts did testify that in his search for the grant application within the records of the Utilities Department, **that he found documents related to the application** which were not produced to Ms. Brawley as part of the Original Response Documents. (Transcript at 206-208, 211-215, 226-227, 231-234, 266, and 272 Metts Testimony).

(R. p. 18) (emphasis added).

> At trial, the Defendant did not provide any information from other Richland County (other than Andy Metts and Sara Salley) officials to show "a search reasonably calculated to uncover all relevant documents" was completed, **despite testimony from both Ms. Salley (Transcript at 97- 100, Salley Testimony) and Mr. Metts (Transcript at 164, Metts Testimony) stating that there was other documentation that the County likely had but was not included in the 6 pages provided to Ms. Brawley**.

(R. p. 35) (emphasis added).

The clear language of the "FOIA creates an affirmative duty on the part of public bodies to disclose information." Bellamy v. Brown, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991). The legislative intent is that FOIA "must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings." S.C. Code Ann. § 30-4-

15. FOIA is to be liberally construed to carry out its purpose. Pope v. Wilson, 427 S.C. 377, 384–85, 831 S.E.2d 442, 446 (Ct. App. 2019).

The record supports the Court of Appeals' affirmation of Judge Benjamin's determination that the County violated FOIA by failing to produce documents that the County understood to be subject to Mrs. Brawley's FOIA request.

C. Failure to Conduct a Reasonable Investigation

The County asserts that the Court of Appeals erred by affirming Judge Benjamin's determination that Mrs. Brawley presented and prevailed on the County's "failure to conduct a reasonable investigation." This argument is without merit. Mrs. Brawley's complaint alleged that the County's FOIA response was incomplete and inadequate, and the case was tried based on evidence that the County did not diligently search for responsive documents. No error exists.

The County points to no case law that requires "failure to conduct a reasonable investigation" to be specifically pled to state a claim under FOIA. Patton v. Miller, 420 S.C. 471 (2017) ("The governing South Carolina pleading requirements are no longer 'technical confines of code pleading' but instead are 'far more flexible notice pleading provisions of the Rules of Civil Procedure.'") Requiring any plaintiff to know and plead the reason an agency refused to provide appropriate FOIA responses *prior* to filing her lawsuit would be an undue limitation on the remedial limitation of the FOIA statute in violation of S.C. Code Ann. § 30-4-15 (2007); Evening Post Publ'g Co. v. Berkeley Cty. Sch. Dist., 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011) ("FOIA is remedial in nature and should be liberally construed to carry out its purpose.") As discussed above, Mrs. Brawley established at the hearing that no such reasonable investigation was done. The common law relied upon by Judge Benjamin establishes the duty on an agency to conduct

reasonable search (R. pp. 34-35), and the Court of Appeals correctly affirmed Judge Benjamin's judgment that the County failed to conduct such a reasonable search.

III. The Court of Appeals correctly affirmed Judge Benjamin's determination that the County violated FOIA.

The Court of Appeals recognized the appropriate standard of review in the Opinion. Specifically, in holding that Judge Benjamin correctly determined that the County violated FOIA, the Court of Appeals necessarily found that Mrs. Brawley properly raised and established at trial the County's violation of its duty to produce documents in its possession. While the County has attempted to break down the central question it raises on appeal into distinct pieces, the Court of Appeals recognized the central question presented, reviewed the record and applicable law, and found no error by Judge Benjamin when she found that the County violated FOIA.

CONCLUSION

Petitioner-Respondent respectfully requests that this Court deny Richland County, South Carolina's Petition for a Writ of Certiorari and grant her Petition for a Writ of Certiorari and reinstate the Circuit Court's final Order awarding Respondent reasonable attorney's fees and costs due to the County's FOIA violation.

Respectfully submitted,

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