THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

The Honorable Bentley D. Price,
Circuit Court Judge

Appellate Case No. 2024-000350

Michele Graham, ... Appellant,

v.

Adrienne Ciaburri and Mark Ciaburri, ... Respondents.

BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTORY AND OTHER AUTHORITY

STATEMENT OF THE ISSUES ON APPEAL

I. DID THE LOWER COURT APPROPRIATELY CONSIDER THE MOTION FILED BY APPELLANT AS A TEMPORARY INJUNCTION A MOTION FOR WRIT OF MANDAMUS AND SUBSEQUENTLY APPROPRIATELY DENY THE APPELLANT'S REQUESTED RELIEF?

II. DID THE LOWER COURT APPROPRIATELY GRANT ATTORNEY'S FEES TO RESPONDENTS UPON DENYING APPELLANTS MOTION FOR WRIT OF MANDAMUS?

STATEMENT OF THE CASE

Michele Graham (hereinafter "Appellant"), along with additional Plaintiffs who are not parties to this appeal, initially filed a Small Claims Court complaint in Charleston County, South Carolina against Mark & Adrienne Ciaburri (hereinafter "Respondents") on July 2, 2020. (Small Claims Summons, (R. pp. 30 – 31)). The Respondents filed their answer to that action on July 30, 2020, asserting several affirmative defenses. (Small Claims Answer, (R. pp. 32 – 41)).

During the pendency of Appellant's Small Claims Court action, a subsequent action involving the same subject matter and/or controversy was filed by Appellant and her co-Plaintiffs on August 5, 2020 in Charleston County Court of Common Pleas. (Common Pleas Summons, (R. pp. 42 – 54)). In addition to the Summons and Complaint, Appellant and co-Plaintiff's also filed a Motion for Temporary Injunction on August 14, 2020. (Motion for Temporary Injunction, filed 8/14/20 (R. pp. 83 – 105)). Given the pendency of concurrent actions involving the same subject matter filed by the Plaintiffs in two separate courts, Plaintiffs' small claims court action was dismissed upon motion of the Respondents pursuant to 12(b)(8), SCRCP, on August 28, 2020. (Order on Dismissal, (R. p. 4)).

Following dismissal of the small claims court action, Appellant and co-Plaintiffs filed an Amended Complaint in the Common Pleas action on August 31, 2020, alleging a single cause of action – negligence – against Defendants Mark and Adrienne Ciaburri, and not alleging any cause

of action against the remaining Defendants Crista Hoffman, Heather Cumbee, and Shelby Walker (hereinafter "Town of Mount Pleasant Defendants"). (Amended Summons and Complaint, (R. pp. 55 – 68)). Plaintiffs also filed an amended petition for an Injunction with this Court on September 2, 2020. (Amended Motion for Temporary Injunction, filed 9/2/20 (R. p. 106 – 125)).

In response, the Town of Mount Pleasant Defendants filed a Motion to Dismiss in Lieu of an Answer on September 9, 2020, citing various grounds. (Motion to dismiss in Lieu of Answer, (R. pp. 171 – 176)). Further, the Respondents filed an Answer on September 15, 2020, asserting several affirmative defenses including failure to state a claim and lack of jurisdiction. (Answer, filed 9/15/20, (R. pp. 69 – 82)). The Respondents also filed a Motion for Summary Judgement on September 16, 2020, seeking dismissal of Plaintiffs' complaint as a matter of law based upon several grounds. (Motion for Summary Judgement, (R. pp. 177 – 181)).

Plaintiffs' petition for an Injunction was heard on September 24, 2020, before the Honorable Bentley Price and a lengthy evidentiary hearing was held, during which Appellant and co-Plaintiffs called several witnesses including, Mark Ciaburri. Plaintiffs' petition for an Injunction was subsequently denied by the Court's Order dated September 30, 2020. (Order on Motion 9/30/20, (R. pp. 5 – 7)).

The Court held a hearing for all Defendants' dispositive motions on December 11, 2020, and by Order filed December 22, 2020, the Court ruled to grant the Mount Pleasant Defendant's Motion to Dismiss, denied the Respondent's Motion for Summary Judgment, and granted Respondent's Motion for Sanctions and Attorney's Fees related to Plaintiffs' petition for injunction. At that time, attorney's fees were not awarded but, were held in abeyance pending an additional hearing. The Order stated, "Defendant Mark Ciaburri's Motion for Attorney fees as to the Preliminary Injunction hearing heard before this Court on September 24, 2020, hearing.

Defense counsel shall submit an affidavit of fees from the September 24, 2020, hearing. The Court will consider these fees and award the appropriate amount at such time." (Order dated 12/22/20, (R. pp. 8 – 10).

On December 29, 2020, Appellant filed a Request for Findings of Fact and Conclusions of Law, requesting that the court set forth findings of fact and conclusions of law which constituted its denial of the Motion for Temporary Injunction. (Request for Finding of Fact, R. pp. 182 – 183)). On March 22, 2021, an Order was filed by the Court in response to the request for finding of fact, which stated: "Based on the testimony given at the hearing held on September 24, 2020, no testimony was given that Defendant had violated section 90.29 (B)(3) of the Town of Mount Pleasant Laws and Ordinances. Plaintiff did not present evidence that defendant, "maintain(s) an animal that habitually or repeatedly chases, snaps at, bites or attacks pedestrians, bicycles, or vehicles, or other animals, or any animal whose behavior constitutes a reasonable risk of injuring another human or animal." (Order, 3/22/21, (R. pp. 11 – 13)).

On March 29, 2021, Appellant filed a Motion for an Order Granting Relief from Judgement and Order Granting a New Trial pursuant to SCRCP (60)(B)(2). (Motion for Relief, 3/29/21, (R. pp. 182 – 183)). On April 22, 2021, the Court issued an Order as to Appellant's Motion for an Order Granting Relief from Judgement. The Motion was denied. (Order on Motion, 4/22/21, (R. pp. 14 – 16)). Appellant subsequently filed a Notice of Appeal as to this Order on April 26, 2021. (Notice of Intent to Appeal, 4/26/21, (R. pp. 187 – 191))

On April 16, 2021, Respondents filed a Motion to Dismiss for Lack of Jurisdiction. (Motion to Dismiss, 4/16/21, (R. pp. 192 – 194)). This was denied by the Court in an Order dated August 31, 2021. (Order denying Mt. to Dismiss, 8/31/21, (R. pp. 17 – 19)).

On September 10, 2021, Appellant filed a Motion for a Status Conference. (Motion for Status Conference, 9/10/21, (R. pp. 195 – 196)). On December 21, 2021, the Court of Common Pleas issued an order referring all of Appellant's causes of action, expect for the claim for injunctive relief, to the Magistrate's Court for adjudication. The claim for injunctive relief was stayed until the remaining causes of action were adjudicated. (Order referring claims to Magistrate, 12/21/21, (R. pp. 20 – 22)).

On March 15, 2023, this Court issued an unpublished opinion in Appellate Case No. 2021-000450 pertaining to the appeal of April 22, 2021, Order denying her Motion to Reconsider, affirming the Circuit Court. (Court of Appeals Opinion, 3/15/23, (R. pp. 213 – 214)).

On February 2, 2024, an Affidavit regarding attorney's fees was filed by Respondents Counsel. (Affidavit of Attorney's Fees, 2/2/24, (R. pp. 197 – 208)). An Order awarding fees was issued by the Court on February 28, 2024. (Order Awarding Attorney' Fees, 2/28/24, (R. pp. 27 – 29)). This appeal followed.

STANDARD OF REVIEW

There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. *Collins v. Collins,* 239 S.C. 170, 122 S.E.2d 1 (1961).

The determination of who is a prevailing party for the purposes of an award of costs is committed to the sound discretion of the trial court. *EFCO Corp. v. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 617, 635 S.E.2d 922, 924 (2006). An abuse of discretion occurs either

when a court is controlled by some error of law, or where the order is based upon findings of fact lacking evidentiary support. *Id.*

ARGUMENT

I. THE LOWER COURT CORRECTLY DETERMINED THAT THE RELIEF SOUGHT BY APPELLANT IN HER MOTION FOR TEMORARY RELIEF AND SUBSEQUENT AMENDED MOTION FOR TEMPORARY RELIEF WAS THAT OF MANDAMUS AND NOT AN INJUNCTION.

Under South Carolina law, the sole purpose of a temporary injunction is to preserve the status quo and avoid possible irreparable injury to the requesting party during the pendency of litigation. *Compton v. South Carolina Dept. of Corrections*, 392 S.C. 361, 709 S.E.2d 639 (2011) (citing *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973)). Moreover, an applicant for a temporary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *Id.* (citing *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002)). When a court is tasked with evaluating whether a Plaintiff is entitled to temporary injunction, the court must examine the merits of the underlying case, only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief. *Id.* (citing *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992)).

At the time that Appellant's Motion for Temporary Injunction was heard by the Lower Court, Appellant failed to demonstrate any likelihood of irreparable harm as the facts and occurrences alleged had already taken place. The relief she requested did not seek to prevent any on-going conduct but rather, was a request for the Lower Court to order Mount Pleasant Town Officials to act. At the time of the hearing, Appellant was unable to even articulate how

she would be personally and irreparably harmed by the Lower Court not granting her requested relief.

Under South Carolina law, a writ of mandamus is a coercive writ that orders a public official to perform a ministerial duty. *Plum Creek Dev. Co.* v. *City of Conway*, 334 S.C. 30, 512 S.E. 2d 106 (1999). The primary purpose of a writ of mandamus is to enforce a right and a corresponding imperative duty created or imposed by law. *City of Rock Hill v. Thompson*, 349 S.C. 197, 200, 563 S.E.2d 101 (2002) (citing *Ex Parte Littlefield*, 343 S.C. 212, 540 S.E.2d 81 (2000)).

In both Appellant's Motion for Temporary Injunction, filed on August 14, 2020, and Appellant's subsequent Amended Motion for Temporary Injunction, filed September 2, 2020, Appellant concludes with the same requested relief and asks the Lower Court to, "consider the facts and exhibits provided herein as sufficient probable cause to believe that the Pit-bull mix owned by Defendants Mark and Adrienne Ciaburri is dangerous and vicious as defined in Chapter 90 of the Town of Mount Pleasant Code of Ordinances. Plaintiffs respectfully request that this Court issue a temporary injunction requiring the seizure and impoundment of the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri during the pendency of this case and until a final judicial decision regarding the designation of said Pit-bull mix as dangerous or vicious has been made." (Motion for Temporary Injunction, filed 8/14/20 (R. pp. 83 – 105)), (Amended Motion for Temporary Injunction, filed 9/2/20 (R. pp. 106 – 125)).

When distilled down to its simplest form, the relief requested in Appellant's Motion(s) for Temporary Injunction requests the Court to Order the Town of Mount Pleasant, pursuant to Chapter 90 of the Town of Mount Pleasant Ordinances to (1) seize the Respondents' dog pending a determination whether the Respondents' dog is vicious and dangerous; and (2) to

further make a determination that Respondents' dog is vicious and dangerous, in order for it to be euthanized. The relief requested was not for the Lower Court to enjoin conduct, but rather for the Court to direct Mount Pleasant Public Official's to act. The ***only*** mechanism for the Court to order public officials to act in accordance with their obligation(s) pursuant to existing law and upon application from a private citizen or other party with standing is through the grant of a remedial writ of Mandamus pursuant to Rule 65(f)(1), SCRCP.

Throughout the entirety of this litigation, Appellant has elected to represent her *pro se.* Under well settled South Carolina Law "***a pro se litigant who knowingly elects to represent himself assumed full responsibility for complying with substantive and procedural requirements of the law.***" *State v. Burton*, 356 S.C. 259, at N.5, 589 S.E.2d 6, at N.5 (2003) (emphasis added). Appellant continues to maintain, without any appropriate legal basis, that her Motion should be characterized as injunctive relief simply because this is how it was presented to the Court. However, the Court correctly concluded that Appellant had miscaptioned the Motion(s), as Appellant's requested relief could only be achieved through a grant of a remedial writ of mandamus pursuant to Rule 65.

II. THE LOWER COURT APPROPRIATELY DENIED APPELLANT'S REQUESTED RELIEF.

The Lower Court ultimately denied Appellant's Motion(s), even when considering the requested relief as a Writ of Mandamus. It is established in this state that Mandamus will be issued only to compel a public official to perform a **mandatory** duty. *Redmond v. Lexington County School Dist. No. Four*, 314 S.C. 431, 445 S.E.2d 441 (1994). (emphasis added). To obtain a writ of mandamus, requiring performance of an act, the petitioner must show: (1) a duty of respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy.

Charleston County Sch. Dist. v. Charleston County Election Comm'n, 336 S.C. 174, 519 S.E.2d 567 (1999). When the legal right is doubtful, or the performance of duty rests in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully be issued. *In the Interest of Lyde*, 284 S.C. 419, 327 S.E.2d 70 (1985). Ministerial duty is one which a person performs in obedience to a mandate of legal authority without regard to the exercise of his own judgment upon the proprietary of the act to be done. *Godwin v. Carrigan*, 227 S.C. 216, 87, S.E.2d 471 (1955). While mandamus may be employed to compel an inferior tribunal to exercise its discretion, ordinarily it may not be used to direct or compel the exercise of the discretion in a particular way. 55 C.J.S. *Mandamus* § 83 (1983).

The applicable ordinances, which are also cited in Appellant's Motion(s), are contained within Chapter 90: Animals, Title IX: General Regulations of Mount Pleasant, South Carolina Code of Ordinances. Appellant attempted to compel the Court to grant her request of Mandamus by alleging that because the ordinances prohibit dangerous and vicious animals, it was a mandatory duty of the town's public officials to act and seize Respondent's dog.

Mount Pleasant's police department was involved in the original occurrence that gave way to this action and did not chose to seize the Respondent's dog or declare it vicious and dangerous, despite their ability to do so under the cited ordinances. Consequently, the reason that Appellant was seeking to have the Court order the town of Mount Pleasant to act was not because there was a lack of action on the town's part but, because she did not agree with the decisions that were made by the town's public officials. Appellant's own exhibits to her Motion(s), clearly demonstrated that Mount Pleasant Official's exercised their discretion in declining to declare the Respondents' dog a dangerous or vicious animal pursuant to Chapter 90 of the Town of Mount Pleasant Code of Ordinances following a lengthy investigation. (R. pp. 83 – 105, 106 – 125).

As the dog was never declared dangerous or vicious, there was no mandatory duty to compel the town to perform. Appellant failed to meet her burden of proof for the issuance of a writ, as the decision reached by Town of Mount Pleasant's public officials was not ministerial in nature, but was entirely discretionary.

Further, res adjudicata appropriately applies to this issue, as the Court of Appeals has already addressed the Lower Court's decision on not declaring the Respondent's dog dangerous in the Opinion issued on March 15, 2023. In the unpublished opinion, the Court opines:

> "Finally, we hold the circuit court acted within its discretion in denying Graham's motion for a temporary injunction based on its finding that Graham did not present evidence that the Ciaburri's violated a local ordinance by maintaining an animal so as to constitute a public nuisance. Graham at most presented only hearsay evidence that Petey had violent tendencies, and she provided no accounts about any specific incidents in which he attacked either humans or other animals other than the incident leading to her lawsuit. *See FOC Lawshe Ltd. P'ship*, 352 S.C. 408,413,574 S.E.2d 228, 231 (2002) ("The decision to grant or deny temporary injunctive relief is within the sound discretion of the trial judge and will not be overturned absent an abuse of discretion."); Town of Mt. Pleasant, S.C., Code§ 90.29(B)(3) (prohibiting "[m]aintaining an animal that *habitually or repeatedly* chases, snaps at, bites, or attacks pedestrians, bicycles, or vehicles, or other animals, or any animal whose behavior constitutes a reasonable risk to injuring a human or other animal" (emphasis added))."
>
> (Court of Appeals Opinion, 3/15/23 (R. pp. 213 – 215)).

Accordingly, the Lower Court also properly denied Plaintiff's motion for a writ of mandamus. and further correctly concluded that Appellant did not meet the burden for the issuance of the same.

III. THE LOWER COURT'S AWARD OF ATTORNEY'S FEES TO RESPONDENT WAS NOT AN ABUSE OF DISCRETION OR BASED ON ERRORS OF LAW OR UNSUPPORTED FACTUAL CONCLUSIONS AND WAS FURTHER TIMELY, PROPER, REASONABLE, AND MADE PURSUANT TO STATUTE.

Rule 65(f)(2), SCRCP[1], prescribes "a claim for any other relief to which a party may be entitled in the action may be joined with a claim for writ of mandamus, habeas corpus, or other remedial writ, in accordance with these rules, including a claim for damages. The prevailing party upon the motion for such writ **shall** be entitled to recover costs in accordance with the practice as it heretofore existed in the courts of this State, including attorney's fees where proper." (emphasis added.)

As argued in Section I above, the Judge correctly found that the relief sought in Plaintiff's Motions was in fact mandamus and not an injunction. Further, the Judge correctly denied Appellant's request for Mandamus as she did not meet the burden of proof for issuance of the same. (Order on Motion, (R. pp. 5 – 7)).

In her Initial Brief, Appellant attempts to argue that Respondents are not the prevailing party. Appellant argues:

> Taking it a step further and turning to the South Carolina Court of Appeals' reference to the predecessor to Rule 65(f)(2), SCRCP in the case of Plum Creek Dev. Co. v. City of Conway to provide clarity on the interpretation and application of the law regarding damages in mandamus actions, "[T]he predecessor to Rule 65(f)(2), SCRCP, provided as follows: 'In case a verdict shall be found for the person suing such writ [of mandamus] ... he shall recover his damages and costs as he might have done in a civil action.' S.C. Code Ann. § 15–57–30 (1977)." 334 S.C. 30, 37, 512 S.E.2d 106, 110 (1999) (alteration in original). The historical understanding of prevailing party in the context of a writ of mandamus refers to the party seeking the writ, not the public body to which the writ is directed. Therefore, in no instance can the Respondents be considered the prevailing party."
>
> (Initial Brief of Respondent, at p. 16).

Appellant's argument is based on a misunderstanding and interpretation of the referenced case. The issue that the Court is addressing in *Plum Creek Dev. Co.* v. *City of Conway,* pertains to the award of actual damages at issue in the case. As Rule 65(f)(2) clearly spells out, "a claim for

[1] Rule 65, South Carolina Rules of Civil Procedure, pertains to injunctions; mandamus; habeas corpus; and other remedial writs.

any other relief to which a party may be entitled may be joined with a claim for writ of mandamus....including a claim for damages". What the Court is conveying in this opinion is that a party seeking Mandamus may seek the damages that would be awarded as in a civil action and recover them via the filing for Writ of Mandamus. This is direction as to what the moving party may enjoin and recover, which is distinctly separate from who the prevailing party is on the prosecution of the Motion of itself.

This Court has previously stated that a prevailing party is "one who successfully prosecutes an action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered." *Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 156, 711 S.E.2d 895, 897 (2011) (internal citation omitted). Further, it has been established that, the determination of who is a prevailing party for the purposes of an award of costs is committed to the sound discretion of the trial court. *EFCO Corp. v. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 617, 635 S.E.2d 922, 924 (2006).

And in fact, Rule 65(f)(2), SCRCP, specifically and separately addresses damages and attorney's fees, citing that "the prevailing party upon the motion for such writ **shall** be entitled to recover costs in accordance with the practice as it heretofore existed in the courts of this State, including attorney's fees where proper."

It is important to note that, while the Lower Court did grant attorney's fees at the time the Order was issued as to the September 2, 2020, Motion, they held the Order as to the fees until the appropriate time. The affidavit of attorney's fees was filed in February 2024, subsequent to the adjudication of the first appeal on this issue. (R. pp. 197 – 208). Additionally, at the time that the attorney's fees were awarded, the subject dog of interest whom the Appellant was seeking to be

seized via the original Writ of Mandamus, had passed away, rendering the entirety of issues that remained in Circuit Court moot.

Respondents were indeed the prevailing party, and the award of fees was proper pursuant to the appropriate governing Rules. Accordingly, the Lower Court appropriately ruled to grant the award of attorney's fees to Respondents.

Conclusion

For the reasons set forth herein, Respondents respectfully requests this Court to affirm the judgment of the Circuit Court.

Respectfully Submitted,

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January 20, 2026
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CERTIFICATE OF COMPLINACE

Undersigned counsel certifies that Brief of Respondent complies with Rule 211(b) SCACR.

Respectfully Submitted,

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