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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No.: 2024-000350

Michele GrahamAppellant,

v.

Mark Ciaburri

Adrienne T. CiaburriRespondents

BRIEF OF APPELLANT

Michele Graham
1661 Babington Way
Mount Pleasant, SC 29464
843-532-7252

Appellant

TABLE OF CONTENTS

Table of Authoritiesii

Statement of Issues on Appeal1

Statement of the Case1

Standard of Review6

Arguments

1. THE TRIAL COURT'S RE-CHARACTERIZATION OF THE MOTION FOR TEMPORARY INJUNCTION AS A WRIT OF MANDAMUS IS ERRONEOUS AND IN DIRECT CONFLICT WITH THE RELIEF SOUGHT AND SCRPC 8(f)7

2. EVEN IF THE COURT RE-CHARACTERIZED THE MOTION AS A WRIT OF MANDAMUS, THE RESPONDENTS WOULD NOT BE THE PREVAILING PARTY, AS THEY DO NOT MEET THE LEGAL DEFINITION OF “PREVAILING PARTY,” NOR WOULD THEY BE THE APROPRIATE PARTY TO DIRECT SUCH AN ACTION. THEREFORE, THE COURT ERRED IN NAMING THE RESPONDENTS AS THE PREVAILING PARTY13

3. THE AWARD OF ATTORNEY'S FEES TO THE RESPONDENTS IS IMPROPER AND PREMATURE. THE AWARD WAS GRANTED BASED ON ERRORS OF LAW AND UNSUPPORTED FACTUAL CONCLUSIONS, CONSTITUTING AN ABUSE OF DISCRETION BY THE TRIAL COURT....15

4. THE AMOUNT OF FEES AWARDED IS UNREASONABLE, AS IT INCLUDES COSTS UNRELATED TO THE DEFENSE OF THE MOTION, INDICATING AN ABUSE OF DISCRETION BY THE TRIAL COURT20

Conclusion21

TABLE OF AUTHORITIES

CASES

Alston v. Limehouse, 60 S.C. 559, 39 S.E. 188, 191 (1901)9, 14

Buza v. Columbia Lumber Co., 395 P.2d 511, 514 (Alaska 1964)14

City of Charleston v. Masi, 362 S.C. 505, 510, 609 S.E.2d 301, 304 (2005)18

City of Rock Hill v. Thompson, 349 S.C. 197, 202, 563 S.E.2d 101, 104 (2002)10

Edwards v. State, 383 S.C. 82, 678 S.E.2d 412 (2009)9

Ex parte Wilson, 367 S.C. 7, 15, 625 S.E.2d 205, 209 (2005) 6

Graham v. Ciaburri, Op. No. 2023-UP-098 (S.C. Ct. App. Filed March 15, 2023)11

Heath v. County of Aiken, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990)14

Helsel v. City of N. Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992)14

Hueble v. S.C. Dep't of Nat. Res., 416 S.C. 220, 231, 785 S.E.2d 461, 467 (2016)7

Latham v. Town of York, 210 S.C. 565, 571, 43 S.E.2d 467, 469 (1947).....17

Layman v. State, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008)7

Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999)13, 15

Richland Cnty. v. Kaiser, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (2002)8, 11

Roberts v. Union County Board of School Trustees, 284 S.C. 299, 301, 326 S.E.2d 163, 164
(Ct.App.1985).....15

Sloan v. Friends of Hunley, Inc., 393 S.C. 152, 159, 711 S.E.2d 895, 898 (2011)14

State v. Hayne & Mackey, 8 S.C. 367, 377 (1876)13

Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 416

Willimon v. City of Greenville, 243 S.C. 82, 86-87, 132 S.E.2d 169, 170-71 (1963)9

STATUTES

SCRCP 203(b)(1)20

SCRCP 5(a)16

SCRCP 5(d)16
SCRCP 6(d)
.....16
SCRCP 65(f)(1)5, 9
SCRCP 65(f)(2)13, 14, 15, 16, 21
SCRCP 8(f)7, 11

STATEMENT OF ISSUES ON APPEAL

1. Did the Court err in re-characterizing the Appellant's Motion for Temporary Injunction as a Writ of Mandamus?
2. Did the Court err in designating the Respondents as the prevailing party?
3. Did the Court abuse its discretion in granting the Respondents' *Motion for Sanctions and Attorney's Fees Pursuant to SCRPC 65(f)(2)*?
4. Did the Court abuse its discretion in awarding attorney's fees in the amount of "\$9,250.00 as well as any fees and costs not yet billed as of the drafting of this order"?

STATEMENT OF THE CASE

On August 31, 2020, Michele Graham submitted an amended complaint to Charleston County Circuit Court alleging negligence against Mark and Adrienne Ciaburri for their pit-bull mix fatally attacking her twelve year-old Yorkshire Terrier, Gigi. The complaint seeks monetary damages and a permanent injunction declaring the pit-bull mix as dangerous and the imposition of appropriate orders regarding the handling of the pit-bull mix. The responding officers involved in the initial investigation of this incident and the Mount Pleasant Police Department were also named in the lawsuit.

On September 2, 2020, Ms. Graham filed an Amended Motion for Temporary Injunction requesting that the Court quarantine the pit-bull mix until a final determination is made regarding its dangerous status.

On September 24, 2020, the temporary injunction hearing was held, and the motion was denied. The Court filed the Form 4 Order on September 30, 2020, stating, "Plaintiff's Motion for Temporary Injunction is DENIED" (R. p. 5).

Following the entry of the ruling of Ms. Graham's motion for temporary injunction, Mr.

Corvey sent an email to the Court on October 2, 2020 asking if a ruling had been made on the Respondents' *Motion for Sanctions and Award of Attorney's Fees and Costs Pursuant to SCRCP 65(f)(2)* (R. p. 174). The Respondents' motion had not been filed, nor was the motion raised during the hearing for Ms. Graham's motion for temporary injunction. Following the hearing on the motion for temporary injunction, Mr. Corvey handed Ms. Graham the *Motion for Sanctions and Award of Attorney's Fees and Costs Pursuant to SCRCP 65(f)(2)* (R. p.154) and stated that he had just handed a copy to the judge. However, no documents were handed to the judge during the proceedings. Following the instructions of Judge Price's law clerk on October 2, 2020, Ms. Graham emailed a written opposition to the unfiled motion (R. p. 176 and pp. 178-79).

On October 5, 2020, Mr. Corvey emailed the Court a memorandum in support of attorney's fees, a motion for attorney's fees and an amended affidavit of support of award for attorney's fees (R. p. 181). On October 6, 2020, Judge Price's law clerk sent an email informing Mr. Corvey that he would need to file the motion with the Clerk of Court if he wanted it heard, as the clerk's office does not have any motion for fees on file (R. p. 185).

On December 11, 2020, the Respondents' Motion for Summary Judgment was heard and denied. The Court filed the Form 4 Order on December 22, 2020 denying the Respondents' motion for summary judgment and granting the Respondents' motion for attorney's fees for the preliminary injunction hearing on September 24, 2020 (R. p. 8). The Respondents' *Motion for Sanctions and Award of Attorney's Fees and Costs Pursuant to SCRCP 65(f)(2)* was granted without the motion being filed or notice given to Ms. Graham regarding the scheduling of a hearing on the matter. The responding officers and the Mount Pleasant Police Department were dismissed as defendants in the lawsuit.

On December 29, 2020, Ms. Graham filed a Rule 59(e) motion captioned *Motion to Reconsider Order Granting Attorney's Fees as to the Preliminary Injunction Hearing* and a request for findings of fact and conclusions of law regarding the denial of the temporary injunction motion. On January 28, 2021, Ms. Graham filed a motion to recuse the Honorable Bentley Price. The Court heard the Motion to Reconsider and the Motion to Recuse on February 10, 2021 and denied both motions (R. p. 23). The Court filed the Form 4 Order on February 16, 2021 stating the following:

Plaintiff's Motion to Recuse is denied. Ms. Graham's concern that the Court's frustration with pro se litigants was directed towards her is misguided. The fact that the Court expressed concern about the Plaintiff not understanding the rules is understandable as she is not an attorney, but does not detract from the fact that the Court is still obliged to treat a pro se plaintiff in accordance with the same rules as an attorney. Also, the mere fact that a judge is friends with an attorney on social media is also not grounds for recusal. Plaintiff's Motion to Reconsider as to the attorneys fees is denied and Court will make a determination as to amount if any at the appropriate time.

The Court submitted its findings of fact on March 22, 2021 stating the following:

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 a human or other animal (R. p.11).

The Court's findings of fact and conclusions of law made no mention of Ms. Graham's motion being construed as a writ of mandamus or that the denial of the motion was based on elements required for such a writ.

On March 29, 2021, Ms. Graham filed a Motion for Order Granting Relief from Judgment and an Order Granting a New Trial Pursuant to SCRCF 60(b)(2). An oral hearing was

not requested for this motion. The Court denied the Motion on April 22, 2021 and filed a Form 4 stating the following:

Rule 60(b)(2) of the South Carolina Rules of Civil Procedure states, On motion and upon such terms as are just, the court may relieve a party...from final judgment, order, or proceeding for the following reasons...newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).

The Court does not consider the affidavit or testimony of the expert witness to be newly discovered evidence (R. p. 14)

On April 29, 2021, Ms. Graham served the Notice of Appeal on Mark and Adrienne Ciaburri, appealing the Court's denial of a new trial.

On September 10, 2021, Ms. Graham filed a motion for a status conference to clarify the status of the case and ensure alignment among all parties and the court regarding the procedural steps moving forward. This motion aimed to address misconceptions arising from Judge Price's statements during the proceedings on December 11, 2020 and February 10, 2021, indicating that his denial of Ms. Graham's temporary injunction motion automatically precluded the possibility of seeking the relief requested in her permanent injunction (R. p. 84, lines 2-25; R. p. 85, lines 1-25; R. p. 92, lines 8-17; R. p. 94, lines 13-25, R. p. 95, lines 1-25) Ms. Graham sought to clarify and rectify these misconceptions to ensure a fair and accurate understanding of the legal proceedings.

On December 21, 2021, the Chief Administrative Judge bifurcated the case. The order directed that monetary damages be sought in magistrate court, while Ms. Graham's permanent injunction request would remain pending under the jurisdiction of the circuit court. The order states the following:

This Court shall refer all of Plaintiff's causes of action, except for Plaintiff's claim for injunctive relief, to the Magistrate's Court for adjudication. The Circuit Court shall retain jurisdiction over Plaintiff's claim for injunctive relief and such claim is

stayed until the remaining causes of action are adjudicated by the Magistrate's Court (R. p. 20).

On March 15, 2023, the Court of Appeals issued its decision, affirming Judge Price's denial of a new trial. In its decision, the court of appeals explicitly referred to Ms. Graham's motion as a temporary injunction, reaffirming the nature of the relief sought.

On December 14, 2023, Mr. Corvey sent an email to the Court, requesting a ruling on the amount of attorney's fees to be granted to the Respondents (R. p. 238). Mr. Corvey sought a ruling at this time based on the Respondents euthanizing their dog, rendering Ms. Graham's pending permanent injunction moot (R. p. 228).

On February 15, 2024, Mr. Corvey sent another email containing an affidavit in support of attorney's fees (R. p. 249). He was then instructed to file the affidavit along with an order (R. p. 250). However, no hearing was ever held to determine the amount of fees to be awarded, and the Court did not articulate any specific findings supporting the award or a particular amount. Although the Court expressed that a hearing was to be held, it never occurred (R. pp. 240-42). Mr. Corvey was given free rein to draft the order, which he filed on February 16, 2024. Ms. Graham was never served with a copy of the proposed order.

On February 28, 2024, Judge Bentley Price issued the detailed order regarding the award of attorney fees, which indicated the Court's finding that Ms. Graham's motion was a writ of mandamus and affirmed the decision to award fees to the Defendants. The order states the following:

This matter is before the Court arising out of Michele Graham, Michael Graham, and Tammy Graham ("Plaintiffs") seeking "injunctive relief" through Plaintiff's Amended Motion for Temporary Injunction filed with this Court on September 2, 2020. This Court has found Plaintiff was in fact attempting to seek a Writ of Mandamus pursuant to South Carolina Rule of Civil Procedure 65(f)(1) enforcing the government of Mount Pleasant to perform a duty regarding Defendant's dog. Pursuant to SCRCP 65(f)(2), upon prevailing, Defendant's became "...entitled to recover costs in accordance with the practice as it heretofore existed in the courts

of this State, including attorneys fees where proper.”. The Court has properly denied Plaintiff’s writ of mandamus, and therefore Defendants are to be awarded attorneys’ fees in the amount of \$9,525.00 as well as any fees and costs not yet billed as of the drafting of this order (R. p. 27).

Upon receipt of notice of entry of the more complete order filed on February 28, 2024, Ms. Graham served the Notice of Appeal on Mark and Adrienne Ciaburri on February 29, 2024.

STANDARD OF REVIEW

Trial Court’s Re-characterization of Pleadings

"Determining the proper interpretation of a statute is a question of law, and this [Supreme] Court reviews questions of law de novo." Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41(2008). "In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes." Ex parte Wilson, 367 S.C. 7, 15, 625 S.E.2d 205, 209 (2005). Since the characterization of the temporary injunction motion involves the interpretation of the South Carolina Rules of Civil Procedure and the distinction between a temporary injunction and a writ of mandamus, it falls under the category of questions of law. Therefore, the reviewing court should apply a de novo standard of review to independently assess whether the Court's characterization was correct.

Prevailing Party Determination

The issue of prevailing party status is reviewed de novo. Hueble v. S.C. Dep't of Nat. Res., 416 S.C. 220, 231, 785 S.E.2d 461, 467 (2016). Therefore, the reviewing court must determine if: (1) the respondents would be the appropriate party for a writ of mandamus if Ms. Graham’s motion for temporary injunction was correctly characterized as such and (2) if the respondents would meet the definition of “prevailing party” as defined by the South Carolina

Supreme Court and within the context of a writ of mandamus.

Award of Attorney's Fees

The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion. Layman v. State, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008). "An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." *Id.* Therefore, the reviewing court must assess whether the Court's ruling in granting the Respondents' motion for attorney fees was reasonable and appropriate given the facts and the law.

Amount of Fees Awarded

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 or an error of law. *Id.* Therefore, the reviewing court should assess whether the trial court abused its discretion in awarding the stated amount of "\$9,250.00, as well as any fees and costs not yet billed as of the drafting of this order."

ARGUMENTS

1. THE TRIAL COURT'S RE-CHARACTERIZATION OF THE MOTION FOR TEMPORARY INJUNCTION AS A WRIT OF MANDAMUS WAS ERRONEOUS AND IN DIRECT CONFLICT WITH THE RELIEF SOUGHT AND RULE 8(f), SCRPC.

Ms. Graham filed a motion for a temporary injunction, intending it to be treated as such (R. p. 145). The motion aimed to emphasize the inadequate investigation conducted by the police and animal control following the incident and requested that the Court thoroughly review the evidence presented to determine whether to issue an order for the temporary seizure and impoundment of the dog until a final determination could be made regarding its dangerous status. Although Ms. Graham's motion highlighted the duty of animal control to investigate animal

related incidents, it did not ask the Court to require the officers to take specific investigative actions to enforce the regulations outlined in the Town ordinance. Instead, Ms. Graham's motion asked the Court to independently assess the evidence presented regarding the incident and determine whether temporary intervention, such as the seizure and impoundment of the dog, was necessary for public safety. This request is distinct from a writ of mandamus.

The characterization of a motion depends on the relief sought therein. Richland Cnty. v. Kaiser, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002). The relief requested in the motion states:

Plaintiff requests that this Court consider the facts and exhibits provided herein as sufficient probable cause to believe that the Pitbull 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. Plaintiff respectfully requests 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 (R. p. 135).

When characterizing a motion, “[i]t is the substance of the requested relief that matters.” *Id.* The substance of Ms. Graham’s relief is to address the perceived threat posed by the dog pending further legal proceedings. The relief aimed to mitigate any potential harm or danger posed by the dog while legal proceedings are underway. The basis of the requested relief is alleged dangerous behavior, rather than the assertion of a required action or duty by a public official. Therefore, the motion does not align with the purpose and function of a writ of mandamus.

The requested relief indicates that the court would need to conduct an inquiry into the evidence presented and adjudicate on the issue of whether the dog should be seized and impounded temporarily. “On a motion for a temporary order of injunction, the circuit judge, in considering the issues raised by the pleadings, should indicate that their consideration is solely for the purpose of determining whether the plaintiff has a prima facie right to an order of injunction.” Alston v. Limehouse, 60 S.C. 559, 39 S.E. 188, 191 (1901). This is not appropriate for a writ of mandamus. The “principal function” of mandamus “is to command and execute, and

not to inquire and adjudicate; therefore, it is not the purpose of the writ to establish a legal right, but to enforce one which has already been established.” Willimon, 132 S.E.2d at 171.

Additionally, the required elements for a writ of mandamus differ from the elements of a temporary injunction. "The writ of mandamus is the highest judicial writ known to the law and according to long approved and well established authorities, only issues in cases where there is a specific legal right to be enforced or where there is a positive duty to be performed, and there is no other specific remedy." Willimon v. City of Greenville, 243 S.C. 82, 86-87, 132 S.E.2d 169, 170-71 (1963). "For a writ of mandamus to issue, the following must be shown: (1) a duty of the 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." Edwards v. State, 383 S.C. at 97, 678 S.E.2d at 420.

Not only does Ms. Graham’s motion not set out to demonstrate the requisite elements for obtaining a writ of mandamus, Ms. Graham also did not follow required procedures as outlined in the South Carolina Rules of Civil Procedure for seeking such a writ. Rule 65(f)(1), SCRPC states:

No writ of mandamus, habeas corpus, or other remedial writ shall be granted without notice of motion for the writ to the adverse party, which notice shall be served, together with the summons and complaint, in event no summons and complaint have previously been filed and served in the action, upon the adverse party in accordance with the provisions of Rules 4 and 5. **Such notice and motion shall be supported by affidavit or verified complaint setting forth clearly the facts entitling the moving party to such writ.**

Ms. Graham's Amended Complaint was not verified, nor was it supported by an affidavit, nor was it accompanied by a motion and notice thereof, let alone one which “set[s] forth clearly the facts entitling” her to a writ. As stated in Judge Price’s February 16, 2021 Form 4 ruling, “...the Court is still obliged to treat a pro se plaintiff in accordance with the same rules as an attorney.”

Therefore, had Ms. Graham attempted to pursue a writ of mandamus without adhering to the requisite procedural steps, the petition would have been procedurally defective and dismissed on this basis alone, regardless of its substantive merits. City of Rock Hill v. Thompson, 349 S.C. 197, 202, 563 S.E.2d 101, 104 (2002) (Denying the writ of mandamus because the city failed to establish the elements required for issuance of a writ of mandamus and failed to serve Judge with its petition). However, this did not occur. Instead, the motion for temporary injunction proceeded as captioned and was denied on evidentiary grounds.

During the February 10, 2021 hearing, Judge Price explicitly acknowledged that the motion filed by Ms. Graham was an injunction. Judge Price stated:

Okay. So, what you filed was an injunction, and rightfully so. That's fine. I mean Mr. Corvey called it something else. But I think, in the end, you filed an injunction... (R. p. 95, lines 17-20)

This on-the-record acknowledgment indicates the Court's clear understanding of the nature and purpose of the motion, which was aimed at obtaining injunctive relief rather than seeking a writ. Therefore, the subsequent decision to construe the motion as a writ of mandamus and designate the Respondents as the prevailing party is erroneous and contradicts the Court's earlier recognition of the motion's true nature.

The chief administrative judge's decision to bifurcate the case provides further clarity on the nature of Ms. Graham's original motion. Referring the cause of action to magistrate court ensures that all merits of the case are thoroughly examined before deciding on the permanent injunction. The chief administrative judge's actions demonstrate that the court correctly understood and treated Ms. Graham's original motion as a request for temporary relief sought in the interim, while the consideration of the permanent injunction, incorporated into her complaint, would remain pending until the full merits were considered.

The appellate court's ruling on Ms. Graham's appeal of the circuit court's denial of her Rule 60(b)(2), SCRCF motion further reinforces the interpretation of the original motion as one for a temporary injunction. Graham v. Ciaburri, Op. No. 2023-UP-098 (R. p. 232). The appellate court affirmed the Court's decision that the expert witness report did not constitute newly discovered evidence to warrant a new trial. The court also held that the circuit court acted within its discretion in denying Ms. Graham's motion for a temporary injunction based on its finding that Ms. Graham did not present evidence that the Ciaburris violated a local ordinance by maintaining an animal so as to constitute a public nuisance. By affirming the circuit court's decision and reasoning and referring to Ms. Graham's motion as one for temporary injunction, the appellate court confirmed that both the trial court and the appellate court understood and treated the motion as seeking temporary injunctive relief. If the relief sought in Ms. Graham's motion was in line with a writ of mandamus, the appellate court would have treated it as such. Richland Cnty. v. Kaiser, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002)(stating, "because the relief sought was more in the nature of a request for an injunction than a mandamus, we will treat this action as an appeal from the denial of injunctive relief").

Judge Price's subsequent re-characterization of Ms. Graham's motion for temporary injunction as a writ of mandamus, despite her explicit statements and explanations to the contrary, also conflicts with Rule 8(f), SCRCF on the construction of pleadings. Rule 8(f), SCRCF states that all pleadings shall be construed to do substantial justice to all parties involved. During the February 10, 2021 hearing on the Motion to Reconsider, Ms. Graham reiterated the relief requested in the permanent injunction, which is incorporated into the complaint. Ms. Graham is quoted stating the following:

What I'm seeking from this action is, once all the facts and evidence has been presented and examined, that the Court issue an order declaring that the dog is dangerous as described in the Town of Mount Pleasant ordinance and imposing additional restrictions, if necessary. Also, ordering an evaluation of the dog to determine if the dog is too aggressive to have access to the public (R. p. 89, lines 17-23).

Ms. Graham is also on the record making it clear what her temporary injunction motion sought.

Ms. Graham is quoted stating the following:

My request for a temporary injunction had nothing to do with -- it was a motion asking the Court to do what Animal Control did not do or what they refused to do, which was look at the obvious evidence and facts and determine, based on that, if there was enough probable cause to say that this dog is dangerous and impose temporary restriction, which would be impounding, confining, or restricting the dog until a final determination is made by the Courts as to the dangerous status (R. p. 90, lines 5-13)

Despite Ms. Graham's clear explanation that her motion requested temporary action based on the evidence presented, followed by a permanent ruling regarding the status of the dog once all evidence is presented, Judge Price chose to later characterize the motion in a manner that does not align with the true intent and substance of Ms. Graham's arguments. As a result, this mischaracterization led to the improper and unjust granting of attorney's fees to the Respondents.

The Court re-characterized the motion for temporary injunction as a writ of mandamus upon the request of Mr. Corvey. Ms. Graham stated to the Court during the February 10, 2021 hearing that Mr. Corvey was misrepresenting the relief requested in the motion as a request for an order of euthanasia (R. p. 90, lines 18-20). During the February 10, 2021 hearing on Ms. Graham's motion to reconsider, Mr. Corvey continued advocating for the Court to re-characterize the motion as a writ of mandamus and designate the Respondents as the prevailing party or, in the alternative, grant attorney's fees by sanctioning Ms. Graham pursuant to the Frivolous Sanctions Act (R. p. 99, lines 6-9). Mr. Corvey is quoted stating:

I have two different motions for fees prepared in advance, one for, for sanctions under the Frivolous Sanctions Act, and, two, for mandatory fees awardable under Rule 65 through the prevailing party in a writ...

The Court's re-characterization of the motion without sufficient basis from the substance of Ms. Graham's requested relief is an error that should not be upheld by the reviewing court.

2. EVEN IF THE COURT RE-CHARACTERIZED THE MOTION AS A WRIT OF MANDAMUS, THE RESPONDENTS WOULD NOT BE THE PREVAILING PARTY, AS THEY DO NOT MEET THE LEGAL DEFINITION OF "PREVAILING PARTY," NOR WOULD THEY BE THE APROPRIATE PARTY TO DIRECT SUCH AN ACTION. THEREFORE, THE COURT ERRED IN NAMING THE RESPONDENTS AS THE PREVAILING PARTY

Incorrect Party for Writ of Mandamus

Even if Judge Price re-characterized Ms. Graham's motion as a writ of mandamus, the Respondents would not be the appropriate party for such an action. 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). It follows that the parties to the writ would be the petitioner and the government official(s) required to perform the duty, not the Respondents. The Respondents are "private citizen[s], against whom mandamus cannot issue." (alteration in original) State v. Hayne & Mackey, 8 S.C. 367, 377 (1876). Therefore, designating the Respondents as the prevailing party in Ms. Graham's purported writ of mandamus is erroneous.

Failure to Meet Definition of Prevailing Party

Even setting aside the issue of their suitability as the appropriate party to a writ of mandamus, the Respondents cannot be deemed the prevailing party according to the legal definition. The South Carolina Supreme Court has defined "prevailing party" as "[T]he one who successfully prosecutes the 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.” Heath v. County of Aiken, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990) (alteration in original) (quoting Buza v. Columbia Lumber Co., 395 P.2d 511, 514 (Alaska 1964)). See also Sloan v. Friends of Hunley, Inc., 393 S.C. 152, 159, 711 S.E.2d 895, 898 (2011). The denial of Ms. Graham’s temporary injunction motion based on insufficient evidence presented at the motion hearing, does not confer prevailing party status upon the Respondents. It is crucial to recognize that this ruling pertains specifically to the preliminary stage of the case and does not preclude the introduction of evidence at a later stage when the full merits of the case are heard. “When a court is requested to issue a temporary injunction, it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate.” Helsel v. City of N. Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). “A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction.” *Id.* A circuit court judge’s order granting or denying a temporary injunction motion should not be construed as having disposed of the issues upon the merits. Alston v. Limehouse, 60 S.C. 559, 39 S.E. 188, 191 (1901)). “No fact decided upon such motion is concluded...” *Id.* “[I]t is improper for a court to make a final determination or to decide the merits of the case upon application for a temporary injunction.” Roberts v. Union County Board of School Trustees, 284 S.C. 299, 301, 326 S.E.2d 163, 164 (Ct.App.1985)(alteration in original). Thus, the denial of the motion due to insufficient evidence at the preliminary stage does not equate to a successful defense of the underlying issues or a determination of prevailing party status. Prevailing party status hinges on the party in whose favor a decision or verdict is rendered and judgment entered, as per established legal precedent.

Therefore, without a definitive judgment on the merits of the case, it would be incorrect to confer prevailing party status upon the Respondents.

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.

3. THE AWARD OF ATTORNEY'S FEES TO THE RESPONDENTS IS IMPROPER, PREMATURE, AND CONSTITUTES AN ABUSE OF DISCRETION BY THE TRIAL COURT.

Improper

At the conclusion of the December 11, 2020 hearing on the Respondents' motion for summary judgment, Mr. Corvey inquired about the status of his motion for attorney's fees. Judge Price indicated that he deferred his decision on the motion until after the day's hearing on summary judgment and stated that he would provide an answer by the end of the day (R. p. 86, lines 18-25; R. p. 87, lines 1-5). Ms. Graham attempted to understand the Court's decision to even consider imposing sanctions or attorney's fees, and Judge Price responded by suggesting that Ms. Graham submit a proposed order (R. p. 87, lines 11-18). Based on this response from the Court, any further attempt by Ms. Graham to seek clarification or to object would have been

futile. It was apparent that Judge Price had already decided that he was going to rule on the Respondents' *Motion for Sanctions and Attorney's Fees and Costs Pursuant to SCRPC 65(f)(2)* without the motion being filed or a hearing being scheduled and notice given to Ms. Graham. On December 22, 2020, the Court filed a Form 4 granting the Respondents' *Motion for Sanctions and Award of Attorney's Fees and Costs Pursuant to SCRPC 65(f)(2)*, even though the motion was never filed and a hearing never scheduled.

According to Rule 5(a), SCRPC all written motions and notices must be served upon each party of record, unless otherwise ordered by the court. "When a motion is to be supported by affidavit, the affidavit shall be served with the motion..." (*Rule 6(d), SCRPC*). Rule 5(d), SCRPC states:

All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof... Upon failure of a party to file other pleadings, motions, or papers, the court may permit filing or proceed as though the same had not been served.

In the case of the Respondents' *Motion for Sanctions and Attorney's Fees and Costs Pursuant to SCRPC 65(f)(2)*, it was required to be served upon Ms. Graham and filed with the Court within five days of service. If the papers required to be served are not filed within the specified timeframe, Rule 5(d), SCRPC grants the court discretion to permit filing or proceed as though the papers had not been served. This discretion under Rule 5(d), SCRPC is limited to deciding whether to allow the motion to be filed or proceed as though it had never been brought, rather than ruling on an unfiled motion. In the case of Respondents' *Motion for Sanctions and Attorney's Fees and Costs Pursuant to SCRPC 65(f)(2)*, which was never filed and lacked notice of a scheduled hearing, the motion was not properly before the court for consideration. Ms. Graham was thus deprived of the opportunity to respond adequately before the Court's ruling on

December 22, 2020. Judge Price's decision to rule on the unfiled motion was procedurally inappropriate, and therefore, the Court's granting of the Respondents' motion should not be upheld.

Premature

Even setting aside the impropriety of granting the Respondents' motion for the reasons previously mentioned, the Court's Form 4 order denying Ms. Graham's reconsideration of attorney fees explicitly stated that the Court will "determine the amount of attorney fees, if any, at the appropriate time." This ruling indicates the Court's understanding that any decision regarding attorney's fees would need to be made at a later stage of the action once the full merits of the case have been heard. A jury trial is tentatively scheduled to begin on April 30, 2024 in magistrate court to determine liability and damages. The parties were instructed to return to circuit court after adjudication in magistrate court to address the pending permanent injunction. As expressed in Latham v. Town of York, "...a permanent injunction, constituting the final disposition of a case on its merits, can ordinarily be granted only after a hearing on its merits." (210 S.C. 565, 571, 43 S.E.2d 467, 469 (1947)). Awarding attorney's fees before the resolution of the underlying issues prematurely assumes prevailing party status without a full adjudication of the case. Given the ongoing nature of the proceedings and the absence of a final judgment, any determination of prevailing party status and subsequent award of attorney's fees would be premature. Therefore, the Court's decision to entertain the issue of attorney's fees at this stage constitutes a premature exercise of discretion.

Taking it a step further, even if the pending permanent injunction was rendered moot because of the death of the Respondents' dog before the motion for permanent injunction could be heard, the Respondents' status as the non-prevailing party would not change. In City of

Charleston v. Masi, 362 S.C. 505, 510, 609 S.E.2d 301, 304 (2005), the South Carolina Supreme Court clarified that the prevailing party status hinges on the degree of success obtained. The Court held that the District was not deemed a prevailing party because its degree of success was nonexistent, as the circuit court did not specifically find for either party, and the case was being dismissed as moot. Therefore, any award of attorney's fees to the Respondent would still lack a legal basis and would represent an abuse of discretion by the Court.

Abuse of Discretion

The Respondents have persistently sought attorney's fees from multiple judges throughout the course of this litigation, and their efforts have been consistently rebuffed by these judges. Every judge approached with this request, except for Judge Bentley Price, has denied their plea for attorney's fees. The most recent denial came in the form of a written order from the Honorable Laura D. Beck of the magistrate court. The order reads:

A MOTION for Attorney's Fees was heard on May 13, 2022 by the Honorable Laura D. Beck. Edward R. Corvey, III, counsel for Defendants, and the Plaintiff Pro Se were both present. This Court rules that the Motion for Attorney's Fees is denied at this time. After hearing the procedural history of the case, both in Magistrate's Court, and in the Court of Common Pleas, and with the various Orders signed by and guidance given by other Judges, at this time it would not be in the interest of fairness and justice for Attorney's Fees to be granted to Defendants. Further, following guidance from the Chief Administrative Magistrate, this case shall continue under the most recently assigned case number. The parties are not precluded from raising this or other arguments in the future. At this time, the motion is hereby denied (R. p. 26).

The pattern of denials of attorney fees from multiple judges, the premature awarding of fees before a final determination on the merits and the lack of rationale for the awarding of fees demonstrates that the Court's decision was arbitrary, unsupported by legal precedent, and constitutes an abuse of discretion.

The Court's denial of Ms. Graham's motion to reconsider attorney's fees further demonstrates an abuse of discretion, particularly considering the procedural and substantive arguments presented. Upon receiving notice of Judge Price's Form 4 order granting the Respondents' motion for attorney's fees as to the preliminary injunction hearing, Ms. Graham promptly filed a Rule 59(e) motion outlining several grounds warranting reconsideration. The Respondents' Motion was captioned *Motion for Sanctions and Attorney's Fees and Costs Pursuant to SCRC65(f)(2)*, leaving ambiguity regarding the basis for the Court's decision, whether it was for sanctions or due to a re-characterization of Ms. Graham's motion as a writ of mandamus, thereby awarding fees to the Respondents as the prevailing party. Ms. Graham's motion for reconsideration addressed the nature of her motion for temporary injunction, the improper designation of the respondents as prevailing party, the lack of justification for the fee award, the apparent mischaracterization of the motion, and the absence of notice and due process (R. pp. 148-51). However, Judge Price's ruling failed to engage with any of these grounds, offering no analysis or explanation for his decision (R. p. 23).

Additionally, during the reconsideration hearing on February 10, 2021, Judge Price attempted to downplay or not acknowledge the significance of granting the Respondents' unfiled motion for attorney's fees. When Ms. Graham asserted that there was no legal basis entitling the Respondents to attorney's fees and that the motion was never properly before the Court (R. p. 90, lines 21-25; R. p. 91, lines 6-10), Judge Price tried explaining that the granting of the Respondents' motion for fees was simply granting permission to submit a fee affidavit for further consideration (R. p. 93, lines 2-16). Judge Price's attempt to dismiss Ms. Graham's legal concerns and instead characterize the granting of the Respondents' motion as merely allowing the

submission of a fee affidavit for further consideration demonstrates an arbitrary and unreasonable stance, lacking fairness in his response.

Judge Price's Form 4 order following the hearing lacks the necessary judicial reasoning and fails to provide any basis for the granting of the motion or the rationale behind the denial of Ms. Graham's reconsideration motion. The absence of clarity in the Form 4 order provided no foundation from which to address or challenge any findings by the Court. Accordingly, in adherence to 203(b)(1), SCRCF, Ms. Graham filed an appeal upon receipt of the Court's more complete order.

In considering these factors, it becomes apparent that Judge Price's granting of the Respondents' motion and the handling of Ms. Graham's reconsideration motion reflect an abuse of discretion. The granting of the Respondents' motion despite nonadherence to the proper procedures, the failure to engage with the grounds presented in Ms. Graham's reconsideration motion, the attempt to downplay the significance of the attorney's fees issue, and the lack of clarity in the Court's decision all point to a disregard for fundamental legal principles and fairness.

4. THE AMOUNT OF FEES AWARDED INCLUDES COSTS UNRELATED TO THE DEFENSE OF THE MOTION, FURTHER INDICATING AN ABUSE OF DISCRETION BY THE TRIAL COURT

Setting aside the fact that a writ of mandamus cannot be issued against a private citizen, and thus the Respondents cannot be the target of Ms. Graham's purported writ, and also setting aside arguments that the Respondents do not meet the definition of a prevailing party, if Ms. Graham's motion for temporary injunction were re-characterized as a writ of mandamus and the Respondents were designated as the "prevailing party" and entitled to collect fees as stated in the February 28, 2024 Order, they would be entitled only to expenses directly related to their defense

against the writ. The award of “\$9,525.00, as well as any fees and costs not yet billed as of the drafting of the order,” is inappropriate. This amount includes expenses associated with litigation proceedings in magistrate court at the beginning of this action, which are unrelated to the defense against Ms. Graham’s purported writ of mandamus in circuit court (R. pp. 154-68). The amount awarded for attorney's fees, if any, should be confined to the expenses directly attributable to the preliminary injunction hearing as stated in Judge Price’s December 22, 2020 Order.

Rule 65(f)(2), SCRCF states "...the adverse party shall plead to the complaint and respond to such motion [for writ of mandamus] in the time prescribed by these rules for other civil actions." The Respondents did not respond to the purported writ of mandamus as required. Instead, their counsel, Mr. Corvey, emailed motions requesting sanctions and attorney's fees pursuant to 65(f)(2), SCRCF and urging the Court to convert Ms. Graham's motion for a temporary injunction into a writ of mandamus and to designate the Respondents as the prevailing party. This does not equate to a response or mounting a defense.

The fees incurred from Mr. Corvey's actions are not reflective of the formation of an actual defense against the relief sought in the motion. Instead, they reflect efforts aimed at seeking sanctions, attorney's fees, and advocating for procedural maneuvers. Including these fees in the awarded amount of attorney's fees is disproportionate, unjust and an abuse of discretion. Therefore, the amount awarded should be reassessed and reduced to \$0.00 to accurately reflect the defense mounted against the motion.

CONCLUSION

In summary, the granting of the Respondents’ *Motion for Sanctions and Attorney's Fees and Costs Pursuant to SCRCF 65(f)(2)* rests on two critical errors: first, the mischaracterization of Ms. Graham's motion for a temporary injunction as a writ of mandamus; and second, the

improper designation of the respondents as the prevailing party of the purported writ. This erroneous application of an inapplicable rule led to an inappropriate awarding of attorney's fees.

Not only are the respondents not entitled to recover any of their attorney's fees, but the specified amount of "\$9,525.00, as well as any fees and costs not yet billed as of the drafting of this order," is unwarranted. The Court's decision to rule on the unfiled *Motion for Sanctions and Attorney's Fees and Costs Pursuant to SCRPC 65(f)(2)* was procedurally flawed and demonstrated a disregard for established rules of civil procedure. Furthermore, the Court's failure to address Ms. Graham's Rule 59(e), SCRPC motion and engage with her grounds for reconsideration in the subsequent Form 4 order showcases an extreme disregard for legal principles. The lack of justification provided for the specified award amount in the Court's full order detailing its ruling further highlights an extreme abuse of discretion. Therefore, in light of the foregoing, the Appellant respectfully requests that this Court vacate the award of attorney's fees to the Respondents.

Respectfully submitted,



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February 10, 2026