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SC Court of Appeals

REPLY BRIEF OF APPELLANT
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Bentley D. Price, Circuit Court Judge

Case No. 2020-CP-100-3397

Michele Graham.....Appellant

v.

Mark Ciaburri

Adrienne T. Ciaburri.....Respondents

FINAL REPLY BRIEF OF APPELLANT

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

TABLE OF CONTENTS

Table of Authorities..... ii

Introduction 1

Arguments

1. RESPONDENTS' INSERTION OF IRRELEVANT FACTS, INCLUDING THE RESULTS OF THE JURY TRIAL, SHOULD BE DISREGARDED.....1

2. RESPONDENTS MISSTATE THE NATURE OF THE APPELLANT'S APPEAL AND THE APPELLATE COURT'S FINDINGS2

3. THE RESPONDENTS' OWN ARGUMENT SUPPORTS THE APPELLANT'S POSITION THAT A WRIT OF MANDAMUS WAS NOT APPROPRIATE3

4. THE RESPONDENTS' JUSTIFICATION FOR ATTORNEY'S FEES IS BASED ON A MISCLASSIFICATION OF THE APPELLANT'S MOTION 4

Conclusion.....5

TABLE OF AUTHORITIES

Graham v. Ciaburri, Op. No. 2023-UP-098 (S.C. Ct. App. Filed March 15, 2023).....2

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

INTRODUCTION

Appellant Michele Graham submits this reply brief in response to the Initial Brief of the Respondents. The Respondents' brief presents several mischaracterizations of the issues and facts that require correction and clarification. Additionally, the Respondents introduce irrelevant facts that do not directly bear on the appellate issues.

ARGUMENT

A. RESPONDENTS' INSERTION OF IRRELEVANT FACTS, INCLUDING THE RESULTS OF THE JURY TRIAL, SHOULD BE DISREGARDED

The Respondents have introduced extensive details about the small claims court proceedings, including the outcome of the jury trial. This information is irrelevant to the issues on appeal, which focus on the trial court's re-characterization of the Appellant's motion for a temporary injunction as a writ of mandamus and the subsequent award of attorney's fees. The outcome of the jury trial and the small claims court proceedings, which dealt with separate issues of liability and procedural matters, have no bearing on the legal questions currently under review by this Court.

The introduction of these irrelevant details by the Respondents only serves to distract from the substantive errors made by the trial court. The appellate court's role is to review the trial court's decisions on the specific matters that were appealed, not to consider extraneous details from other proceedings that do not affect the core issues at hand. Accordingly, these facts should be disregarded in the Court's consideration of this appeal, and the focus should remain on whether the circuit court acted appropriately.

B. RESPONDENTS MISSTATE THE NATURE OF THE APPELLANT’S APPEAL AND THE APPELLATE COURT’S FINDINGS

On Page 7, Paragraph 2 of the Respondents’ Initial Brief, the Respondents incorrectly claim that the Appellant appealed the court's denial of her motion to reconsider the granting of attorney's fees. This is a misrepresentation of the facts. The Appellant actually appealed the circuit court’s denial of her motion for a new trial based on newly discovered evidence. The appellate court, in an unpublished opinion, affirmed the denial of that motion but, crucially, treated the Appellant's original motion as a temporary injunction, not as a writ of mandamus. Graham v. Ciaburri, Op. No. 2023-UP-098 (R. pp. 232-35).

This appeal was strategically important for several reasons:

1. **Clarification of Legal Classification:** By appealing the denial of the new trial, the Appellant effectively brought the issue of how the original motion was classified to the attention of the appellate court. The fact that the appellate court treated the motion as a temporary injunction, rather than as a writ of mandamus, reinforces that the trial court's later reclassification was incorrect. If the relief sought in the temporary injunction motion was more 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 (2002).
2. **Preemptive Strategy:** The Appellant anticipated that the Respondents might push for the reclassification of the motion as a writ of mandamus. By appealing the denial of the new trial, the Appellant set a precedent in the appellate court that the motion was properly classified as a temporary injunction. This appeal served as a safeguard against the Respondents' current arguments for reclassification.

3. **Ensuring Consistency in Legal Interpretation:** The appeal forced the appellate court to evaluate the original motion in its correct context. By affirming that the motion was for a temporary injunction, the appellate court provided a clear interpretation that now stands as a counter to the Respondents' misrepresentation.

The Respondents' assertion that the appellate court should now affirm the trial court's improper reclassification of the temporary injunction as a writ of mandamus is inconsistent with the appellate court's prior treatment of the issue. The appellate court's decision confirmed that the motion was indeed for a temporary injunction. Therefore, any argument by the Respondents to reclassify the motion should be rejected, as it contradicts the appellate court's earlier determination.

By having appealed the denial of the new trial, the Appellant provided a clear appellate record that counters the Respondents' misrepresentation and supports her position.

C. THE RESPONDENTS' OWN ARGUMENT SUPPORTS THE APPELLANT'S POSITION THAT A WRIT OF MANDAMUS WAS NOT APPROPRIATE

The Respondents argue that the dog was not declared dangerous and, therefore, a writ of mandamus would not be appropriate. The Appellant agrees with this assessment, which supports the Appellant's original position that the trial court's reclassification of the Appellant's motion for temporary relief as a writ of mandamus was erroneous.

The Appellant did not seek a writ of mandamus precisely because the dog had not yet been declared dangerous. Instead, the Appellant requested that the court declare the dog dangerous as part of the relief sought in the complaint and that temporary measures be imposed to quarantine the dog until a final determination could be made.

During the December 11, 2020 hearing, the attorney representing the Town of Mount Pleasant explicitly stated that the Complaint, as he understood it, appeared to be more like a declaratory judgment action (R. p. 83). This statement further shows that the Appellant's action was aimed at securing declaratory relief, not at compelling a public official to perform a ministerial duty via a writ of mandamus.

This appeal concerns the trial court's improper reclassification of the Appellant's motion for temporary injunctive relief as a writ of mandamus. The Respondents' own argument, along with the statement from the Town of Mount Pleasant's attorney, demonstrates why such a reclassification was not warranted and why the temporary relief requested by the Appellant was the appropriate course of action.

By recognizing that a writ of mandamus was not applicable, the Respondents confirm that the trial court should have treated the Appellant's motion as what it was—a request for temporary injunctive relief aimed at addressing the immediate risk posed by the Respondents' dog following its involvement in a fatal attack.

D. THE RESPONDENTS' JUSTIFICATION FOR ATTORNEY'S FEES IS BASED ON A MISCLASSIFICATION OF THE APPELLANT'S MOTION

The Respondents argue that the trial court's award of attorney's fees was proper under Rule 65(f)(2), SCRCF, based on their status as the prevailing party in what they claim was a writ of mandamus. However, this argument fails to recognize that the trial court's reclassification of the Appellant's motion as a writ of mandamus was erroneous from the outset.

The Respondents acknowledge that a writ of mandamus would not be appropriate because the dog was never declared dangerous. This admission highlights that the trial court's reclassification of the Appellant's motion as a writ of mandamus was erroneous. Since the motion was misclassified, the Respondents' claim to being the prevailing party—and thus their

entitlement to attorney's fees under Rule 65(f)(2), SCRCF—is fundamentally flawed.

The Respondents also assert that the attorney's fees were awarded after the subject dog had passed away, rendering the underlying issue moot. However, an issue becoming moot does not confer prevailing party status on the Respondents. The mootness of the issue further illustrates the impropriety of awarding fees based on a misclassified motion, as the core issue had already resolved itself without a need for further court intervention. This timeline illustrates that the award of attorney's fees was inappropriate and not justified by the circumstances.

Accordingly, the trial court's award of attorney's fees was based on an error of law and should be reversed.

CONCLUSION

The key issues for this Court to determine are: (1) Whether the trial court properly re-characterized the motion for temporary injunction as a writ of mandamus; (2) If the Court did properly re-characterize the motion, whether the Respondents can be considered the prevailing party and thus entitled to an award of attorney's fees; (3) Whether the granting of attorney's fees was legally and procedurally proper; and (4) Whether the amount of attorney's fees awarded was reasonable, particularly given that the amount includes costs unrelated to the defense against the motion.

The Respondents' arguments rely on the trial court's improper reclassification of the Appellant's motion for temporary injunctive relief as a writ of mandamus. The Respondents have admitted that a writ of mandamus would not be appropriate in this case, which further supports the Appellant's position.

Additionally, the attorney's fees awarded by the trial court were granted after the

underlying issue had become moot, which does not justify the Respondents' prevailing party status. The inclusion of costs unrelated to the defense against the motion only compounds the error.

For these reasons, the Appellant respectfully requests that this Court reverse the trial court's reclassification of the motion, find that the Respondents are not entitled to attorney's fees, and vacate the award of attorney's fees as it was based on an error of law and was procedurally improper.

Respectfully submitted,



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