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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

CASE NO. 20-CP-22-00600
CASE NO. 20-CP-22-00601
(S.C. S.Ct. Appellate Case No. 2026-001955)

Sunset Lodge, LLC, and Franklin D. Beattie, as trustee of the Franklin D. Beattie
Preservation Trust, and M. Baron Stanton.....Plaintiffs,

v.

Town of Pawleys Island,.....Defendant,

Of which Sunset Lodge, LLC and Franklin D. Beattie, as trustee of the Franklin D. Beattie
Preservation Trust, are the Petitioners-Respondents,

and

Town of Pawleys Island is the Respondent-Petitioner.

**PETITIONERS-RESPONDENTS LANDOWNERS' REPLY TO TOWN'S RETURN TO
LANDOWNERS' MOTION AND PETITION FOR MANDAMUS AND CERTIORARI**

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BEATTIE, AS TRUSTEE

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marking by the Court of Appeals of its opinions as “unpublished,” but all
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- III. Neither the Court of Appeals nor the Circuit Court actually 7
followed the correct procedure for awarding attorney’s fees, neither
addressed the proper full scope of the fees that should be awarded, and
both profoundly shorted the Landowners in an award that did not even
approach what was required in a high-stakes, messy, complicated and
novel case, in which the opponent also continued to oppose
the fees requested, or any fees at all.

I. The statement of the case that the Town incorporates by reference into its Return is itself extensively refuted in the Landowners' Return to the petition from which the Town borrows what the Town incorporates.

Rather than make a separate statement of factual background, the Town incorporates its own separate petition for certiorari (which includes an extensive “Introduction”) “for a statement of the case.” However, the Town’s petition, including its 4-page, freestyle “Introduction,” is deeply flawed, as explained particularly in the Landowners' return to that petition. The errors are extensive.

II. The Town argues in favor of indiscriminate, arbitrary, or unregulated marking by the Court of Appeals of its opinions as “unpublished,” but all authorities the Town references state the opposite of what the Town indicates.

The Town incorrectly supports the ability of an intermediate appellate court, intentionally or not, to unilaterally shield its opinions from scholarly review in the community, or judicial review within the judicial system, by, among other things, marking its opinions “unpublished,” declaring they will not be followed as precedent applicable to others, and forbidding others from even citing the opinions.

The Town supports this practice, even at epidemic proportions, even though it violates statutes enacted by the General Assembly¹ under specific authorization

¹ S.C. Code Ann. § 14-3-810 (implying presumption of General Assembly that all opinions will be published), S.C. Code Ann. § 14-3-820 (same), S.C. Code Ann. § 14-3-830 (same), S.C. Code Ann. § 14-3-940 (setting forth allowed manner of establishing court rules with approval of General Assembly), S.C. Code Ann. § 14-3-950 (same), S.C. Code Ann. § 14-8-250 (requiring that points stated in a case be stated in an opinion and be decided with reasons being stated), and S.C. Code Ann. § 18-9-280 (requiring that points stated in a case be stated in the appellate opinion and be decided with reasoning stated; allowing memorandum opinions

in the State constitution,² and appellate court rules promulgated pursuant to those statutes by the state Supreme Court and approved by the legislature.

The Town is incorrect that the face of Rule 220(a), SCACR itself allows the Court of Appeals to issue unpublished opinions. The rule provides exactly the opposite.

Rule 220 requires the following: “The appellate court shall make its decisions in writing by published opinions or memorandum opinions, with any concurring or dissenting opinions attached. Published opinions shall appear in the Official Reports of the Supreme Court and the Court of Appeals; memorandum opinions shall not be published in the official reports and shall be of no precedential value.” (Rule 220 (a), SCACR (emphasis added).)

There is no epilogue in Rule 220, or any other rule, creating a third category of opinion that is not a memorandum opinion and that is simply marked “unpublished,” regardless of whether it is discursive or not, whether it is on

only when certain determinations are unanimously made by 5-member Supreme Court).

Rule 220, SCACR was established pursuant to the procedure of S.C. Code §§ 14-3-940 and 14-3-950. Rule 220 is partly repetitive of state statutes, S.C. Code §§ 14-8-250 and 18-9-280.

² S.C. Const. (1895) Art. V, § 25.

The state Constitution specifically contemplates the publication of the decisions of the Supreme Court and Court of Appeals. See S.C. Const. (1895) Art. V, § 25 (1985 Act No. 9), and see S.C. Const. Art. V; § 9, S.C. Const. Art. I, § 3; S.C. Const. Art. I, § 23; id., Art. I, § 9; id., Art. I, § 8; and id., Art. I, § 7.

specific subject matter or not, whether it presents specific procedural circumstances or not, whether it decides all the issues presented or not, whether it is drafted by staff as a mere expedient or not, or whether it is poorly reasoned or not.

The remainder of Rule 220 ultimately requires that the Court of Appeals “shall make its decisions in writing by published opinions,” because memorandum opinions are unavailable to the Court of Appeals.

The duty of the Court of Appeals to decide the issues presented and do so in writing by published opinions is an unambiguous ministerial duty to be discharged in performing the court’s other duties and functions.

Rule 220 allows the Supreme Court, but only the Supreme Court, an alternative, and the limits are for obvious good reason. First, citizens of the State and others are entitled to have their duly presented issues decided, know the reasons, and have others know the reasons. They are further entitled to accountability, transparency and predictability of the courts and the laws, as well as uniformity of application and equal protection thereunder.

Secondly, the 5-member Supreme Court acts as the whole court and may be called upon to review decisions of the 9-member Court of Appeals, which usually acts in panels of three, but may act en banc.

In reviewing the court below, this Court must have rulings on the issues presented. This court may also take into account the effect of the ruling below on the litigants, other cases, other present or future litigants, past decisions, and the State in general. No provision of the state Constitution, the statutes of South Carolina, or the Appellate Court Rules allows this consideration to be altered or squelched by simply labelling an opinion as completely inconsequential to all except a hapless litigant.

If in reviewing the court below, this Court summarily affirms (or, rarely, summarily reverses) a lower tribunal, this Court may do so by memorandum opinion that still does not compromise the constitutional, statutory and judicial policy of openness, transparency and accountability of South Carolina courts.

The constitutional assurances that "[a]ll courts shall be public, and every person shall have speedy remedy therein for wrongs sustained,"³ and that "[t]he General Assembly shall provide for the publication of the decisions of the Supreme Court and the Court of Appeals"⁴ arise from concerns and are there for a reason. It is so that a court may not routinely or preferentially avoid difficult cases or issues presented to it, rule in generalities only by fiat as to who is the victor on selected issues, sweep the reasoning or lack thereof under the rug, engage in an epidemic of

³ S.C. Const. (1895) Art. I, § 9; and see S.C. Const. (1868) Art. I, § 15.

⁴ S.C. Const. (1895) Art. V, § 25.

unpublished staff opinions, per curiam opinions, or the like, and throw stare decisis out the window, along with all public confidence in the integrity and predictability of court outcomes.

The alternative of issuing a "memorandum opinion" is reserved for the Supreme Court. A memorandum opinion is a defined thing. It is a type of opinion that, by rule and statute, is reserved for only four circumstances, which also are not present here.

The Town is also wrong about the directive and reasoning in In Re Memorandum Decisions by Court of Appeals (S.C. Sup. Ct. dated Dec. 18, 1993).

The directive and scope is, again, just the opposite of that stated by the Town. The directive in this order is not a "holding" in the usual sense of pronouncements by this Court, because it is not the determination of an appeal or other adversarily mediated controversy, like the present one. In Re Memorandum Decisions by Court of Appeals is an administrative order.

The administrative order does not, as the Town argues, state that the Court of Appeals may issue memorandum opinions. The order expressly recognizes the lack of authorization for Court of Appeals to issue memorandum decisions.

The order in fact recognizes that a memorandum opinion is not the type of disposition that even this Court should routinely employ, and recognizes that such a mode is used sparingly by this Court.

The order also does not state that the Court of Appeals is at liberty to not identify and rule on each issue presented on appeal. The order lays out the minimum the Court of Appeals can do in an opinion, and cautions against routine performance of the minimum. In Re Memorandum Decisions by Court of Appeals does not authorize a memorandum opinion at all by the Court of Appeals, which the Court does not, and cannot, authorize the Court of Appeals to issue.

The Town mischaracterizes the Landowner's argument re Lanham v. Blue Cross and Blue Shield, 338 S.C. 343, 526 S.E.2d 253 (Ct. App. 2000). In Lanham, the issue of the authority of the Court of Appeals to issue unpublished opinions was brought up by a party to the appeal, not by the court itself, and the Landowners did not argue, as the Town asserts, that the latter was the case.

The Court of Appeals addressed the issue, but only in a footnote, and only by fiat, as the footnote lacks any logic or citation of authority. The sum total of the court's reasoning as to why the court assumed it was allowed to simply mark any of its opinions as "unpublished" (including, as in Lanham, and here, those opinions that come nowhere near any of the four circumstances required of the Supreme Court in order for it to issue an unpublished opinion) is that the court had been doing so.

Thus, the Landowners seek mandamus on this issue, or alternatively, certiorari on this issue, as a record was made in the Court of Appeals on this issue by way of petition for rehearing, the soonest the issue could be raised.

III. Neither the Court of Appeals nor the Circuit Court actually followed the correct procedure for awarding attorney's fees, neither addressed the proper full scope of the fees that should be awarded, and both profoundly shorted the Landowners in an award that did not even approach what was required in a high-stakes, messy, complicated and novel case, in which the opponent also continued to oppose the fees requested, or any fees at all.

The Town's arguments countering the Landowner's points about the Court of Appeals' and Circuit Court's errors on attorney's fees are similarly without moment.

The standards require providing sufficient attorney's fees to compensate the attorney for having done the work reasonably required in order to handle the whole matter as actually handled, and this is not determined in hindsight, once the matter has been won or otherwise determined. It is also not determined arbitrarily and is not determined based on estimates of what might have been determined in some different case or some hypothetical case.

It is determined as of the time the attorney did not know the ultimate outcome and end of the matter, a point that indeed has not yet been reached.⁵

⁵ The only reason the Record, rife with errors, fictions, procedural complications, and incongruities, requires an allegedly "sprawling" brief (Town Return at 4) to present the case and all the errors, is the mess the Town persistently

The award is measured in this manner. Yet, the award is to the party, not the attorney. The party and the attorney are then left to settle their affairs in accordance with the business between them.

Although not categorically so, this measure often coincides with or closely resembles what the Landowner actually had to pay, or if not paid or not fully paid, what has been paid and what has accrued. For example, if a contingency fee is due after completion, the contingency fee is neither the minimum nor the maximum of the award.

Various constructs can be used for determining the fee, but unless the statute specifies a particular intent or approach, the determination comes down to determining a market rate for what the attorney actually did, along the lines of the approach in Layman v. State, 378 S.C. 670, 666 S.E.2d 249 (2008)(starting the inquiry by determining “the actual amount of work performed, expenses incurred,” and looking at “all of the hours spent on the litigation of the case (designated in the chart below as ‘Total Hours Expended’).”.)

The determination is made without hindsight, because, at the time an attorney makes tactical decisions, makes sacrifices on selected issues, performs preparatory work, raises issues, performs tasks based upon what is presented to

made of the matter. One need only read the procedural history, and one does need to read it.

him or her, and plans for multiple, future, contingent paths, he or she does not definitively know the final path and outcome. Rather, what the attorney actually did, as each thing arose, as the attorney did each thing, and without a blow-by-blow analysis of each exercise of judgment, each tactical decision, or each skirmish along the way, is considered.

The focus is on what was actually involved, and what was actually done, and how much it generally costs to do it.

In approximating a market rate, absent statutory direction on the approach, the general approach is to determine, through reasonable means, the actual time actually spent on the matter that is being compensated for, then determine if any of it was unreasonable to spend at the time the decision to spend it was made, then multiply the time by a reasonable rate of money per unit of time, and then make appropriate enhancements, if any. Above all, the reasoning should be stated, not purposefully ambiguous or shrouded.

Neither the Circuit Court nor the Court of Appeals did this, and the case cost the Landowners many, many, many times more than was awarded for the conservative and limited parts of the case for which they sought reimbursement. The things for which an award should be made should include compensation for all work done trying to obtain the fee award itself, including work on appeal and on any remand. This was briefed extensively and discretely.

Respectfully submitted,

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