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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge

Appellate Case No. 2024-002127

Christine Jernigan,……...…….……..…..……Appellant,

v.

Kershaw County South Carolina,…….……..…..……..……...Respondent.

FINAL BRIEF OF APPELLANT

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I. STATEMENT OF THE ISSUES ON APPEAL

A. Whether the circuit court erred in denying Appellant's Motion for Equitable Relief

1. The circuit court erred by finding that Appellant, a life-long resident of South Carolina, lacked statutory standing to proceed with this case pursuant to FOIA, Section 30-4-100(A)

2. Appellant's Motion for Equitable Relief established a *prima facie* showing of likelihood of success on the merits to the requested relief

    a. KCSC's August 18, 2022, FOIA Response did not comply with the legal requirements of FOIA, Section 30-4-30(c)

    b. The record establishes that KCSC's August 18, 2022, FOIA disclosure was incomplete/redacted

B. Whether the circuit court erred by failing to follow the procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A)

C. Whether the circuit court erred in granting Respondent's oral motions for Judgment on the Pleadings and Dismissal for Failure to Prosecute after the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds

1. The circuit court's application of FOIA, Section 30-4-100(A)'s statutory standing provision leads to a result that is plainly absurd

2. There was no basis for a non-jury trial on August 27, 2024, that could support the circuit court's Dismissal for Failure to Prosecute

II. STATEMENT OF THE CASE

On July 24, 2023, Appellant Christine Jernigan ("Appellant" or "Mrs. Jernigan") initiated this case (the "538 FOIA case") against Respondent Kershaw County South Carolina ("Respondent" or "KCSC") in the Court of Common Pleas for the Fifth Judicial Circuit, Kershaw County. (R. pp. 1-18). Count I seeks declaratory and associated injunctive/equitable relief including: (*i*) a finding that the written determination and disclosure provided by KCSC to Appellant on August 18, 2022, violates the statutory requirements of the Freedom of Information Act ("FOIA"), Section 30-4-30(c); and (*ii*) an order requiring disclosure of the relevant public

records requested; *e.g*., KCSC's June 29, 2022, E-911/Dispatch audio recordings. (R. pp. 14-15, 17). The Complaint also seeks (*iii*) an order awarding Appellant costs/expenses, including reasonable attorney fees, incurred in this action pursuant to FOIA, Section 30-4-100(B). (R. pp. 15, 17).

For records of the FOIA Request submitted to KCSC on August 11, 2022, that have been destroyed or otherwise rendered unavailable by KCSC, Count II seeks declaratory/equitable relief pursuant to FOIA and the Public Records Act, S.C. Code Ann. §§ 30-4-10, *et seq*. (R. pp. 16-17). Most importantly, the long-promised June 29, 2022, E-911/Dispatch recordings – which are indisputably public records that should have been disclosed years ago – have apparently been destroyed or otherwise rendered unavailable by KCSC. As this Court has held, FOIA would be rendered meaningless if public bodies could simply destroy, rather than disclose, requested public records in violation of the legal requirements of FOIA and the Public Records Act. *See Ballard v. Newberry Cnty*., 432 S.C. 526, 534, 854 S.E.2d 848, 852 (Ct. App. 2021) (holding that "[d]estruction of pertinent documents covered by a then-pending FOIA request could very well present" a cause of action pursuant to FOIA and/or the Public Records Act).

In sum, for Count I, the primary question is whether KCSC's August 18, 2022, written determination and disclosure of public records violated the statutory requirements of FOIA, Section 30-4-30(c). For Count II, the primary question is whether KCSC's destruction of requested public records – *e.g*., KCSC's apparent destruction of the long-promised June 29, 2022, E-911/Dispatch recordings – violates the legal requirements of FOIA and the Public Records Act. Accordingly, this is a "paper case" involving the application of legal principles to facts of record (i.e., questions of law).

The factual background of the present 538 FOIA case necessarily overlaps with that of an earlier-filed, related case (the "782 FOIA case") which is also currently on appeal before this Court. *See Jernigan v. Kershaw County Sheriff's Office*, App. No. 2024-000833 (the "833 appeal"). Both cases address similar issues; e.g., whether the respective written determinations provided by the public bodies violated the statutory requirements of FOIA, Section 30-4-30(c), and whether the circuit court erred by failing to follow the legal requirements of FOIA, Section 30-4-100(A). As a matter of judicial efficiency and consistency, Appellant respectfully submits that this Court should exercise its discretion pursuant to Rule 214, SCACR, by consolidating these two related appeals before the same panel.

On June 28, 2022, undersigned counsel left phone messages with Kershaw County Sheriff's Office ("KCSO") officers reporting concerns relating to his grandmother, and Appellant Mrs. Jernigan's mother, Ann Martin ("Mrs. Martin"), who is a vulnerable adult pursuant to the Omnibus Adult Protection Act ("OAPA"), S.C. Code Ann. §§ 43-35-5, *et seq*. (R. pp. 10 at ¶55; 55 at ¶3; 61-62; 67-68; 103-04; 121-22 at ¶¶11, 16-17, 21). Mrs. Martin served as office manager and chief receptionist for the South Carolina House of Representatives, Solomon Blatt Building, for over three decades until her retirement in 2013 due to age-related cognitive decline. *See* H. 4594, 120th Session (2013-2014); (R. pp. 116-19).

On June 29, 2022, at around 9:44am, KCSO Officer #15 Courtney Cochran contacted KCSC Dispatch Operator Tina Hand, via phone, regarding undersigned counsel's phone messages reporting concerns pursuant to the OAPA. (R. pp. 10 at ¶¶54-55; 61-62; 67-68; 104; 122 at ¶¶16, 22). KCSC Dispatch Operator Tina Hand dispatched/assigned KCSO Officer #45 Joseph Branham (Primary) who, at around 10:30am on June 29, 2022, spoke with undersigned

counsel via phone regarding Mrs. Martin and the OAPA-related concerns. (R. pp. 11 at ¶58; 61-62; 67-68; 104; 122 at ¶¶20, 22).

At around 11:00am on the morning of June 29, 2022, Mrs. Martin chose to exercise her right to travel away from a privately-owned, for-profit assisted living facility located in Kershaw County, known as Pinedale, with her daughter Mrs. Jernigan. (R. pp. 7 at ¶37; 104; 117 at ¶¶12-14; 123 at ¶¶25-27).[1] After Mrs. Martin chose to travel away from Pinedale with her daughter, KCSO Officers #45 Joseph Branham (Primary), #42 Grant Arledge, and #40 Brian Morris were dispatched/assigned by KCSC to pursue them in police vehicles. (R. pp. 7 at ¶38, 55 at ¶5, 64-65, 104, 122-23 at ¶¶21, 128 at ¶27). The KCSO Officers stopped Appellant Mrs. Jernigan's vehicle after she and Mrs. Martin traveled away from Pinedale. (*Id.*).

Undersigned counsel drove to KCSO's primary office in Lugoff, South Carolina, and attempted to intervene on behalf of his mother and grandmother. (R. pp. 55 at ¶5; 65; 104; 122 at ¶21). Despite undersigned counsel's in-person appeals – and KCSO Officer #15 Courtney Cochran's associated communications, via KCSC Dispatch Operator Tina Procter, that undersigned counsel "Justin [Jernigan] is at the Sheriff Dept. and wants to let 42 and 40 know" – KCSO remanded Mrs. Martin to the Pinedale facility. (R. pp. 65, 104-05). KCSO indicated that Appellant Mrs. Jernigan would have to "contact the court" with respect to her mother Mrs. Martin being remanded to the privately-owned, for-profit Pinedale facility. (*Id.*).

Appellant's FOIA Request seeks public records relevant to the police-involved events of June 28-29, 2022. (R. pp. 6 at ¶29; 34-35; 54-57). Prior to submitting the FOIA Request to

[1] *See*, *e.g.*, Bill of Rights for Residents of Long-Term Care Facilities, S.C. Code Ann. § 44-81-20 ("The General Assembly further finds that it is necessary to preserve the dignity and personal integrity of residents of long-term care facilities through the recognition and declaration of rights safeguarding against encroachments upon each resident's need for self-determination.").

KCSC on August 11, 2022, the Request was first submitted to KCSO on July 22, 2022. (R. pp. 7 at ¶¶33-34; 30-31; 107-08; 120-21 at ¶¶9-10). KCSO's Records Department responded on July 25, 2022, by indicating that KCSO would not provide any of the communication/dispatch-related records of the FOIA Request, and that these records must instead be obtained from KCSC.

> After reviewing your request, we do not have any reports regarding the incident you mentioned from June 29, 2022. The only records of this incident in our system are the calls made to our central dispatch, and you will have to obtain those records from them. According to the records and your request, you were informed that the issue you were dealing with was a civil issue, so that is why we do not have any records regarding this incident. If you have any further questions or concerns, you are welcome to contact us.

(R. pp. 7 at ¶35; 34-35; 107).[2]

The records encompassed by the FOIA Request include all records associated with the "Pinedale facility," and "audio recordings" of any type relating to the employees (i.e., the dispatch operators and officers) who were personally involved with the events of June 28-29, 2022. (*See* R. pp. 7 at ¶36; 14-15 at ¶84; 55-57; 183). In addition, the FOIA Request seeks personnel/training records for the employees personally involved in the events that occurred on and around June 29, 2022. (R. pp. 14-15 at ¶84; 56 at ¶2; 183).[3]

[2] Appellant respectfully submits that the lack of certainty in and around July/August 2022 as to the E911/Dispatch arrangement between and amongst KCSO and KCSC was reasonable and understandable. Indeed, as of 2019, approximately half of the E-911 Organizations in this State operated under the umbrella of either a chief of police or county sheriff's department. (*See* R. p. 183).

[3] As discussed above at footnote two, the initial FOIA Request included a few readily apparent, good faith errors by indicating that the "Dispatch Operator[s]" personally involved were believed to be KCSO (*i.e.*, "Department") employees. ((*See* R. pp. 183-184 citing R. pp. 55 at ¶2 ("the Department (Dispatch Operator)"); 56 at ¶1 ("Department dispatch line"); and 56 at ¶2 ("Department employees")).

A. KCSC's August 18, 2022, FOIA Response and Disclosures

Pre-suit counsel provided KCSC's only response to the FOIA Request on August 18, 2022.

> I am responding to your Freedom of Information Act request dated August 4, 2022, on behalf of KC E9-1-1 Communications. Please find enclosed herewith all documents not subject to exemption under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq*. as well as a CD containing the audio. If you have any other questions or concerns, do not hesitate to contact me.

(R. pp. 8 at ¶¶43-44; 59; 108; 121 at ¶11).

KCSC's August 18, 2022, FOIA Response attached and disclosed one relevant public document, CFS2022-39001, which states that it was printed on August 18, 2022. (R. pp. 9-10 at ¶¶49-50; 61-62; 109; 121 at ¶11). The August 18, 2022, CFS2022-39001 pubic record, however, omitted the names of the respective KCSC Dispatch Operators who were personally involved with the associated communications documented therein. (*See* R. pp. 10 at ¶¶50-52; 61-62; 67-68; 109; 121 at ¶11; 122 at ¶22). These omissions are apparent when the November 17, 2022, CFS2022-39001 document, which was disclosed by KCSO on December 2, 2022, in the related 782 FOIA case, is compared against the August 18, 2022, CFS2022-39001 document disclosed by KCSC. (*Compare* R. pp. 67-68 *with* R. pp. 61-62).

The CD optical disc disclosed by KCSC with its August 18, 2022, FOIA Response Letter contained a total of twelve (12) individual audio recording files of phone calls concerning or involving undersigned counsel; *i.e*., Audio File Nos. 0 to 11. (R. pp. 10 at ¶53; 60; 109; 121 at ¶¶11-12). The first four audio recording files (*i.e*., Audio File Nos. 0 to 3) are respective portions of the phone call by KCSO Officer #15 Courtney Cochran to KCSC Dispatch Operator Tina Hand beginning around 9:44am on the morning of June 29, 2022, and ending between 9:46am and 9:47am. (R. pp. 10 at ¶¶54-55; 61-62; 67-68; 109; 121 at ¶¶13-14; 122 at ¶¶16-17).

The subject matter of Audio File Nos. 0 to 3 involves undersigned counsel's June 28, 2022, phone messages left with KCSO officers reporting OAPA-related concerns with respect to Mrs. Martin. (*Id.*).

The end time of Audio File No. 3 (*i.e.*, 9:46:38 start time plus 14 second duration) is 9:46:52. (R. pp. 121-22 at ¶15). Subtracting the 9:46:52 end time of Audio File No. 3 from the 9:44:37 start time of Audio File No. 0 yields a total phone call duration of 135 seconds. Adding up the four respective time durations of Audio File Nos. 0 to 3 (*i.e.*, 26s + 47s +27s + 14s), however, yields a total phone call duration of 114 seconds. (*Id.*). According to the math, twenty-one (21) seconds of the phone call between KCSO Officer #15 Courtney Cochran and KCSC Dispatch Operator Tina Hand on the morning of June 29, 2022, have been omitted from Audio File Nos. 0 to 3 by KCSC. (*Id.*).

The last eight audio files of the CD optical disc disclosed by KCSC with its August 18, 2022, FOIA Response Letter (i.e., Audio Files Nos. 4 to 11) are recordings of undersigned counsel's June 29, 2022, afternoon/evening phone communications with various KCSC Dispatch Operators, and KCSO Officer #32 Dustin Tate, unsuccessfully attempting to obtain a public record documenting the police-involved events of June 28-29, 2022. (R. pp. 10-11 at ¶56; 61-62; 67-68; 109; 122 at ¶18). No audio recordings of undersigned counsel's phone communications reporting the OAPA-related concerns to KCSO Officer #45 Joseph Branham (Primary) on the morning of June 29, 2022, were included on the CD optical disc containing the twelve (12) total audio recording files. (R. pp. 11 at ¶58; 109-10; 122 at ¶20).

Most importantly, however, KCSC's disclosures on August 18, 2022, withheld <u>*all*</u> records and audio recordings associated with the E-911/Dispatch communications on the morning of June 29, 2022, accusing Appellant and undersigned counsel of improper or unlawful

conduct. (*See* R. pp. 11 at ¶59; 13 at ¶71; 41; 59-62; 110; 186-87; 122 at ¶¶16-18). As demonstrated by the November 17, 2022, CFS2022-39009 public record – which was produced by KCSO on December 2, 2022, in the related 782 FOIA case – there are E-911/Dispatch communications documented therein for which no audio recordings have ever been disclosed by KCSC. The November 17, 2022, CFS2022-39009 public record, *inter alia*, demonstrates that the Administrator of the Pinedale facility, Phillip Hudson ("Mr. Hudson"), called KCSC E-911/Dispatch on the morning of June 29, 2022, and asserted that Appellant and undersigned counsel had committed improper or unlawful acts. (*See* R. pp. 12 at ¶69; 64-65; 110; 122 at ¶21; 186-87). Mr. Hudson's E-911 call to KCSC on the morning of June 29, 2022, totaled approximately one hour, lasting from 10:55am to 11:53am. (R. pp. 12 at ¶70; 64-65; 110-11).

In late August 2022, near the expiration of FOIA, Section 30-4-30(c)'s disclosure deadlines, Appellant believed that KCSC and KCSO would resolve the FOIA matters amicably on reasonable terms; *e.g.*, to avoid wasting taxpayer and judicial resources. On August 23, 2022, Appellant offered, as a mutually beneficial solution, to extend the applicable disclosure deadlines of FOIA, Section 30-4-30(c), if KCSC (or KCSO) would agree to provide the third-party citizen E-911/Dispatch call records and recordings that triggered KCSO's June 29, 2022, police-actions – *i.e.*, Mr. Hudson's approximately one-hour E-911 call – as soon as possible. (*See* R. pp. 11 at ¶60; 41; 110; 120 at ¶9; 187). Otherwise, undersigned counsel requested that pre-suit counsel for KCSC and KCSO agree to keep Appellant "in the loop" moving forward regarding when the additional records of the FOIA Request – e.g., the requested personnel/training records of the employees personally involved – would thereafter be disclosed. (R. p. 41).

Pre-suit counsel for KCSC and KCSO rejected the August 23, 2022, settlement proposal that same night at around 9:00pm. (*See* R. pp. 11 at ¶61; 40). Thereafter, on August 24, 2022,

undersigned counsel offered to personally inspect and make copies of the public records of the FOIA Request. (R. pp. 12 at ¶62-63; 39; 110; 188). Pre-suit counsel for KCSC and KCSO never responded to undersigned counsel's August 24, 2022, proposal seeking to resolve the FOIA matters amicably by personally inspecting and copying the relevant public records of the FOIA Request.

At the initial hearing before Judge Newman on December 19, 2022, in the related 782 FOIA case, the audio recordings of Mr. Hudson's approximately one-hour long E-911 call on the morning of June 29, 2022, were discussed. (R. p. 12 at ¶75). Specifically, with respect to Mr. Hudson's June 29, 2022, E911 call, litigation counsel for KCSO (and KCSC) stated that he and his associate were "going to central dispatch to get that additional recording, if it exists. I presume that it does, but I don't know. But we're going to Kershaw County Dispatch to get that." (R. p. 76, lines 7-10). After the December 19, 2022, initial FOIA hearing in the 782 FOIA case, however, the June 29, 2022, E-911 audio recordings were never disclosed to Appellant. (R. pp. 13 at ¶76; 111-12).

B. Appellant's July 28, 2023, Motion for Equitable Relief

Appellant's July 24, 2023, Complaint requests that the circuit court schedule "an initial hearing within ten days of the date of service of this Complaint upon KCSC" pursuant to the legal requirements of FOIA, Section 30-4-100(A). (R. pp. 15 at ¶87; 17 at ¶A). FOIA, Section 30-4-100(A), states in part (emphasis added):

> Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court *must* schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court *shall* establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this [six-month] time period upon a showing of good cause. The court may order equitable relief as it

> considers appropriate, and a violation of this chapter *must* be considered to be an irreparable injury for which no adequate remedy at law exists.

On July 28, 2023, Appellant's Summons/Complaint and Exhibits A to F were formally served upon KCSC. (R. p. 142). This Court recently held that the Chief Administrative Judge ("CAJ") of the circuit court is responsible for complying with and meeting the legal requirements of FOIA, Section 30-4-100(A), when a FOIA-plaintiff includes a request that the circuit court schedule the initial 10-day hearing in the complaint. *See Osmundson v. School District 5*, 443 S.C. 610, 614-16, 905 S.E.2d 418 (Ct. App. 2024) (interpreting FOIA, Section 30-4-100(A) based on its plain meaning, as a matter of first impression).

Even so, Appellant took further steps in the present 538 FOIA case in an effort to obtain the legal protections enacted by our legislature for the benefit of all FOIA plaintiffs at Section 30-4-100(A). Appellant filed an expedited Motion on July 28, 2023, requesting: (*i*) the initial ten-day hearing required by Section 30-4-100(A); (*ii*) injunctive/equitable relief ordering KCSC to fully respond to and disclose the records of the FOIA Request pursuant to the legal requirements of FOIA, Section 30-4-30(c); and (*iii*) a scheduling order to conclude proceedings in this case within six months of filing (the "Motion for Equitable Relief"). (R. pp. 102-13). On August 7, 2023, Appellant filed/submitted a follow-up Letter to Judge Newman, CAJ, regarding the required 10-day initial hearing for the July 28, 2023, Motion for Equitable Relief. (R. p. 143). Appellant's August 7, 2023, Letter "respectfully request[s] that your Honor move this FOIA-case forward in a manner consistent with" FOIA, Section 30-4-100(A). (*Id.*).

C. The August 8, 2023, Initial Hearing and Form 4 Order

Pursuant to FOIA, Section 30-40-100(A), "[a] citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter." At the initial hearing on August 8, 2023, Judge Newman issued rulings from the bench

denying Appellant's July 28, 2023, Motion for Equitable Relief on grounds that Appellant Mrs. Jernigan, who is a life-long resident of this State (R. pp. 2 at ¶1; 55 at ¶4; 125 at ¶4; 263 at ¶5), lacks standing to proceed with this case because she was not specifically listed as "requester" on the FOIA Request (R. p. 219, lines 3-10).[4]

KCSC's case dispositive lack-of-FOIA-requester-standing arguments at the August 8, 2023, hearing were unexpected. (*See* R. pp. 175; 214, lines 14-20). Appellant requested leave to brief the case dispositive lack-of-FOIA-requester-standing issue prior to the circuit court issuing a ruling on this matter. (R. pp. 214, lines 14-16; 218, lines 23-25).[5] Even so, Judge Newman entered a Form 4 Order on August 8, 2023, stating: "Following a hearing on August 8, 2023, Plaintiffs '…Motion for…Equitable Relief…' (filed on 7/28/23) is DENIED." (R. p. 144).

At the August 8, 2023, initial hearing, the long-promised June 29, 2022, E-911/Dispatch recordings were, once again, discussed by KCSC's counsel. (R. pp. 173-174).

> MR. MORRISION: I'll try to get it done this week and go to Kershaw County and see if there are any audio recordings and if there are I will send them to him. Maybe that will resolve this. I don't know.

(R. pp. 215, line 25 to 216, line 3).

> THE COURT: Mr. Morrison is going to get you those recordings, those 911 recordings as he said he would.

(R. p. 222, lines 21-22).

> MR. MORRISON: I will go get – I'll report to [undersigned counsel] Justin [Jernigan] by the end of the week as to my progress.

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[4] *See also* (R. pp. 212, lines 23-25 ("[T]he requester is [undersigned counsel] Justin Jernigan. Justin Jernigan is a resident of North Carolina"); 213, lines 3-5 (same); 215, lines 13-16 (same)).

[5] (R. pp. 214, line 19 ("I'm not sure if [KCSC's counsel is] asking [the Court] to dismiss the case"); 218, lines 23-25 ("[I]f this is an issue that the Court wants to rule on, I would like to be able to brief the issue").

(R. p. 223, lines 1-2).

The above-quoted "Maybe that will resolve this. I don't know." comments by KCSC's counsel at the August 8, 2023, hearing are noteworthy. As discussed above on page 8, KCSC's pre-suit counsel rejected Appellant's August 23, 2022, proposal to extend the FOIA-disclosure deadlines of Section 30-4-30(c) for all other requested records if KCSC would simply provide the June 29, 2022, E-911 audio recording records. (R. pp. 11 at ¶61; 40; 187).

Following the August 8, 2023, initial FOIA hearing, KCSC's counsel neither disclosed the June 29, 2022, E-911 audio recordings nor followed-up with undersigned counsel as to his progress in obtaining the long-promised E-911 audio recording public records. (*See* R. pp. 161, 174, 235).

D. Appellant's August 15, 2023, Motion to Clarify/Reconsider

Our appellate courts, and the appealability statue itself, emphasize that appealability turns on the effect of a particular motion/order rather than the label given. *See* S.C. Code Ann. § 14-3-330(2) (stating that "[a]n order affecting a substantial right" is directly appealable if it "in effect determines the action"); *Thornton v. S.C. Elec. & Gas Corp*., 391 S.C. 297, 303, 705 S.E.2d 475, 477 (Ct. App. 2011) (stating, at n.6, that "[o]ur courts have previously looked beyond the labels on motions and orders to discern their actual effect for purposes of appealability"). The circuit court's August 8, 2023, Form 4 Order denied Appellant's Motion for Equitable Relief on lack-of-FOIA-requester standing grounds, effectively ending the present case. The August 8, 2023, Form 4 Order is also an appealable order, as a matter of right, pursuant to S.C. Code Ann. § 14-3-330(4) ("An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction.").

Appellant timely-filed an August 15, 2023, Motion, and September 11, 2023, supporting Memorandum with Exhibits J to L, seeking clarification and reconsideration of the August 8, 2023, Form 4 Order pursuant to Rules 52(a), (b) ("in granting or refusing interlocutory injunctions the court shall … set forth the findings of fact and conclusions of law which constitute the grounds of its action"), & 59(e), SCRCP (collectively, the "Motion to Clarify/Reconsider"). (R. pp. 147-61, 169-98). Appellant followed-up on the Motion to Clarify/Reconsider by submitting a Letter to Judge Newman dated September 15, 2023. (R. pp. 233-35).

Appellant subsequently followed-up with Judge Newman's law clerk on October 24, 2023, regarding the pending Motion to Clarify/Reconsider. Judge Newman's law clerk responded on October 27, 2023, stating that undersigned counsel for Appellant "will receive a ruling on your Motion in the near future." (R. pp. 266-67).

E. The August 27, 2024, Hearing and October 17, 2024, Order

Rather than issuing a ruling on Appellant's pending Motion to Clarify/Reconsider, however, the present case was instead placed on the circuit court's non-jury roster calendar for the August 27, 2024, term. Given that the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds, and no ruling on the pending August 15, 2023, Motion to Clarify/Reconsider had been entered, there was no basis for the circuit court to schedule or conduct a non-jury trial on August 27, 2024. (*See* R. pp. 258-61). Unfortunately, due to a docketing error/mistake, undersigned counsel neglected to contact the circuit court and opposing counsel regarding these matters prior to the scheduled August 27, 2024, term of non-jury court. (R. pp. 259-60). After realizing this error/mistake, undersigned counsel promptly contacted the court and opposing counsel on August 30, 2024. (R. pp. 259-60, 263-64, 266).

On October 17, 2024, the circuit court entered an Order denying Appellant's Motion to Clarify/Reconsider, and granting KCSC's August 27, 2024, oral Motion for Judgment on the Pleadings, on grounds that Appellant lacked statutory standing to proceed under FOIA, Section 30-4-100(A); *i.e.*, lack-of-FOIA-requester standing. (R. pp. 238-40, 243-46). The October 17, 2024, Order states in part: "The grounds for this request have already been presented to and ruled upon by the Court in connection with a prior motion. Plaintiff has filed a motion to reconsider that prior ruling that is still pending. In accordance with the ruling below, that motion to reconsider is denied." (R. p. 244).

Despite affirming the August 8, 2023, Form 4 Order's determination that Appellant lacked statutory standing to proceed under FOIA, Section 30-4-100(A), the October 17, 2024, Order also grants KCSC's August 27, 2024, oral Motion to Dismiss for Failure to Prosecute on grounds that neither Appellant nor undersigned counsel appeared for the scheduled non-jury trial on August 27, 2024. (R. p. 243).

F. Appellant's October 28, 2024, Rule 59(e) Motion to Reconsider

On October 28, 2024, Appellant timely-filed a Motion to Reconsider the October 17, 2024, Order pursuant to Rule 59(e), SCRCP (the "Rule 59(e) Motion to Reconsider"). (R. pp. 248-269). The circuit court denied Appellant's Rule 59(e) Motion to Reconsider via a Form 4 Order entered on November 21, 2024. (R. p. 270). Appellant timely-filed and served a Notice of Appeal on December 16, 2024. (R. pp. 273-89). The orders subject to appeal include (*i*) the August 8, 2023, Form 4 Order; (*ii*) the October 17, 2024, Order, and (*iii*) the November 21, 2024, Form 4 Order. (*Id.*).

III. STANDARD OF REVIEW

The issues on appeal concern the circuit court's interpretation and application of statutes, rules, and/or precedent to facts of record, which are questions the appellate court is free to decide with no particular deference to the circuit court. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000) (citations omitted). "Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law *de novo*." *Catawba Indian Tribe v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). Although an injunction is equitable in nature, the analysis presents a question of law if the matter can be determined based on interpretation and application of statutory provisions to the facts of record. *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 760 S.E.2d 785, 788 (2014) (citation omitted).

In construing a statute, a court examines and enforces the statutory language as written. *See Smith v. Tiffany*, 419 S.C. 548, 555, 799 S.E.2d 479, 483 (2017) ("It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question. Absent an ambiguity, there is nothing for a court to construe, that is, a court should not look beyond the statutory text to discern its meaning. … '[T]here is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning' unless a statutory provision is ambiguous.") (citations omitted).

IV. ARGUMENT

A. The circuit court erred in denying Appellant's Motion for Equitable Relief

Appellant's Complaint and Motion for Equitable Relief seek declaratory and associated injunctive/equitable relief ordering KCSC to (*i*) fully respond to, and (*ii*) disclose the records of, the FOIA Request submitted to KCSC on August 11, 2022, in compliance with the legal requirements of FOIA, Section 30-4-30(c). (R. pp. 14-15, 102-13).

First, Appellant respectfully submits that the circuit court erred by denying the Motion for Equitable Relief on grounds that Appellant lacked statutory standing to proceed with this case pursuant to FOIA, Section 30-4-100(A); *i.e.*, lack-of-FOIA-requester standing. Second, Appellant respectfully submits that the circuit court erred by denying the Motion for Equitable Relief because the Motion established a *prima facie* showing of likelihood of success on the merits to the requested relief. Specifically, the Motion for Equitable Relief established a *prima facie* showing that KCSC's August 18, 2022, written determination and disclosure of public records violated the statutory requirements of FOIA, Section 30-4-30(c).

For the reasons discussed herein, Appellant respectfully requests that this Court reverse the circuit court's orders denying the Motion for Equitable Relief, and grant appropriate relief as requested in the Motion.

1. **The circuit court erred by finding that Appellant, a life-long resident of South Carolina, lacked statutory standing to proceed with this case pursuant to FOIA, Section 30-4-100(A)**

The circuit court's grounds for denying the Motion for Equitable Relief – lack-of-FOIA-requester standing – are contrary to controlling precedent. The South Carolina Supreme Court has previously addressed the minimal statutory standing requirements for FOIA-plaintiffs as follows:

> The traditional concepts of constitutional standing are *inapplicable* when standing is conferred by statute. FOIA contains a specific standing provision allowing any citizen of South Carolina to seek a declaratory judgment or injunctive relief to enforce the Act's requirements. S.C. Code Ann. § 30-4-100(a).
> …
>
> The legislature has specifically conferred standing upon *any* citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive relief, or both. Appellant has pled that he is a citizen of the State and that FOIA has been violated. *Nothing more is required*. Therefore, the trial court erred in finding Appellant lacked standing to assert his FOIA claims.

Freemantle v. Preston, 398 S.C. 186, 194-95, 728 S.E.2d 40, 44-45 (2012) (emphasis added). *see also Sloan v. Friends of Hunley, Inc*., 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006) ("this Court has held that standing under FOIA does not require the information seeker to have a 'personal stake in the outcome'") (citation omitted).

Over 40 years ago – when FOIA was originally enacted – the legislature found that its "provisions must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay." S.C. Code Ann. § 30-4-15. An essential purpose of FOIA "is to protect the public from secret government activity." *South Carolina Tax Comm. v. Gaston Copper Recycling*, 316 S.C. 163, 169, 447 S.E.2d 843, 846 (1994) (citation omitted). Pursuant to FOIA, all "persons" have the statutory "right to inspect, copy, or receive" a "public record of a public body" upon submission of a "written request for records" to the public body. S.C. Code Ann. §§ 30-4-20(b), 20(c), 30(a)(1) & 30(c). FOIA's definition of "person" broadly encompasses any "individual, corporation, partnership, firm, organization or association" without limitation. *Id*., § 30-4-20(b).

As the South Carolina Supreme Court held in *Freemantle*, a FOIA-plaintiff need only plead: (*i*) citizenship/residency of the State, and (*ii*) that FOIA has been violated to establish statutory standing pursuant to S.C. Code Ann. § 30-40-100(A). 398 S.C. at 95, 728 S.E.2d at 45. The *Fremantle* Court explicitly stated that "[n]othing more is required." *Id*. Appellant, as a lifelong citizen/resident of South Carolina, certainly meets the statutory standing requirements in the present FOIA case. (R. p. 2 at ¶1 ("Plaintiff Mrs. Jernigan is a citizen of the United States residing in Seneca, South Carolina, County of Oconee"); R. p. 263 at ¶5 ("Plaintiff has been a life-long citizen and resident of South Carolina, presently residing in Seneca, County of Oconee.")).

Appellant respectfully submits that the circuit court erred by finding that Appellant lacked statutory standing pursuant to FOIA, Section 30-40-100(A), and denying Appellant's Motion for Equitable Relief on these grounds.

2. Appellant's Motion for Equitable Relief established a *prima facie* showing of likelihood of success on the merits to the requested relief

Appellant respectfully submits that the Motion for Equitable Relief established a *prima facie* showing that KCSC's August 18, 2022, written determination and incomplete/redacted disclosure of public records violated the statutory requirements of FOIA, Section 30-4-30(c). Accordingly, Appellant respectfully submits that the circuit court erred by denying the Motion for Equitable Relief and refusing to grant the injunctive/equitable relief requested by the Motion.

"An injunction is an equitable remedy that may be used to require a party to perform an action." *Richland County v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002). To obtain an injunction, a party generally must show "(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) (citations omitted). Our legislature, however, has mandated that all FOIA violations must be considered "an irreparable injury for which no adequate remedy at law exists." S.C. Code Ann. § 30-4-100(A). Thus, Appellant need only show a likelihood of success on the merits to obtain the equitable/injunctive relief requested.

The "likelihood of success" element does not require a party to "prove an absolute right," rather, the party seeking equitable relief "need only present a fair question to raise as to the existence of such a right." *Peek v. Spartanburg Reg'l Healthcare Sys*., 367 S.C. 450, 456, 626 S.E.2d 34, 37 (Ct. App. 2005) (citation omitted). If the party makes a "*prima facie* showing" with respect to the relief requested, the circuit court should issue the injunction. *Id*. FOIA,

Section 30-4-100(A) states that the circuit "court may order equitable relief as it considers appropriate."

a. KCSC's August 18, 2022, FOIA Response did not comply with the legal requirements of FOIA, Section 30-4-30(c))

Appellant respectfully submits that the Motion for Equitable Relief established a *prima facie* showing with respect to the relief requested because KCSC's August 18, 2022, FOIA Response did not comply with the legal requirements of FOIA, Section 30-4-30(c).

FOIA imposes "an affirmative duty on the part of public bodies to disclose information." *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991) (emphasis added). Pursuant to FOIA, Section 30-4-30(c), a public body is required – within ten (10) business days for public records less than two years old or within twenty (20) business days for public records greater than two years old – to notify the "person" making the request in writing regarding the public body's determination, reasoning, and final opinion as to the public availability of each public record requested. If the public body does not provide the required written determination as to the public availability of each public record requested, the FOIA request must be considered approved as to all nonexempt public records/information. *See* S.C. Code Ann. §§ 30-4-30(c); *Sloan v. South Carolina Dep't of Revenue*, 409 S.C. 551, 762 S.E.2d 687, 688-89 (2014) (holding that the DOR's "equivocal and evasive" FOIA response was "manifestly at odds with the clarity mandated by" Section 30-4-30(c)).

Pre-suit counsel provided KCSC's only written response to the FOIA Request on August 18, 2022.

> I am responding to your Freedom of Information Act request dated August 4, 2022, on behalf of KC E9-1-1 Communications. Please find enclosed herewith all documents not subject to exemption under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq*. as well as a CD containing

> the audio. If you have any other questions or concerns, do not hesitate to contact me.

(R. pp. 8 at ¶¶43-44; 59; 108; 121 at ¶11).

KCSC's August 18, 2022, FOIA Response does not address the public availability of, or explain how any FOIA exemptions could potentially apply to, any records of the FOIA Request as required pursuant to FOIA, Section 30-4-30(c). *See* (R. pp. 55-57, 59); *Pope v. Wilson*, 431 S.E.2d 442, 448, 427 S.C. 377, 388 (Ct. App. 2019) (holding that a public body "must show the applicability of a specific FOIA exemption to each requested public record"). It is unclear what records of the FOIA Request were available, not available, and/or withheld as exempt based upon KCSC's bare assertion "[p]lease find enclosed herewith *all* documents not subject to exemption." (R. p. 59) (emphasis added); *see Sloan*, 409 S.C. 551, 762 S.E.2d at 688- 89 (holding that the DOR's equivocal and evasive FOIA responses were efforts designed to delay "final determination as to the public availability of the requested documents," best characterized as "'we will get to it when we get to it,' which is manifestly at odds with the clarity mandated by section 30-4-30(c)").

Appellant respectfully submits that a *prima facie* showing has been established with respect to the injunctive/equitable relief requested by the Motion for Equitable Relief; *i.e.*, an order requiring KCSC to fully respond to and disclose the records of the FOIA Request submitted to KCSC on August 11, 2022, in compliance with the legal requirements of FOIA, Section 30-4-30(c).

b. The record establishes that KCSC's August 18, 2022, FOIA disclosure was incomplete/redacted

As discussed in detail at Section II(A) above (pages 6-9), KCSC's August 18, 2022, FOIA Production was incomplete/redacted. This is evident based upon the respective November

17, 2022, CFS2022-39001 and CFS2022-39009 public records that were disclosed by KCSO on December 2, 2022, in the related, earlier-filed 782 FOIA case. Appellant respectfully submits that the Motion for Equitable Relief established a *prima facie* showing with respect to the relief requested because KCSC's August 18, 2022, FOIA disclosure was incomplete/redacted.

The November 17, 2022, CFS2022-39001 public record demonstrates that the CFS2022-39001 pubic record that was disclosed by KCSC on August 18, 2022, omitted the names of the respective dispatch operators who were personally involved with the associated communications documented therein. (*Compare* R. pp. 67-68 *with* R. pp. 61-62). The November 17, 2022, CFS2022-39009 public record demonstrates that KCSC unlawfully withheld <u>*all*</u> records and audio recordings associated with the E-911/Dispatch calls on the morning of June 29, 2022, accusing Appellant and undersigned counsel of improper or unlawful conduct. For instance, KCSC's August 18, 2022, FOIA disclosure withheld all records and audio recordings of Mr. Hudson's approximately one-hour E-911 call on the morning of June 29, 2022.

Additionally, according to the math, twenty-one (21) seconds of the phone call between KCSO Officer #15 Courtney Cochran and KCSC Dispatch Operator Tina Hand on the morning of June 29, 2022, were omitted from Audio File Nos. 0 to 3 of the CD optical disc disclosed by KCSC on August 18, 2022. Moreover, no audio recordings of undersigned counsel's phone communications reporting the OAPA-related concerns to KCSO Officer #45 Joseph Branham (Primary) on the morning of June 29, 2022, were included on the CD optical disc disclosed by KCSC on August 18, 2022.

Appellant respectfully submits that the circuit court erred by denying the Motion for Equitable Relief because the Motion established a *prima facie* showing of likelihood of success on the merits to the requested relief. Appellant respectfully requests that this Court reverse the

circuit court's orders denying the Motion for Equitable Relief, and grant appropriate relief as requested by ordering KCSC to fully respond to and disclose all records of the FOIA Request submitted to KCSC on August 11, 2022, in compliance with the legal requirements of FOIA, Section 30-4-30(c), including specifically:

> Complete, unredacted records and audio recordings of the communications of CFS2022- 39009, including Pinedale Administrator Phillip Hudson's communications with KCSC and KCSO accusing Appellant and undersigned counsel of committing improper or unlawful acts on the morning of June 29, 2022.

(R. pp. 14 at ¶84; 102; 112).

B. <u>The circuit court erred by failing to follow the procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A)</u>

Appellant respectfully submits that the expedited resolution requirements and substantive legal standards of FOIA, Section 30-4-100(A) are "mode of trial" rights imposed using mandatory "must" and "shall" language. Appellant respectfully requests that this Court issue an order specifying that the circuit court is required to resolve FOIA cases like a motion for temporary injunction in compliance with the mandatory legal requirements of FOIA, Section 30-4-100(A), and Rule 52(b), SCRCP.

The prevailing rule of statutory interpretation is that "use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement." *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) (citation omitted). Moreover, statutory provisions are generally regarded as mandatory when, as in the present case, the power or duty to which it relates is for the security or protection of important rights. *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981) (citation omitted).

The original version of FOIA, Section 30-4-100 provided all citizens of the State the right "to apply to the circuit court for injunctive relief to enforce the provisions of [FOIA]." 1978 Act

No. 593, Section 11.[6] Effective May 26, 1987, the General Assembly updated Section 30-4-100 to mandate that all FOIA violations "*must* be considered an irreparable injury for which no adequate remedy at law exists." 1987 Act No. 118, Section 8 (emphasis added). Accordingly, a FOIA plaintiff need only establish a showing of likelihood of success on the merits to obtain the declaratory and equitable/injunctive relief requested. *See Scratch Golf*, 361 S.C. at 121, 603 S.E.2d at 907.

During the 2017 round of updates, the General Assembly amended FOIA, Section 30-4-100(A) (effective May 19, 2017, emphasis added) to include the below procedural mandates and deadlines that the CAJ's of the circuit courts are required to follow upon the filing of a FOIA case.

> Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court *must* schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court *shall* establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause.

The 2017 FOIA amendments impose "time constraints within which *determinative hearings* on the requests for relief must be made." 2017 Act No. 67 (H. 3352), Section 4, Effect of Amendment (emphasis added). The CAJ of the circuit court was assigned to fulfill the expedited scheduling/time requirements via the last round of amendments to H. 3352. *See* S. Journal (Wed., May 10, 2017), 122d Gen. Ass., 1st Reg. Sess., at 36-39 (S.C.).

On May 2, 2017, when H. 3352 was considered by the Judiciary Committee, Senator Margie Bright Matthews, Esq., of Colleton County, noted that the CAJs were available to decide FOIA matters locally on an expedited basis. Senator Matthews explained that adding the

[6] H*2727 (Rat #0739, Act #0593 of 1978) General Bill.

scheduling/time constraints would "create an avenue of filing FOIA requests like a temporary [injunction] motion so that it would have [to be] fast-tracked within ten days." *See* S. Judiciary Comm. Meeting, 122d Gen. Assemb., 1st Reg. Sess. (S.C. May 2, 2017), available at https://www.scstatehouse.gov/video/archives.php, at 01:53:00 to 1:54:50; Rule 65, SCRCP.

In *Osmundson*, this Court found that "the legislative intent behind the ten-day requirement was to benefit FOIA applicants;" "A review of the legislative history indicates the amendments to the FOIA since its enactment have been to expand rights; thus, we find the purpose of the ten-day requirement was to expedite resolution, not to erect a procedural barrier;" and held that the circuit court erred in dismissing the FOIA action on technical/procedural grounds. 443 S.C. 610, 905 S.E.2d 418. Thus, *Osmundson* held, pursuant to the plain and unambiguous language of Section 30-4-100(A), that the circuit court is responsible for scheduling an initial hearing within ten days of the service on all parties. Based on the plain and unambiguous language of Section 30-4-100(A), if the hearing court is unable to make a final ruling at the initial 10-day hearing, as in the present case, the court must thereafter establish a scheduling order and conclude actions brought pursuant to this chapter within six months of initial filing; i.*e*., by January 24, 2024, in the present case.

The General Assembly also provided public bodies with a corresponding right to seek declaratory relief via an expedited hearing under Section 30-4-110(A) through the 2017 FOIA amendments. Accordingly, the public body has a duty to file an action seeking relief with respect to (*i*) alleged "unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests," or (*ii*) where the public body "received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure." S.C. Code Ann. § 30-4-

110(A). KCSC did not request a hearing or seek declaratory relief pursuant to Section 30-4-110(A) in this case.

"The General Assembly has the power and authority to change the statutes in any manner in which, in its best judgment, it may deem wise." *Fort Sumter Hotel v. S.C. Tax Comms.*, 201 S.C. 50, 60, 21 S.E. 2d 393, 397 (1942). The circuit court can "now only carry out by its order the plain meaning and intent of the statutes as they appear on the books today. That course alone constitutes the cornerstone of constitutional government." *Id.* The scheduling/time constraints and substantive legal standards (*i.e.*, "*must* be considered an irreparable injury for which no adequate remedy at law exists") of Section 30-4-100(A) created an expediated avenue for filing/resolving FOIA actions like a temporary injunction motion. If final resolution is not reached following the initial 10-day hearing, a scheduling order must be entered to ensure final resolution within six months of filing.

The circuit court's failure to comply with and follow the mandatory procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A) has effectively denied Appellant the statutory "mode of trial" rights enacted by the legislature for the benefit of FOIA plaintiffs. This places Appellant, and all similarly-situated FOIA-plaintiffs, in an untenable situation. The circuit courts are not carrying out the plain meaning and intent of Section 30-4-100(A) as it appears on the books today in this and other FOIA cases and, as a result, a cornerstone of our constitutional government is breaking down.

Appellant respectfully submits that the circuit court erred by failing to follow the procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A) to reach a timely final resolution. FOIA plaintiffs should not be required to brow beat

court staff in an effort to obtain the procedural and substantive legal protections of FOIA, Section 30-4-100(A). *See Osmundson*, 443 S.C. at 613.

Appellant submits that this case is a "paper case." The primary declaratory and associated injunctive/equitable relief requested in the Complaint with respect to Count I, and in the Motion for Equitable Relief – (*i*) a finding that the written determination and disclosure provided by KCSC to Appellant on August 18, 2022, violates the statutory written determination requirements of FOIA, Section 30-4-30(c); and (*ii*) an order requiring disclosure of the relevant public records requested – should have been settled at an initial hearing held within ten (10) days of service. A scheduling order to conclude this case within six months of initial filing should have been entered following the initial hearing; *i.e*., to conclude proceeding in this case by January 24, 2024.

Appellant respectfully submits that the expedited resolution requirements and substantive legal standards of Section 30-4-100(A) are "mode of trial" rights imposed using "must" and "shall" language, that automatically apply to the benefit of all FOIA plaintiffs without requiring resort to formal motion practice. Appellant respectfully requests that this Court enter an order specifying that the circuit court is required to resolve this and all other FOIA cases in compliance with the requirements of FOIA, Section 30-4-100(A), and Rule 52(b), SCRCP. Appellant respectively requests that this Court reverse the circuit court's orders denying Appellant's Motion for Equitable Relief, and grant appropriate relief as requested in the Motion and Court I of the Complaint.

C. The circuit court erred in granting Respondent's oral Motions for Judgment on the Pleadings and Dismissal for Failure to Prosecute after the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds

Appellant respectfully submits that the circuit court erred in granting KCSC's August 27, 2024, oral motions for Judgment on the Pleadings and Dismissal for Failure to Prosecute because the circuit court's August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds, and is otherwise appealable as a matter of right pursuant to S.C. Code Ann. § 14-3-330(4). *See* Section II(D) above (pages 12-13). There was no basis for the circuit court to conduct a non-jury trial on August 27, 2024, or consider further motions, while Appellant's August 15, 2023, Motion to Clarify/Reconsider the August 8, 2023, Form 4 Order remained pending.

The October 17, 2024, Order denies Appellant's August 15, 2023, Motion to Clarify/Reconsider as follows: "The grounds for this request have already been presented to and ruled upon by the Court in connection with a prior motion. Plaintiff has filed a motion to reconsider that prior ruling that is still pending. In accordance with the ruling below, that motion to reconsider is denied." (R. p. 244).

Given that the circuit court's August 8, 2023, Form 4 Order had already ruled that Appellant lacked standing statutory standing to proceed with this case pursuant to FOIA, Section 30-4-100(A), KCSC's oral Motion for Judgment on the Pleadings on the same grounds was superfluous. Moreover, because the Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds, there was no basis for any non-jury trial to occur on August 27, 2024, or other grounds to support the circuit court's Dismissal for Failure to Prosecute. Appellant respectfully requests that this Court reverse the circuit court's October 17, 2023, Order.

1. The circuit court's interpretation of FOIA, Section 30-4-100(A)'s statutory standing provision leads to a result that is plainly absurd

As noted above, the circuit court's grounds for denying Appellant's July 28, 2023, Motion for Equitable Relief and for granting KCSC's August 27, 2024, oral Motion for Judgment on the Pleadings – lack-of-FOIA-requester standing under FOIA, Section 30-4-100(A) – are the same. Thus, there was no cause for the circuit court to consider or grant the surplus oral Motion for Judgment on the Pleadings on the same grounds.

In any case, Appellant respectfully incorporates the above arguments from Section IV(A)(1) (pages 16-18) that the circuit court's grounds for denying Appellant's Motion for Equitable Relief, and for granting Respondent's oral Motion for Judgment on the Pleadings – lack-of-FOIA-requester standing under FOIA, Section 30-4-100(A) – are foreclosed by controlling precedent. *See Freemantle*, 398 S.C. at 95, 728 S.E.2d at 45 ("Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required.").

Moreover, Appellant respectfully submits that the circuit court's interpretation of FOIA, Section 30-4-100(A), if upheld, "lead[s] to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention." *See Kiriakides v. United Artists Commc'ns, Inc*., 312 S.C. 271, 440 S.E.2d 364, 366 (1994). When FOIA was originally enacted, the legislature found that its "provisions must be construed so as to make it possible for citizens, *or their representatives*, to learn and report fully the activities of their public officials at a minimum cost or delay." S.C. Code Ann. § 30-4-15 (emphasis added). The circuit court's interpretation and application of FOIA, Section 30-4-100(A)'s "citizen of the State" provision defeats this plain legislative intention by determining that all FOIA Requests submitted to public bodies by out-of-state members of the South Carolina Bar representing in-

state clients are legally unenforceable in court. This is a plainly absurd result that could not possibly have been intended by the Legislature. *Cf. Ballard*, 432 S.C. 526, 854 S.E.2d 848.

In the *Ballard* case, for example, an in-state member of the South Carolina Bar ("Ms. Ballard") submitted a FOIA request to the County in connection with her representation of a former part-time chief magistrate in Newberry County. *Id.* Ms. Ballard proceeded *pro se* on appeal in the FOIA case in an effort to recover attorney's fees that the circuit court had disallowed based on its view that the case had produced a "split" result. *Id.*

The circuit court's interpretation/application of FOIA, Section 30-4-100(A), raises constitutionality concerns by determining that out-of-state members of the South Carolina Bar cannot submit legally enforceable FOIA Requests to public bodies on behalf of clients. Our legislature no longer imposes conditions or governs the practice of law in this State. As the Note to the 1986 Amendment of Rule 11(a), SCRCP, explains, "[t]he requirement that an attorney of record must be a resident or maintain an office in the State is deleted. The conditions under which a person may appear of record are more properly within the exclusive power of the Supreme Court to govern the admission to practice, rather than a matter of trial court procedure."

Appellant respectfully submits that the circuit court erred by finding that Appellant lacked statutory standing to proceed with this case pursuant to FOIA, 30-40-100(A), and requests that this Court reverse the circuit court's October 17, 2023, Order.

2. There was no basis for a non-jury trial on August 27, 2024, or other grounds that support the circuit court's Dismissal for Failure to Prosecute

As discussed above, this case should not have been set for a non-jury trial on August 27, 2024, because (*i*) the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds, and (*ii*) no ruling on the pending August 15, 2023, Motion to Clarify/Reconsider had been entered. Moreover, as discussed above at Section IV(B) (pages 22-

26), a scheduling order to conclude this case within six months of initial filing (*i.e.*, by January 24, 2024), in accord with the mandatory legal requirements of FOIA, Section 30-40-100(A), should have been entered. This case should have been decided on an expediated basis, like a motion for a temporary injunction, as was intended and unambiguously mandated by our General Assembly. Appellant respectfully submits that the circuit court erred by considering/granting KCSC's August 27, 2024, oral Motion to Dismiss for Failure to Prosecute, and requests that this Court reverse the circuit court's October 17, 2023, Order.

Undersigned counsel intended to contact the court, and opposing counsel, prior to the August 27, 2024, hearing date to address the above-noted legal inconsistencies, and thereby avoid the burden, travel, and associated expenses of holding an unnecessary in-person hearing. This is consistent with the response by Judge Newman's law clerk on October 27, 2023, stating that undersigned counsel "will receive a ruling on your Motion in the near future" with respect to the Motion to Clarify/Reconsider denial of the Motion for Equitable Relief on lack-of-FOIA-requestor-standing grounds. (R. pp. 266-267). Unfortunately, due to a docketing error/mistake, undersigned counsel neglected to contact the court and opposing counsel prior to the scheduled August 27, 2024, hearing. After realizing this mistake, undersigned counsel promptly contacted the court and opposing counsel regarding the matter on August 30, 2024. (R. pp. 263-64 at ¶¶11-13; 266).

From the outset, Appellant has diligently petitioned and implored the circuit court to follow the statutory procedural protections and deadlines explicitly provided to all FOIA litigants by FOIA, Section 30-4-100(A) to resolve this case. This case was fully briefed and ready for determination on the merits of Count I at the time of the August 8, 2023, initial hearing, and all

further delays were ultimately caused by failure of the judicial system to meet the statutory obligations mandated by FOIA, Section 30-4-100(A).

Appellant respectfully submits that the circuit court erred by considering/granting KCSC's oral Motion to Dismiss for Failure to Prosecute, and requests that this Court reverse the circuit court's October 17, 2023, Order.

V. CONCLUSION

For the reasons set forth herein, the appealed orders of the circuit court should be reversed and appropriate relief entered on Appellant's Motion for Equitable Relief.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge

Appellate Case No. 2024-002127

Christine Jernigan,…….……..……..……..…..……Appellant,

v.

Kershaw County South Carolina,…….…….……..…..……..Respondent.

CERTIFICATE OF SERVICE

I hereby certify that the Final Brief of Appellant is being served by email to counsel for Respondent as follows: David Morrison, Esq., at david@gslawsc.com, and Andrew Lindemann, Esq., at andrew@ldlawsc.com.

Respectfully submitted,

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October 6, 2025