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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 REPLY BRIEF OF APPELLANT

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Appellant Christine Jernigan ("Appellant" or "Mrs. Jernigan"), pursuant to Rule 208(a)(3), SCACR, respectfully submits this Reply to the Brief filed by Respondent Kershaw County South Carolina ("Respondent" or "KCSC").

BACKGROUND/SUMMARY ON REPLY

The Issues on Appeal in this case are straight-forward matters involving the interpretation and application of statutes, rules, and/or precedent to facts of record; *i.e.*, questions of law. (*See* App. Br. 15). Count I of the Complaint seeks declaratory and associated injunctive/equitable relief (*i*) finding that the written determination (copied below) 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*) requiring disclosure of the public records requested; *e.g.*, the long-promised June 29, 2022, E-911/Dispatch audio recordings. (App. Br. 1-2; R. pp. 14-15, 17).

> 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.

(App. Br. 6; R. p. 59).

Count II of the Complaint, pursuant to FOIA and the Public Records Act, seeks declaratory/equitable relief with respect to records of the FOIA Request that have subsequently been destroyed or otherwise rendered unavailable by KCSC. (App. Br. 2; R. pp. 16-17). In this respect, Count II is a contingent or alternative claim that becomes moot if none of the requested public records were, in fact, subsequently destroyed by KCSC. *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).

This case was filed pursuant to FOIA, Section 30-4-100(A) (copied below, emphasis added), which includes: (*i*) a specific statutory standing provision, and also imposes (*ii*) expedited resolution requirements and (*iii*) substantive legal standards for resolving this and all other FOIA actions:

> [*i*] 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. [*ii*] Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge [CAJ] 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. [*iii*] 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.

Our 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* App. Br. 16-17). Appellant is a life-long resident of this State and, accordingly, satisfies Section 30-4-100(A)'s "citizen of the State" statutory standing requirement. (App. Br. 10-11, 16-17 citing R. pp. 2 at ¶1; 55 at ¶4; 125 at ¶4; 263 at ¶5).

In accord with Count I of the Complaint, and pursuant to the procedural and substantive legal requirements of FOIA, Section 30-4-100(A), Appellant filed a July 28, 2023, Motion requesting: (*i*) the required ten-day initial hearing; (*ii*) declaratory/equitable relief ordering KCSC to fully respond to and disclose the records of the FOIA Request as required by FOIA, Section 30-4-30(c); and (*iii*) a scheduling order to conclude all proceedings in this case within six months of filing (the "Motion for Equitable Relief"). (*See* App. Br. 9-10, 22-26; R. pp. 102-113). Appellant's Motion for Equitable Relief was not opposed on the merits by any responsive briefing from KCSC.

If the circuit court had granted Appellant's Motion for Equitable Relief following the August 8, 2023, initial hearing, and KCSC had subsequently disclosed the unlawfully withheld public records, the only remaining matter in this case would have been resolving the Complaint's request for an order awarding Appellant costs/expenses, including reasonable attorney fees, incurred in this action pursuant to FOIA, Section 30-4-100(B). (*See* App. Br. 2; R. pp. 14-15, 17). Instead, at the initial hearing on August 8, 2023, Judge Newman, CAJ, issued rulings from the bench denying Appellant's July 28, 2023, Motion for Equitable Relief on grounds that Appellant, although a resident of this State, lacks standing to proceed with this case because she was not listed as "requester" on the FOIA Request; *i.e.*, lack-of-FOIA-requester standing. (App. Br. 10-11; R. p. 219, lines 3-10). The August 8, 2023, Form 4 Order states: "Following a hearing on August 8, 2023, Plaintiffs '…Motion for…Equitable Relief…' (filed on 7/28/23) is DENIED." (App. Br. 11; R. p. 144).

The August 8, 2023, Form 4 Order is an appealable order, at least, pursuant to S.C. Code Ann. § 14- 3-330(4), because the Order is "[a]n interlocutory order or decree in a court of common pleas … refusing an injunction." Moreover, given that the August 8, 2023, Form 4

Order ended the present case on lack-of-FOIA-requester standing grounds, the Order involves the merits and affects substantial rights in this special-proceeding pursuant to Sections 14-3-330(1)-(3). Appellant timely-filed an August 15, 2023, Motion and September 11, 2023, Memorandum 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"). (App. Br. 13; R. pp. 147-61, 169-98).

Appellant followed up with the circuit court via a Letter dated September 15, 2023, and a subsequent email dated October 24, 2023, regarding the pending August 15, 2023, Motion to Clarify/Reconsider. (App. Br. 13; R. pp. 233-35, 266-67). On October 27, 2023, Judge Newman's law clerk responded by stating that Appellant "will receive a ruling on your Motion [to Clarify/Reconsider] in the near future." (R. pp. 266-67). Instead of issuing a ruling "in the near future" affirming, or reconsidering, its August 8, 2023, Order finding that Appellant lacked statutory standing to proceed with this case, the circuit court scheduled this case for a non-jury trial dated August 27, 2024. There was no basis for the circuit court to schedule or conduct any non-jury trial on August 27, 2024, because the court had determined approximately one-year earlier that Appellant could not proceed with this case due to lack-of-FOIA-requester standing.

On October 17, 2024, the circuit court entered an Order denying Appellant's August 15, 2023, Motion to Clarify/Reconsider, and granting KCSC's August 27, 2024, oral Motion for Judgment on the Pleadings, on grounds that Appellant, although a resident of this State, nevertheless lacks statutory standing to proceed with this case under FOIA, Section 30-4-100(A), because she was not listed as "requester" on the FOIA Request; i.e., lack-of-FOIA-requester

standing. (App. Br. 14; R. pp. 243-46). Thus, the October 17, 2024, Order affirmed the August 8, 2023, Form 4 Order's denial of the Motion for Equitable Relief on lack-of-FOIA-requester standing grounds. The October 17, 2024, Order states in part: "The grounds for this request [i.e., KCSC's Motion for Judgment on the Pleadings] have already been presented to and ruled upon by the Court in connection with a prior motion. Plaintiff has filed a [August 15, 2023,] motion to reconsider that prior ruling that is still pending. In accordance with the ruling below, that motion to reconsider is denied." (App. Br. 14; R. p. 244); *but see Freemantle*, 398 S.C. at 194-95, 728 S.E.2d at 44-45 (holding that "Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required.").

Despite affirming the August 8, 2023, Form 4 Order's determination that Appellant, who is a life-long resident of this State, lacked statutory standing to proceed with this case under FOIA, Section 30-4-100(A), the October 17, 2024, Order also granted 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. (App. Br. 14; R. p. 243).

The Statement of the Case section of Appellant's Brief (App. Br. 14, emphasis added) includes, *inter alia*, the below undisputed facts and procedural history establishing appellate jurisdiction for this Court to hear this timely-filed appeal pursuant to Rules 203(b)(1) & 263(a), SCRAP:

> On October 28, 2024, Appellant <u>*timely-filed*</u> a Motion to Reconsider the October 17, 2024, Order pursuant to Rule 59(e), SCRCP (the "Rule 59(e) Motion to Reconsider"). (R. pp. 248-69). 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 <u>*timely-filed and served*</u> 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, [Written] Order, and (*iii*) the November 21, 2024, Form 4 Order. (*Id.*).

Rather than responding to Appellant's initial Brief on the first-extended 60-day deadline pursuant to Rule 208(a)(2), SCACR, Respondent instead filed a June 2, 2025, Motion to Dismiss this appeal arguing that Appellant's Monday, October 28, 2024, Rule 59(e) Motion to reconsider the circuit court's October 17, 2024, Written Order – which was indisputably "timely" pursuant to Rules 203(b)(1) & 263(a), SCACR – subsequently became "not timely filed," and therefore did not stay the time for appeal, due to alleged later-occurring procedural missteps or deficiencies. (R. p. 299 quoting R. p. 294). Rather than actually applying Rules 203(b)(1) & 263(a), SCACR, to the calendar – which clearly establish that Appellant's Monday, October 28, 2024, Rule 59(e) Motion was filed prior to expiration of Rule 203(b)(1)'s 10-day deadline – Respondent instead argued that "the law of this case ... holds that the Appellant's motion to reconsider was not timely." (R. p. 299 quoting R. p. 291). Specifically, because the November 21, 2024, Form 4 Order states that the "Motion to Reconsider (filed on [Monday] 10/28/24) is DENIED. The motion was not timely filed and is not meritorious," Respondent argued Appellant was required to thereafter file yet another Rule 59(e) motion to reconsider the November 21, 2024, Form 4 Order, and to specifically seek and obtain reversal of the November 21, 2024, Form 4 Order via this appeal in order for this Court to have appellate jurisdiction to hear this appeal. (R. p. 299 citing R. p. 292).

In sum, Respondent's June 2, 2025, Motion to Dismiss argued that this Court lacked appellate jurisdiction to hear the present appeal because Appellant is procedurally barred from obtaining reversal of the November 21, 2024, Form 4 Order denying Appellant's timely-filed Monday, October 28, 2024, Rule 59(e) Motion as "not timely filed and [] not meritorious." In other words, Respondent's Motion to Dismiss argued that this Court must ignore the actual facts and Rules 203(b)(1) & 263(a), SCACR, and instead find that it lacks appellate jurisdiction to

hear this appeal based on the circuit court's November 21, 2024, Form 4 Order denying Appellant's Rule 59(e) Motion as "not timely filed and [] not meritorious."

After considering Respondent's June 2, 2025, Motion to Dismiss (R. pp. 290-94), Appellant's June 12, 2025, Return in Opposition (R. pp. 297-311), and Respondent's June 17, 2025, Reply (R. pp. 312-14), this Court entered a July 8, 2025, Order denying the Motion to Dismiss (R. pp. 319-20). Specifically, the July 8, 2025, Order states in part: "After careful consideration of the filings, we deny the motion to dismiss. However, this order merely allows the appeal to proceed at this time and does not finally determine whether the underlying order is subject to immediate review." (R. p. 319).

ARGUMENT

Appellant's Brief identifies and argues the primary Issues on Appeal copied below (i.e., with the respective sub-issues omitted) pursuant to Rule 208(b)(1)(B), SCACR:

A. Whether the circuit court erred in denying Appellant's Motion for Equitable Relief (App. Br. 15)

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) (App. Br. 22)

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 (App. Br. 27)

In contrast to the primary Issues on Appeal presented and argued in Appellant's Brief (copied above), Respondent's Brief argues the issues copied below.

I. The South Carolina Court of Appeals lacks appellate jurisdiction over this appeal (Resp. Br. 6)

II. The trial court's denial of the Appellant's Motion for Equitable Relief is not appealable even after final judgment (Resp. Br. 10)

III. The trial court did not abuse its discretion in dismissing the Appellant's action based on her failure to prosecute when she failed to appear for the scheduled term of court and trial of the case (Resp. Br. 14)

IV. The trial court did not abuse its discretion in entertaining the Respondent's motion for judgment on the pleadings nor err in ruling that the Appellant lacks standing to bring this action (Resp. Br. 17).

As illustrated above, Respondent's Brief is divided into four parts or sections that do not directly correspond to and meet the issues that have been identified and argued on appeal by Appellant's Brief. Importantly, rather than attempting to meet and contest Appellant's Issue A on the merits (i.e., that the circuit court erred in denying Appellant's Motion for Equitable Relief), Respondent's Brief instead argues at Issue II that "[t]he trial court's denial of the Appellant's Motion for Equitable Relief is not appealable even after final judgment." Moreover, Respondent's Brief does not include a specific part or section contesting the merits of Appellant's Issue B, *i.e.*, that the circuit court erred by failing to follow the procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A). With respect to Appellant's Issue C, however, Respondent's Brief responds with arguments that are split, respectively, between Respondent's Issues IV and III.

This Court should reject the arguments of Respondent Brief. As an initial matter, with respect to Respondent's Issue I, this Court clearly possesses appellate jurisdiction to hear this timely-filed appeal pursuant to the requirements of Rules 203(b)(1) & 263(a), SCRAP. This Court should reject Respondent's efforts to relitigate its previously-denied Motion to Dismiss for alleged lack of appellate jurisdiction. (*See* R. pp. 319-20).

Second, this Court should reject the arguments of Respondent's Issue II contending that this Court cannot consider the circuit court's denial of Appellant's July 28, 2023, Motion for

Equitable Relief on appeal because the August 8, 2023, Form 4 Order denying the Motion is allegedly not appealable. In this respect, the August 8, 2023, Form 4 Order is an appealable order, at least, pursuant to S.C. Code Ann. § 14-3-330(4) ("An interlocutory order or decree in a court of common pleas … refusing an injunction."). Moreover, the August 8, 2023, Form 4 Order involves the merits and affects substantial rights in this special-proceeding, pursuant to Sections 14-3-330(1)-(3), because the Order not only refused the requested injunctive relief, it effectively ended the present case on lack-of-FOIA-requester standing grounds.

Lastly, this Court should reject the respective arguments of Respondent's Issues IV and III for the reasons previously set forth in Appellant's Brief at Issues B and C, and herein below. (*See* App. Br. 22-31). First, in attempting to support the October 17, 2024, Order granting Judgement on the Pleadings for lack-of-FOIA-requester standing at Issue IV, Respondent is arguing against controlling precedent. *See Freemantle*, 398 S.C. at 194-95, 728 S.E.2d at 44-45 (holding that "Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required."). Second, with respect to Respondent's Issue III, this case is governed by the requirements of FOIA, Section 30-4-100(A). Rather than following Section 30-4-100(A), the circuit court erred by setting this case for trial and granting Respondent's Motion to Dismiss for Failure to Prosecute after the August 8, 2023, Form 4 Order ended this case on lack-of-FOIA-requester standing grounds over a year earlier.

I. This Court has appellate jurisdiction to hear this appeal pursuant to Rules 203(b)(1) & 263(a), SCACR

Applying Rules 203(b)(1) & 263(a), SCACR, to the calendar establishes that Appellant's Monday, October 28, 2024, Rule 59(e) Motion to reconsider the circuit court's October 17, 2024, Written Order was filed prior to expiration of Rule 203(b)(1)'s 10-day deadline. Accordingly, Appellant's December 16, 2024, Notice of Appeal was timely filed/served within 30 days of the

November 21, 2024, Form 4 Order denying the Rule 59(e) Motion pursuant to Rules 203(b)(1) & 263(a), SCACR. This Court clearly has appellate jurisdiction to hear the present timely-filed appeal.

Even so, as discussed above at pages 6-7, rather than submitting its initial/response Brief on the first-extended 60-day deadline, Respondent chose to instead file a Motion to Dismiss this appeal on June 2, 2025, which stayed/delayed all pending deadlines in this appeal pursuant to Rule 240(b), SCACR. (*See* R. pp. 290-94). The allegations contained in Respondent's Motion to Dismiss were not supported by affidavit or other documents as required pursuant to Rule 240(c)(3), SCACR. (R. p. 301 quoting R. pp. 290-91). This Court denied Respondent's Motion to Dismiss via Order dated July 8, 2025, and the Order did not invite or request further briefing on the matter. (R. p. 319 ("After careful consideration of the filings, we deny the motion to dismiss.")). In total, over four months elapsed between the filing of Appellant's April 2, 2025 initial Brief and the filing of Respondent's initial Brief on August 7, 2025.

Respondent had an opportunity to fully brief the arguments of its Motion to Dismiss, and to file a Reply attempting to refute the arguments of Appellant's Return in Opposition. (*See* R. pp. 290-94, 312-14). Respondent's Brief at Issue I repeats and supplements the prior arguments of its Motion to Dismiss. (*Compare* Resp. Br. 6-9 *with* R. pp. 290-94). Respondent's Brief, at footnote two, includes an argument in reply to Appellant's Return in Opposition which was not provided in Respondent's Reply Brief filed in support of the Motion to Dismiss. (*Compare* Resp. Br. 7, n.2 *with* R. pp. 312-314). This Court should reject Respondent's efforts to supplement and relitigate its previously-denied Motion to Dismiss for alleged lack of appellate jurisdiction.

Appellant respectfully incorporates by reference the arguments of Appellant's 12-page June 12, 2025, Return in Opposition to the Motion to Dismiss, which are also summarized herein below. (R. pp. 297-311). Importantly, all of Respondent's prior briefing on this matter ignore our Supreme Court's holding that "'[t]imely' is a temporal term," and as used in Rule 203(b)(1), SCACR, "it means *only* that the post-trial motion – in this case a Rule 59(e) motion – was served … not later than ten days from the date of receipt of written notice of the entry of the order the merits of which the [post-trial] motion purports to address." ((R. p. 304 quoting *Swing v. Swing*, 445 S.C. 340, 346, 914 S.E.2d 158 (2025) (emphasis added, internal fn omitted)).

Respondent's Brief at page 7, footnote 2, attempts to address certain arguments of Appellant's June 12, 2025, Return as follows:

> In response to the earlier filed Motion to Dismiss Appeal, the Appellant attempted to challenge the trial court's explicit ruling that her motion to reconsider 'was not timely filed.' However, it is too late for her to challenge that ruling at this stage of the appeal, where the Appellant both failed to appeal from that ruling in her Opening Brief and failed to seek reconsideration from the trial court prior to even filing her appeal. Notably, the Appellant did not dispute that she committed those very errors, but instead disputes their impact on this Court's appellate jurisdiction. The Appellant referred to those errors as 'alleged procedural missteps or deficiencies which do not affect this Court's appellate jurisdiction.' She is incorrect in that regard.

Respondent's "law of the case" arguments are contrary to the holding in *Swing*, and the fact that this Court determines its own jurisdiction based on the Appellate Rules. *See Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 810 S.E.2d 856, 858, 422 S.C. 211, 215 (2018) (holding that "the South Carolina Appellate Court Rules control" with respect to determining whether an appeal was timely for purposes of establishing appellate jurisdiction); (R. p. 305). As our Supreme Court explained in *Swing*, timeliness is a temporal term, and this Court either had, or did not have, appellate jurisdiction to hear this appeal at the time it was filed pursuant to Rules 203(b)(1) & 263(a), SCACR.

Respondent's purported jurisdictional arguments are, indeed, "alleged procedural missteps or deficiencies which do not affect this Court's appellate jurisdiction pursuant to Rules 203(b)(1) & 263(a), SCACR." (R. pp. 306-07).

As set forth in Appellant's Return in Opposition, Respondent's arguments concern secondary/remaining issues, or purported other grounds to affirm appearing in the Record (*see* Rule 220(c), SCACR), which this Court is not required to address. (R. pp. 307-10). Once this Court reverses an erroneous underlying order dismissing an action, alleged errors in the order denying the appellant's Rule 59(e) motion to reconsider the reversed underlying order become irrelevant. For instance, in *Osmundson v. School District 5*, the appellant had also raised a secondary or remaining issue on appeal arguing that the circuit court erred in denying his Rule 59(e) motion to reconsider on procedural grounds; i.e., his failure to provide a copy of the motion to the court within ten days of filing pursuant to Rule 59(g), SCRCP. 443 S.C. 610, 905 S.E.2d 418, 421 (Ct. App. 2024). The *Osmundson* Court held that, [b]ecause we reverse and remand based on the circuit court's erroneous dismissal of the action, we need not address this argument." 905 S.E.2d at 421 (citations omitted). After reversing the circuit court's underlying order dismissing the action, the alleged errors in the order denying the appellant's Rule 59(e) motion to reconsider the reversed underlying order became irrelevant. *Id.*; (R. pp. 309-10).

For the reasons set forth herein, and in Appellant's Return in Opposition (R. pp. 297-311), this Court clearly has appellate jurisdiction to hear the present timely-filed appeal pursuant to Rules 203(b)(1) & 263(a), SCACR. Appellant respectfully requests that this Court reject the

arguments of Respondent's Issue I contending that this Court lacks appellate jurisdiction to hear the present appeal.

II. The circuit court's August 8, 2023, Order denying Appellant's July 28, 2023, Motion for Equitable Relief is an appealable Order that is properly before this Court pursuant to S.C. Code Ann. §§ 14-3-330(1)-(4)

Respondent's Brief does not attempt to meet and contest the merits of Appellant's Issue A; i.e., that the circuit court erred in denying Appellant's July 28, 2023, Motion for Equitable Relief. (*See* App. Br. 15-21). Instead, Respondent's Issue II contends that "[t]he trial court's denial of the Appellant's Motion for Equitable Relief is not appealable even after final judgment." (Resp. Br. 10). This Court should reject the arguments of Respondent's Issue II because these arguments conflict with the actual facts and controlling law.

The Statement of the Case section of Respondent's Brief suggests that the merits of Appellant's Motion for Equitable Relief were not actually before the circuit court. (Resp. Br. 3-4).[1] The procedural history clearly establishes, however, that the merits of Appellant's July 28, 2023, Motion for Equitable Relief were fully supported via arguments and evidence which were not opposed by any responsive briefing from Respondent KCSC. (*See* R. pp. 100-14, 120-23). KCSC also did not request a hearing or seek declaratory relief pursuant to FOIA, Section 30-4-110(A), in this case. (*See* App. Br. 24-25).

[1] Indeed, because the Statement of the Case section of Appellant's Brief contains a "concise history of the proceedings, insofar as necessary to an understanding of" the merits of Appellant's Issue A – that the circuit court erred in denying Appellant's Motion for Equitable Relief – Respondent accuses Appellant of violating Rule 208(b)(1)(C), SCACR, by allegedly including unspecified "contested matters" in the Statement of the Case section of Appellant's Brief. (Resp. Br. 3). Appellant respectfully submits that the Statement of the Case section of Appellant's Brief complies with the requirements of Rule 208(b)(1)(C), SCACR, and that the Court should reject Respondent's unsupported accusations that Appellant's Brief violates the Appellate Rules.

The arguments of Respondent's Brief at Issue II depend upon the false premise that Appellant's Motion for Equitable Relief is actually "a motion for summary judgment" which is not appealable, even after final judgment. (Resp. Br. 11). In reality, Appellant's Motion and this case were filed pursuant to the mandatory procedural and substantive legal requirements of FOIA, Section 30-4-100(A) (copied below, emphasis added); i.e., "mode of trial" rights. (*See* App. Br. 22-26).

> Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge [CAJ] 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.

Senator Matthews explained that adding the above 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." (App. Br. 23-24). Pursuant to the plain and unambiguous language of FOIA, Section 30-4-100(A), the hearing court is required to (*i*) make a final ruling on the request for declaratory/injunctive relief at the initial hearing, or, if unable to do so, (*ii*) establish a scheduling order to conclude the case within six months of initial filing. Appellant's Motion for Equitable Relief was fully supported via arguments/evidence, and was squarely before the circuit court for resolution on the merits of the request for declaratory/injunctive relief pursuant to the requirements of FOIA, Section 30-4-100(A). (*See* R. pp. 100-14, 120-23).

The October 17, 2024, Order affirmed the August 8, 2023, Form 4 Order's denial of the Motion for Equitable Relief's request for declaratory/injunctive relief on grounds that Appellant,

who is a life-long resident of this State, lacked statutory standing to proceed with this case under FOIA, Section 30-4-100(A). Based upon the actual facts and controlling law, the August 8, 2023, Form 4 Order is an appealable order pursuant S.C. Code Ann. § 14-3-330(4), because the Order is "[a]n interlocutory order or decree in a court of common pleas … refusing an injunction."

Moreover, 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* App. Br. 12); 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 not only refused the requested injunctive relief pursuant to FOIA, Section 30-4-100(A), it denied Appellant's Motion for Equitable Relief on lack-of-FOIA-requester standing grounds, effectively ending the present case. Accordingly, the August 8, 2023, Form 4 Order also involves the merits and affects substantial rights in this special-proceeding pursuant to Sections 14-3-330(1)-(3).

This Court should reject the arguments of Respondent's Issue II because, based upon the actual facts and controlling law, the August 8, 2023, Order denying Appellant's July 28, 2023, Motion for Equitable Relief pursuant to FOIA, Section 30-4-100(A), is an appealable Order that is properly before this Court pursuant to S.C. Code Ann. §§ 14-3-330(1)-(4).

III. This Court should reject the arguments of Respondent's Issues IV and III for the reasons previously set forth in Appellant's Brief at Issues B and C, and herein

First, Respondent's Issue IV (Resp. Br. 17-19) argues against controlling precedent in *Freemantle* interpreting/applying FOIA, Section 30-4-100(A)'s statutory standing provision as

follows: "The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute. … Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required." 398 S.C. at 194-95, 728 S.E.2d at 44-45. As discussed above at page 2, Appellant is a life-long resident of this State and, accordingly, satisfies Section 30-4-100(A)'s "citizen of the State" statutory standing requirement. (App. Br. 10-11, 16-17 citing R. pp. 2 at ¶1; 55 at ¶4; 125 at ¶4; 263 at ¶5). Accordingly, the circuit court's grounds for denying the Motion for Equitable Relief and granting Judgement on the Pleadings – lack-of-FOIA-requester standing – are contrary to controlling precedent. (*See* App. Br. 16-17, 27-29).

Second, this Court should reject the arguments of Respondent's Issue III (Resp. Br. 14-17) because these arguments conflict with the requirements of FOIA, Section 30-4-100(A), and the actual facts. From the outset, Appellant diligently petitioned and implored the circuit court to follow the requirements of FOIA, Section 30-4-100(A), to resolve this case. (*See* App. Br. 9-10, 12-13). This case was fully briefed and ready for determination on the merits of the request for declaratory/injunctive relief (Count I) at the time of the August 8, 2023, initial hearing. (*See* R. pp. 14-15, 100-114, 120-123). The delays in this case were ultimately caused by failure of the judicial system to meet the statutory obligations mandated by FOIA, Section 30-4-100(A).

Respondent argues that "[p]rior precedent … support [] dismissal under similar circumstances where a plaintiff and his counsel failed to appear when a case was called to trial." (Resp. Br. 16 (citation omitted)). Yet, none of Respondent's cited cases were filed pursuant to the mandatory procedural and substantive legal requirements of FOIA, Section 30-4-100(A), or involve similar facts. 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. (*See* App. Br. 22-26). Appellant respectfully submits that the circuit court erred by failing to resolve this FOIA case in compliance with the requirements of FOIA, Section 30-4-100(A). (*Id.*).

Rather than resolving this FOIA case in compliance with the requirements of FOIA, Section 30-4-100(A), as legally required, the circuit court erred by setting this case for a non-jury trial on August 27, 2024, after the August 8, 2023, Form 4 Order effectively ended this case on lack-of-FOIA-requester standing grounds. (*See* App. Br. 27, 29-31). The October 17, 2024, Order whipsawed Appellant by affirming that she lacked statutory standing to proceed with this case under FOIA, Section 30-4-100(A), while, at the same time, finding that she failed to prosecute the same case she had been found to lack standing to proceed with over a year earlier. (*See* R. pp. 243-46). Upon the foregoing, this Court should reject the arguments of Respondent's Issue III.

CONCLUSION

For the reasons set forth in this Reply, and for the reasons set forth in Appellant's Brief, the August 8, 2023, and October 17, 2024, Orders should be reversed and appropriate relief entered.

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.

PROOF OF SERVICE

I hereby certify that the Final Reply Brief of Appellant is being served by email to Respondent's counsel 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