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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
Civil Action No. 2023-CP-28-00538

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

v.

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

NOTICE OF APPEAL

Appellant appeals the lower court's Orders: (1) entered on August 8, 2023, denying Appellant's Motion for Equitable Relief; (2) entered on October 17, 2024, dismissing the action with prejudice, and denying Appellant's Motion to Reconsider (8/8/23 Order); and (3) entered on November 21, 2024, denying Appellant's October 28, 2024, Motion to Reconsider (10/17/24 Order). Copies of these Orders are attached hereto. Appellant timely filed a Rule 59 Motion to Reconsider upon receiving notice of the October 17, 2024, Order, and received notice of the Order denying the Rule 59 Motion on November 21, 2024.

Respectfully submitted,

By: /s/Justin A. Jernigan
Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
7148 Stirrup Court, Weddington, NC 28104
Ph: 864-710-5029
Email: justin.a.jernigan@gmail.com

ATTORNEY FOR APPELLANT

December 16, 2024

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EXHIBIT A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Kershaw
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2800538

Christine Jernigan
PLAINTIFF(S)

Kershaw County South Carolina
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Following a hearing on August 8, 2023, Plaintiff's "...Motion for ... Equitable Relief..." (filed on 7/28/23) is DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/08/2023 .

Kershaw County South Carolina

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2023 Aug 08 11:59 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2023 Aug 08 11:59 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

ELECTRONICALLY FILED - 2023 Aug 08 11:59 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Kershaw Common Pleas

Case Caption: Christine Jernigan VS Kershaw County South Carolina

Case Number: 2023CP2800538

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

EXHIBIT B

ELECTRONICALLY FILED - 2024 Oct 17 3:27 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF KERSHAW	)	
Christine Jernigan,	)	C/A #: 23-CP-28-00538
	)	
Plaintiff,	)	
	)	**ORDER GRANTING MOTION TO DISMISS FOR FAILURE TO PROSECUTE AND GRANTING JUDGMENT ON THE PLEADINGS AND DISMISSING THIS CASE WITH PREJUDICE**
v.	)	
	)	
Kershaw County South Carolina,	)	
	)	
Defendant.	)	
_____	)	

This matter came before the court on Tuesday, August 27, 2024, for a non-jury trial term of court. Two cases appeared on the roster for trial. All parties were properly notified of the term of court.

Neither Plaintiff, Christine Jernigan, nor her counsel, Justin Jernigan appeared. The Defendant and their witnesses were present and ready to proceed to trial. Plaintiff had not communicated with the Court or with Defendant's counsel and had not requested a continuance.

At the call of the case, counsel for Kershaw County made two motions. Both motions were heard and granted. Counsel moved to dismiss the case for failure to prosecute. The Defendant was present with their witnesses and ready to proceed. Due to the absence of Plaintiff for a properly noticed non-jury trial term of court and the lack of communication from Plaintiff, that motion is granted. *See, McComas v. Ross*, 626 S.E.2d 902, (Ct.App. 2006). Normally, this motion would result in the case being dismissed without prejudice. If this were the only motion pending, that normal result would follow. However, the ruling on the motion for judgment on the pleadings, addressed below, dictates that this case must be dismissed with prejudice.

ELECTRONICALLY FILED - 2024 Oct 17 3:27 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Kershaw County also moved for judgment on the pleadings. This is a Freedom of Information enforcement action that is highly disputed. Christine Jernigan is the Plaintiff. Justin Jernigan represents her but is not a party to the action.

Plaintiff attached the Freedom of Information Act request to the complaint as Exhibit B. That request was originally served upon the Kershaw County Sheriff's Department. Subsequently, the same FOIA request was served upon Kershaw County by Justin Jernigan. The Court has examined the request. The request clearly indicates that the requestor is Justin Jernigan, not Christine Jernigan. Mr. Jernigan did not indicate that the request was made in a representative capacity.

Kershaw County moved for judgment on the pleadings on these grounds: (1) Christine Jernigan, plaintiff, never made a FOIA request and therefore had no FOIA request to enforce; (2) Justin Jernigan, who made the FOIA request, was not a party to this litigation and therefore could not enforce the FOIA request; (3) Even if he were a party, Justin Jernigan, who resides in North Carolina, cannot bring an enforcement action pursuant to S.C. Code Section 30-4-100. 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.

As to ground (1), the record clearly reflects that Christine Jernigan is the sole plaintiff. However, the record also reflects that the FOIA request she seeks to enforce was made by Justin Jernigan. Christine Jernigan did not make a FOIA request. Therefore, she has no FOIA request to enforce.

As to ground (2), Justin Jernigan is not a plaintiff in this case. Instead, he is counsel of record for Christine Jernigan. Christine Jernigan is the sole plaintiff. However, he is the

ELECTRONICALLY FILED - 2024 Oct 17 3:27 PM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

requestor on the FOIA request attached to the complaint and served upon Kershaw County. He cannot prosecute this case as a party to the litigation when he is not a party.

As to ground (3), even if Justin Jernigan were a party to this case, he cannot bring a FOIA enforcement action since he is not a citizen of the State of South Carolina. The court's file clearly shows that his address is in Weddington, N.C. The Freedom of Information Act specifically describes who can bring an enforcement action. While the act allows any person to make a FOIA request, enforcement is governed by Section 30-4-100 which states:

> (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….

A Freedom of Information Act with enforcement limited to state citizens is appropriate and lawful. The United States Supreme Court denied a challenge to Virginia's citizens-only FOIA statute. *See, McBurney v. Young*, 133 S.Ct. 1709, 569 U.S. 221 (2013). The reporter's summary of the opinion states in the syllabus:

> Virginia's FOIA exists to provide a mechanism for Virginia citizens to obtain an accounting from their public officials; noncitizens have no comparable need. Moreover, the distinction between citizens and noncitizens recognizes that citizens alone foot the bill for the fixed costs underlying recordkeeping in the Commonwealth.

McBurney, 569 S.Ct. 1709, 1711.

> The Court has repeatedly stated that the Constitution does not guarantee the existence of FOIA laws.

569 S.Ct. @ 1712.

> Insofar as there is a "market" for public documents in Virginia, it is a market for a product that the Commonwealth has created and of which the Commonwealth is the sole manufacturer. A State does not violate the dormant Commerce Clause when, having created the market through a state program, it "limits benefits generated by (that) state program to those who fund the state treasury and whom the State was created to serve.

569 S.Ct. @ 1712-1713.

The United States Supreme Court stated that a citizen-only FOIA enforcement provision "provides a service that is related to state citizenship." 569 S.Ct. @ 1713. South Carolina's FOIA does the same thing. Enforcement is limited to citizens of South Carolina. South Carolina citizens foot the bill for the infrastructure for the recordkeeping and are the recipients of state services. Since Justin Jernagin is not a resident of South Carolina, even if he were a plaintiff in this action, he cannot bring an enforcement action.

Consequently, Defendant's motion for judgment on the pleadings is granted on all grounds asserted. This case is dismissed with prejudice.

AND IT SO ORDERED.

_____
Honorable Jocelyn Newman

_____, 2024

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Kershaw Common Pleas

Case Caption: Christine Jernigan VS Kershaw County South Carolina

Case Number: 2023CP2800538

Type: Order/Dismissal

So Ordered

Jocelyn Newman

EXHIBIT C

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Kershaw
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2800538

Christine Jernigan
PLAINTIFF(S)

Kershaw County South Carolina
DEFENDANT(S)

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NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff's Motion to Reconsider (filed on 10/28/24) is DENIED. The motion was not timely filed and is not meritorious.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/21/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2024 Nov 21 11:41 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2024 Nov 21 11:41 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

ELECTRONICALLY FILED - 2024 Nov 21 11:41 AM - KERSHAW - COMMON PLEAS - CASE#2023CP2800538

Kershaw Common Pleas

Case Caption: Christine Jernigan VS Kershaw County South Carolina

Case Number: 2023CP2800538

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
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Jocelyn C. Newman, Circuit Court Judge
Civil Action No. 2023-CP-28-00538

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

v.

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

PROOF OF SERVICE

I hereby certify that the foregoing Notice of Appeal is being served by email to counsel for the Respondent David Morrison at david@dmorrison-law.com. A copy of the Notice of Electronic Filing for the notice of appeal filed with the clerk of the lower court is attached.

Respectfully submitted,

By: /s/Justin A. Jernigan
Justin A. Jernigan, Esq. (S.C. Bar No. 74954)
7148 Stirrup Court, Weddington, NC 28104
Ph: 864-710-5029
Email: justin.a.jernigan@gmail.com

ATTORNEY FOR APPELLANT

December 12, 2024



****** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2023CP2800538

Official File Stamp:	12-16-2024 05:07:16 PM
Court:	CIRCUIT COURT Common Pleas Kershaw
Case Caption:	Christine Jernigan VS Kershaw County South Carolina
Document(s) Submitted:	Appeal/Notice of Appeal to Court of Appeals - Exhibit/Filing of Exhibits - Exhibit/Filing of Exhibits - Exhibit/Filing of Exhibits
Filed by or on behalf of:	Justin A. Jernigan

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

David Leon Morrison for Kershaw County South Carolina
Cameron W. DeBoy for Kershaw County South Carolina
Justin A. Jernigan for Christine Jernigan

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means: