

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Hon. S. Jackson Kimball, III  
Special Circuit Court Judge

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Case No. 2014-001264

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Frank M. Adams

Appellant,

v.

The City of Tega Cay,  
City Manager, Dennis P.  
Piper, Municipal Clerk,  
Katie Poulsen

Respondent(s).

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[INITIAL] BRIEF OF APPELLANT

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**SC Court of Appeals**

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN RULING ON A POST TRIAL MOTION FOR SANCTIONS MORE THAN 10 DAYS AFTER THE ENTRY OF SUMMARY JUDGMENT?
2. DID THE DEFENDANT'S WRITTEN MOTION FOR SANCTIONS UNDER THE FRIVOLOUS PROCEEDINGS SANCTIONS ACT AND RULE 11 SCRPC VIOLATE PLAINTIFF'S U.S. AND/OR SOUTH CAROLINA CONSTITUTIONAL RIGHTS PERTAINING TO DOUBLE JEOPARDY?
3. DID THE TRIAL COURTS ORDER FOR RULE 11 SANCTIONS VIOLATE THE PLAINTIFF'S RIGHT TO A JURY TRIAL?
4. DID THE JUDGES ORDER FOR RULE 11 SANCTIONS 4 1/2 MONTHS AFTER HEARING AND 3 MONTHS AFTER ENTRY OF ORDER VIOLATE THE APPELLANT'S U.S. AND/OR SOUTH CAROLINA CONSTITUTIONAL RIGHTS TO A SPEEDY AND PUBLIC TRIAL?
5. DID THE TRIAL COURT ERR BY GRANTING RULE 11 SANCTIONS FOR DEFENDANT WHEN NO ORAL ARGUMENTS FOR RULE 11 SANCTIONS WERE MADE?
6. WAS THE APPELLANT'S COMPLAINT FRIVOLOUS?

## STATEMENT OF THE CASE

On August 8<sup>th</sup>, 2012 Frank M. Adams brought this action against the City of Tega Cay, City Manager Dennis Pieper, and Municipal Clerk, Katie Poulsen, pursuant to S.C. Code Ann. § 30-40-30, the South Carolina Freedom of Information Act (Complaint p.1).

A hearing for various motions came before the trial court on September 17<sup>th</sup>, 2013. An Order for Summary Judgment was granted for the City and the

Plaintiff's Complaint was dismissed with prejudice. The final Order was issued on November 5<sup>th</sup>, 2013 (see Order page 3).

The City filed its motion for Sanctions on February 7<sup>th</sup>, 2014 and the hearing was conducted on April 1<sup>st</sup>, 2014 (see Transcript of Proceedings, page 1).

The Court issued an Order, on May 14<sup>th</sup>, 2014, denying the FCPSA due to it's filing being beyond the ten day limit, but granting sanctions in the amount of \$15,000.00 under Rule 11 SCRPC (see Order pgs. 1-4).

1. THE TRIAL COURT HAD NO JURISDICTION TO RULE ON A POST TRIAL MOTION FOR SANCTIONS BEYOND TEN DAYS.

Defendant's motion for sanctions is for an order pursuant to the Frivolous Civil proceedings Act, S.C. Ann. § 15-36-10 ("FCPSA") and Rule 11 SCRPC (see Transcript page 44, line 20-24). This matter last came before this Court on September 17, 2013 for hearing on various motions, which resulted in a Motion For Summary Judgment for the City and a dismissal of the Plaintiff's Complaint with prejudice. The final order ending this case was issued on November 5<sup>th</sup>, 2013 ( see transcript page 46, line 23, through page 47).

The City filed its motion for Sanctions on February 7<sup>th</sup>, 2014- a full 4 ½ month's after the hearing, and 3 month's after the final order was issued. The general ten-day limitation for post-trial motions applies here , The South Carolina Court of Appeals addressed the timing of post-trial motions in Pitman v. Republic Leasing Co., 351 S.C. 429, 570 S.E.2d 187 (Ct. App. 2002). In that case, the defendant moved for sanctions two months after

summary judgment had been granted in his favor. The Court vacated the award of attorney's fees. It held that a trial court cannot entertain a motion for sanctions under the FCPSA where that motion was filed more than ten days after the judgment ( see Transcript page 47, line 5-19). Furthermore, South Carolina Supreme Court Opinion No. 27370 *Holmes v. East Cooper Community Hospital/Tenet Healthsystem Medical Inc.* stated the following: "Motions made pursuant to the FCPSA are post-trial motions." See S.C. Code Ann. 15-36-10 (1) (Supp. 2012) ("At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous") ( see Transcript, page 48, lines 6-19).

As such, a party has ten days after filing of a court order to file a motion pursuant to the FCPSA See *In re Beard*, 359 S.C. 351, 357, 597, S.E.2d. 835, 838 (Ct. App. 2004) (referring to motions made under the FCPSA as "post trial motions for sanctions" and finding that the general ten-day limitation for post-trial motions applies to motion made pursuant to the FCPSA); *Pitman v. Republic Leasing Co.*, 351 S.C. 429, 432-33, 570 S.E.2d. 187, 189-90 (Ct. App. 2002) ("Absent specific statutory language vesting the trial judge with continuing jurisdiction, we refuse to hold that a trial judge retains jurisdiction to consider a motion for sanctions beyond ten days after entry of judgment. Such an interpretation would run counter to our established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.")

*Rutland v. Holler, Dennis, Corbett, Ormond, & Garner (Law Firm* , 371 S.C. 91, 96, 637

S.E.2d. 316, 319 (Ct. App. 2006) (“[B]ecause a trial judge retains jurisdiction pursuant to Rule 59(e), SCRCF, to alter or amend a judgment within ten days of its issuance, a motion for sanctions would be timely if filed within ten days of judgment.” (alteration in original)) ( see Transcript: page 48, lines 20-25, Transcript, page 49, lines 1-18).

The “criteria for Rule 11 sanctions are essentially the same as those for sanctions under the FCPSA].” *The Father v. South Carolina Dep’t. of Soc. Servs.*, 345 S.C. 57,72,545 S.E.2d. 523, 531, (Ct. App. 2001) (see Transcript page 45, lines 14-18).

**2. THE RESPONDENT’S MOTION FOR SANCTIONS UNDER THE FCPSA AND RULE 11 ARE VIOLATIVE OF THE APPELLANT’S U.S. CONSTITUTIONAL AND SOUTH CAROLINA CONSTITUTIONAL RIGHT’S AS PERTAINING TO DOUBLE JEOPARDY.**

This motion, as presented, would result in double jeopardy and would violate the Plaintiff’s Constitutional rights under Amendment V to the US Constitution and Article 1, Section 12, of the South Carolina Constitution ( see Transcript, page 44, line 25,page 45, lines 1-14). Because the motion calls for sanctions under the FCPSA and Rule 11 (Transcript, page 45, lines 4-5).

The “criteria for Rule 11 sanctions are essentially the same as those for sanctions under the FCPSA].” *The Father v. South Carolina Dep’t. of Soc. Servs.*, 345 S.C. 57,72,545 S.E.2d. 523, 531, (Ct. App. 2001) (see Transcript page 45, lines 14-18). The City moved the Court for an order pursuant to the Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 (“FCPSA”) *and* Rule 11, SCRCF (Notice of and Motion For Sanctions, page 1). This use of the word “*and*” literally would, if granted, have resulted in double jeopardy to the Plaintiff/Appellant. The option of and/or was not pleaded to in the Motion.

3. THE TRIAL COURT'S RULING FOR RULE 11 SANCTIONS VIOLATED THE APPELLANTS RIGHT TO A JURY TRIAL UNDER THE U.S. AND SOUTH CAROLINA CONSTITUTION'S.

Furthermore, the plaintiff contends that sanctions against him would violate his right to a jury trial, his right to a speedy and public trial under both the U.S. Amendment VI, and VII, and South Carolina Article I, Section 14, Constitutions (Transcript, page 45, lines 20-24).

4. THE JUDGES ORDER FOR RULE 11 SANCTIONS 4 1/2 MONTHS AFTER HEARING AND 3 MONTHS AFTER ENTRY OF THE ORDER VIOLATED THE APPELLANT'S U.S. AND SOUTH CAROLINA CONSTITUTIONAL RIGHTS TO A SPEEDY AND PUBLIC TRIAL.

Furthermore, the plaintiff contends that sanctions against him would violate his right to a jury trial, his right to a speedy and public trial under both Amendment VI, U.S. and Article I, Section 14, and Section 9, South Carolina, Constitutions (Transcript, page 45, lines 20-24).

5. THE TRIAL COURT ERRED BY GRANTING RULE 11 SANCTIONS AGAINST APPELLANT WHEN THE RESPONDENT'S COUNSEL NEVER MADE ORAL ARGUMENT FOR RULE 11 SANCTIONS AT THE SANCTIONS MOTION HEARING.

Counsel for the Defense either *de facto* abandoned his argument for both FCPSA and Rule 11 in favor of FCPSA or *elected* to only argue for the FCPSA, thereby abandoning his motion for the Rule 11 sanctions.

6. THE APPELLANT'S CASE WAS NOT FRIVOLOUS.

The Plaintiff contends that the case had merit at the time of filing. To distill the argument down to its most basic form would be to contend that Appellant's SCFOIA

request was obviously never fulfilled because I still don't have a Miller/Blackwelder 100% annexation petition that shows the zoning as being *all B-2*. What the Appellant did receive from the City is a 100% annexation petition, for a quashed annexation ordinance that shows the zoning to be B-2 and R-40, and which lacks the signature of Cheryl Blackwelder (see Transcript, page 37, lines 13-22)(see Response To Allegations Contained in Defendant's Motion for Sanctions Pursuant to the Frivolous Civil Proceedings Sanctions Act, page 1, section 2, page 2, sections 2-5)(also see Complaint, page 2, section 6, page 3, sections 6-7) .

The SC Legislative code, Annotated, regarding FOIA states the following:

This chapter shall be known and cited as the "Freedom of Information Act".

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter 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 to the persons seeking access to public documents or meetings ( Transcript, page 37, lines 23-25, page 38, lines 1-13).

**SECTION 30-4-20. Definitions.**

(b) "Person" includes any individual, corporation, partnership, firm, organization or association.

**SECTION 30-4-110. Penalties.**

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense (Transcript, page 38, lines 16-25, page 39, lines 1-6).

Referencing section (b) the definition of “person” and S.C. Code Ann. § 30-4-110 above, “Person” is specifically referenced in the Legislative Code. “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). “[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute’s operation.” *Hodges v. Anderson County Sheriff’s Office*, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). Courts will reject an interpretation of a statute “when such an interpretation leads to an absurd result that could not have been intended by the legislature.” *Lancaster County Bar Ass’n v. S.C. Comm’n on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) (Transcript, page 40, lines 9-25, page 41, line 1).

Furthermore, our Court of Appeals has held that the plain language of § 30-4-20(a) encompasses the office of sheriff and the sheriff’s department. *See Burton v. York County*

*Sheriff's Dept.*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004). The sheriff is a "person" and an elected official whose compensation is paid by the taxpayers. The FOIA request made on January 25<sup>th</sup>, 2012 was made to City Manager Dennis Pieper and the denial was made by Municipal Clerk Katie Poulsen (Transcript page 41, lines 2-16).

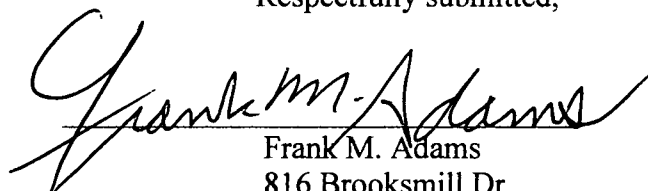
There is currently another SCFOIA lawsuit under appeal to the South Carolina Supreme Court, *Lambries v. Saluda County Council*, 728 S.E. 2d. 488 (2012) which also lists the individual members of the Council, by name, as individuals (Transcript, page 43, lines 1-7).

CONCLUSION

For The reasons stated above, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

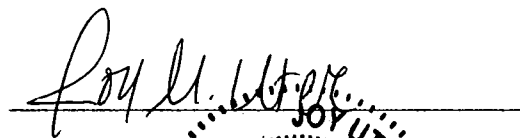
November 5<sup>th</sup>, 2014



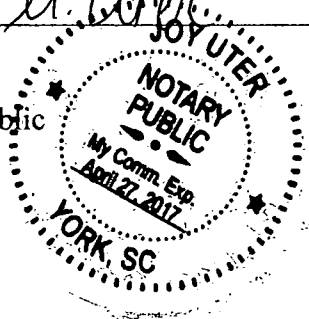
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SWORN TO and subscribed before me this

5<sup>th</sup> day of November 2014



Notary Public



Commission Expires April 27, 2017

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