

64930

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JUL 20 2012
SC Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Circuit Court Judge

Case No. 2011-CP-01-242

Danny Hozey and Terry
Richey,

Appellants,

v.

Abbeville County School
Board,

Respondent.

MOTION TO DISMISS APPEAL


The Respondent, Abbeville County School Board, moves to dismiss this appeal on the grounds that the Notice of Appeal was not properly and timely served upon the Respondent pursuant to Rule 203(b), South Carolina Rules of Civil Procedure, and this Court, therefore, lacks jurisdiction to consider the appeal. The Notice of Appeal was untimely because (1) Appellants' Motion for Reconsideration of the underlying Judgment was not filed within ten (10) days of written notice of entry of the Judgment on February 27, 2012 and thus did not stay the time for appeal; (2) Appellants' Motion for Reconsideration failed to state with particularity the grounds upon which the Motion was based or the specific relief sought and, therefore, was insufficient and did not stay the time for appeal; and (3) even if the time for appeal was stayed by the Motion for

Reconsideration, Appellants' Notice of Appeal was not properly served on counsel for Respondent within thirty (30) days after receipt of written notice of entry of the Order denying the Motion for Reconsideration.

This Motion to Dismiss is supported by a Memorandum of Law in Support of Respondent's Motion to Dismiss Appeal and the Affidavit of Laura Callaway Hart, filed contemporaneously with this Motion, and such other and further law that may be presented to the Court.

Respectfully submitted,

July 20, 2012


Laura Callaway Hart (S.C. Bar # 2766)
DUFF, WHITE & TURNER, LLC
P. O. Box 1486
Columbia, South Carolina 29202
(803) 790-0603
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Circuit Court Judge

Case No. 2011-CP-01-242

Danny Hozey and Terry
Richey,

Appellants,

v.

Abbeville County School
Board,

Respondent.

AFFIDAVIT OF LAURA CALLAWAY HART

Laura Callaway Hart, being first duly sworn, does depose and say the following:

1. I am one of the attorneys representing the Respondent, Abbeville County School Board, in this case. I submit this Affidavit in support of the Motion to Dismiss Appeal filed by the Respondent.
2. The Circuit Court entered a form Judgment in a Civil Case in this matter on February 27, 2012 in which it granted the Respondent's Motion for Summary Judgment. A copy of the Judgment is attached hereto as Exhibit A.
3. The Circuit Court issued a more formal Order granting the Respondent's Motion for Summary Judgment and dismissing this case on March 2, 2012. The Order

was filed in the Court of Common Pleas on March 5, 2012. A copy of the Order is attached hereto as Exhibit B.

4. Appellants filed a Motion for Reconsideration of the judgment on March 16, 2012. Appellants stated in their Motion for Reconsideration that they received the Order (which is attached as Exhibit B) on March 6, 2012. A copy of Appellants' Motion for Reconsideration is attached hereto as Exhibit C.

5. Appellants did not file a Memorandum of Law in support of their Motion for Reconsideration.

6. The Circuit Court did not hear oral arguments on the Appellants' Motion for Reconsideration.

7. The Circuit Court entered a form Judgment in a Civil Case denying Appellants' Motion for Reconsideration on April 25, 2012. A copy of this Judgment in a Civil Case is attached hereto as Exhibit D.

8. Appellants state in their Notice of Appeal that they received the Judgment in a Civil Case denying their Motion for Reconsideration on April 26, 2012.

9. As counsel for the Respondent, I received the Notice of Appeal and two "Proofs of Service" from Appellants in an envelope bearing a postmark of May 30, 2012. I received these documents on May 31, 2012 when they were delivered to my correct address by regular mail. Copies of the envelope and all enclosures (double-sided) are attached hereto as Exhibit E.

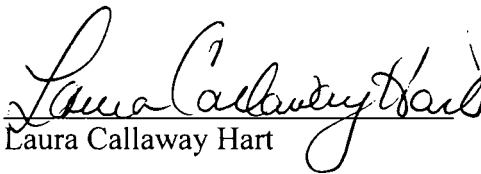
10. The Notice of Appeal apparently mailed to me on May 30, 2012 bore an incorrect address and telephone number for me as counsel for the Respondent. The address for me that is shown on the Notice of Appeal is that of Nelson, Mullins, Riley &

Scarborough, the law firm where I formerly practiced law. I left Nelson, Mullins, Riley & Scarborough in November, 2008 and have practiced at the law firm of Duff, White & Turner at its current address since January, 2009. All of the pleadings and correspondence in this case reference my current law firm and address; none show the Nelson, Mullins, Riley & Scarborough name or address. The telephone number shown for me on the Notice of Appeal has never been assigned to me at any personal or business address.

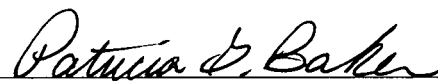
11. I have not been served with the Notice of Appeal at any time other than as described in Paragraphs 9 and 10, above. I have never received a corrected Notice of Appeal.

FURTHER AFFIANT SAYETH NOT.

Respectfully submitted,


Laura Callaway Hart

SWORN TO BEFORE ME THIS 20th
DAY OF July, 2012.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2/22/17

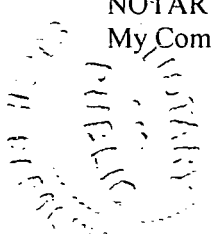


Exhibit A

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-01-242

HOZEY, ET AL.

ABBEVILLE COUNTY SCHOOL BOARD

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Attorney for Plaintiff Defendant Self-Represented Litigant

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), SCRPC; Rule 4(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other Rule 56.
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 2012 FEB 27 PM 4 20
 EMILY MCMAHAN
 CLERK OF COURT

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: Defendant's motion to dismiss pursuant to 12(b)(6) is denied. Defendant's motion for summary judgment is granted. Upon review of the pleadings and affidavits, I find that, to the extent Plaintiffs seek redress under FOIA, this cause of action is barred by the statute of limitations. Furthermore, the central issue in question, namely, the closing of Calhoun Falls High School, is properly a legislative question, and this court is hesitant to substitute its judgment for that of the school board. See *Sloan v. Greenville County*, 356 S.C. 531 (S.C. App. 2003). Finally, Plaintiffs lack standing to challenge any fees supposedly paid by parents of charter school children in that they are not parents of any such children. Defendant's request for fees is denied due to the fact that, until recently, one of the Plaintiffs did have *de facto* custody of children who would have potentially enrolled in the charter school, thereby granting that Plaintiff standing to bring a challenge had the children not relocated. Attorneys for the Defendant shall prepare a formal, proposed order detailing this court's findings.

Order Information

This order ends does not end the case.

Additional Information for the Clerk : _____

TRUE COPY
 BY *[Signature]*
 ABBEVILLE COUNTY CLERK OF COURT

Complete if judgment requires payment of a sum of money or affects title to real or personal property		Complete if judgment requires payment of a sum of money or affects title to real or personal property	
JUDGMENT AGAINST PLAINTIFF		JUDGMENT AGAINST DEFENDANT	
Judgment Amount	\$ _____	Judgment Amount	\$ _____
Taxable Costs	\$ _____	Taxable Costs	\$ _____
Attorney's Fees	\$ _____	Attorney's Fees	\$ _____
Interest	\$ _____	Interest	\$ _____
Other	\$ _____	Other	\$ _____
Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____

If applicable, describe the property, including tax map information and address, referenced in the order. 7

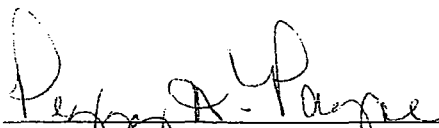
STATE OF SOUTH CAROLINA,)
) IN THE COURT OF COMMON PLEAS.
COUNTY OF ABBEVILLE.)

Danny Hozey and Terry Richey,)
)
Plaintiffs,)
)
v.) CERTIFICATE OF SERVICE
)
Abbeville County School Board,) 11-CP-01-242
)
Defendants.)

The undersigned, an employee of the Office of the Clerk of Court for Abbeville County, does hereby certify that service of Order in the above matter dated February 24, 2012, and filed February 27, 2012, was made upon the following persons by placing same in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 27th day of February, 2012:

C. Lance Sheek, Esq.
P. O. Box 49175
Greenwood, SC 29648

Laura Callaway Hart, Esq. ✓
Duff White & Turner, LLC
P. O. Box 1486
Columbia, SC 29202



Peggy A. Payne, Common Pleas Clerk

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

Danny Hozey, and Terry Richey,
Plaintiffs,


v.

Abbeville County School Board,
Defendant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

C.A. No. 2011-CP-01-242

ORDER

TRUE COPY
BY 
ABBEVILLE COUNTY CLERK OF COURT

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2012 MAR 5 AM 9 35
EMILY Y MCMAHAM
CLERK OF COURT

THIS MATTER ORIGNIALLY CAME BEFORE THE COURT on January 10, 2012 on Defendant's Motion to Dismiss, or, alternatively, Motion for Summary Judgment. Plaintiffs were represented by C. Lance Sheek. Defendant was represented by Laura Hart and David Duff. The Court issued a form 4 order on February 24, 2012; this order shall constitute the final order. The Court finds as follows:

Plaintiffs, Danny Hozey and Terry Richey, filed this action as citizens and residents of Abbeville County against Abbeville County School Board (hereinafter "the Defendant"). Plaintiffs see an order from this Court overturning actions by the Defendant on the grounds that the Defendant allegedly acted "without following proper procedure or policy." Plaintiffs claim that because of these alleged procedural deficiencies, the vote by the Defendant in December 2007 to close Calhoun Falls High School should be declared null and void and rescinded. Plaintiffs also claim that the fees charged by the Abbeville County School District (hereinafter "the District") for students of Calhoun Falls Charter School to attend the Abbeville County Career Center, which is operated by the District, are unlawful, apparently because the decision to charge such fees also was made "in violation of proper policy and procedure." Plaintiffs request



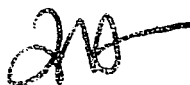
that this Court issue an order directing the Defendant to “place the Calhoun Falls High School in operation” and prohibiting the enforcement of actions by the Defendant which Plaintiffs allege were unlawful, specifically the charging of fees for the participation of the Charter School students in programs provided by the District.

In response, the Defendant filed a Motion to Dismiss or, Alternatively, for Summary Judgment; it subsequently filed an Amended Motion, in which it added a request for costs and attorney’s fees pursuant to the S.C. Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10, and/or Rule 11, SCRCF. The Defendant seeks an order, pursuant to Rule 12(b)(6), dismissing the Complaint on the grounds of lack of standing or failure to state a cause of action. Alternatively, the Defendant requests that the Court grant summary judgment in its favor, pursuant to Rule 56, on the additional grounds of untimeliness under the Freedom of Information Act (“FOIA”) statute of limitations, laches, and equitable estoppel.

The Court has carefully considered the testimony, exhibits, and arguments of the parties. For the reasons discussed below, the Court denies the Defendant’s Motion to Dismiss, grants the Defendant’s Motion for Summary Judgment on the grounds of timeliness and standing, and denies the Defendant’s request for costs and attorneys’ fees.

FACTUAL BACKGROUND

The Defendant voted to close, and did close, Calhoun Falls High School and now charges fees for students of Calhoun Falls Charter School who enroll in classes at Abbeville County Career Center. Plaintiffs allege that these actions were taken “without following proper procedure or policy,” specifically referring to discussing items in executive session that were closed to the public and to failing to provide notice to the public of its meetings. Complaint at ¶ 9. Neither Plaintiff is the parent or custodian of a child enrolled in the Charter School or in the



))

schools of Abbeville County School District. However, Plaintiff Danny Hozey asserts that, until recently, he had *de facto* custody of children who potentially would have enrolled in Calhoun Falls High School had it not been closed.

In the Affidavits of Dr. Ivan Randolph, Superintendent of Abbeville County School District, which Defendant filed in support of its Motion, the Defendant established that it voted to close Calhoun Falls High School at a public meeting on December 14, 2007. The meeting followed the publishing of an agenda that included this topic. Since the December 14, 2007 public vote to close the school, the District has deeded the land and building formerly used by Calhoun Falls High School to the Town of Calhoun Falls. The Calhoun Falls Charter School opened for operations in August, 2008, in the building formerly used by Calhoun Falls High School. On August 29, 2008, the District and the Charter School entered into a Memorandum of Agreement whereby the Charter School agreed to pay the District certain fees for each Charter School student who enrolled in classes at the Abbeville County Career Center, operated by the District.

The Plaintiffs filed this action on September 21, 2011, and the Defendant accepted service on October 3, 2011, more than three years after the December 17, 2007, vote by the Defendant to close Calhoun Falls High School and more than two years after the Charter School agreed to pay fees for its students to attend the District's Career Center.

STANDARD OF REVIEW

Dismissal of a complaint under Rule 12(b)(6), SCRPC, is appropriate when, after considering all the facts alleged and the inferences reasonably drawn from them, it appears to the court that the plaintiff is not entitled to judgment. A court should dismiss if the complaint, viewed in the light most favorable to the plaintiff, does not state a valid claim for relief under

any theory of law. Rydde v. Morris, 381 S.C. 643, 675 S.E.2d 431 (2009); Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007); Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (S.C. App. 2003).

If matters outside the pleadings are considered by the court, the motion is then treated as one for summary judgment, and the standard becomes that as set out in Rule 56(c). Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 701 S.E.2d 742 (2010); Gause v. Smithers, 384 S.C. 130, 681 S.E.2d 607 (S.C. App. 2009). “Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed.” McClanahan v. Richland County Council, 350 S.C. 433, 437, 567 S.E.2d 240, 242 (2002). A party opposing a motion for summary judgment may not rest on the mere allegations of his pleadings, but must set forth specific facts showing that there is a genuine issue of material fact to be considered by a jury. Thomas v. Waters, 315 S.C. 534, 445 S.E.2d 659 (S.C. App. 1994). The court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.

DISCUSSION

I. Plaintiffs’ Complaint is sufficient to survive the Defendant’s Motion to Dismiss.

Plaintiffs allege that the Board did not provide “proper notice to the community of issues to be heard by the School Board” and that it also failed to follow proper procedures in conducting their meetings and in discussing items in closed or executive sessions. Complaint ¶ 9. Although Plaintiffs do not expressly allege that the South Carolina Freedom of Information Act (“FOIA”), found at S.C. Code Ann. §§ 30-4-10, et seq. (2007 and Supp. 2010), is the basis



of their action, it sounds as a claim under FOIA. Therefore, to the extent that Plaintiffs assert a legally cognizable claim, this Court concludes that the redress sought by Plaintiffs is based on the statutory process set out in FOIA. This is not to say that Plaintiffs' claim is otherwise proper. However, the Court is required to deny the Motion to Dismiss.

II. Plaintiffs' action is barred by the one-year statute of limitation in the Freedom of Information Act.

Lawsuits asserting FOIA violations must be filed in circuit court "no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later." S.C. Code Ann. § 30-4-100 (2007). To the extent that Plaintiffs' Complaint asserts claims under FOIA, the one-year statute of limitations contained within FOIA applies to this action.

The Defendant voted to close Calhoun Falls High School at a public meeting on December 14, 2007, a matter which is substantiated by the affidavit of Dr. Randolph, filed with the Defendant's motion. Dr. Randolph's affidavit also establishes that the Charter School entered into a contract with the District on August 28, 2009, in which it agreed to pay fees for each of its students who enrolled in classes at the Career Center. The Plaintiffs filed this action on September 21, 2011, and the Board accepted service on October 3, 2011, more than three years after the Board voted to close the High School and more than two years after the Charter School agreed to pay fees for its students to attend the Career Center. Plaintiffs' Complaint is, therefore, barred by the one-year limitations period set out in § 30-4-100.

"Statutes of limitation are . . . fundamental to our judicial system." Hooper v. Ebenezer Senior Services and Rehabilitation Center, 377 S.C. 217, 659 S.E.2d 213 (S.C. App. 2008), quoting Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. App. 2005). They give finality to litigation and promote a settled state of public affairs.

Hooper, 377 S.C. at 227, 659 S.E.2d at 218. They are not mere technicalities, but important to the administration of our judicial system. *Id.* In those cases where there is no question that the case was not commenced within the applicable limitations period, dismissal as a matter of law is appropriate. This is such a case.

III. The decision to close of Calhoun Falls High School was made by the Defendant, a legislative body, and this Court has no reason to substitute its judgment for that of the elected members of the Defendant.

The central act in question, namely, the closing of Calhoun Falls High School, is properly a legislative question, and this Court is hesitant to substitute its judgment for that of the school board. South Carolina law on this point is clear: discretionary decisions of legislative bodies should not be disturbed unless they are “arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power.” Sloan v. Greenville County, 356 S.C. 531, 555, 590 S.E.2d 338, 351 (S.C. App. 2003) (quoting Smith v. Georgetown County Council, 292 S.C. 235, 238-39, 355 S.E.2d 864, 866 (Ct. App. 1987) (citing Bob Jones Univ. v. City of Greenville, 243 S.C. 351, 133 S.E.2d 843 (1963))). Courts have been and should remain “loath to substitute their judgment for that of elected representatives.” *Id.*

The Defendant, Abbeville County School Board, is a legislative body whose members are publicly elected. The decision by the Defendant to close Calhoun Falls High School was a discretionary decision which should not be disturbed absent evidence that it was arbitrary, unreasonable, an obvious abuse of discretion, or in excess of its lawfully delegated power. Plaintiffs make no allegations and offer no evidence that the Defendant Board’s vote to close the school was arbitrary, unreasonable, an obvious abuse of discretion, or in excess of its lawfully delegated power. This Court has been presented with no legally sufficient reason to substitute its

judgment for that of the Abbeville County School Board and, therefore, will not invalidate the vote of the duly elected members of the Board to close Calhoun Falls High School.

IV. Plaintiffs have no standing to challenge the charging of fees for Charter School students to participate in Abbeville County School District programs.

In order to have standing to proceed with a claim, Plaintiffs must have a personal stake in it or, in other words, be real parties in interest to the litigation about it. They must allege and establish that they have “a real, material, or substantial interest in the outcome” of the claim. Hill v. S. Carolina Dept. of Health & Env'tl. Control, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010); Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006). A nominal or technical interest in the issue is not sufficient. Charleston County Sch. Dist. v. Charleston County Election Comm'n, 336 S.C. 174, 519 S.E.2d 567 (1999). Instead, they must have sustained, or be in immediate danger of sustaining, prejudice from an executive or legislative action. Such imminent prejudice must be of a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public. Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S. Carolina Dept. of Natural Res., 345 S.C. 594, 550 S.E.2d 287 (2001); Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999) (citing Citizens for Lee County, Inc. v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992)).

Neither Plaintiff is the parent or natural guardian of a child enrolled in Calhoun Falls Charter School or, for that matter, in a school operated by the District. Affidavit of Ivan Randolph, Ph.D. at ¶¶ 7 and 8. Neither Plaintiff pays any fees to the Defendant or to Abbeville County School District to enable a child to attend classes at the Abbeville County Career Center. Although they may be taxpayers of Abbeville County, they have no personal stake in the charging of fees for Charter School students, and, therefore, lack standing to proceed with that

claim. This claim should be dismissed due to Plaintiffs' failure to establish that they have standing to proceed with this claim.

V. Other grounds for summary judgment or dismissal are not necessary.

The Court finds it unnecessary to address the remaining grounds for dismissal or summary judgment raised by the Defendant.

VI. The Defendant's request for costs and fees is denied.

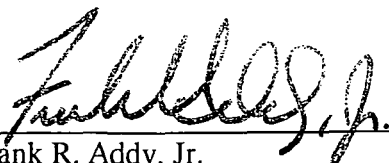
The Defendant requests that the Court award costs and attorney's fees to the Defendant, pursuant to the Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10, and/or Rule 11, SCRPC. The awarding of costs and fees is within the discretion of the Court, and the Court finds such relief is not warranted in this case because one Plaintiff arguably had potential standing at some point in the past. The Court, therefore, denies the Defendant's request for costs and attorneys fees.

ORDER

For the reasons set forth above, Defendant's Motion to Dismiss is denied, Defendant's Motion for Summary Judgment is granted, and Defendant's request for costs and fees is denied.

THEREFORE, IT IS ORDERED that judgment be entered for the Defendant on Plaintiffs' Complaint. Accordingly, this matter is hereby dismissed with prejudice.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Court Judge

March 2, 2012
Greenwood, South Carolina

STATE OF SOUTH CAROLINA,)
) IN THE COURT OF COMMON PLEAS.
COUNTY OF ABBEVILLE.)

Danny Hozey and Terry Richey,)
)
Plaintiffs,)
)
v.)
)
Abbeville County School Board,)
)
Defendants.)

CERTIFICATE OF SERVICE

11-CP-01-242

The undersigned, an employee of the Office of the Clerk of Court for Abbeville County, does hereby certify that service of formal Order in the above matter dated March 2, 2012, and filed March 5, 2012, was made upon the following persons by placing same in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 5th day of March, 2012:

C. Lance Sheek, Esq.
P. O. Box 49175
Greenwood, SC 29648

Laura Callaway Hart, Esq. ✓
Duff White & Turner, LLC
P. O. Box 1486
Columbia, SC 29202

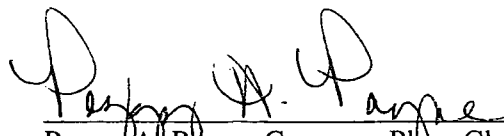

Peggy A. Payne, Common Pleas Clerk

Exhibit C

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
C.A. No: 2011-CP-01-242

Danny Hozey and Terry Richey,)
)
Plaintiff,)

MOTION FOR RECONSIDERATION

vs.)

Abbeville County School Board,)
)
Defendant,)

TRUE COPY
Emily Y McMahhan
ABBEVILLE COUNTY CLERK OF COURT

TO: DAVID DUFF AND LAURA HART, ATTORNEYS FOR THE DEFENDANT:

PLEASE TAKE NOTICE that the Plaintiff above named, by and through their undersigned attorney, will move before the presiding judge for the Court of Common Pleas, ten (10) days after notice hereof, or as soon thereafter as parties may be heard, for a reconsideration of his judgment in this matter filed in the Office of the Clerk of Court for Abbeville County on March 5, 2012 and received by the Plaintiff's on March 6, 2012. The Plaintiff's request that the Court reconsider the following judgments:

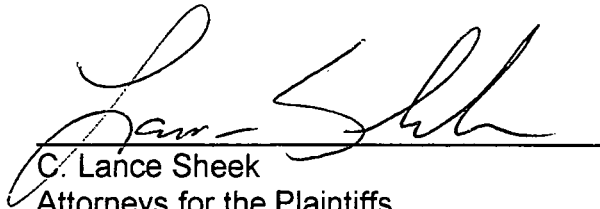
1. That the matter in the Plaintiff's Complaint was barred by the applicable statute of limitations, and;
2. That the Plaintiffs lacked standing to bring this action, and;
3. That the Court should not exercise its right to redress this issue due to the fact that the challenged decision is one of a legislative body.

This motion is made pursuant to the facts of this case, the applicable statutory and case law, and the Memorandum of Law to be filed in this matter.

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2012 MAR 16 AM 10 46
EMILY Y MCMAHAN
CLERK OF COURT

Respectfully Submitted,

GEOLY, SHEEK & MERRITT, LLC

A handwritten signature in black ink, appearing to read "C. Lance Sheek", is written over a horizontal line. The signature is stylized and cursive.

C. Lance Sheek
Attorneys for the Plaintiffs
1225 S. Main Street
Greenwood, SC 29646
(864) 223-3352
(864) 223-3400 fax

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ABBEVILLE)
)
 Danny Hozey and Terry Richey,)
)
 PLAINTIFF,)
 VS.)
)
 Abbeville, County School Board,)
)
 DEFENDANT,)
)

Court of Common Pleas
 IN THE FAMILY COURT
 EIGHTH JUDICIAL CIRCUIT
 2011-DR-01-242
 CP

TRUE COPY
 BY [Signature]
 ABBEVILLE COUNTY CLERK OF COURT

PROOF OF SERVICE

I, Katrina S. Davis, Paralegal for C. Lance Sheek, Attorney at Law, Counsel for the Defendants, Danny Hozey and Terry Richey, above named, certify that I served a Motion for Reconsideration, on the following, by placing in the United States Postal Service via First Class Mail on the 16th day of March, 2012 and did personally mail to the following addresses:

David Duff
 P.O. Box 1486
 Columbia, SC 29202

Laura Calloway Hart
 P.O. Box 1486
 Columbia, SC 29202

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 2012 MAR 16 AM 10 44
 EMILY Y MCMAHAN
 CLERK OF COURT

[Handwritten Signature]

Katrina S. Davis, Paralegal
 GEOLY SHEEK & MERRITT, LLC
 1225 South Main Street
 Greenwood, SC 29466
 864-538-0047

Greenwood, South Carolina
 March 16, 2012

Exhibit D

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-01-242

DANNY HOZEY AND TERRY RICHEY

ABBEVILLE COUNTY SCHOOL BOARD

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Attorney for Plaintiff Defendant Self-Represented Litigant

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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

Handwritten signature
 ABBEVILLE COUNTY CLERK OF COURT
 FILED COPY

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: Upon a review of Plaintiff's motion for reconsideration and Defendant's response, the court finds Plaintiffs' motion for reconsideration should be denied.

Order Information

This order ends does not end the case.

Additional Information for the Clerk :

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 APR 25 AM 9 09
 JIMMY MCMAHAN
 CLERK OF COURT

Complete if judgment requires payment of a sum of money or affects title to real or personal property		JUDGMENT AGAINST PLAINTIFF:		JUDGMENT AGAINST DEFENDANT:	
Judgment Amount	\$ _____	Judgment Amount	\$ _____	Judgment Amount	\$ _____
Taxable Costs	\$ _____	Taxable Costs	\$ _____	Taxable Costs	\$ _____
Attorney's Fees	\$ _____	Attorney's Fees	\$ _____	Attorney's Fees	\$ _____
Interest	\$ _____	Interest	\$ _____	Interest	\$ _____
Other	\$ _____	Other	\$ _____	Other	\$ _____
Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____
If applicable, describe the property, including tax map information and address, referenced in the order.					

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interests or costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

STATE OF SOUTH CAROLINA,)
) IN THE COURT OF COMMON PLEAS.
COUNTY OF ABBEVILLE.)

Danny Hozey and Terry Richey,)
)
) Plaintiffs,)

v.)

Abbeville County School Board,)
)
) Defendant.)

CERTIFICATE OF SERVICE

11-CP-01-242

The undersigned, an employee of the Office of the Clerk of Court for Abbeville County, does hereby certify that service of a copy of Form 4 Order denying Plaintiff's Motion for Reconsideration was made upon the following counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 25th day of April, 2012:

C. Lance Sheek, Esq.
Geoly, Sheek & Merritt, LLC
1225 S. Main Street
Greenwood, SC 29646

Laura Callaway Hart, Esq.
And David T. Duff, Esq.
Duff, White & Turner, LLC
P. O. Box 1486
Columbia, SC 29204


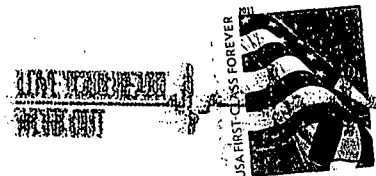

Peggy A. Payne, Common Pleas Clerk

Exhibit E

Geoly, Sheek & Merritt
1225 South Main Street
Greenwood, SC 29649

GREENVILLE SC 296

30 MAY 2013 PM 4:11



Laura Hart
3700 Forest Drive, Ste. 404
Columbia, SC 29204

30

29204+4010



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Circuit Court Judge

Case No. 2011-CP-01-242

Danny Hozey and Terry
Richey,

Appellants,

v.

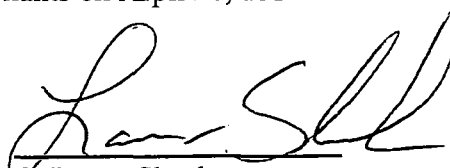
Abbeville County School
Board,

Respondent.

NOTICE OF APPEAL

Danny Hozey and Terry Richey appeals the order of the Honorable Frank R. Addy, Jr. dated March 2, 2012 and filed in the Office of the Clerk of Court on March 5, 2012. The order denying the Appellants' Motion for Reconsideration was filed in the Office of the Clerk of Court on April 25, 2012 and received by the Appellants on April 26, 2012.

May 18, 2012



C. Lance Sheek
Attorney for the Appellants
1225 S. Main Street
Greenwood, South Carolina 29646
(864) 223-3352
(864) 223-3400 fax

Other Counsel of Record:
Laura C. Hart, Esq.
Post Office Box 11070
Greenville, South Carolina 29211
Attorney for Respondent
(803) 865-1185

RECEIVED

MAY 31 2012

DUFF, WHITE
& TURNER, L.L.C.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Circuit Court Judge

Case No. 2011-CP-01-242

Danny Hozey and Terry
Richey,

Appellants,

v.

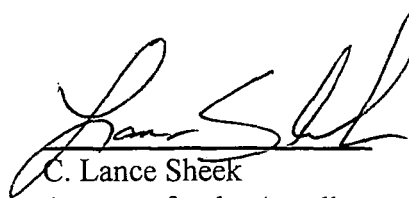
Abbeville County School
Board,

Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on the 18th day of May, 2012, he served a copy of the Appellant's Notice of Appeal on the Respondent by placing the same in the U.S. Mail, with the appropriate postage affixed thereto, addressed to the Respondent's attorney of record, Laura C. Hart, P.O. Box 11070, Columbia, SC, 29211.

May 18, 2012



C. Lance Sheek
Attorney for the Appellants
1225 S. Main Street
Greenwood, South Carolina 29646
(864) 223-3352
(864) 223-3400 fax

RECEIVED

MAY 31 2012

DUFF, WHITE
& TURNER, L.L.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT
C.A. No: 2011-DR-01-242

Danny Hozey and Terry Richey,)
)
Plaintiffs,)
)
vs.)
)
Abbeville County School Board,)
)
Defendant.)

PROOF OF SERVICE

The undersigned hereby certifies that on the 12th day of February, 2012, he served upon the Defendant a copy of the Plaintiffs' Motion to Amend Complaint by placing the same in the U. S. mail, with the appropriate postage affixed thereto, addressed to the Defendant's attorneys of record, David T. Duff and Laura Calloway Hart, P.O. Box 1486, Columbia, South Carolina, 29202.

Respectfully Submitted,

GEOLY, SHEEK, & MERRITT, LLC



By: C. Lance Sheek
Attorney for the Plaintiffs
1225 S. Main Street
Greenwood, SC 29646
(864) 223-3352
(864) 223-3400 fax

RECEIVED

MAY 31 2012

DUFF, WHITE
& TURNER, L.L.C.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Circuit Court Judge

Case No. 2011-CP-01-242

Danny Hozey and Terry
Richey,

Appellants,

v.

Abbeville County School
Board,

Respondent.

MEMORANDUM OF LAW IN SUPPORT OF
RESPONDENT'S MOTION TO DISMISS APPEAL

The Respondent, Abbeville County School Board, moves to dismiss this appeal on the grounds that the Notice of Appeal was not properly and timely served upon the Respondent pursuant to Rule 203(b), South Carolina Appellate Court Rules. This Court, therefore, lacks jurisdiction to consider the appeal.

FACTUAL BACKGROUND

The Circuit Court entered a form Judgment in a Civil Case granting summary judgment to the Respondent in this case on February 27, 2012 (Affidavit of Laura Callaway Hart at Exhibit A), followed by a more formal Order on March 5, 2012 (*id.* at Exhibit B). Appellants, stating they received the formal March 5 Order on March 6,

2012, filed a Motion for Reconsideration on March 16, 2012 (*id.* at Exhibit C). Appellants did not submit a memorandum of law in support of their Motion for Reconsideration, and the Circuit Court did not hear oral arguments on it. (Affidavit of Laura Callaway Hart at ¶¶ 5 and 6) The Circuit Court denied the Motion for Reconsideration in an Order filed on April 25, 2012 (*id.* at Exhibit D). Appellants state in their Notice of Appeal that they received the Order denying their Motion for Reconsideration on April 26, 2012.

Counsel for the Respondent received the Notice of Appeal and two “Proofs of Service” from Appellants in an envelope bearing a postmark of May 30, 2012. This envelope and its enclosures were received by counsel on May 31, 2012 when they were delivered to her correct address by regular mail. (Affidavit of Laura Callaway Hart at ¶ 9) The Notice of Appeal bore an incorrect address and telephone number for counsel for the Respondent. (*Id.* at ¶ 10) Appellants did not serve counsel for Respondent with the Notice of Appeal at any other time, and counsel for Respondent has, to date, not received a corrected Notice of Appeal. (*Id.* at ¶ 11)

ARGUMENT

Rule 203(b)(1), SCACR, requires a Notice of Appeal to be served on all respondents “within thirty (30) days after receipt of written notice of entry of the order or judgment.” However, a motion to amend a judgment under either Rule 52 or 59, SCRCP, which is filed not later than ten (10) days after receipt of entry of the judgment, stays the appeal until receipt of written notice of entry of the order granting or denying the motion. Appellants’ Notice of Appeal was untimely because (1) their Motion for Reconsideration was not filed within ten (10) days of written notice of entry of the Judgment on February

27, 2012 and thus did not stay the time for appeal; (2) their Motion for Reconsideration failed to state with particularity the grounds upon which the Motion was based or the specific relief sought and, therefore, was insufficient and did not stay the time for appeal; and (3) even if the time for appeal was stayed by the Motion for Reconsideration, Appellants' Notice of Appeal was not properly served on counsel for Respondent within thirty (30) days after receipt of written notice of entry of the Order denying the motion.

First, Appellants filed and served their Motion for Reconsideration on March 16, 2012, which is more than ten (10) days after the February 27, 2012 entry of the form Judgment in a Civil Case (Exhibit A). It was, therefore, untimely under either Rule 52 or Rule 52, SCRCF.

Second, Appellants' Motion for Reconsideration did not identify any grounds on which it was based or the relief that it sought, and Appellants did not file a Memorandum of Law in support of their Motion. Appellants' failure to state the grounds and relief sought in their Motion for Reconsideration violates Rule 7(b)(1), SCRCF, which requires that motions "shall state with particularity the grounds therefor, and shall set forth the relief or order sought."

By requiring notice to the court and the opposing party of the basis for the motion, rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that 'the court can comprehend the basis of the motion and deal with it fairly.'" *Calderon v. Kansas Dept. of Soc. and Rehab. Servs.*, 181 F.3d 1180, 1186 (10th Cir.1999) (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1192, at 42 (2d ed.1990)). Therefore, when a motion is challenged for a lack of particularity, the court should ask "whether any party is prejudiced by a lack of particularity or 'whether the court can comprehend the basis for the motion and deal with it fairly.'" *Registration Control*, 922 F.2d at 807-08 (quoting 5 Wright & Miller, *Federal Practice and Procedure* § 1192, at 42).

Camp v. Camp, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010). Neither the trial court nor the Respondent could discern any stated reason for the trial court to reconsider its rulings. The Appellants never identified the issues to be addressed or even whether they sought reconsideration of the trial court's rulings under Rule 52 or Rule 59, SCRC. The Respondent and the trial court were left to speculate on the grounds for the motion. *Cf. Camp*, 386 S.C. at 575-76, 689 S.E.2d at 636-37. Such a Motion for Reconsideration is wholly insufficient and invalid. It cannot operate to stay the time for appeal.

If Respondent is correct and Appellants' Motion for Reconsideration of the Judgment in the trial court was either untimely or insufficient, the time for appeal was not stayed and expired on or about March 29, 2012, thirty (30) days after entry of the Judgment in a Civil Case on February 27, 2012. Appellants' service of their Notice of Appeal after May 29, 2012, was, therefore, untimely.


Third, Appellants' Notice of Appeal was served on Respondent more than thirty (30) days after they received written notice of the denial of their Motion for Reconsideration. Assuming without conceding that the time for appeal was stayed by the filing of Appellants' Motion for Reconsideration, which the Respondent expressly denies, the time for appeal would have begun to run on April 26, 2012, when Appellants state they received written notice of the April 25 Order denying their Motion for Reconsideration. Because thirty (30) days from April 26, 2012 fell on a Saturday, May 26, 2012, and the following Monday was Memorial Day, a state and federal holiday, the Notice of Appeal was required to be served on the Respondent no later than Tuesday, May 29, 2012 to be timely. However, Appellants did not serve the Notice of Appeal on

Respondent until after May 29, 2012, rendering it untimely under any circumstance and requiring dismissal of this appeal.

Appellants' Motion for Reconsideration was both untimely and ineffective and did not stay the time for appeal. Even if the time for appeal had been stayed by a timely and valid Motion for Reconsideration, Appellants never served or provided the Respondent with any Notice of Appeal until after thirty (30) days had elapsed since their receipt of the Circuit Court's Order denying their Motion for Reconsideration. This failure to timely serve the Notice of Appeal is a jurisdictional defect, requiring dismissal of this appeal. *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008); *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). The Respondent respectfully requests that this Court dismiss this appeal as untimely.

Respectfully submitted,

July 20, 2012


Laura Callaway Hart (S.C. Bar # 2766)
DUFF, WHITE & TURNER, LLC
P. O. Box 1486
Columbia, South Carolina 29202
(803) 790-0603
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Circuit Court Judge

Case No. 2011-CP-01-242

Danny Hozey and Terry
Richey,

Appellants,

v.

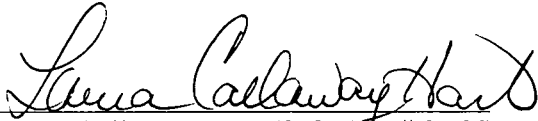
Abbeville County School
Board,

Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the Motion to Dismiss Appeal on Danny Hozey and Terry Richey by depositing a copy of it in the United States Mail, postage prepaid, on July 20, 2012, addressed to their attorney of record, C. Lance Sheek, 1225 S. Main Street, Greenwood, South Carolina 29646.

July 20, 2012


Laura Callaway Hart (S.C. Bar # 2766)
DUFF, WHITE & TURNER, LLC
P. O. Box 1486
Columbia, South Carolina 29202
(803) 790-0603
Attorney for Respondent

Other Counsel of Record:
C. Lance Sheek
1225 S. Main Street
Greenwood, South Carolina 29646
(864) 223-3352
Attorney for Appellants

RECEIVED

JUL 20 2012

SC Court of Appeals

DUFF, WHITE & TURNER, L.L.C.

ATTORNEYS AND COUNSELORS AT LAW

POST OFFICE BOX 1486
COLUMBIA, SOUTH CAROLINA 29202

3700 FOREST DRIVE, SUITE 404
COLUMBIA, SOUTH CAROLINA 29204
WWW.DWTLAWFIRM.COM

TELEPHONE
803 / 790-0603

FACSIMILE
803 / 790-0605

DAVID T. DUFF*†
ANDREA E. WHITE
MEREDITH L. SEIBERT
KIOSHA H. DICKEY
LINDSAY ANNE THOMPSON*
JOSEPH D. DICKEY, JR.

OF COUNSEL
M. JANE TURNER
LAURA CALLAWAY HART

sender's email address
lhart@dwtlawfirm.com

* CERTIFIED SPECIALIST IN EMPLOYMENT AND LABOR LAW
† CERTIFIED CIVIL ARBITRATOR AND MEDIATOR
* ALSO ADMITTED IN TENNESSEE

July 20, 2012

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED
JUL 20 2012

SC Court of Appeals

Re: Hozey, et al. v. Abbeville County School Board
C. A. No.: 2011-CP-01-242
Appellate Case No. 2012-212023

Dear Ms. Kitchings:

Enclosed for filing is the original Motion to Dismiss Appeal, Affidavit of Laura Callaway Hart, and supporting Memorandum of Law in the above-referenced case, along with six copies. Also enclosed is the original and one copy of the Certificate of Service and the \$25 filing fee.

Thank you for your assistance in this matter.

Sincerely,



Laura Callaway Hart (S.C. Bar # 2766)
DUFF, WHITE & TURNER, LLC
P. O. Box 1486
Columbia, South Carolina 29202
(803) 790-0603
Attorney for Respondent

Enclosures

cc: C. Lance Sheek, Esq. (via U.S. Mail)
1225 S. Main Street
Greenwood, South Carolina 29646
(864) 223-3352
Attorney for Appellants