

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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**APPEAL FROM JASPER COUNTY
Court of Common Pleas**

SC Court of Appeals

The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No.: 2014-002612

Randy Horton.....Appellant,

v.

Jasper County School District.....Respondent.

RESPONDENT'S INITIAL BRIEF

CHILDS & HALLIGAN, P.A.

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I. STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion in its award of \$14,626.56 in attorneys' fees and costs to Appellant?

II. STATEMENT OF THE CASE

On June 19, 2013, Plaintiff/Appellant Horton filed his Complaint against the Defendant/Respondent Jasper County School District seeking a declaratory judgment and attorneys' fees and costs for the alleged violations of the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. §§ 30-4-10, *et seq.*, as amended. (Complaint.)

Thereafter, on October 9, 2013, Appellant filed a motion for summary judgment. (Plaintiff's Summary Judgment Motion.) On September 5, 2014, the Honorable Carmen T. Mullen granted the Plaintiff's Motion for Summary Judgment and awarded Plaintiff \$13,530.00 in attorneys' fees and \$1,096.56 in costs, for a total of \$14,626.56. (Order Granting Summary Judgment and Award of Costs and Attorneys' Fees.)

On September 16, 2014, Appellant filed Motions pursuant to Rules 52 and 59, SCRPC, requesting that the September 5, 2014, Order be reconsidered, altered, and/or amended. Specifically, Appellant's counsel requested an attorneys' fees award of \$37,861.26, which was calculated using the hourly rates of \$295.00 per hour for partner, J. Ashley Twombly, \$250.00 per hour for associate, Jennifer Campbell, \$150.00 per hour for paralegal time, and \$75.00 per hour for legal assistant time. (Motion Pursuant to Rules 52 & 59.)

On November 3, 2013, the Honorable Carmen T. Mullen denied Appellant's Motion for Reconsideration. (Motion for Reconsideration.) Appellant filed a Notice of Appeal on December 4, 2014. (Notice of Appeal.)

III. STANDARD OF REVIEW

"An award of attorney's fees rests within the sound discretion of the trial judge and should not be disturbed on appeal unless there is an abuse of discretion." *Patel v. Patel*, 359 S.C.

515, 599 S.E.2d 114 (2004). “Where an attorney's services and their value are determined by the trier of fact, an appeal will not prevail if the findings of fact are supported by any competent evidence.” *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989).

IV. ARGUMENTS

A. Under S.C. Code Ann. 30-4-100(B) The Award Of Attorneys' Fees Is Within The Discretion Of The Court.

South Carolina courts follow the “American Rule” that each party is responsible for paying his own attorney's fees. *Duke Power Co. vs. South Carolina Public Service Commission*, 284 S.C. 81, 326 S.E.2d 395 (1985). As a general rule, attorney's fees are not recoverable unless authorized by contract or statute. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993).

FOIA does not mandate the award of attorneys' fees, but permits the court, in its discretion, to award reasonable attorneys' fees to a prevailing plaintiff under the Act. Section 30-4-100(b) of the Act provides:

If a person or entity seeking such relief prevails, he or it *may* be awarded reasonable attorney's fees and other costs of litigation. If such person or entity prevails in part, *the court may, in its discretion*, award him or it reasonable attorney's fees or an appropriate portion thereof.

(Emphasis added.)

Clearly, the Appellant has no absolute right to the recovery of attorneys' fees, and the award of attorneys' fees rests in the discretion of the court. Appellant wrongfully interprets this statute to provide for a mandatory award of attorneys' fees, and not a discretionary function to be decided by a judge on a case-by-case basis.

B. The Trial Court's Award Of Attorneys' Fees Was Reasonable, Supported By Adequate Findings, And There Was No Abuse Of Discretion.

The trial court's order awarding Appellant his attorneys' fees was reasonable and supported by adequate findings. South Carolina case law is clear that so long as a trial court

makes specific findings of fact on the record for each factor set forth by *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997), the order should be affirmed. See *Burton v. York County Sheriff's Dep't.*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004); See also *Blumberg*, 310 S.C. at 494, 427 S.E.2d at 661 (1993) (“When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor.”)

In the instant case, the court recited the *Burton* factors, reflected upon the factors, made specific findings of fact on the record regarding the factors, and after doing so, concluded that “an award of costs and attorney’s fees is appropriate under the circumstances and hereby award attorneys’ fees at a rate of \$100 an hour.” (Order Granting Summary Judgment and Award of Costs and Attorneys’ Fees.) Specifically, the court addressed the time, nature, extent and difficulty of the case; counsels’ preparation of pleadings; document review; and the fact that counsel has a combined twenty-five years of experience in litigation¹. By expressly considering the *Burton* factors and by reducing the amount awarded to Appellant from the original amount requested, the trial court appropriately evidenced its exercise of discretion in awarding Appellant his attorneys' fees and costs.

Further, Appellant’s argument that it was unreasonable for the trial court to reduce their attorneys’ rate from \$250-295 to \$100 is misplaced. In *Farmers & Merchants Bank v. Fargnoli*, 274 S.C. 23, 260 S.E. 2d 185 (1979), the court propounded “[t]he law requires, however, that the award must be reasonable.” *Id.* at 26, 260 S.E.2d at 187. See also *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 243, 616 S.E.2d 431, 436 (Ct. App. 2005). Thus, the award of attorneys’ fees is the basis of reasonableness, not the reasonableness of the hourly rate charged by the attorneys. In the instant case, after the trial judge considered the *Burton* factors,

¹ The Appellant’s argument that they have a combined 25 years of litigation experience is irrelevant when the majority of the time they are attributing to this case had little to nothing to do with litigation, but collecting and cataloging documents requested by Mr. Horton.

within her discretion, she awarded reasonable attorneys' fees of \$13,530.00 plus costs.

Moreover, Appellant's contention that he is entitled to more because the Respondent never objected to Appellant's requested legal fees and costs is not accurate. In its brief in response to Plaintiff's Motion for Summary Judgment, Respondent stated that it was aware that attorneys' fees may be awarded, and that the award was within the discretion of the court. Although the Respondent believes no fee is justified, an award of \$13,530.00 and \$1,096.56 in costs was granted, within the court's discretion, and the District made a business decision to not pursue appeal.

**C. The Award Of Additional Attorneys' Fees In This Case Would
Serve No Useful Purpose.**

The essential purpose of the FOIA is to protect the public from secret government activity. *Campbell v. Marion Cnty. Hosp. Dist.*, 354 S.C. 274, 280, 580 S.E.2d 163, 166 (Ct. App. 2003). However, the purpose of FOIA was not to allow the public or even school board members to demand copies of thousands of pages of documents at no cost. There are only two alternatives for who will bear the cost of compliance with requests for documents: requesters or taxpayers. FOIA clearly imposes compliance costs on requesters, at the same time that it protects the requesting public's rights by limiting what may be charged to what is "reasonable" and does "not exceed the cost." S.C. Code Ann. § 30-4-30.

In this case, Appellant was never denied access to these records. He was informed several times that he would be required to pay for the time to locate, search, and copy the records. Appellant also requested copies of "bonus checks" and the District denied this pursuant to Sections 30-4-40(a)(6)(B) and (C) of FOIA because he did not have Board approval to pursue this request. However, the District provided Appellant the ranges of bonuses as issue and the total amount of bonuses distributed. Respondent would like to clarify that if a majority Board decided it was necessary to review the records requested, they would have been provided to all Board members at no cost. However, the Board found no legitimate reason to review the records

because all Board members are able to review the budget quarterly where they can track every penny that is spent. Accordingly, Appellant had no qualifying need as a Board member to be provided with the information he specifically requested, in the manner he specifically requested.

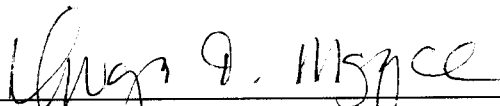
Further, the Respondent has already provided Appellant with thousands of pages of documents, at no charge. This production of documents required many hours, and the District had to assign an employee to organize Mr. Horton's requests. Clearly, the spirit of FOIA does not contemplate allowing attorneys to collect fees to review each and every document from an overly burdensome and tedious request to ensure compliance.

V. CONCLUSION

The circuit court properly considered, on the record, each of the six factors pertaining to an award of attorneys' fees. It awarded Appellant \$14,626.56, nearly 40% of their fees, and all of their costs. The award is supported by the Record and is within the bounds of reason. There was no abuse of discretion. Accordingly, the award should not be disturbed by this Court.

Respectfully submitted,

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APPEAL FROM COUNTY
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SC Court of Appeals

The Honorable Carmen T. Mullen, Circuit Court Judge

C.A. No.: 2014-002612

RANDY HORTON.....Appellant,

v.

JASPER COUNTY SCHOOL DISTRICT.....Respondent.

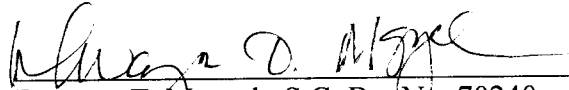
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served Respondent's Initial Brief and Designation of Matter to be included in the Record on Appeal by depositing a copy of the same in the U.S. Mail service, postage prepaid and addressed as follows:

Twenge & Twombly, LLC
James Ashley Twombly, Esq.
Jennifer Inez Campbell, Esq.
311 Carteret St.
Beaufort, SC 29902

This 2nd day of February, 2015

CHILDS & HALLIGAN, P.A.

A handwritten signature in black ink, appearing to read "Dwayne T. Mazyck", is written over a horizontal line.

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VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: Randy Horton v. Jasper County School District
C.A. No. 2013-CP-27-327

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Dear Ms. Kitchings:

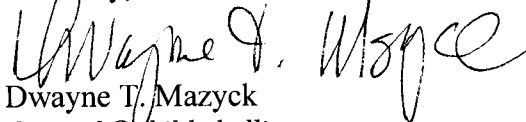
We represent Respondent, Jasper County School District, in the above-referenced appeal. Enclosed for filing please find the original and three copies of the following pleadings:

- Initial Brief of Respondent;
- Respondent's Designation of Matter to be Included in the Record on Appeal; and
- Certificate of Service.

Please return the extra copies with our courier. We appreciate the Court's assistance with this matter

With kind regards, I am

Sincerely,


Dwayne T. Mazyck
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/aes

Enclosures

c: James Ashley Twombly, Esq. (w/ encl.) (via U.S. Mail only)
Jennifer Inez Campbell, Esq. (w/ encl.) (via U.S. Mail only)
Mary Allison Caudell, Esq. (w/o encl.)