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MAR 23 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr.
Circuit Court Judge

Appellate Case No. 2014-000829
Circuit Court Case No. 2014-CP-32-00697

Vivian Atkins, Robert P. Frick, and Kay Hollis, in their official capacity as members of the Town Council of the Town of Chapin, Appellants,

v.

James R. Wilson, Jr., in his official capacity as Mayor of the Town of Chapin, Gregg White, in his official capacity as a member of the Town Council of the Town of Chapin, and the Town of Chapin, Defendants,

of whom

James R. Wilson, Jr., in his official capacity as Mayor of the Town of Chapin, and Gregg White, in his official capacity as a member of the Town Council of the Town of Chapin, are the Respondents.

MOTION TO DISMISS APPEAL

Pursuant to Rule 240, SCACR, Respondents move to dismiss this appeal based on the law-of-the-case doctrine and its preclusive effect over the issues before the Court.

BACKGROUND

This case involves Appellants' attempt to use the Judiciary to achieve a political goal, which Judge Cooper rightly dismissed at the pleadings stage pursuant to Rule 12(b)(6). As the appeal's caption makes clear, Appellants filed suit against three Defendants: Chapin's Mayor James Wilson, its Councilman Gregg White, and the Town of Chapin itself. In seeking the same relief against all three Defendants, Appellants asked the circuit court to declare a section

of the Chapin Town Ordinances to be “unenforceable,” to declare the Town’s employment contract with its Director of Economic Development to be “void and unenforceable,” and to award Appellants their attorneys’ fees and costs. (Compl. ¶ “Wherefore”; R. p. 22.)

Judge Cooper issued an order on March 18, 2014, dismissing the Complaint as to all Defendants. (Order Denying Motion for Injunctive Relief and Granting Motion to Dismiss; R. p. 1.) He subsequently denied Appellants’ motion to reconsider that ruling. (Order Denying Plaintiffs’ Motion to Reconsider; R. p. 10.)

Appellants noticed an appeal of these rulings on April 22, 2014. In their Notice of Appeal, Appellants designated only Mayor Wilson and Councilman White—not all three Defendants—as Respondents. This designation is consistent in both the appeal’s caption and the proof of service. (Ex. A, Notice of Appeal (Apr. 22, 2014).)

Following these rulings, Appellants engaged in misconduct that was squarely contrary to Judge Cooper’s rulings. To remedy this, Judge Cooper issued an order enforcing his earlier declarations and voiding Appellants’ post-judgment actions. (Order on Defendants’ Motion to Enforce Order and Enjoin Contrary Conduct and Motion for Civil Contempt; R. p. 12.)

Appellants appealed that decision on May 22, 2014. In their second Notice of Appeal, Appellants again designated only Mayor Wilson and Councilman White—and again omitted the Town of Chapin—as Respondents. Once again, this designation of only two Defendants as Respondents on appeal was consistent in the caption and in the proof of service. (Ex. B, Second Notice of Appeal (May 22, 2014).)

Appellants’ decision not to challenge Judge Cooper’s rulings as to the Town of Chapin is fatal to their appeal, as explained below.

ARGUMENT

It is hornbook law that a party dissatisfied with a trial-level ruling must serve notice of its intent to appeal that decision within thirty days or appellate jurisdiction is lost. *See Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (“Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.”). As part of this jurisdictional requirement, an appellant must designate as a respondent every party against whom it seeks to take an appeal. *See Conner v. City of Forest Acres*, 348 S.C. 454, 461–62, 560 S.E.2d 606, 609–10 (2002) (dismissing two defendants from an appeal because they “were not served with a Notice of Appeal naming them as respondents within the 30-day time period”).

It is likewise a fundamental of appellate law that the failure to appeal an issue renders the lower court’s decision on that point the law of the case. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (“[A]n unappealed ruling, right or wrong, is the law of the case.”). The law-of-the-case doctrine is a natural result of an appellate court’s limited jurisdiction—namely, it is jurisdictionally barred from reviewing a ruling that has not been timely appealed—and it also serves a host of efficiency goals, including promoting finality of litigation and avoiding inconsistent judgments. 5 Am. Jur. 2d *Appellate Review* § 566.

Here, Appellants have not appealed Judge Cooper’s declarations and rulings as they relate to the Town of Chapin. As such, those rulings are the law of the case with respect to the Town. But those are the exact same declarations and rulings that Judge Cooper issued regarding Mayor Wilson and Councilman White. Indeed, Appellants

sought the same relief as to all three Defendants in the Complaint, all three Defendants asserted the same defenses to Appellants' claims, and Judge Cooper's rulings declared the law as it applies to all parties in the case.

Only on appeal did Appellants decide to splinter off the Town of Chapin from the remaining Defendants. But by not appealing Judge Cooper's rulings with respect to the Town of Chapin, Appellants locked in those rulings as conclusive, and Appellants are now prohibited as a matter of this Court's appellate jurisdiction from grafting the Town of Chapin onto this appeal as a respondent.

Because Judge Cooper's rulings are unalterable as to the Town of Chapin, the law-of-the-case doctrine renders them conclusive as to Mayor Wilson and Councilman White as well. Courts agree that when the law-of-the-case doctrine attaches to one litigant, it applies to all other litigants that were privy to the unchallenged ruling. *See, e.g., United States v. Aramony*, 166 F.3d 655, 661 (4th Cir. 1999) (holding that "when a rule of law has been decided adversely to one or more codefendants, the law of the case doctrine precludes all other codefendants from relitigating the legal issue").

Absent dismissal, this appeal would create the potential for inconsistent judgments: the Town of Chapin, as a political subdivision, would have to enforce its ordinances and contracts in the manner ordered by Judge Cooper, but its individual elected officials may have to enforce them in a different manner if so ordered by this Court. This potential for conflicting rulings is precisely what the law-of-the-case doctrine is designed to cure. Accordingly, the Court should follow this straightforward application of the law-of-the-case doctrine and dismiss this appeal due to Appellants' failure to appeal Judge Cooper's ruling as to all Defendants.

CONCLUSION

This appeal has been the latest chapter in a needless political drama that has played out for over one year already. Judge Cooper rightly dismissed this case at the trial level, and his rulings have gone unchallenged on appeal as they relate to the Town of Chapin. Because those rulings are now the law of the case and apply equally to Mayor Wilson and Councilman White, the Court should dismiss this appeal.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

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Attorneys for the Respondents

March 23, 2015
Columbia, South Carolina

Exhibit A

Notice of Appeal

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APR 22 2014

S.C. Supreme Court

APPEAL FROM LEXINGTON COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE G. THOMAS COOPER, JR.
CIRCUIT COURT JUDGE

CASE NO. 2014-CP-32-0697

Vivian Atkins, Robert P. Frick, and Kay Hollis,
in their official capacity as members of the
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as Mayor of the Town of Chapin,
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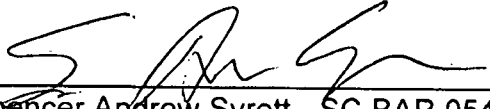
of whom James R. Wilson, Jr. and Gregg White are

Respondents.

NOTICE OF APPEAL

Vivian Atkins, Robert P. Frick, and Kay Hollis, in their official capacity as members of the Town Council of the Town of Chapin, appeal the Order Denying Plaintiffs' Motion for Injunctive Relief and Granting Defendants' Motion to Dismiss issued by the Honorable G. Thomas Cooper, Jr. on March 18, 2014, and his Order Denying Plaintiffs' Motion to Reconsider issued April 8, 2014, and received by the Appellants on April 22, 2014.

April 22, 2014



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Town of Chapin and the Town of Chapin,

of whom James R. Wilson, Jr. and Gregg White are

Respondents.

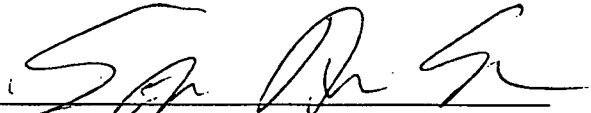
**PROOF OF SERVICE OF
NOTICE OF APPEAL**

I certify that I have served the Notice of Appeal on the Respondents, James R. Wilson, Jr. and Gregg White, by depositing a copy of it in the United States Mail, postage prepaid, on April 22, 2014, addressed to the attorney of record as follows:

Matthew Todd Carroll
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SC BAR 74000

April 22, 2014



Spencer Andrew Syrett SC BAR 05459
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Attorney for Appellants

Exhibit B

Second Notice of Appeal

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE G. THOMAS COOPER, JR.
CIRCUIT COURT JUDGE

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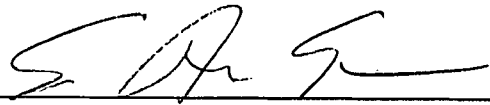
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NOTICE OF APPEAL

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May 22, 2014



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Of whom James R. Wilson, Jr. and Gregg White are

Respondents.

**PROOF OF SERVICE OF
NOTICE OF APPEAL**

I certify that I have served the Notice of Appeal on the Respondents, James R. Wilson, Jr. and Gregg White, by depositing a copy of it in the United States Mail, postage prepaid, on May 22, 2014, addressed to the attorney of record as follows:

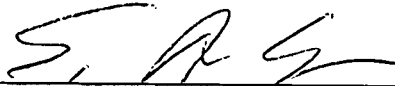
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May 22, 2014



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PROOF OF SERVICE

I, the undersigned Office Manager of the law offices of Womble Carlyle Sandridge & Rice LLP, Attorneys for Respondents, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

Pleading: Motion to Dismiss Appeal

Parties Served: Spencer Andrew Syrett
712 Richland Street, Suite E
Post Office Box 7403
Columbia, SC 29202
Attorney for Appellants



Deborah L. Johnson

March 23, 2015

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MAR 23 2015

SC Court of Appeals

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March 23, 2015

The South Carolina Court of Appeals
The Honorable John C. Few
The Honorable Jenny Abbott Kitchings
Post Office Box 11629
Columbia, SC 29211

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MAR 23 2015
SC Court of Appeals

Re: Vivian Atkins v. James R. Wilson, Jr.
Appellate Case No. 2014-000829

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Respondents' Motion to Dismiss, along with a \$25 check for the filing fee. Please file the original and six copies, and return a file-stamped copy to us in the enclosed envelope.

With kind regards, I remain

Very truly yours,

M. Todd Carroll

Enclosures

cc: Spencer Andrew Syrett