

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APR 03 2015

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

SC Court of Appeals

CASE NO. 2014-CP-32-0697

2014-000829

Vivian Atkins, Robert P. Frick, and Kay Hollis,
in their official capacities 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. and Gregg White are

Respondents.

RETURN TO MOTION TO DISMISS

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Attorney for Appellants

ARGUMENT

The Respondents, James R. Wilson and Gregg White, seek to have the appeal dismissed because The Town of Chapin was not named as a Respondent. For the reasons stated below, the Motion should be denied.

STANDING

In order to raise an issue with the Court, a party must have "standing" to raise it. Standing requires that the party seeking to raise the issue have a demonstrable stake in the decision. The Respondents have a stake in the outcome of the appeal but they do not have a direct demonstrable stake in how the appeal affects the Town of Chapin. As mayor, Mr. Wilson could have acted so that the Town would have been involved in the case. As set forth below, because Mr. Wilson failed to act, the Town made no appearance in the case and is not represented. Given the facts of the case, The Respondents' attorney would be unable to represent the Town because of both actual and potential conflicts of interest.

TIMELINESS

The first Notice of Appeal in this case was filed on April 22, 2014. The second Notice of Appeal was filed on May 22, 2014. The Respondents knew at that time who the parties to the appeal were. The parties have now ordered and paid for transcripts, prepared and submitted briefs, and printed the record on Appeal. Except for oral argument, the Court has received everything necessary to consider and determine the appeal. The Respondents have simply waited too long to raise this issue (assuming it has any merit). By participating in the Appeal and especially by failing to address it in their brief, the Respondents have waived any right to claim at this late some alleged technical deficiency.

PARTICIPATION BY THE TOWN OF CHAPIN

The Town of Chapin never made an appearance in the action. Had the Town wished to appear in the action in the lower court, it would have had to engaged an attorney to represent it. The attorney who would be normally expected to do so is the duly appointed Town Attorney. Chapin has had no Town attorney since January 1, 2014.

§5-7-230 of the Code and §2.601 of the Chapin Town Code require the Mayor and

Council to act to appoint a Town Attorney. This action would have to be taken at a meeting of Council. Since the mayor has taken total control over the agendas for all meetings of the Council, the mayor would have had to have placed the appointment of a Town Attorney on an agenda. For reasons known only to the mayor and despite numerous requests from all of the Appellants, the Mayor has not placed the appointment on the agenda for any meeting.

In the alternative, the Town could have retained an attorney for its representation in this case. §5-7-160 vests all power in the Town Council except as otherwise provided. §5-9-30 of the Code which enumerates the powers of the Mayor does not grant to the Mayor any power to enter into contracts on behalf of the Town. This action would have to be taken at a meeting of Council. Since the mayor has taken total control over the agendas for all meetings of the Council, the mayor would have had to have placed the retaining of an attorney on an agenda. For reasons known only to the mayor, the Mayor did not do so.

As a result, the Town of Chapin, although made a party to the action, did not participate in the case. It therefore did not present any position to the Court.

Assuming the Town were to have been named as a Respondent in the appeal, the Town would have been unable to file a brief, make an argument or participate in the appeal process in any fashion. For the Town to do so would have required an attorney which as shown above would have been the obligation of the Mayor to pursue. The Town's being a party will have no impact on the appeal. "Whatever doesn't make any difference, doesn't matter." McCall v. Finley, 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987).

As a party to the case, however, the Town will be bound by whatever action the Court takes on the appeal. If the Court affirms the rulings by the lower court, the Town is bound. If the Court reverses in whole or in part, the Town is bound.

CONCLUSION

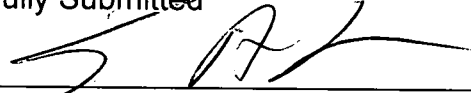
The irony of the Respondents' motion is not lost on the Appellants. This appeal is about the Mayor's assertion that he has absolute control over all activities of the Town government.

The Respondents have no standing to assert arguments on behalf of the Town.

The Respondents have waived any right by failing to their inaction.

The Mayor had every opportunity to give the Town a voice in the proceedings. He cannot now complain that the Town has no voice.

Respectfully Submitted



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240. The undersigned certifies that this Return complies with the requirements of Rule



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April 3, 2015

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Respondents.

**PROOF OF SERVICE OF
RETURN TO MOTION TO DISMISS**

I certify that I have served the Appellants' Return to Motion to Dismiss 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 3, 2015, addressed to the attorney of record as follows:

Matthew Todd Carroll
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SC BAR 74000

April 3, 2015

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