

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-07273
Appellate Case No. 2014-000961

RECEIVED
MAR 23 2016
SC Court of Appeals

Betty J. Keitt.....Appellant/Petitioner,

v.

City of Columbia.....Respondent.

**APPELLANT'S REPLY TO RESPONDENT'S
RETURN TO PETITION FOR REHEARING**

J. LEWIS CROMER & ASSOCIATES, L.L.C.
J. Lewis Cromer (#1470)
Julius W. Babb, IV (#77216)
1418 Laurel Street, Suite A
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533
Attorneys for Appellant/Petitioner

Appellant/Petitioner, Betty J. Keitt, filed her Petition for Rehearing on March 9, 2015. Defendant/Respondent City of Columbia (“Respondent” or “City”) filed a response to the petition, which was received by Appellant/Petitioner on March 18, 2016. The Appellant/Petitioner replies to this response as follows:

ARGUMENT

I. THE SUBJECT OPINION OVERLOOKED OR MISAPPREHENDED THAT APPELLANT’S PUBLIC POLICY DISCHARGE CLAIM IS PRECLUDED DUE TO AN EXISTING REMEDY UNDER THE SOUTH CAROLINA WHISTLEBLOWER ACT.

The City, in its Response to the Petition for Rehearing, argues that Keitt’s Petition should be denied because the Court properly ruled that her unsuccessful grievance barred pursuit of a wrongful termination claim. The City argues that there is “[n]othing in the Whistleblower Act itself or the jurisprudence of this State supports Keitt’s argument.” (*See* Respondent’s Return to Appellant’s Petition for Rehearing, at p. 2). Their focus seems to be upon the portion of Keitt’s argument regarding the absence of judicial review of the grievance. This assertion is not accurate and the Petition should be granted.

The absence of judicial review under the County and Municipal Employees Grievance Procedure Act is only a part of the argument. It is inherently inequitable to require Keitt to seek a positive factual determination of termination for whistleblowing from the very entity, the City, whom terminated her in the first place, especially when there is the absence of judicial review. *See Wright v. Marlboro County School District*, 317 S.C. 160, 165 (Ct. App. 1994). The City has a conflict of interest where they are hearing a grievance from the same employee who has asserting retaliatory discharge. Equity and fairness should frown upon a situation where Keitt is left with no legal recourse due to the City denying her grievance.

II. NO OTHER AVAILABLE ALTERNATIVES THAT BAR KEITT’S CLAIM.

The City raises an additional argument in their Return. As an initial matter, the Court did not address such concerns in their Order, and Keitt relies upon her previous arguments on brief and before the panel in opposition to the same. A claim for wrongful termination in violation of public policy should "provide a remedy for a clear violation of public policy where no other reasonable means of redress exist." *Stiles v. American Gen. Life Ins. Co.*, 335 S.C. 222, 228,516 S.E.2d 449, 452 (1999). Reasonableness is a key factor here and should not be disregarded when analyzing alternative remedies such as those discussed in this appeal. Keitt did not allege other claims in her lawsuit that would be alternative remedies and thus be available as seen in some of the cases cited by the City. The City also has failed to provide an adequate explanation as to why Keitt should be forced into a position of filing another claim even where it is not supported by the facts and would thus be frivolous.

III. KEITT ESTABLISHED A CLAIM OF PUBLIC POLICY DISCHARGE.

The City raises another alleged “alternative sustaining ground” in the Return, which argues that Keitt cannot establish the elements of the claim. Again, this is not the basis upon which the Court ruled and inappropriate to be brought up at this stage. Moreover, this is an issue that was not previously raised prior to the appeal and thus not properly preserved for appellate review. To the extent necessary, Keitt relies upon her arguments on brief and before the panel in opposition to such arguments. The City Manager and grievance committee upheld the decisions and actions of Judge Turner to retaliate against Keitt and the City is liable. Additionally, it is a clear violation of public policy for an employee to be terminated in retaliation for filing complaints of judicial misconduct and being asked to alter records that amounts to criminal violations. The claim is valid whether

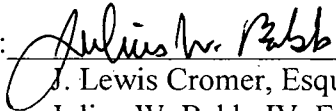
under the established exceptions set forth in *Ludwick* or an exception outside of the two established exceptions as discussed in *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 713 S.E.2d 634 (2011).

CONCLUSION

The Appellant respectfully requests a rehearing on the basis that the Court of Appeals overlooked or misapprehended the points addressed herein.

Respectfully Submitted,

J. LEWIS CROMER & ASSOCIATES, L.L.C.

BY: 

J. Lewis Cromer, Esquire (#1470)
Julius W. Babb, IV, Esquire (#77216)
1418 Laurel Street, Suite A
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Appellant/Petitioner

Columbia, South Carolina
March 23, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-07273
Appellate Case No. 2014-000961

RECEIVED
MAR 23 2016
SC Court of Appeals

Betty J. Keitt.....Appellant,

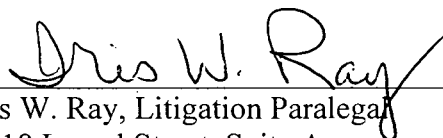
v.

City of Columbia.....Respondent.

PROOF OF SERVICE

I, Iris W. Jennings, an employee of J. Lewis Cromer & Associates, L.L.C., hereby certify that I have caused to have served the Final Brief and Final Reply Brief on the City of Columbia by U.S. Mail, postage prepaid, on March 23, 2016, to the Respondent's attorney of record, W. Allen Nickles, III, at the following address:

W. Allen Nickles, III
Nickles Law Firm, LLC
1122 Lady Street, Suite 610
Columbia, South Carolina 29201


Iris W. Ray, Litigation Paralegal
1418 Laurel Street, Suite A
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530

March 23, 2016

**J. LEWIS CROMER
& ASSOCIATES L.L.C.**
ATTORNEYS AND COUNSELORS AT LAW

JULIUS W. BABB, IV
RYAN K. HICKS

J. LEWIS CROMER
J. PAUL PORTER
SHANNON M. POLVI

ASHLEY C. STORY
CHELSEA R. RIKARD

March 23, 2016

RECEIVED
MAR 23 2016
SC Court of Appeals

Via Hand Delivery

Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Betty J. Keitt v. City of Columbia*
Case No. 2012-CP-40-07273
Appellate Case No. 2014-000961

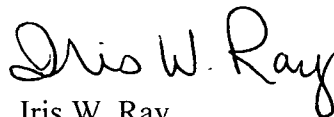
Dear Ms. Kitchings:

Enclosed please find the one (1) original and seven (7) copies of the Appellant's Reply to Respondent's Return to Petition for Rehearing on the above referenced matter. Also, enclosed is the original and (1) copy of the Proof of Service. Please file and return the clocked copies to us via our courier.

By copy of this letter, I am serving a copy of the Reply on opposing counsel. Should you have any questions and/or concerns, please feel free to call us. Thank you in advance for your kind assistance in this matter.

With kind regards, I remain

Sincerely,



Iris W. Ray
Litigation Paralegal

/iwr
Enclosures

cc: W. Allen Nickles, III, Esquire (via U.S. Mail and email)