

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No. 2009-CP-46-03360

ROBERT K. MARSHALL, Jr., and
DONNA CHAPMAN MARSHALL,
doing business as "Rock Hill Property Management",
a South Carolina general partnership, Appellants,

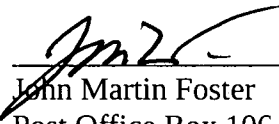
vs.

THE CITY OF ROCK HILL, SOUTH CAROLINA,
a municipal corporation,
CAREY F. SMITH, in his capacity as City Manager, and
LORI THOMAS,
in her capacity as Customer Services Manager Respondents.

NOTICE OF APPEAL

Robert K. Marshall, Jr. and Donna Chapman Marshall appeal the Order of the Honorable John C. Hayes, III issued April 9, 2012, filed April 18, 2012 and received by Appellants by mailing on April 20, 2012.

May 16, 2012



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
803 324-8100
Attorney for Appellants

Other Counsel of Record:
Wm. Mark White
Jeremy D. Melville
Spencer & Spencer, PA
Attorneys for Respondent
PO Box 790
Rock Hill, SC 29731
803 327-7191

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APPEAL FROM YORK COUNTY
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in her capacity as Customer Services Manager Respondents.

PROOF OF SERVICE

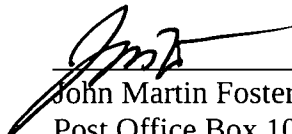
I certify that I have served the Notice of Appeal dated May 16, 2012, on the following counsel or persons of record:

Wm. Mark White
Jeremy D. Melville
Spencer & Spencer, PA
PO Box 790
Rock Hill, SC 29731

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by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out above, pursuant to Rule 262, S.C.A.C.R.

May 16, 2012



John Martin Foster
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803 324-8100
Attorney for Appellants

64247

JOHN MARTIN FOSTER
Attorney at law

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Rock Hill South Carolina 29730	29731-6106	jmfoster@comporium.net

May 16, 2012

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, SC 29211

Re: Robert K. Marshall and Donna Chapman Marshall, Appellants
v. City of Rock Hill, et al., Respondents
Docket No. 09-CP-46-03360

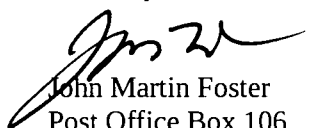
Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the appearing respondents;
- (2) A copy of the order which is to be challenged on appeal, and
- (3) Our filing fee of \$100.00.

Thank you and your staff, as always, for your help in these matters.

Sincerely,



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
803 324-8100
Attorney for Appellants

jmf/
enclosures

Other counsel of record:

Wm. Mark White
Jeremy D. Melville
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Rock Hill, SC 29731
803 327-7191

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MAY 16 2012
SC Court of Appeals

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP4603360

Robert K Marshall Jr	Donna Chapman Marshall	Rock Hill City Of Lori Thomas	Carey F Smith
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; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

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

This order ends does not end the case.

ORDER INFORMATION

Additional Information for the Clerk:

FILED-RECEIVED
2012 APR 18 AM 11:41
DAVID HAMIL
C.C.C.P. & C.
YORK COUNTY

SC Court of Appeals

MAY 16 2012

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INFORMATION FOR THE PUBLIC INDEX		
Complete the section below when the judgment affects title, labor or personal property and any amounts should be enrolled, or when the judgment affects the public index.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

RECEIVED
APR 10 2012

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 interest or additional taxable 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.

Circuit Court Judge

2049
Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 18th day of April, 2012, and a copy mailed first class or placed in the appropriate attorney's box on 18th day of April, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

John Martin Foster
Attorney at Law
PO Box 106
Rock Hill, SC 29731

ATTORNEY(S) FOR THE PLAINTIFF(S)

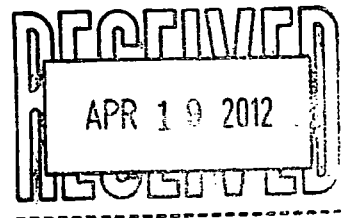
William Mark White
Spencer & Spencer PA
PO Box 790
Rock Hill, SC 29731

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter



STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Robert K. Marshall, Jr. and)
Donna Chapman Marshall,)

Plaintiffs,)

v.)

City of Rock Hill, South Carolina)
a municipal corporation, Carey F.)
Smith, in his capacity as City)
Manager, and Lori Thomas, in her)
Capacity as Customer Services)
Manager)

Defendant.)

ORDER

C. A. No. 09-CP-46-03360

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

2012 APR 18 AM 8:48

FILED-RECEIVED

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2012 APR 18 AM 8:52

CERTIFIED TRUE COPY

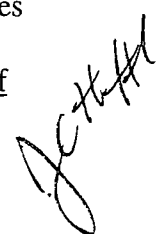
This matter involves the authority of the City of Rock Hill (City) to regulate the provision of utilities to consumers. Particularly, Plaintiffs are challenging the City's authority to restrict or refuse service to a consumer who is delinquent on a past utility bill.

STATEMENT OF THE CASE

The City filed a motion for summary judgment on February 29, 2012. The motion was heard before this Court on Tuesday, March 20, 2011. Plaintiffs were represented by John Martin Foster, Esquire. The City was represented by Mark White, Esquire. Both Defendant and Plaintiffs filed memorandums in support of their positions on the issues.

STANDARD OF REVIEW

Summary judgment is appropriate when it is clear that there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. City of



Columbia v. A.C.L.U., 323 S.C. 384, 386, 475 S.E.2d 747, 748 (1996). In ruling on a motion for summary judgment, the evidence and the inferences that can be drawn therefrom should be viewed in the light most favorable to the nonmoving party. Café Assocs. v. Gerngross, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991).

Rule 8 of the South Carolina Rules of Civil Procedure requires that Plaintiffs state “the facts showing that the pleader is entitled to relief.” Plaintiffs are required to set forth the “ultimate facts,” which if proven at trial would entitle the pleader to the relief sought. Stroud v. Riddle, 260 S.C. 99, 103, 194 S.E.2d 235, 237 (1973).

DISCUSSION

Plaintiffs bring this action under 42 U.S.C. § 1983. Plaintiffs contend that the City’s application of Sections 29-2 and 29-31 of the Municipal Code of the City of Rock Hill (Municipal Code) to Plaintiffs is unconstitutional. Specifically, Plaintiffs allege that the City refused to supply utilities to one Charles Willis, a tenant of the Plaintiffs rental property at the time of this action, in violation of Plaintiffs’ constitutional rights to Due Process and Equal Protection. *See* Plaintiffs’ Complaint, ¶ 23.

As set forth by the Fourth Circuit: The essential elements to be proved in any Section 1983 action are (1) that the defendant was acting under color of state law in the actions complained of; and (2) that the defendant deprived Plaintiffs of a right, privilege or immunity secured by the Constitution or laws of the United States.” Clark v. Link, 855 F.2d 156, 161 (4th Cir. 1988). “If there is no violation of a federal right, there is no basis for a section 1983 action” Id.

1. EQUAL PROTECTION

“In order to survive a motion to dismiss an equal protection claim, a plaintiff must

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plead sufficient facts to demonstrate plausibly that he was treated differently from others who were similarly situated and the unequal treatment was the result of discriminatory animus.” Equity In Athletics, Inc. v. Dep’t of Educ., 639 F.3d 91, 108 (4th Cir. 2011).

“If a classification does not (1) implicate a “fundamental right” or (2) draw upon suspect classifications such as race, religion or alienage, an ordinance must only be rationally related to a legitimate governmental purpose. Sylvia Dev. Corp. v. Calvert County, Md., 48 F.3d 810, 820 (4th Cir. 1995).

In the instant case, Plaintiffs have failed to plead or identify any fundamental right implicated by the ordinance. Plaintiffs allege a constitutional right to the unregulated provision of utilities to a delinquent consumer in order that Plaintiffs may rent their property to that delinquent consumer. Any right to the provision of utility services for commercial purposes, so far as such a right exists, is not a fundamental right guaranteed by either the United States Constitution or that of South Carolina.

As to the classification at issue in this case, the only class regulated by Sections 29-2 and 29-31 of the Code is the class of “consumers.” Section 29-31(a) of the Code provides that “Service shall not be provided at a new location to any consumer delinquent at a prior location. All members of any family occupying the same household may be deemed consumers for the purpose of this section, regardless of the name in which service is registered.” Furthermore, Section 29-31(e) provides that “the term family shall be defined as one or more people, plus their household employees, who live together in a dwelling unit as a single housekeeping unit.” Consumers are not a suspect class.

Furthermore, Plaintiffs are not consumers in this context. The consumer in the context of

Page #3

residence is the occupier of the residence: the end-user¹. In this case, the consumer is Mr. Willis, a tenant of a rental house owned by the Plaintiffs. Therefore, the Court finds that not only is there no suspect class, but Plaintiffs are not even among the class regulated by the ordinance.

Because there is no suspect class, the ordinance in question receives rational basis review. In Bibco Corp. v. City of Sumter, 332 S.C. 45, 52-53, 504 S.E.2d 112, 116 (1998), the South Carolina Supreme Court summarized rational basis review of a statute or ordinance under Equal Protection as three step analysis: (1) whether plaintiff was treated differently than others similarly situated; (2) whether defendant intentionally discriminated against plaintiff and had a rational basis for doing so; and (3) whether the discrimination/classification bears rational relationship to a legitimate government purpose or goal. In Sylvia Dev. Corp. v. Calvert County, Md., 48 F.3d 810, 819 (4th Cir. 1995), the Fourth Circuit explained that “[t]o prove that a statute has been administered or enforced discriminatorily, more must be shown than the fact that a benefit was denied to one person while conferred on another. A violation is established only if the plaintiff can prove that a state intended to discriminate.”

While Plaintiffs allege that the City has provided utilities to other property owners similarly situated, more is required than mere speculation. Plaintiffs must plead facts which, if proven, would entitle Plaintiffs to relief. There is nothing in either the pleadings or the record to indicate that Plaintiffs received disparate treatment. The ordinance in question is facially neutral and applies equally to persons seeking utilities

¹ Black's law dictionary defines "consumer" as "[a] person who buys goods or services for personal, family, or household use with no intention of resale; a natural person who uses products for personal rather than business purposes." Black's Law Dictionary, 7th Ed. P. 311.

Part # A

for a delinquent consumer. The very purpose of the ordinance is to prevent consumers like Mr. Willis from circumventing past debts owed to the City. The ordinance was applied to Mr. Willis as it was intended and, presumably, as it is applied to other delinquent consumers.²

Based on the above, the Court finds that the ordinance is rationally related to a legitimate governmental purpose: the regulation of utilities. The City can regulate, within reason, to whom they will provide utility services. When a consumer is not entitled to the provision of services, the City has the right to not provide those services.

2. DUE PROCESS

Plaintiffs allege that the City's application of Sections 29-2 and 29-31 of the Municipal Code has deprived Plaintiffs of life, liberty, or property without due process of law. Where a plaintiff challenges a legislative act alleging a violation of Due Process, the following legal analysis applies:

The first step in this process is to determine whether the claimed violation involves one of those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty such that neither liberty nor justice would exist if they were sacrificed. The next step depends for its nature upon the result of the first. If the asserted interest has been determined to be fundamental, it is entitled in the second step to the protection of strict scrutiny judicial review of the challenged legislation. If the interest is determined not to be "fundamental" it is entitled only to the protection of rational-basis judicial review.

Hawkins v. Freeman, 195 F.3d 732, 739 (4th Cir. 1999) (internal citations omitted).

As stated above in the Court's Equal Protection analysis, Plaintiffs have failed to plead or identify any fundamental right. Plaintiffs allege a constitutional right to the

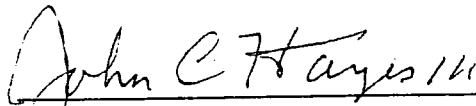
² Furthermore Mr. Willis is not a plaintiff in this action, and Plaintiffs, as owners of the rental property, cannot step into his shoes.

provision of utilities to a delinquent consumer in order that Plaintiffs may rent their property to that delinquent consumer. No such right exists. Additionally, as plaintiffs are not consumers, the ordinance in question does not implicate any rights of Plaintiffs.

Because the Ordinance does not implicate a fundamental right, rational basis review is proper. As set forth in the Court's Equal Protection analysis, the ordinance is rationally related to a legitimate governmental purpose: the regulation of utilities.

Therefore, Defendant's motion for Summary Judgment is GRANTED.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge #6

April ^{9th} 1, 2012
York, South Carolina.