

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUL 12 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2016-000211

Kim MurphyAppellant

vs.

Richland-Lexington School District No. 5 by and through its Board of Trustees by
And through Counsel to the Board of Trustees..... Respondent

RESPONDENT ROBERT GANTT'S AMENDED RETURN TO
APPELLANT'S MOTION TO CONSOLIDATE APPEALS

Pursuant to Rule 214 and Rule 240(d) S.C.A.C.R., Robert Gantt, an individual Respondent in appellate case 2016-001198, files this Amended Return to Appellant's motion and opposes the issuance of an Order consolidating Appellate Case No. 2016-000211 with Appellate Case No. 2016-001198.

Respondent's objection is based upon the fact that the issues presented in the appeal are not related to any degree required by Rule 214 with Case No. 2016-000211 having different parties and being based upon entirely different issues than Case No. 2016-001198 to which this Respondent is a party. In this Respondent's case, Appellant appeals the grant of summary

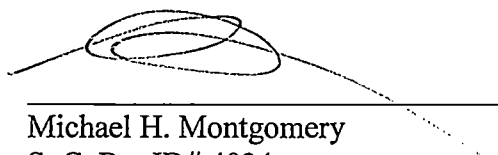
judgment to Respondent by the lower court on the basis that Appellant lacked any factual basis from which a reasonable finder of fact might conclude that Respondent was involved in a conspiracy with Bobby Merle Bowers, co-Respondent, or that Respondent defamed Plaintiff. Neither of these issues involve the same question as the appeal in Case No. 2016-000211 which deals with whether or not the School Board of School District Five of Lexington and Richland County properly removed Appellant from her seat thereon.

The appeals that Appellant seeks to consolidate neither deal with the same order, judgment, decision or decree or involve the same question in two or more different cases and therefore do not meet the requirements for consolidation enumerated in Rule 214. The appeals do not, as Appellant asserts, involve the same or even similar questions of law and fact.

This Respondent opposes consolidation in any form or way and further opposes the Court holding current appellate deadlines in abeyance until this Court issues its decision on Appellant's motion. Robert Gantt's legal and factual arguments are more fully discussed in the incorporated memorandum.

Respectfully Submitted,

MONTGOMERY WILLARD, LLC



Michael H. Montgomery
S. C. Bar ID# 4034
1002 Calhoun Street (29202)
Post Office Box 11886
Columbia, South Carolina 29211-1886
(803) 779-3500
Facsimile (803) 799-2755
ATTORNEYS FOR THE RESPONDENT
ROBERT GANTT, INDIVIDUALLY

July 12, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

JUL 12 2016

SC Court of Appeals

DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2016-000211

Kim MurphyAppellant

vs.

Richland-Lexington School District No. 5 by and through its Board of Trustees by
And through Counsel to the Board of Trustees.....Respondent

RESPONDENT ROBERT GANTT'S AMENDED MEMORANDUM OF LAW IN
OPPOSITION TO APPELLANT'S MOTION TO CONSOLIDATE APPEALS

Respondent Robert Gantt submits this Amended Memorandum of Law in opposition to
Appellant Kim Murphy's Motion to Consolidate Appeals.

INTRODUCTION

Kim Murphy filed an action against Robert Gantt and Bobby Merle Bowers alleging that they engaged in a civil conspiracy designed to cause her to resign or be removed from her position on the School District Five of Lexington and Richland County School Board. She also alleged that Mr. Gantt and the District Five School Board defamed her by publishing that she was a resident

of Lexington County, rather than Richland County, the area which elected her to the School Board. During the proceedings wherein Mr. Gantt sought summary judgment, Ms. Murphy also raised an argument alleging that Mr. Gantt acted in such a way as to create an innuendo or inference that she was engaging in misconduct or an illegal act or that she had been aware that she did not live in Richland County, but had acted deceptively to seek and obtain a Richland County seat on the School Board. Ms. Murphy sought this seat on the School Board on two occasions.

The Honorable Doyet A. Early, III heard Mr. Gantt's motions for Summary Judgment and after hundreds of pages of briefing and argument that lasted nearly three hours, granted Summary Judgment to Mr. Gantt as well as the School Board and Mr. Bowers. Ms. Murphy subsequently made a Rule 59 motion for reconsideration. Judge Early denied that motion. Ms. Murphy filed an appeal of Judge Early's decision. Subsequent to that filing, she dismissed the School Board from her appeal leaving only Mr. Gantt and Mr. Bowers as Respondents in the case.

In granting Summary Judgment to Mr. Gantt, Judge Early found, *inter alia*, that Ms. Murphy:

has failed to produce any evidence that there was communication between them (Messrs. Bowers and Gantt) other than a single telephone conversation, a meeting where they were present with counsel for the School District and members of Mr. Bowers' staff, the official letter asking for a determination and the determination letter. There is nothing in these interactions from which a fact finder, as a matter of law, could even circumstantially conclude that they engaged in an alliance or combination for the purpose of causing injury to Plaintiff. Likewise, there is no evidence that Bowers and Gantt acted in any way with an animus or intent to harm Plaintiff or that Plaintiff has suffered special damages which she attributes to a civil conspiracy, all being the requisite elements of the cause of action.

Thus, she is unable to offer anything that creates even a circumstantial inference necessary to survive summary judgment as to any element of her cause of action for civil conspiracy against Mr. Gantt. I, therefore, find and conclude that Defendant Robert Gantt's Motion for Summary Judgment on Plaintiff's civil conspiracy cause of action should be granted, and Plaintiff's claim against him dismissed with prejudice.

Likewise, Judge Early found her claims against Mr. Gantt for defamation similarly deficient finding that Ms. Murphy was unable as a matter of law to point to any statement that even hints, to a reasonable person, that she has been the victim of words that might constitute per se defamation;

Judge Early also found that Mr. Gantt was entitled to summary judgment on the grounds that his statements in school board meetings and as school board chair were qualifiedly privileged and that Ms. Murphy was unable to prove actual malice, which was a requirement for defamation based upon her admitted status as a public figure and official.

The appeal that she asks this court to consolidate this set of facts with is completely and totally unrelated. It is an administrative appeal of the decision of the School Board removing her from her seat on the Board based upon the fact that the South Carolina Office of Research and Statistics determined that she did not live in the area she was elected to represent. In that underlying case, she had the opportunity to appear before a hearing officer and the School Board. Thereafter, she made an administrative appeal to the Circuit Court which strongly confirmed the decision of the Board and denied her appeal. She filed a Motion for Reconsideration which was not addressed because it was not properly served upon the Court.

It is these two vastly divergent cases that Plaintiff asks this Court to consolidate.

ARGUMENT

The Appeals in Question should not be Consolidated

Rule 214 of the South Carolina Appellate Court Rules enumerates the requirements to consolidate cases for Appeal. It provides for consolidation in two circumstances and states:

Where there is more than one appeal from the same, order, judgment, decision or decree, or where the same question is involved in two or more appeals

in different cases, the appellate court may, in its discretion order the appeal to be consolidated.

In this case, Ms. Murphy is unable to demonstrate that either criterion enumerated in the rule is met and her two appeals against entirely different parties dealing with totally separate questions of law should not be consolidated. Doing so, rather than promoting efficiency and saving resources, will likely simply create confusion and a morass of paperwork more voluminous than that which will result from the two separate appeals. It is instructional that even Ms. Murphy's recital of her basis for consolidation essentially admits that these cases do not meet the test for consolidation wherein she asserts that "Appellant seeks consolidation because both appeals consist of similar questions of fact and law". [emphasis added] The Court should deny her motion to consolidate.

A. *There are not multiple appeals from the same order, judgement, decision or decree in this instance.*

This ground is not even advanced by Ms. Murphy and provides no basis for consolidation.

B. *Ms. Murphy's appeals do not address the same question of law.*

Ms. Murphy seeks to have this Court consolidate these cases because in her estimation, they allegedly arise from the same series of events. While there is a common factor in that had Ms. Murphy not been a School Board member and had she not been determined to live outside of the area from which she was elected, the actual legal and factual issues surrounding the case could not be more different.

i. *The nature of the appeals is different.*

In the case not involving Mr. Gantt, Ms. Murphy appeals from an administrative Order. Her appeal should be governed by the Administrative Procedures Act, *S.C. Code Ann.* §1-23-10,

et. seq. In the case involving Mr. Gantt, Ms. Murphy appeals from a grant of summary judgment. The weighing of fact, the evaluation of issues and virtually every aspect of these two appeals will be different. The mere fact that they arguably emanate from a similar background is not a basis for consolidation. In looking at our Court's rulings dealing with consolidation, it is clear that these different types of cases, with different standards, parties, issues and records are not appropriately consolidated. In *Binswanger & Co. v. Green*, 216 S.C. 108, 56 S.E.2d 749, 751 our Supreme Court determined that "consolidation of different pending actions in the same court, should not be granted when the result thereof is to bring about a complication of issues of fact, embarrassment or delay in the trial, difficulty to the parties, the jury and the court to present or apply the law to the several tendencies of the evidence; or result in prejudice to the rights of the parties." Here, Mr. Gantt would submit, consolidation of these cases would make it difficult on the parties to present the issues and factual bases of their respective cases, particularly in light of the vast difference between the records, and status of the cases. These different appeals with different parties and no common legal issues should not be consolidated.

ii. The standards of review are different.

The Administrative Procedures Act (which should govern Ms. Murphy's appeal of the School Board decision), enumerates the standard of review in the appeal of an administrative decision as follows:

The circuit court reviews the order of the State Board under the Administrative Procedures Act (APA), S.C. Code Ann. § 1-23-380(A)(6) (2005), which provides for reversal only if its findings are:

- a) in violation of constitutional or statutory provisions;*
- b) in excess of the statutory authority of the agency;*
- c) made upon unlawful procedure;*
- d) affected by other error of law;*

- e) *clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or*
- f) *arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.*

This Appellate Court reviews the order of the circuit court to determine whether it properly applied the APA standard of review. *Beaufort County Bd. of Educ. v. Lighthouse Charter Sch.*, 335 S.C. 230, 516 S.E.2d 655 (1999). Although under the APA, the Court may not substitute its judgment for that of a state agency as to the weight of the evidence on questions of fact, it may reverse or modify decisions which are clearly erroneous in view of the substantial evidence on the whole record. *Welch Moving and Storage Co., Inc. v. Public Serv. Comm'n of South Carolina*, 301 S.C. 259, 391 S.E.2d 556 (1990).

The review of an Administrative appeal is vastly different from the standard of review for summary judgment which "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (quoting *Watson v. S. Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C. 1975)). An appellate court reviews the grant of summary judgment under the same standard applied by the circuit court. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). "The circuit court should grant summary judgment 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' Rule 56(c), *SCRCP*. "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a

properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David*, 367 S.C. at 250, 626 S.E.2d at 5.

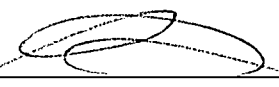
These different standards of review further illuminate the reason that consolidating these appeals is inappropriate. These differing standards demonstrate the dissimilarity of the facts, questions and issues that will need to be briefed and ruled upon by the Court. These issues coupled with the facts that the only common party is the Plaintiff weigh strongly against any exercise of discretion leading to consolidation.

CONCLUSION

The questions presented, types of cases and standards of review in these appeals coupled with the lack of common parties make it likely that consolidating these appeals will complicate, confuse and obfuscate the issues before the court and result in more time, expense and the use of more resources. The cases do not meet the requirements enumerated in Rule 214 S.C.R.A.P. The Court should deny Ms. Murphy's Motion to Consolidate her Appeals.

Respectfully Submitted,

MONTGOMERY WILLARD, LLC



Michael H. Montgomery
S. C. Bar ID# 4034
1002 Calhoun Street (29202)
Post Office Box 11886
Columbia, South Carolina 29211-1886
(803) 779-3500
Facsimile (803) 799-2755
ATTORNEYS FOR THE RESPONDENT
ROBERT GANTT, INDIVIDUALLY

July 12, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUL 12 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2016-000211

Kim MurphyAppellant

vs.

Richland-Lexington School District No. 5 by and through its Board of Trustees by
And through Counsel to the Board of Trustees..... Respondent

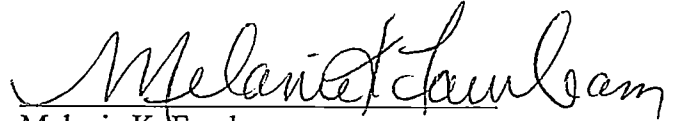
CERTIFICATE OF MAILING/SERVICE

I, Melanie K. Farnham, employee with the law firm of MONTGOMERY WILLARD, LLC, do hereby certify that I have served counsel of record with *Robert Gantt's Amended Return to Appellant's Motion to Consolidate Appeals and Respondent Robert Gantt's Amended Memorandum of Law in Opposition to Appellant's Motion to Consolidate Appeals* by mailing a copy of the same via First Class Mail with the proper postage affixed thereto to the addresses below:

J. Lewis Cromer, Esq.
Chelsea R. Rikard, Esq.
J. Lewis Cromer & Associates, LLC
P.O. Box 11675
Columbia, SC 29211

John M. Reagle, Esq.
Childs and Halligan, P.A.
P.O. Box 11367
Columbia, SC 29211

Patrick J. Frawley, Esq.
Davis Frawley, LLC
P.O. Box 489
Lexington, SC 29071


Melanie K. Farnham

Columbia, South Carolina
July 12, 2016

MONTGOMERY WILLARD, LLC
ATTORNEYS AND COUNSELORS AT LAW
1002 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201

(803) 779-3500

MICHAEL H. MONTGOMERY
MHM@MONTGOMERYWILLARD.COM
DIRECT DIAL No. (803) 753-6484

CERTIFIED CIVIL MEDIATOR

POST OFFICE BOX 11886
COLUMBIA, SOUTH CAROLINA 29211-1886

FACSIMILE (803) 799-2755
WORLD WIDE WEB [HTTP://WWW.MONTGOMERYWILLARD.COM](http://www.MONTGOMERYWILLARD.COM)

RECEIVED

JUL 12 2016

SC Court of Appeals

July 12, 2016

Via Hand Delivery
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1120 Senate St.
Columbia, SC 29201

Re: *Kim Murphy v Richland-Lexington School District No. 5 by and through its Board of Trustees by And through Counsel to the Board of Trustees Appellate Case No. 2016-000211*

Kim Murphy v Robert Gantt and Bobby Merle Bowers, in their individual capacities Appellate Case No. 2016-001198

Our File No: 2155804

Dear Ms. Kitchings:

Pursuant to a discussion this morning with Elizabeth Carter of your office, enclosed please find Respondent Robert Gantt's Amended Return to Appellant's Motion to Consolidate Appeals, Respondent Robert Gantt's Amended Memorandum of Law in Opposition to Appellant's Motion to Consolidate Appeals, and the related Certificate of Service in the above matter. Please note that these documents are the originals and additional copies are not being submitted, per Ms. Carter's instructions.

Further, these documents have been amended to reflect just the caption of Appellate Case No. 2016-000211. As you will note, I am not counsel of record for this matter. However, Appellant's Motion to Consolidate affects Appellate Case No. 2016-001198. I am Respondent's counsel of record in Case No. 2016-001198, which is the reason why Respondent Gantts' Return was filed by my office.

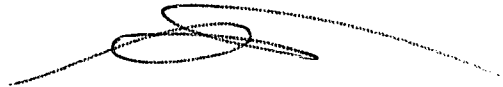
The Honorable Jenny Abbott Kitchings
July 12, 2016
Page 2

Please feel free to contact me if you have any questions or concerns. Thank you for your assistance.

With kind regards, I am

Very truly yours,

MONTGOMERY WILLARD, LLC

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Michael H. Montgomery

MHM/mkf
Enclosures

cc w/ encl: J. Lewis Cromer, Esq.
Patrick John Frawley, Esq.
John M. Reagle, Esq.