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JUL 15 2016

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2016-000211

Kim Murphy ..... Appellant

v.

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

APPELLANT’S REPLY TO RESPONDENTS’ RETURNS TO  
APPELLANT’S MOTION TO CONSOLIDATE APPEALS

Pursuant to Rule 214 and Rule 240(f) of the South Carolina Appellate Court Rules (SCACR), Appellant hereby files her Reply to Respondent Robert Gantt’s (“Gantt”) and Bobby Merle Bowers' (“Bowers”) Returns. On June 30, 2016, Appellant Kim Murphy filed a Motion to Consolidate Appeals with her corresponding Memorandum of Law in Support. By way of her Motion, Appellant seeks consolidation of the appeals captioned Appellate Case No. 2016-000211 and 2016-001198 on the basis that both appeals involve the same questions pursuant to Rule 214 of the SCACR. On July 11, 2013 Respondents Gantt and Bowers filed their Returns and Memorandums of Law in Opposition to Appellant’s Motion to Consolidate. On that same date Respondent Richland-Lexington School District No. 5 Board of Trustees (“Board”) filed a Return and Memorandum of Law in Support of Appellant’s Motion. The Board did not object to

Appellant's Motion, though they noted a disagreement with Appellant's characterization of the common issues of fact in the appeals. Appellant does not oppose the Board's Return, however she does not that she does not agree with their assertions regarding the dissimilarities between the two appeals. Appellant hereby replies to Respondent Gantt and Bowers' Return

### ARGUMENT

For the reasons set forth below, Appellant's Motion to Consolidate Appeals should be granted.

1. The differing nature of the case and standards of review are not dispositive as to consolidation.

Respondent Gantt's substantial arguments are twofold: (1) the nature of the appeals are different and (2) the standards of review are different. In his first argument, Gantt attempts to differentiate the two appeals based on their procedural posture; one being reviewed by the Circuit Court in its appellate capacity and the other being disposed by way of a grant of summary judgment. His second argument then expounds upon this notion and asserts that due to their procedural differences, the appeals must be analyzed under differing standards of review, thus disqualifying them from consolidation. Gantt's argument concerning the differing nature of the cases, subsumes his argument regarding the different applicable standards of review, and can be analyzed together.

Gantt argues that the appeal, of which he is not a party (Appellate Case No. 2016-001198), should be governed by the Administrative Procedures Act, *S.C. Code Ann. § 1-23-10 et seq.* He urges that the standard of review here is limited to whether the circuit court appropriately applied the standard of review dictated by the APA. Gantt asserts that because the appeal, of which he is a party, is not governed by the APA and has different governing law, the court

should deny consolidation. Appellant asserts that not only is the APA not the appropriate governing standard for this action, but also the differing standards of review are not dispositive as to the question of consolidation.

In support of his assertion that the APA governs the appeal, of which he is not a party (Appellate Case No. 2011-001198), Gantt relies upon the case of *Beaufort County Bd. of Educ. v Lighthouse Charter Sch.*, 335 S.C. 230, 516 S.E.2d 655 (1999). *Lighthouse* is distinguishable from the present case because it involved an appeal from the State Board of Education denying a charter school application, rather than a decision from a local Board of Trustees. Gantt's argument even acknowledges that the circuit court applies the standard dictated by the APA when hearing an appeal from the *State Board*. Further, at the time of *Lighthouse* the statute governing charter schools specifically mandated appeals from local school boards to be filed with the State Board of Education, from which a final agency decision is appealable to the circuit court and governed by the APA. *Id.*; S.C. Code Ann § 1-23-380. However, the current statute provides that such appeals be made to the Administrative Law Court. S.C. Code Ann. § 59-40-90. Notably, the statute does not provide the standard of review to be applied nor does it state that the case is to be tried in equity.

The statutes applicable here, S.C. Code Ann. § 59-19-60 and § 59-19-560, governing the removal of trustees, similarly provides a procedure for appeal. The statute does not mandate that decisions of the local school board be appealed to the State Board or Administrative Law Court, but rather to the circuit court, who uses a *de novo* standard and is required to try the case *in equity*. *See*, S.C. Code Ann. § 59-19-60; § 59-19-560. The latter statute specifically states that appeals brought pursuant to S.C. Code Ann. 59-19-60 are to be tried by the lower court in equity. *Id.* This characteristic distinguishes the type of cases relied upon by Gantt, which are not

statutorily required to be tried in equity. In appeals brought under S.C. Code Ann § 59-19-560 the Court of Appeals can find facts in accordance with its view of the preponderance of the evidence and correct errors of law. *See, Hamilton v Board of Trustees of Oconee County School Dist.*, 282 S.C. 519, 319 S.E.2d 717 (Ct. App. 1984) (*citing, Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976); *Lexington County School District v. Bost*, 282 S.C. 32, 315 S.E.2d 677 (1984)). Thus South Carolina statute and case law recognize that the APA does not govern the procedures or standards of review for Appellate Case No. 2016-001198.

Rule 214, SCACR, permits consolidation where there is (1) more than one appeal from the same order, judgment, decision, or decree or (2) where the same question is involved in the two or more appeals in different cases. Rule 214, SCACR. Appellant relies upon the latter as her basis for seeking consolidation. Notably, the rule does not preclude or even mention the different standards of review as being a dispositive factor in the Courts analysis regarding consolidation. Moreover, Gantt did not identify any case law in which the Court denied consolidation on the basis of differing standards of review. Thus Gantt has not put forth any basis for denial of consolidation that is rooted in statutory or common law. Appellant respectfully requests that her Motion be granted accordingly.

2. The appeals share questions of law and fact.

The proper inquiry for a Rule 214 Motion, is not whether there are differing standards of review, but whether two or more appeals involve the same question. Here, the same question is involved in both appeals, that being, whether Appellant is a resident of Richland County and whether her removal from the Board of Trustees was a proper exercise of authority. Respondents Gantt and Bowers generally assert that the facts, questions, and issues are different, yet they fail

to specifically identify or discuss which facts or issues are different and why. Appellant, however, in her Motion and Memorandum of Law in Support of Consolidation discussed in depth just how the issues of fact and law in each of her appeals are not only similar but interdependent. Specifically, Appellant provided the Court with a summation of the common questions of fact and law of each appeal, which include whether Appellant was properly a resident of Richland at the time of her election, and whether the Board of Trustees had the authority to remove Appellant from her elected position in the middle of her term. Both appeals depend on these issues. Appellant acknowledges that there are additional questions of law and fact that are pending in these appeals including whether there existed a civil conspiracy between Respondents Gantt and Bowers, and whether Gantt defamed Appellant. However, both appeals rest on the resolution of the central and controlling questions. Thus, consolidation is necessary where the Court can resolve multiple matters within one action.


Appellant respectfully requests this Honorable Court consolidate the present appeal with Appellate Case 2016-001198. Appellant further requests that the current appellate deadlines be held in abeyance until this Court issues an Order on her motion. Alternatively, if this Court finds consolidation of the appeals is not necessary, Appellant respectfully requests a limited consolidation for purposes of briefing and oral argument.

[Signature Block on Next Page.]

Respectfully submitted,

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

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July 15, 2016  
Columbia, South Carolina

*Attorneys for Appellant*

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And through Counsel to the Board of Trustees, ..... Respondent.

**PROOF OF SERVICE**

This is to certify that the undersigned employee of J. Lewis Cromer & Associates, LLC, did cause to have served on July 15, 2016, a copy of the **APPELLANT'S REPLY TO RESPONDENTS' RETURNS TO APPELLANT'S MOTION TO CONSOLIDATE APPEALS** via First Class Mail, postage prepaid, to the following counsel of record, at the below indicated address:

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SC Court of Appeals

July 15, 2016

Via Hand Delivery

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

**Re: *Murphy v Richland-Lexington School District 5 et al.*  
Appellate Case No. 2016-000211**

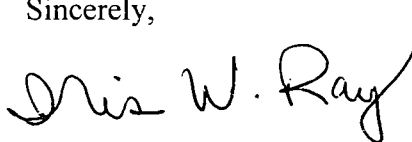
Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Appellant's Reply to Respondents' Returns on the above captioned matter. Also, enclosed is the Proof of Service. Please file the originals and return the clocked copies to our courier.

Should you have any questions and/or concerns, please feel free to call us. Thank you in advance for your assistance in this matter.

With kind regards, I remain

Sincerely,



Iris W. Ray  
Litigation Paralegal

/iwr  
Enclosures

cc w/enclosures:

John Reagle, Esq.  
David Morrison, Esq.  
Michael Montgomery, Esq.  
Patrick Frawley, Esq.  
Kim Murphy