THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr.
Circuit Court Judge

Appellate Case No. 2014-000829
Circuit Court Case No. 2014-CP-32-00697

Vivian Atkins, Robert P. Frick, and Kay Hollis, in their official capacity 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., in his official capacity as Mayor of the Town of Chapin, and Gregg White, in his official capacity as a member of the Town Council of the Town of Chapin, are the .... Respondents.

BRIEF OF RESPONDENTS

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ISSUES PRESENTED

1. Discretionary Authority Over Meeting Agendas: Chapin Town Ordinance § 2.206(b) vests the Mayor with authority to "approve" items to be placed on meeting agendas. Did the circuit court correctly hold that this authority is discretionary?

2. Remedial Rulings to Enforce Declaratory Judgment: After the circuit court issued its declaratory ruling construing the Chapin Town Ordinances, Appellants engaged in conduct that the circuit court found to be inconsistent with its declaratory judgment. Did the circuit court abuse its discretion in issuing a remedial decision to correct Appellants' post-judgment misconduct?

3. Mayor's Hiring Decision: Chapin has a strong-mayor form of government, which gives the Mayor the authority to hire and fire employees as a matter of both state and municipal law. Did the circuit court correctly dismiss Appellants' challenge to one of the Mayor's hiring decisions?

4. Attorneys' Fees: After denying Appellants all of their requested relief, the circuit court dismissed their statutory claim for attorneys' fees. Did the circuit court correctly dismiss Appellants' request to recover their attorneys' fees?

STATEMENT OF THE CASE

The Town of Chapin operates under a strong-mayor form of government, and this case arises out of a dispute over the Mayor's powers. The case was filed on February 26, 2014, but it traces its roots to Election Day in November 2013 when Mayor Wilson defeated Stan Shealy, a 32-year incumbent and political ally of Appellants. Within weeks after that election concluded, and following an unsuccessful protest by Mr. Shealy, Appellants attempted to misappropriate the Judiciary to achieve their political goals against the new Mayor and the new Town Councilman, Gregg White. Judge Cooper rightly stopped these efforts, which are fully detailed below.

I. Appellants filed a politically-motivated lawsuit, which Judge Cooper promptly dismissed.

Appellants filed this case seeking declaratory relief regarding the Mayor's authority under the Chapin Town Ordinances regarding meeting agendas and the propriety of his hiring a new Town employee, along with a claim for attorneys' fees. (Compl.; R. p. 19.) In essence, Appellants were displeased that Mayor Wilson had not put an item on the Town Council's agenda that would have allowed Appellants to oust him as Mayor, and they also disagreed with his choice for Chapin's new Director of Economic Development.

On March 10, 2014, Judge Cooper heard Respondents' Motion to Dismiss the Complaint, as well as Appellants' Motion for a Preliminary Injunction regarding the various issues on which they sought declaratory relief. By Order dated March 18, 2014, Judge Cooper terminated this case at the pleadings stage, as all of these claims were defective as a matter of law, particularly in light of Chapin's strong-mayor government. (Order Denying Motion for Injunctive Relief and Granting Motion to Dismiss; R. p. 1.)

On March 31, 2014, Appellants sought reconsideration of Judge Cooper's March 18th Order. (Motion to Reconsider March 18, 2014 Order; R. p. 130.) Judge Cooper denied that motion by Order dated April 8, 2014. (Order Denying Plaintiffs' Motion to Reconsider; R. p. 10.) That, however, did not stop Appellants.

II. Despite having received an unambiguous declaration from the circuit court, Appellants ignored Judge Cooper's rulings.

Despite Judge Cooper dismissing their case and specifically holding that Mayor Wilson "must sign off on the agenda prior to its distribution to Council, and there is no requirement that the Mayor place items on the agenda that he believes do not merit Council's consideration" (Order Denying Motion for Injunctive Relief and Granting Motion to Dismiss; R. p. 4), Appellants pressed forward as if no case had been filed and no ruling had been issued.

On April 6, 2014, Appellants attempted to announce a "special meeting" of Town Council, but they did so without submitting the agenda for that meeting to Mayor Wilson for his consideration. (Announcement of Special Meeting for April 10, 2014; R. p. 139.) Because this was directly contrary to Judge Cooper's March 18th Order, Respondents filed a motion the next day to enforce that order. (Motion to Enforce Order and to Enjoin Contrary Conduct; R. p. 134.)

On April 8, 2014, Judge Cooper circulated a letter to counsel for all parties stating that he was hearing criminal trials and could not expeditiously convene a hearing on Respondents' Motion to Enforce the March 18th Order. However, his letter stated that Appellants' Motion to Reconsider the March 18th Order was denied, and it concluded with a warning that if Appellants insisted on holding their "special meeting" in contravention of the Court's earlier order, that meeting "could be illegal and of no force

and effect." (Letter from The Honorable G. Thomas Cooper, Jr. (Apr. 8, 2014); R. pp. 241–42.)

III. Even after Judge Cooper warned Appellants that their post-judgment misconduct was improper, they continued to ignore his rulings.

Judge Cooper's warning fell on deaf ears. Only 36 minutes after Judge Cooper circulated his letter to the parties, counsel for Appellants emailed counsel for Respondents and stated that Appellants would press forward with their "special meeting" notwithstanding Judge Cooper's letter. (Email correspondence from Andrew Syrett to Todd Carroll (Apr. 8, 2014); R. pp. 244–45.) And they did. (Aff. James R. Wilson, Jr. ¶¶ 9–10 (Apr. 14, 2014); R. p. 249.)

Because Appellants held a meeting and attempted to address agenda items that were never submitted to the Mayor for his consideration, as required by both the Chapin Town Ordinances and by Judge Cooper's March 18th Order, Respondents were forced to file a Motion for Civil Contempt to undo Appellants' misconduct. (Motion for Civil Contempt; R. p. 237.)

Respondents filed that motion on April 14, 2014. Later that same day, Appellants noticed a second "special meeting" in violation of the Town Code and the March 18th Order. (Supplemental Aff. James R. Wilson, Jr. ¶ 3 (Apr. 21, 2014); R. p. 273.)

Recognizing the time-sensitivity of the circumstances, Judge Cooper's Chambers contacted the parties about holding a conference with the Court to address the situation. When Appellants could not make themselves available, Judge Cooper set a hearing on Respondents' post-judgment motions for April 25, 2014. (Email correspondence from Brandon Reeser, Law Clerk to The Honorable G. Thomas Cooper, Jr., to Counsel (Apr. 15, 2014); R. pp. 264–71.)

Because a hearing had been set to address the propriety of Appellants' post-judgment misconduct, Respondents requested that Appellants cancel the second improperly-noticed "special meeting" until the circuit court had an opportunity to review the situation. (Letter from Todd Carroll to Andrew Syrett (Apr. 16, 2014); R. p. 276.)

Once again, Appellants refused and attempted to hold another "special meeting" in violation of the ordinances and the March 18th Order. (Email correspondence from Andrew Syrett to Todd Carroll (Apr. 16, 2014); R. p. 278.) That meeting took place on April 17, 2014. (Supplemental Aff. James R. Wilson, Jr. ¶ 6 (Apr. 21, 2014); R. p. 274.)

IV. Just as he earlier warned, Judge Cooper declared all of Appellants' post-judgment misconduct to be unlawful and of no force and effect.

On Friday, April 25, 2014, the circuit court heard arguments regarding Respondents' post-judgment motions. At 1:18 a.m. on the Saturday morning following the hearing, Appellants notified Respondents that they intended to schedule yet another improper meeting designed to "explore whatever steps are available to remove him [*i.e.* the Mayor] from office in the most expedient manner possible." (Email correspondence from Andrew Syrett to Todd Carroll (Apr. 26, 2014); R. p. 228.)

Judge Cooper put an end to Appellants' misconduct on May 5, 2014:

> The Court finds Plaintiffs' post-judgment "special" meetings to have been unlawfully held because the proposed agendas for those meetings were never presented to the Mayor for his approval under Ordinance § 2.206(b) and the Court's March 18th Order. Any votes or actions Plaintiffs attempted to take or other business Plaintiffs attempted to conduct at all meetings held contrary to Ordinance § 2.206(b) and the Court's March 18th Order are hereby invalidated and deemed to be without any force or effect.

(Order on Defendants' Motion to Enforce Order and Enjoin Contrary Conduct and Motion for Civil Contempt at 6–7; R. pp. 17–18.) This appeal followed.

STANDARD OF REVIEW

I. Dismissal Under Rule 12(b)(6), SCRCP

Rule 12(b)(6), SCRCP, tests the legal sufficiency of a complaint. Under this rule, the Court should dismiss a claim if it fails "to state facts sufficient to constitute a cause of action." *Id.* When evaluating a motion under this rule, the Court is not to read unalleged facts into the pleadings, *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005), nor need it credit the claimant's legal conclusions or predicate act labels, *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (Ct. App. 2002). An appellate court applies the same standard as the circuit court when reviewing dismissal. *Disabato v. S.C. Ass'n of Sch. Adm'rs*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013).

II. Interpretation of Statutes and Ordinances

This Court reviews the circuit court's interpretation of the South Carolina statutes and the Town of Chapin's ordinances de novo. *Jennings v. Jennings*, 401 S.C. 1, 4, 736 S.E.2d 242, 243 (2012).

III. Review of Equitable Rulings

This Court reviews the circuit court's equitable decisions—namely, its denial of Appellants' request for temporary injunctive relief or mandamus, and its grant of Respondents' request for post-judgment relief in supplementary proceedings—for an abuse of discretion. *See, e.g., Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011) ("Whether to grant a preliminary injunction is left to the sound discretion of the trial court and will not be overturned unless it is clearly erroneous."); *Charleston County Sch. Dist. v. Charleston County Election Comm'n*, 336 S.C. 174, 179,

519 S.E.2d 567, 570 (1999) ("Whether to issue a writ of mandamus lies within the sound discretion of the trial court, and an appellate court will not overturn that decision unless the trial court abuses its discretion."); *Ag-Chem Equip. Co. v. Daggerhart*, 281 S.C. 380, 383, 315 S.E.2d 379, 381 (Ct. App. 1984) (holding that "[s]upplementary proceedings are equitable in nature" and finding the circuit court's post-judgment remedial rulings did not amount to an abuse of discretion).

ARGUMENTS AND AUTHORITIES

I. The circuit court rightly declared that Chapin's Mayor is vested with discretion over items for meeting agendas, a point that Appellants concede.

A. The plain language of Chapin Town Ordinance § 2.206 provides the Mayor with "approval" authority over agenda items, authority that is consistent with the strong-mayor form of government.

Appellants' first cause of action was for a declaration that Chapin Town Ordinance § 2.206 means something other than what it actually says. This ordinance, which governs how the Town's meeting agendas are prepared, states as follows: "The agenda shall be approved by the Mayor, prior to its distribution." Chapin, S.C., Code § 2.206(b) (R. p. 114.)

Despite the ordinance's plain language and the discretion it vests in the Mayor regarding inclusion of items for meeting agendas, Appellants asked the circuit court to declare that the ordinance is "unenforceable to the extent that it grants the Mayor ***any*** control over the agendas for council meetings." (Compl. ¶ 11 (emphasis added); R. p. 20.) Judge Cooper rightly rejected Appellants' request and construed the ordinance to vest the Mayor with discretion to approve agenda items.

As the Court is aware, statutes are to be enforced as they are written, and a statute's plain language controls the analysis. *See Rainey v. Haley*, 404 S.C. 320, 323,

745 S.E.2d 81, 82 (2013) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000))). A statute's terms are to be given their common and normal meaning. *Morgan v. S.C. DSS*, 280 S.C. 577, 581, 313 S.E.2d 350, 352 (Ct. App. 1984) ("In construing a statute, the words used should be given their ordinary and popular significance."). When a statute's terms are clear, "the Court's inquiry is over." *Jennings*, 401 S.C. at 4, 736 S.E.2d at 244.

These principles apply equally to local ordinances. *See Charleston County Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67–68, 459 S.E.2d 841, 843 (1995) ("It is well settled that when interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used.").

Judge Cooper's construction of the Mayor's authority was fully consistent with these guidelines. Chapin has a mayor-council form of government. Chapin, S.C., Code § 2.101 (R. p. 111.) Under this "strong mayor" system, the Mayor is:

- Chapin's Chief Executive Officer, *id.* § 2.105 (R. p. 111);
- Chapin's Chief Administrative Officer, S.C. Code Ann. § 5-9-30 and Chapin, S.C., Code § 2.402 (R. p. 116); and
- The presiding officer over all meetings of Town Council, of which the Mayor is a member, S.C. Code Ann. § 5-9-30(3) and Chapin, S.C., Code § 2.205 (R. p. 113).

As part of his office's considerable authority to prioritize issues for the Town, Ordinances §§ 2.201 and 2.202 authorize the Mayor to unilaterally call or change meeting times, and Ordinance § 2.206(b) vests the Mayor with discretion to determine what is considered at

those meetings: "The agenda shall be approved by the Mayor, prior to distribution." (R. pp. 113–14.)

This "approval" authority is unambiguous. For one, Appellants actually concede on appeal that Judge Cooper's construction of Ordinance § 2.206 ***is correct***. (*See* Br. of Appellants at 3 ("Ordinance § 2.206 admittedly grants authority to the Mayor to set the agenda for regular meetings.").)

Nor is Appellants' concession surprising, as South Carolina courts agree that the authority for an official to "approve" an item includes the discretion to exercise judgment and deny or reject that same item. *See, e.g.*, *Paslay v. Brooks*, 198 S.C. 345, 354, 17 S.E.2d 865, 869 (1941) ("Undoubtedly, the power to approve a claim as the one before us carries with it the discretion to disapprove."); *Fouche v. Verner*, 30 S.C. 277, 281, 9 S.E. 113, 114 (1889) ("To approve or disapprove the application, necessarily implies the duty of examination—both of questions of law and fact—for the purpose of determining whether the application should be approved or disapproved; and this necessarily implies the exercise of judgment.").

Other jurisdictions are in lockstep with this straightforward construction of laws that vest discretionary "approval" authority in officials. *See, e.g.*, *People v. Riggs*, 87 P.3d 109, 114 (Colo. 2004) ("The term 'approval' itself implies knowledge and the exercise of discretion after knowledge."); *143rd St. Investors, LLC v. Bd. of County Comm'rs*, 259 P.3d 644, 652 (Kan. 2011) ("In common usage, if one must have approval as a condition precedent, one knows that disapproval is possible."); *Cunningham v. Comm'r of Banks*, 144 N.E. 447, 455 (Mass. 1924) ("'Approved' in the connection in which it is used in [the cited Massachusetts statute] implies the exercise of sound

judgment, practical sagacity, wise discretion and final direct affirmative sanction."); *Morse v. Curtis*, 200 S.E.2d 832, 835 (N.C. Ct. App. 1973) ("Indeed, Black's Law Dictionary defines it: '"the act of approval" imports the act of passing judgment, the use of discretion and determination as a deduction therefrom.'" (quoting *Brice v. Robertson House Moving Wrecking & Salvage Co.*, 105 S.E.2d 439, 446 (N.C. 1958))).

Because the Mayor's "approval" authority over agenda items derives from the plain language in Ordinance § 2.206(b) and is consistent with his many roles within Chapin's strong-mayor form of government—evidenced in both South Carolina's statutes and Chapin's ordinances—Judge Cooper rightly rejected Appellants' claim for a declaration that the Mayor plays no part in setting meeting agendas.

Appellants have not identified any defects in the circuit court's construction of the Mayor's authority: not one contrary case, not any ambiguous language in the Chapin Town Ordinances, not any contrary South Carolina statutes, nothing. The Court should affirm Judge Cooper's ruling accordingly.

B. The circuit court did not improperly consider extraneous evidence when dismissing Appellants' request for declaratory relief.

Despite conceding that Judge Cooper correctly interpreted Ordinance § 2.206(b), Appellants suggest that the circuit court did not follow the proper process under Rule 12(b)(6), SCRCP, when dismissing their Complaint. (Br. of Appellants at 2–3.) In their view, the circuit court considered "matters not alleged in the Complaint" when dismissing their case, but they do not identify what those "matters" were. Failure to fully explain an argument in an opening brief forfeits the argument on appeal. *See Potomac Leasing Co. v. Bone*, 294 S.C. 494, 496, 366 S.E.2d 26, 27 (Ct. App. 1988) ("Glasco does not argue its exception that the trial court abused its discretion in denying its motion for

change of venue based on the ground of convenience of witnesses. We therefore deem it abandoned.").

At most, Appellants argue that the circuit court erred when it noted that there was "no evidence that the Appellants had sought to amend the agenda at a meeting." (Br. of Appellants at 3.) This collateral attack misses the mark for the simple reason that Appellants never alleged that they had attempted to amend an agenda during a meeting. (Compl. *passim*; R. pp. 19–22.) Judge Cooper certainly did not commit reversible error by noting that Appellants failed to make certain allegations in their Complaint; indeed, the absence of allegations is typically the very basis for granting a Rule 12(b)(6) motion. The Court should reject Appellants' argument on this point.

C. The circuit court rightly denied Appellants any of the preliminary relief they sought.

Appellants' next procedural, non-substantive, challenge to the circuit court's ruling is based on Judge Cooper's denial of Appellants' request "for temporary relief." (Br. of Appellants at 3–4.) Appellants, however, do not support their argument with any discussion of the standards for the preliminary relief that they sought, any discussion of how Judge Cooper erred in applying those standards, or citations to any authority whatsoever to suggest that his decision was incorrect. (*Id.*)

Just as above, the failure to fully discuss and support an argument in an opening brief constitutes a waiver of the appellate argument. *Potomac Leasing Co.*, 294 S.C. at 496, 366 S.E.2d at 27.

Even if the Court finds that this issue is preserved for appellate review, Appellants' position is simply incorrect. With their Complaint, Appellants filed a motion styled "Motion: Preliminary Injunction." The relief they requested, though, was described

as follows: "An Order of the Court ordering the Mayor to place any item requested by any member of Council on the agenda of the next occurring Council meeting after the request, without any delay." (Motion for Preliminary Inj. at 1; R. p. 90.)

Because Appellants asked the circuit court to direct the Mayor to affirmatively undertake specific actions, the circuit court correctly construed their request as one for mandamus. (Order Denying Plaintiffs' Motion for Injunctive Relief and Granting Defendants' Motion to Dismiss at 3; R. p. 3.) *See Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 495, 685 S.E.2d 600, 607 (2009) (explaining that when construing a request for an injunction or mandamus, "it is 'the substance of the requested relief that matters' and not the form in which the petition for relief is framed" (quoting *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 437, 673 S.E.2d 448, 458 (2009))).

The circuit court likewise correctly declined to issue mandamus directing the Mayor in how he should exercise his discretionary authority. Mandamus, which involves the Judiciary "ordering a public official to perform a ministerial duty," is the "highest judicial writ known to the law." *Edwards v. State*, 383 S.C. 82, 95, 678 S.E.2d 412, 419 (2009). It may only be issued when the public official has a duty to perform the requested act and that act is ministerial, and the requesting party has a "specific legal right for which discharge of the duty is necessary" but no other legal remedy short of mandamus. *Id.* at 96, 678 S.E.2d at 419.

If the public official has any discretion about how or whether to perform the requested act, then mandamus is improper. *See, e.g., Redmond v. Lexington County Sch. Dist. No. 4*, 314 S.C. 431, 438, 445 S.E.2d 441, 445 (1994) (denying mandamus because the school board's challenged conduct involved the exercise of "discretionary authority");

Linton v. Gaillard, 203 S.C. 19, 24, 25 S.E.2d 896, 898 (1943) ("Nothing is better settled than that mandamus will not be issued to control the discretion or judgment vested by law in public officers." (quoting *Atl. Coast Line R.R. v. Caughman*, 89 S.C. 472, 482, 72 S.E. 18, 22 (1911))).

Here, as Judge Cooper found and Appellants concede, the Chapin Town Ordinances give the Mayor discretion as to what is approved for inclusion on meeting agendas. Because the Mayor's authority is discretionary, its exercise cannot be compelled by mandamus. *See State ex rel. Williams v. Heirs*, 51 S.C. 388, 392, 29 S.E. 89, 91 (1898) ("Because the power conferred upon the respondent to ***approve*** the claim gave him the right to exercise his discretion in the premises, and where an officer is clothed with discretionary powers mandamus is not the proper remedy.") (emphasis supplied by the *Williams* court). The circuit court's ruling on this issue should be affirmed.

II. Judge Cooper properly exercised his discretion to enforce the March 18th Order after Appellants ignored his declarations.

Less than three weeks after Judge Cooper declared that "the Mayor must sign off on the agenda prior to its distribution to Council, and there is no requirement that the Mayor place items on the agenda that he belies do not merit Council's consideration," Appellants attempted to hold meetings with agendas that were not transmitted to the Mayor for his consideration and approval. Before they ever held one of these post-judgment meetings, Judge Cooper wrote the parties a letter of warning that if Appellants proceeded contrary to the court's March 18th declaration, their conduct "could be illegal and of no force and effect." (Letter from The Honorable G. Thomas Cooper, Jr. (Apr. 8, 2014); R. pp. 241–42.)

Judge Cooper's warning did nothing to deter Appellants, as they proceeded to hold two meetings contrary to the circuit court's declaration before the parties convened for a hearing on Respondents' motion to enforce the March 18th Order. Following that hearing, Judge Cooper exercised his authority under the Declaratory Judgments Act and issued an order voiding all actions Appellants attempted to take during these "unlawfully held" meetings. (Order on Defendants' Motion to Enforce Order and Enjoin Contrary Conduct and Motion for Civil Contempt at 6–7; R. pp. 17–18.) This ruling was entirely consistent with the circuit court's authority.

South Carolina Code § 15-53-120 provides circuit courts with authority to enforce declaratory judgments that they enter:

> Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith.

Like other provisions of the Declaratory Judgments Act, this authority should be "liberally construed" to fulfill its "remedial" purposes. *Id.* § 15-53-130.

Courts at both the state and federal level recognize that this "necessary or proper" statutory language vests trial courts with discretion to enter coercive orders needed to enforce a declaratory judgment. *See, e.g.*, *Ins. Servs. of Beaufort, Inc. v. Aetna Cas. & Surety Co.*, 966 F.2d 847, 852 (4th Cir. 1992) ("The power of the court to retain jurisdiction to give complete and effectual relief is well established, and it follows without any serious controversy that the court may make such further orders to give effect to a declaratory judgment as shall seem meet and proper." (quoting Walter H.

Anderson, *Actions for Declaratory Judgments* § 451 (2d ed. Supp. 1991))); *Bank of Augusta v. Satcher Motor Co.*, 249 S.C. 53, 60, 152 S.E.2d 676, 680 (1967) ("Under these provisions, a court, in a proceeding for declaratory relief, may grant consequential or incidental relief, that is, it may enter a judgment granting both declaratory and coercive relief, where the proper grounds for such relief appear from the pleadings and proof." (quoting 22 Am. Jur. 2d *Declaratory Judgments* § 100)).[1]

Here, Appellants challenge the circuit court's entry of a post-judgment order enforcing its March 18th declaration on grounds that the court "did not follow the procedure specified" in the Declaratory Judgments Act. (Br. of Appellants at 5–6.) This is not so.

A. The title of Respondents' motion to enforce the March 18th Order is irrelevant.

Appellants first suggest that the circuit court's ruling was improper because Respondents filed a "motion" to enforce the March 18th Order, rather than a "petition" to enforce that order. (*Id.* at 6.) The Court should not credit this semantic hairsplitting, as the title of the document that raised the issue of Appellants' post-judgment misconduct to the circuit court does not carry any relevance. *See Melton v. United States*, 359 F.3d 855, 857 (7th Cir. 2004) ("Call it a motion for a new trial, arrest of judgment, mandamus, prohibition, coram nobis, coram vobis, audita querela, certiorari, capias, habeas corpus, ejectment, quare impedit, bill of review, writ of error, or an application for a Get-Out-of-Jail Card; the name makes no difference. It is substance that controls.").

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[1] The federal Declaratory Judgments Act contains functionally identical language to South Carolina's version of the statute: "Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment." 28 U.S.C. § 2202.

B. Judge Cooper followed the procedure outlined in the Declaratory Judgments Act when entering his post-judgment order.

Appellants also argue that the circuit court's ruling was improper because it "did not issue any Rule to Show Cause." (Br. of Appellants at 6.) This, too, misses the mark, as the Declaratory Judgments Act only requires the circuit court to provide a party against whom a declaration has been entered to with notice and an opportunity to explain why further relief is not necessary. S.C. Code Ann. § 15-53-120.

These procedural safeguards were undoubtedly honored here:

- Judge Cooper gave the parties' ten days' notice of a hearing. (Email correspondence from Brandon Reeser, Law Clerk to The Honorable G. Thomas Cooper, Jr., to Counsel (Apr. 15, 2014); R. pp. 264–71.)
- Both Respondents and Appellants submitted briefs supporting their respective positions. (Mem. in Supp. of Defs.' Post-Judgment Motions; R. p. 251; Return to Mot. for Contempt; R. p. 163.)
- Both Respondents and Appellants submitted sworn testimony supporting their respective positions. (Aff. James R. Wilson, Jr. (Apr. 14, 2014); R. p. 247; Supplemental Aff. James R. Wilson, Jr. (Apr. 21, 2014); R. p. 273; Aff. Vivian Atkins (Apr. 23, 2014): R. p. 223.)
- And both sides were heard during a hearing on April 25, 2014. (Order on Defendants' Motion to Enforce Order and Enjoin Contrary Conduct and Motion for Civil Contempt at 2; R. p. 13.)

After considering all of the arguments and evidence, Judge Cooper properly entered an order enforcing his prior declaration, just as directed by the Declaratory Judgments Act.[2]

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[2] Nowhere in their appellate brief do Appellants argue that the circuit court's remedy—to invalidate the actions Appellants attempted to take at their unlawful post-judgment meetings—was beyond the court's authority. Nor would such an argument be legitimate, as courts routinely undo actions that public bodies attempt to take in violation of laws that dictate how government should operate. *See, e.g.*, *Bus. License Opposition Comm. v. Sumter County*, 311 S.C. 24, 28, 426 S.E.2d 745, 747–48 (1992) (affirming a lower court's invalidation of a county ordinance on grounds that it was "illegally adopted" during a closed meeting even though no formal vote was taken during that meeting); *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 130, 459 S.E.2d 876, 879 (Ct. App.

C. The circuit court properly held that Appellants' post-judgment behavior was inconsistent with the March 18th Order.

Finally, Appellants argue that Judge Cooper's second order is not properly part of this case because, in their view, their post-judgment misconduct arose under Chapin ordinances associated with "special" meetings, rather than "regular" meetings, and was therefore beyond the scope of the March 18th Order. (Br. of Appellants at 5–6.) This argument is incorrect for several reasons, as Judge Cooper readily identified in his second order.

Breadth of Appellants' Own Pleadings. As a threshold matter, the March 18th Order was not limited to how agendas were prepared only for "regular" meetings because Appellants' own pleadings were not so limited. Paragraph 12 of the Complaint, for instance, requested a declaratory judgment "ordering the Mayor to place on the agenda of the next Council meeting, without any delay, any item requested by any member of Council." (Compl. ¶ 12; R. p. 20.) Likewise, in their motion for a preliminary injunction, Appellants sought an order directing "the Mayor to place any item requested by any member of Council on the agenda of the next occurring Council meeting after the request, without any delay." (Mot. for Preliminary Inj. at 1; R. p. 90.)

Nowhere did Appellants suggest that their claims for relief were limited only to "regular" meetings. In turn, the circuit court's March 18th Order declared the law as to the agenda for all types of meetings, just as Appellants pled their case. (*See, e.g.*, Order Denying Motion for Injunctive Relief and Granting Motion to Dismiss at 6 (holding that the Mayor has authority "to deny any item requested to be on the agenda for a Council

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1995) (affirming a lower court's invalidation of a public body's decision to honor an employment contract when the vote to do so was unlawfully taken in executive session).

meeting"); R. p. 6.)[3] Judge Cooper did not abuse his discretion when rejecting Appellants' post-judgment efforts to recast the scope of their original, unsuccessful, case.

Ordinance § 2.206(b) Does Not Distinguish Among Types of Meetings. Second, the Chapin Town Ordinances do not distinguish among the various types of meetings with respect to how agendas are established. Chapin has a single ordinance that explains how agendas are to be set, regardless of the type of meeting: Ordinance § 2.206(b), titled "Agenda," which vests the Mayor with discretion to "approve" items for an agenda. This ordinance does not indicate that it is limited to agendas only for "regular" meetings, nor does it indicate that agendas should be established differently based on the type of meeting being held.[4]

To limit Ordinance § 2.206(b) to only agendas for "regular" meetings would leave the Town of Chapin without any provision for setting agendas for all other types of meetings. But as a matter of South Carolina law, agendas are required for all types of meetings other than regular meetings. S.C. Code Ann. § 30-4-80(a). If Appellants'

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[3] Even if Appellants were factually correct that their pleadings were intended to be limited only to "regular" meetings, which they are not, they still cannot overcome the circuit court's post-judgment authority to enforce the court's view of its own declaratory judgment. *See, e.g.*, *Insurance Services of Beaufort*, 966 F.2d at 851 ("This [post-judgment] relief 'need not have been demanded ***or even proved*** in the original action for declaratory relief.'" (quoting *Edward B. Marks Music Corp. v. Charles K. Harris Music Publ'g Co.*, 255 F.2d 518, 522 (2d Cir. 1958))) (emphasis supplied by the *Insurance Services of Beaufort* court).

[4] In their opening brief, Appellants argue that the title is "not part of the ordinance" based on Chapin Town Ordinance § 1.204. (Br. of Appellants at 5.) This is misleading, as Ordinance § 1.204 expressly states that each ordinance's title is designed "to indicate or emphasize the contents of such section." Obviously, by entitling an ordinance "Agenda," the legislative intent was to pass an ordinance governing meeting agendas. *See, e.g.*, *Duvall v. S.C. Budget & Control Bd.*, 377 S.C. 36, 47, 659 S.E.2d 125, 130 (2008) (relying on a statute's title as indicia of legislative intent and citing additional cases in support of this same proposition).

argument were accepted, Chapin's ordinances ***would*** provide a method for establishing agendas for meetings that ***do not require*** an agenda as a matter of state law, but ***would not*** provide a method for establishing agendas for meetings that actually ***do require*** an agenda as a matter of state law. Judge Cooper rightly rejected this backwards result by construing Ordinance § 2.206(b) to apply to agendas for all types of meetings, an interpretation that matches the ordinance's plain language. *See S.C. Tax Comm'n v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 168, 447 S.E.2d 843, 846 (1994) ("In giving effect to legislative intent, we are constrained to avoid an absurd result.")

Appellants' Construction Amounts to Implied Repeal. Finally, Appellants' reliance on Ordinance § 2.202's provisions for calling "special" meetings is misplaced. That ordinance sets forth ***when*** "[s]pecial meetings may be held." Chapin, S.C., Code § 2.202 (R. p. 113.) It does not, however, speak to ***what*** business may be considered at a "special" meeting, nor does it contain any language to suggest that an agenda for a "special" meeting is set any differently than for all other types of meetings.[5]

Judge Cooper rightly recognized that Appellants' efforts to read into Ordinance § 2.202 additional authority that would subvert the plain language of Ordinance § 2.206(b) would amount to an implied repeal of the Mayor's authority to approve

[5] This "when versus what" distinction is commonplace with respect to irregular meetings of public bodies. For instance, the South Carolina Constitution authorizes the Governor to convene a session of the General Assembly "on extraordinary occasions." S.C. Const. art. IV, § 19. However, the authority to convene a legislative session does not also authorize the Governor to establish what the General Assembly may consider during that session. *See McConnell v. Haley*, 393 S.C. 136, 139 n.1, 711 S.E.2d 886, 888 n.1 (2011) ("Although the Governor may convene the extra session, she may not dictate the manner in which the General Assembly proceeds at that session or the topics considered."). Similarly here, Ordinance § 2.202 indicates when a "special" meeting may be called, but it does not indicate that the method for setting the agenda for such a meeting differs in any way from the procedure prescribed by Ordinance § 2.206(b).

meeting agenda items. The law, of course, strongly disfavors implied repeal. *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010).

Likewise, ordinances dealing with the same general subject matter are to be construed together in order to establish a uniform result. *See Beaufort County v. S.C. State Election Comm'n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011) ("Moreover, it is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result."). In fact, this principle of statutory construction is "a restatement of the presumption against implied repeal." 2B Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction* § 51:1, at 190–91 (7th ed. 2012).

Applying these twin rules, the circuit court properly held that the inclusion of how agendas are to be prepared in Ordinance § 2.206(b), but not in Ordinance § 2.202, defeats Appellants' post-judgment attempts to bypass the Mayor's approval authority by calling "special" meetings under Ordinance § 2.202. *See id.* § 51:1, at 213–14 ("[W]here a legislature inserts a provision in only one of two statutes that deal with a closely related subject, courts construe the omission as deliberate rather than inadvertent."). Accordingly, the Court should reject Appellants' arguments regarding Judge Cooper's rulings remedying their post-judgment misconduct.

III. The circuit court properly dismissed Appellants' remaining claims, which sought to undo one of the Mayor's hiring decisions and to recover their attorneys' fees.

In addition to their claim regarding meeting agendas, Appellants challenged the Mayor's decision to hire a Director of Economic Development for the Town of Chapin,

and they sought to recover their attorneys' fees associated with this litigation. Judge Cooper dismissed both, and his decision is unassailable.

Regarding their challenge to the Mayor's hiring decision, Appellants concede that the Town Council unanimously voted to create this position. (Br. of Appellants at 4.) (Chapin Town Council Meeting Minutes, at 1 (Jan. 15, 2014); R. p. 119.)[6] Once the position was created, both the South Carolina Code and the Town Ordinances vested the Mayor with authority to hire this employee. *See, e.g.*, S.C. Code Ann. § 5-9-30(1) (vesting "strong mayors" with the authority "to appoint . . . all municipal employees"); *id.* § 5-9-30(2) (vesting "strong mayors" with the authority "to direct and supervise the administration of all departments, offices and agencies" within the municipality unless otherwise provided by law); *id.* § 5-9-40 ("All departments, offices and agencies under the direction and supervision of the mayor shall be administered by an officer appointed by and subject to the direction and supervision of the mayor."); Chapin, S.C., Code § 2.403 (R. p. 116) (providing that, with few inapplicable exceptions, "all officers and employees of the town shall be appointed by the Mayor").

This authority to hire employees is a key characteristic of the strong-mayor form of government, as Judge Cooper rightly noted. (Order Denying Motion for Injunctive

[6] Because these meeting minutes are public records, the circuit court was entitled to take judicial notice of them and to consider them when resolving Respondents' Rule 12(b)(6) motion. *See, e.g.*, Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are "not subject to reasonable dispute"); *id.* 201(f) ("Judicial notice may be taken at any stage of the proceeding."); *Sec'y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007) ("In reviewing the dismissal of a complaint under Rule 12(b)(6), we may properly take judicial notice of matters of public record."); *Odom v. McMaster*, Case No. 2:10-cv-873-MBS, 2010 U.S. Dist. LEXIS 80566, at *14 (D.S.C. Aug. 6, 2010) ("This court has routinely allowed reference to public records in 12(b)(6) motions to dismiss."). And, in any event, Appellants concede the substance of these meeting minutes in their opening brief. (Br. of Appellants at 4.)

Relief and Granting Motion to Dismiss at 7; R. p. 7.) Nor are there any allegations that the Mayor allocated monies to fund this position in any way inconsistent with the Town Ordinances, which give the Mayor full authority to "transfer funds within and between departments" when necessary, much like the flexibility provisos that the General Assembly includes in the annual Appropriations Act. Chapin, S.C., Code § 8.103(a) (R. p. 117). There cannot be any legitimate dispute that the Mayor was within his authority when he made this hiring decision, and Judge Cooper properly dismissed this claim.

Regarding Appellants' claim for attorneys' fees, the statute under which they seek to recover permits recovery only to "prevailing parties" and only when the public actor has conducted him- or herself "without substantial justification." S.C. Code Ann. § 15-77-300(A). Here, Appellants are not "prevailing parties," making their claim for fees facially defective. Likewise, for the myriad reasons explained above, Respondents' challenged behavior in this case has certainly been justified, as it has been entirely consistent with the governing statutes and ordinances. Accordingly, the circuit court properly dismissed this final claim as well. Its decision should be affirmed.

CONCLUSION

As noted at the outset, this case is, at its core, a political dispute. Judge Cooper rightly refused to allow Appellants to conscript the Judiciary for political mischief. As he explained in his order striking Appellants' post-judgment misconduct: "If, in the eyes of the voters, the Mayor does not properly exercise his authority over the agenda, then they will hold him accountable at the ballot box. But this Court is not a proper venue for such a political argument." (Order on Defendants' Motion to Enforce Order and Enjoin Contrary Conduct and Motion for Civil Contempt at 6; R. p. 17.)

The circuit court's interpretation of Chapin's ordinances and the South Carolina Code, as well as the Mayor's authority under them, is supported by the plain language of these bodies of law and the traditional tools of statutory analysis. Likewise, the circuit court's exercise of supplemental authority to enforce its prior declaratory judgments was well within its discretion. Appellants have not identified a single legitimate defect in the circuit court's rulings. They should be affirmed accordingly.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The below-signed counsel certifies that this brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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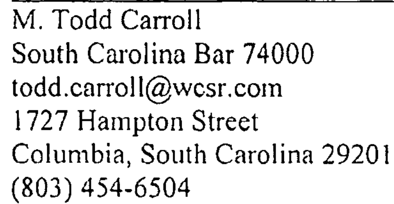

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PROOF OF SERVICE

I, the undersigned Legal Secretary of the law offices of Womble Carlyle Sandridge & Rice LLP, Attorneys for Respondents, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

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