

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2013-CP-40-1897
Appellate Case No. 2016-000211

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SC Court of Appeals

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.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

Appellant, a former trustee on the Richland-Lexington School District No. 5 Board of Trustees, was removed from her position by her fellow board members. Appellant is now for all intents and purposes disenfranchised, unable to seek election as a resident of either Richland or Lexington Counties. Appellant challenges her removal from the Board of Trustees. Respondent filed a response brief to Appellant's initial brief, received by this Court on November 14, 2016. There, the Respondent maintains that: Appellant is not a resident of Richland County; Appellant was properly removed from the office of School Board Trustee; and Appellant was afforded due process. Appellant Murphy respectfully replies to show the Court that Respondent's arguments are not supported by law or the facts of this case.

I. APPELLANT IS A CITIZEN AND RESIDENT OF RICHLAND COUNTY.

Respondent asserts that all of the evidence in this case shows Appellant's residence is in Lexington County, not Richland County. However, the facts and the law show that Appellant's residence is located within Richland County, and that Appellant was a Richland County resident at the time of her removal.

Respondent cited to the testimony of Mr. Bowers and Mr. Miller, stating that Geographic Information System tools could be used to establish that Appellant's residence was located on "Lot 4 of 'Final Subdivision Plat of Laurel Springs.'" Respondent again argued that the SCB&CB conducted a "detailed review" of Appellant's residence and concluded that Appellant's property falls within Lexington County lines. However, the evidence indicates that the South Carolina Geoditic Survey ("SCGS") had not even conducted surveys of Murphy's residence at the time of the hearing giving rise to this matter. (R. p. 47). Rather, they looked at the 1995 maps and concluded that Murphy was a resident of Lexington County. (R. p. 97 ¶ 16-

20). SCGS found that Appellant's property was located within Lexington County without conducting a detailed review of the property or following the statutory procedure required for boundary disputes, and thus, the Respondent should not have removed Appellant based on that finding.

Respondent acknowledged in its Initial Brief that Appellant was properly elected to the Board as a representative of Richland County in 2010. (Respondent's Initial Brief *citing* R. p. 34, ¶ 21-22). Respondent also acknowledged that Richland County granted "elector" status to Appellant based on Richland County's mapping computer database that showed the same "Approx. County Line" as the Final Subdivision Plat of Laurel Springs that Mr. Bowers and Mr. Miller referenced in their testimony. Respondent contends that Richland County erred by granting such status to Appellant.

However, Lexington County officials also determined that Appellant's residence was located in Richland County using approximate county lines when Appellant secured approval for the proposed layout of her property using approximate county lines. (R. pp. 41-42). Further, Appellant's property has been shown to be located in Richland County by virtue of a certified plat.¹ (R. p. 45). Also, Appellant voted in Richland County as recently as the 2014 primary election. (R. p. 32). Last, Appellant has paid taxes to Richland County. (R. p. 39).

SCGS failed to follow the appropriate statutory procedure to reestablish the county boundary after deciding that Murphy lived in Lexington County, and thus, Murphy is still a resident of Richland County and was such at the time of her removal.² Therefore, Respondent

¹ The existing statute requires that upon reestablishing a county boundary, the South Carolina Geodetic Survey (SCGS) shall certify its work through a certified plat signed and sealed by a licensed South Carolina Professional Land Surveyor and approved by the Chief of the SCGS. *See* S.C. Code Ann. § 27-2-105 (2014). Murphy's residence has been shown to be in Richland County by virtue of a certified plat.

² *See e.g.*, S.C. Code Ann. § 27-2-105 (2014); S.C. Code Ann. § 27-2-105 (1976) (statutory procedure for reestablishing ill-defined, unmarked, or poorly marked county lines).

failed to establish that Murphy was a resident of Lexington County at the time of her removal, and the Respondent did not have cause to remove her.

Respondent argued that the county line is neither ill defined, unmarked, or poorly marked, and that Appellant's residence is clearly located on the Lexington County side of the county line, citing to the testimony of Mr. Bowers and Mr. Miller. However, the overwhelming evidence indicating that Appellant's residence has been understood to be located in Richland County since Appellant has resided there discredits Respondent's argument that the line is clearly established and that the line clearly shows that Appellant's residence is located in Lexington County. *See e.g.*, (R. pp. 41-43); (R. p. 45); (R. p. 39).

Although Respondent tried to support their reliance on SCGS's findings with Mr. Miller's testimony about the consistent placement of Rocky Ford and the efforts taken to confirm its location, the record shows that the bearings coming from Rocky Ford are not clearly established. (R. pp. 95-96). Mr. Miller's testimony also reflects that the boundary lines, the USGS map, the Lexington County map, U.S. Census map, and the statutory line plotted by Miller's office all differ. (R. p. 80). Respondent even acknowledged in its brief that Lexington County, the United States Geological Service, and the United States Census Bureau "all have other boundary lines near Appellant's residence meant to denote the boundary between Richland and Lexington Counties."

The Respondent also acknowledged that Richland County's own tax mapping computer data base has the same "Approx. County Line" as the map cited by Bowers and Miller, and that Richland County granted Appellant "elector" status based on Richland County's map. Thus, it is evident that the line in question is ill-defined, at the very least, for Richland County and Respondent to come to different determinations about Appellant's residence, and the

Respondent, through the SCGS, should have followed the statutory procedure to discern the county line and the location of Appellant's residence. Because SCGS failed to follow the statutory procedure to reestablish the county line, Appellant remains a resident of Richland County, and was improperly removed as an elected board member.

Respondent cited to 2002 S.C. Act No. 326, § 9 in support of its removal, stating that it only permits a resident of Richland County to hold the seat on the Board to which Appellant was elected (one of the seats allocated to Richland County). S.C. Act No. 326 expressly states: "[n]otwithstanding another provision of law, in Richland-Lexington School District 5: (1) three trustees must reside in Richland County and four must reside in Lexington County." *See* 2002 S.C. Act No. 326 § 9. However, at the time Appellant was removed, she was still a resident of Richland County for all purposes, including satisfying residency requirements for the Richland County seat for which she was elected. The determinations of the SCGS, the Lower Court, and the Board are not enough to reestablish the county line upon which Richland County has depended when making residency determinations. Rather, a statutory scheme must be followed, which was not followed here. Appellant is a lawful resident and voter of Richland County. She was properly elected to represent the constituents of Richland County on the Respondent Board, after being certified by Richland County to run. Appellant's removal on the grounds that she is not a Richland County resident is reversible. Thus, Appellant respectfully requests that this Court reverse the Circuit Court's Order affirming Appellant's removal.

II. APPELLANT WAS NOT PROPERLY REMOVED FROM THE OFFICE OF SCHOOL BOARD TRUSTEE

Respondent argues that the Board's Order of Removal was proper, because the Board removed Appellant after determining that Appellant did not reside in Richland County as required by 2002 Act No. 326, § 9. However, Appellant was a resident of Richland County at the

time of her removal, and thus, the Board did not have cause to remove Appellant from her position based on her failure to meet the residency requirement. It is not the same as where an elected official chooses to move from her district during her tenure. Appellant's residence remained in the same location at all times. The Circuit Court erred in holding that the Board's determination that Appellant lived in Lexington County was enough to establish cause to remove Appellant in the middle of her term. Appellant was still legally a resident of Richland County at the time of her removal, regardless of the Board's determination.

It is well recognized that "[s]chool officers whose terms of office are fixed and definite generally are not removable without cause, unless there is a constitutional or statutory authority therefor." *See e.g.*, 78 C.J.S., *Schools and School Districts*, § 135; S.C. Code Ann. § 59-19-60; *State ex rel. Lyon v. Rhame*, 92 S.C. 455, 75 S.E. 881, 882 (1912) (stating, "[t]he power of removal from office ... is not an incident of the executive office, and it exists only where it is conferred by the Constitution or by the statute law, or is implied from the conferring of the power of appointment"); *State v. Wannamaker*, 213 S.C. 1, 48 S.E.2d 601 (1948) (stating, "[i]f an officer holds office for a fixed term, summary removal is not authorized.... [t]he right to hold an office during a fixed term unless removed for cause may be overcome only by an unequivocal grant of power from the Legislature to remove at pleasure").

Here, Respondent had neither cause to remove Appellant from her position on the Board, nor an unequivocal ground of legislative power to do so.³ *See State v. Wannamaker*, 213 S.C. 1,

³ South Carolina Code § 59-19-60 gives the removal authority of trustee members to *county boards of education* – not boards of trustees. (emphasis added). The statute states, "School districts shall be under management of boards of trustees... subject to the supervision and orders of the county board of education." The code section reveals that a board of trustees is not substituted for a county board of education because the two are separate and apart from one another. The District 5 Board of Trustees never inherited the Richland County Board of Education's trustee removal authority. Act 140 of 1969 gave appointment and removal authority over District 5 trustees to Richland County Council, and Act 610 of 1984 amended Act 140 of 1969 and extinguished Richland County Council's trustee removal authority without delegating it. Therefore, the Board of Trustees did not hold the authority to remove Appellant under S.C. Code Ann. § 59-19-60.

48 S.E.2d 601 (1948). Respondent asserts that the Board had the authority to remove Appellant from the Board for cause under S.C. Code Ann. § 59-19-60, based on the determination that Appellant lived in Lexington County. However, Appellant never changed her residence. Moreover, even if Respondent's decision about her residency was correct, it should not have affected Appellant's tenure on the Board. Rather, the line should have been officially changed before the next election so that Appellant would not be an eligible candidate at that time. The appropriate governmental agencies here determined that Appellant resided in Richland County for the purposes of all legal rights and obligations at the time she was elected, such as voting, paying taxes, and running for the Respondent Board to represent Richland County constituents. (Appellant's Appeal Br., Exs. B & C). That designation remained unchanged for all times relevant to this appeal.⁴ The Respondent's finding that Appellant was not a resident of Richland County was not enough to constitute cause for her removal, because she was still legally a resident of Richland County at the time of her removal. Appellant satisfied the mandatory residency requirement established by 2002 S.C. Act No. 326, § 9, and her continuation on the Board would not have affected the public's constitutional rights or interests in having only legally qualified representation. Therefore, Respondent did not have authority to remove Appellant, and the Circuit Court's decision should be reversed.

III. THE LOWER COURT ERRED IN FINDING THE RESPONDENT BOARD HAD GIVEN APPELLANT DUE PROCESS.

South Carolina Code Ann. § 59-19-60 sets forth the process necessary for removal of a school district trustee, and that a school district trustee shall not be removed from office without cause. *See* S.C. Code Ann. § 59-19-60. However, Respondent has not provided proof that the

⁴ In a separate matter arising this year, the Circuit Court found that Appellant was not a resident of Richland County with respect to the 2016 School Board Election. Appellant would show the Court, that despite this ruling which is under appeal in a separate case, the statutory procedure for resolving a boundary dispute has yet to have been applied with respect to her residency, and now she is, for the purpose of running for office, a resident of no County.

Board had cause to remove Appellant under § 59-19-60. Respondent claims that it based Appellant's removal on Appellant's failure to meet the residency requirement for the Richland County seat. However, Appellant was legally a resident of Richland County at the time of her removal, and she will remain a resident of Richland County until the SCGS follows the statutory procedure established by § 27-2-105 to reestablish the county line.

Respondent contends that S.C. Code Ann. § 27-2-105 (1976) is inapplicable to this case because it is not a case seeking to resolve a boundary dispute between Richland County and Lexington County.⁵ Respondent claimed in its Initial Brief that no boundary dispute between the counties is presented by this case and that there is no evidence that the boundary at issue is ill defined, unmarked, or poorly marked. However, the evidence clearly shows that a boundary dispute has resulted from the ill-defined, unmarked, or poorly marked county line at issue in this case.⁶ Thus, the procedure to change county boundaries, established in S.C. Code Ann. § 27-2-105, must be followed. That procedure has not been followed here; therefore, Appellant's residence is still located in Richland County.⁷ Consequently, Appellant lacked cause to remove Appellant. The Respondent denied Appellant due process through the misapplication of the statute governing the resolution of county line disputes and the failure to follow the statutory procedure. Because the statutory procedure at issue is mandatory and must be followed, this

⁵ Respondent also alleged that this issue was not properly raised before the Court. However, Appellant raised the issue of whether she was afforded Due Process through the Respondent's procedures in the Court below, directly relating to the Respondent's application of the appropriate statute. (Appellant's Appeal Br., 6-8). Therefore, this issue is properly before the court.

⁶ In addition to this dispute arising over the line and Appellant's history as a resident of Richland County, Respondent acknowledged that Lexington County, the United States Geological Service, and the United States Census Bureau "all have other boundary lines near Appellant's residence meant to denote the boundary between Richland and Lexington Counties." The Respondent also acknowledged that Richland County's own tax mapping computer data base has the same "Approx. County Line" as the map cited by Bowers and Miller, and that Richland County granted Appellant "elector" status based on Richland County's map.

⁷ Appellant also did not have an opportunity to participate in the Hearing Officer selection process, which may have been a violation of Appellant's due process rights. *See State v. Langford*, 400 S.C. 421, 437, 735 S.E.2d 471, 479 ("Without a doubt, permitting solicitors – who represent a party in the case – to select the judge raises specter of partiality and calls the validity of the entire system into question.")

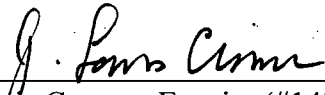
Court should reverse the Circuit Court's decision because of its failure to follow the statutory authority.⁸

CONCLUSION

For the foregoing reasons, Appellant respectfully asks this Honorable Court to reverse the holding of the Circuit Court, and to remand this case to the Circuit Court to determine appropriate relief for Appellant.

Respectfully Submitted,

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⁸ See 78 C.J.S., *Schools and School Districts*, § 135.