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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Brian Gibbons, Circuit Court Judge

Appellate Case No. 2017-000423
Case No. 2016-CP-29-1418

Jackie Harris ..... Appellant,

v.

Lancaster County Election Commission, Lancaster Municipal Election Commission, and Linda Blackmon-Brace ..... Respondents.

RESPONDENT LINDA BLACKMON-BRACE'S REPLY TO RESPONDENT LANCASTER COUNTY ELECTION COMMISSION'S RETURN TO THE MOTION TO STRIKE AND DISMISS THE CROSS-APPEAL

Pursuant to Rule 240(f), SCACR, Respondent Linda Blackmon-Brace submits the following reply to Respondent Lancaster County Election Commission's (the Commission) return to her motion to strike the initial brief filed on behalf of the Commission and dismiss the Commission's appeal of the circuit court's ruling. For the reasons set forth below, the Court should grant Ms. Blackmon-Brace's motion.

In support of its return, the Commission submitted an affidavit sworn out by the County Attorney in which he expressed his opinion that he complied with the South Carolina Appellate Court Rules in filing the Commission's initial brief.[1] The County Attorney, in his affidavit,

[1] However, in submitting its return, the Commission ignored Rule 240(e), SCACR, which imposes the same requirements on a party filing a return as the party filing a motion—that the filing be supported by "citation

correctly agrees that "the Commission has no right to appeal." Return at 2; see also Beaufort Realty Co. v. Beaufort Cty., 346 S.C. 298, 301, 551 S.E.2d 588, 589–90 (Ct. App. 2001) (asserting that "[a] party cannot appeal from a decision which does not affect his or her interest"). Indeed, "[o]nly a party aggrieved by an order, judgment, . . . or decision may appeal." Rule 201(b), SCACR. The Commission, of course, is not an aggrieved party because it received all favorable rulings in the circuit court's order affirming the decision of the Commission. Cf. Cisson v. McWhorter, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970) (holding the party "was not aggrieved by the judgment of the [circuit] court, but rather benefited thereby, and [was] without legal right to appeal therefrom"). After stating the Commission has no right to appeal, the County Attorney goes on to say that "the Commission has taken no action to do so." Return at 2. Yet, in its initial brief of respondent filed with this Court, the Commission asked the Court to "reverse the ruling of the [c]ircuit [c]ourt." Comm'n Br. at 12.

An "appeal" is defined as "[a] proceeding undertaken to have a decision reconsidered by a higher authority; esp., the submission of a lower court's . . . decision to a higher court for review and possible reversal." Appeal, BLACK'S LAW DICTIONARY (10th ed. 2014). The Commission has asked this Court, a higher court, to reverse the circuit court's decision. As a respondent, indeed a prevailing party, the only way to seek a reversal of the circuit court's decision is by filing a cross-appeal. See Rule 203(c), SCACR. As the County Attorney candidly admitted in his affidavit, though, he "made no effort to comply with Rule 203(c)." The Commission can argue semantics all day long, but by definition, the Commission is appealing the circuit court's order. Because the

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of authorities in support of the motion," Rule 240(c)(2), SCACR. The Commission's return cites no authority in support of it joining Appellant's team and asking for a reversal for the first time on appeal. Rather, the return is supported by a conclusory affidavit providing the County Attorney's opinion that he complied with the appellate court rules without any citation to a statute, rule, or decision supporting his change of position.

Commission has not followed the proper procedure to file an "appeal," its brief is not properly before the Court. Our appellate rules do not allow a respondent to assume the position of the appellant without taking certain steps to alert all parties and this Court of its change in position. Thus, regardless of how the Commission's position is denominated, the Commission's attempt to appeal the decision of the circuit court must be rejected and its brief stricken from the record.

Next, the Commission takes the position that it complied with Rule 208(b)(2), SCACR, in filing its brief. But the Commission ignored a key provision of that rule. The rule, in relevant part, provides that a "[r]espondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)[, SCACR]." Rule 208(b)(2), SCACR (emphasis added). Notably, the rule does not stand for the proposition that a respondent may ask the Court to reverse for any ground appearing in the record. Indeed, this Court's precedent expressly prohibits such a practice. See, e.g., I'On, LLC v. Town of Mount Pleasant, 338 S.C. 406, 421–22, 526 S.E.2d 716, 724 (2000) ("An appellate court may not, of course, reverse for any reason appearing in the record."). Thus, in the absence of a perfected cross-appeal, the Commission's brief is merely an expression of its opinion. Cf. Cisson, 255 S.C. at 178, 177 S.E.2d at 605 (noting this Court "is concerned with the substance of the judgment and not with the opinion of the appealing party"). The Commission's expression of its opinion, in addition to being irrelevant and not properly before the Court, is inappropriate because the Commission is asking for a reversal for the first time on appeal. See I'On, LLC, 338 S.C. at 422, 526 S.E.2d at 724 (recognizing the preservation requirement "serves as a keen incentive for a party to prepare a case thoroughly" and "prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope the appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case"). The Commission never asked the circuit court to reverse

the Commission's own decision, and this Court is not the appropriate forum in which to do so for the first time.

What is more, the Commission is trying to use an "ace card" on appeal in favor of a party to a contest over which it presided. The South Carolina Appellate Court Rules were created to "provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 7 (3d ed. 2016) (quoting Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992)). What the Commission has sought to accomplish in this case finds no support in the appellate court rules, or our case law, and turns this orderly mechanism on its head. A tribunal offering the imprimatur of a governmental entity by endorsing one party's position in an appeal from its own decision is fundamentally wrong. Indeed, it is unprecedented. Even a cursory review of the Commission's initial brief demonstrates it is arguing on behalf of Jackie Harris and asking this Court to give her another opportunity to prove her case. It is difficult to imagine any circuit court or governmental tribunal taking such a position, and allowing them to do so would undermine the rule of law.

For the foregoing reasons, the Court should grant Ms. Blackmon-Brace's motion and strike the Commission's improper filing. The Commission did not follow proper procedure by filing and serving a notice of its intent to appeal the circuit court's ruling and, further, the Commission has no standing to appeal.

(Signature page to follow)

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned of Sowell Gray Stepp & Laffitte, LLC, attorneys for the Respondent, Linda Blackmon-Brace, certify that I have served a copy of Respondent Linda Blackmon-Brace's Reply to Respondent Lancaster County Elections Commission's Return to the Motion to Strike and Dismiss the Cross-Appeal upon all parties by depositing a copy in the United States Mail, postage prepaid, on May 31, 2017, addressed as follows:

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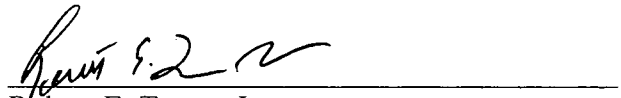

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