

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean Hoefer Toal, Special Circuit Court Judge

Case No. 2016-CP-40-5431
Appellate Case No. 2016-002134

Robert Gantt and Edward K. White.....Respondents,

v.

Samuel J. Selph as Director, and Marjorie Johnson, Adell Adams, E. Peter Kennedy, Sylvia Holley and Jane Emerson as the Members of the Board of Voter Registration and Elections of Richland County, The Board of Voter Registration and Elections of Richland County and Kim Murphy, Defendants,

Of whom Kim Murphy is theAppellant.

INITIAL BRIEF OF RESPONDENTS ROBERT GANTT AND EDWARD K. WHITE

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Statement of Issues on Appeal

- I. DID THE CIRCUIT COURT HAVE JURISDICTION TO HEAR THIS DECLARATORY JUDGMENT ACTION?
- II. DID THE CIRCUIT COURT CORRECTLY DETERMINE THAT MURPHY'S RESIDENCE IS IN LEXINGTON COUNTY?

Statement of the Case

This case is an appeal from a Circuit Court Order making a declaration under the South Carolina Uniform Declaratory Judgment Act. After a lengthy hearing, the Court found that Murphy lives in Lexington County and was therefore not qualified to be on the ballot to serve on the Board of Trustees for School District Five of Lexington and Richland Counties. Murphy has lived in her current residence since 2000. In 2010, she was elected to the Board for a Richland County Seat. In 2012, a routine review of maps pursuant to a state budget proviso determined that her residence was in Lexington County. The Board removed Murphy based upon her residence and the Circuit Court upheld her removal¹. Although Murphy has since engaged in a long succession of appeals, the Court Order finding that she is a resident of Lexington County is unstayed and the law of the case. Moreover, she subsequently sued Plaintiff Gantt, Bobby Bowers of the South Carolina Office of Research and Statistics and the School Board alleging conspiracy and slander in the determination that she was a Lexington County resident. The Circuit Court granted Summary Judgment against her in that case² affirming, *inter alia*, that she was a Lexington County resident.

¹ Civil Action No. 2013-CP-40-1897 (Honorable DeAndrea Gist Benjamin presiding)

² Civil Action No. 2014-CP-40-4666 (Honorable Doyet A. Early, III presiding)

Although Murphy appealed both decisions, neither Order was stayed. In August 2016, despite the existence of these Court Orders, Murphy filed as a candidate for the School Board for a seat representing Richland County. Mr. White and Mr. Gantt filed the Declaratory Judgment action that forms the basis of this Appeal in Circuit Court on October 3, 2017 as a Verified Amended Complaint for Declaratory Judgment. The Amendment converted what was originally a petition for Mandamus to the Declaratory Judgment action. This matter is Civil Action No. 2016-40-CP-5431. The Defendants filed their answers October 4, 2017. The Court conducted a bench trial on October 6, 2016 in the Kershaw County Courthouse, Honorable Jean Hoefer Toal presided. After a complete hearing on the merits, Judge Toal issued an Order on October 10, 2016 and an Amended Order on October 11, 2016 granting the relief requested in the amended Complaint. Murphy did not file a Rule 59(e) motion on any ground. Murphy filed her Notice of Appeal with the Court of Appeals on October 14, 2016. The appeal was transferred to this Court pursuant to SCACR 204(a) on October 24, 2016.

Statement of Facts

This case is a continuation of an ongoing battle initiated when Kim Murphy was removed from a seat on the School Board of School District Five of Lexington and Richland Counties because she did not reside in the county she was elected to represent. The dispute has involved several lawsuits, the first being Murphy's appeal of a 2014 Decision of the Honorable DeAndrea Gist Benjamin. There, Judge Benjamin determined that Murphy's residence is in Lexington County³ and affirming her removal from the school board seat designated for Richland County. (ROA pp. _____) Judge Benjamin issued an Oder affirming the School Board's determination

³ "By clear and convincing evidence" Order dated October 30, 2014 (ROA. P. _____)

that because Murphy lived in Lexington County, she was unqualified to serve as a representative of Richland County on the Board. Shortly after Judge Benjamin's decision, Murphy brought a claim against Defendant Robert Gantt, Bobby Bowers of the South Carolina Office of Research and Statistics and the School Board, alleging causes of action for conspiracy and defamation in the actions surrounding and in the determination that she was a Lexington County resident. Affirming, *inter alia*, that Murphy's residence is in Lexington County, The Honorable Doyet A. Early, III granted summary judgment against Murphy on all causes of action (ROA pp. ____). Then, even though she had "conditionally" registered to vote in Lexington County in 2014 (ROA p. ____ (TR p. 220-221), Murphy decided to file to run for School Board in District Five in 2016 for a Richland County Seat against Robert Gantt. Mr. Gantt is the former and current Chair of the School Board for School District Five of Lexington and Richland Counties. Mr. White is a member of the School Board. Both hold seats representing residents of Richland County.

Gantt and White petitioned the Board Elections and Voter registration for relief. That Board denied their petition. Next, they filed an action appealing that decision and filed a petition for mandamus. One part of the mandamus action was seeking to compel the local officials to follow the settled, unstayed decisions of the Court. The Court dismissed the appeal and converted the mandamus action to a declaratory judgment action by way of a consent Order. Gantt and White filed a verified Amended Complaint for Declaratory Judgment. All defendants filed timely answers. In her answer, Murphy filed a number of claims inconsistent with her in court agreements. Gantt and White also filed a Motion to Strike those claims as well as a Motion for Summary Judgment. The Court conducted an evidentiary hearing and issued its Order.

It is undisputed that Murphy has resided at the same address since approximately 2000. Based upon her application for a building permit and the tax map designation in Richland County,

she has paid property taxes on her home in Richland County. It is undisputed that her husband's parcel is located in both counties. It is undisputed that the precinct and other census maps show that her actual residence is in Lexington County. It is also undisputed that the Richland County tax maps show her residence in Richland County. She has been aware that state maps showed that her residence was actually in Lexington County since at least 2013.

The State Office of Research and Statistics and its office of the State Geodetic Survey agree that her dwelling is located wholly within Lexington County. Other than Mrs. Murphy, no entity or party has disputed the accuracy of the maps. It appears that the Counties have taken no action to adjust the boundary because no one has ordered them to do so and making those adjustments creates issues with the public.

Standard for Declaratory Judgment

A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009). An issue essentially one at law will not be transformed into one in equity simply because declaratory relief is sought. *Felts v. Richland County*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1990)

The Uniform Declaratory Judgments Act provides that "courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." *S.C. Code Ann.* §15-53-20 (2016). "The enumeration in §§15-53-30 to 15-53-50 does not limit or restrict the exercise of the general powers conferred in §15-53-20 in any proceeding when declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty." *S.C. Code Ann* §15-53-60 (2016). The Declaratory Judgment Act "is declared to be remedial. Its purpose is to settle and to afford relief

from uncertainty and insecurity with respect to rights status and other legal relations. It is to be liberally construed and administered.” *S.C. Code Ann* §15-53-130 (2016).

The existence of another adequate remedy does not preclude a judgement for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. Rule 57 *S.C.R.C.P.*.

Declaratory relief will however ordinarily be refused "where a special statutory remedy has been provided, or where another remedy will be more effective or appropriate under the circumstances." *Williams Furniture Corporation v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 56 S.E. (2d) 576, quoting from *Aetna Casualty & Surety Co. v. Quarles*,, 92 F.2d 321 (4th Cir.)

Argument

Introduction

Appellant's brief, argument and grounds for appeal focus contentions that the Circuit Court lacks jurisdiction to hear this case either as an Appeal from a determination by the Richland County Board of Voter Registration and Elections; as a challenge to Ms. Murphy's vote or ballot; or because there is a process to define a county line that should take precedence and deprive the Circuit Court of jurisdiction. This action is none of those, and the facts and circumstances in this case dictated that the Declaratory Judgment Act was appropriate and the Court had jurisdiction thereunder to take the action it did.. It is also important that as a matter of introduction, the Court become informed as to what this case is and what it is not.

What this Case is not.

Appellant wishes to mischaracterize this case as either "an appeal from a ruling of a Circuit Court that overturned the determination by the Board of Voter Registration and Elections of Richland County" (Brief of Appellant P. 2) or "Ballot Challenge". Appellant also wishes to assert that the Court lacked jurisdiction to determine the location of the county line or in the alternative relied upon insufficient evidence. While the Court's decision may have effects, which are similar in outcome to some or all of those actions, the action filed and relief sought below is none of them. Because the case is not subject to any exclusive statutory scheme designed by the General Assembly as an exclusive remedy, jurisdiction is proper under the Uniform Declaratory Judgment Act. Moreover, that Act is emphasized in importance considering the facts of this particular case. Here, this case is one of importance to the public and triggers virtually every basis in law for which the Legislature apparently enacted the Uniform Declaratory Judgment Act. The case sought to settle and declare important rights (whether or not Murphy was eligible to serve based upon her residence), in a timely manner to avoid confusion and further expense to the public down the line.

The Case is not an appeal from a determination by the Board of Voter Registration.

While Mr. Gantt and Mr. White filed an appeal from the decision of the Board of Voter Registration and Elections as Civil Action No. 2016-40-CP-5432, that appeal was dismissed and is not a part of this action. In that matter, the Court held that Mr. White and Mr. Gantt lacked standing under the statutory scheme to file the appeal. The Court interpreted the statute as affording a right of appeal only to an aggrieved voter, rather than a party aggrieved by that voter not being qualified to vote in a particular place. Thus, the statutory scheme that Appellant raises was not applicable in this instance and this case is not such an appeal.

The Court ruled favorably on the election commission's motion to dismiss in Civil Action No. 2016-40-CP-5432⁴ and decided that *S. C. Code Ann. §7-5-230(c)* (2016) provided a remedy only to a person denied registration or restoration of his name on the registration books. Because Mr. White and Mr. Gantt did not fall into that category, there was no statutory process for them to pursue. That being the case, there is no statutory scheme precluding them filing the declaratory judgment action.

This Case is not a Ballot Challenge.

S.C. Code Ann. §7-13-810 (2016) deals with ballot challenges. The statute deals with action of poll managers or a citizen challenging a person from actually voting. That argument is not ripe and moot in this case because there is no evidence in the record that Appellant voted or

⁴ It is essential to recognize that the Appeal of the decision of the Richland County Board of Voter Registration and Elections is a totally separate lawsuit which is not before the Court as it was dismissed below and not appealed. Appellant's references to it as a part of this case are misplaced.

that her ballot was challenged at the polling place. The Declaratory Judgment action dealt with her qualification to serve in office based upon the statutory location of her home. It addresses state statutory and constitutional requirements of great public importance in a case that is tailor made for decision by way of declaratory judgment. The act is particularly germane here where the question presented for a declaration deals with the validity and effective enforcement of prior court rulings legally binding on the Appellant determining that her residence is in Lexington County and that she was unable to serve legally as a representative on the School Board from Richland County. There is no statutory scheme regarding a ballot challenge that precludes Mr. Gantt and Mr. White's filing of this declaratory judgment action.

This case is not an Election Contest.

S.C. Code Ann. §5-15-130 (2016) deals with Election Contests and does not govern this case. Because of the declaratory judgment order, Murphy's name never appeared on the ballot. She was not a candidate and it would be error to treat the declaratory judgment action as an election or election contest under *S. C. Code Ann.* §5-15-130 (2016).

Our courts have defined an election contest and the prerequisites to the initiation of one:

[t]here are two prerequisites to maintaining an election contest in South Carolina: (1) the contest notice must allege irregularities or illegalities; and (2) the alleged irregularities or illegalities must have changed or rendered doubtful the result of the election in the absence of fraud, a constitutional violation, and a statute providing that such irregularity or illegality shall invalidate the election.

Yonce v. Lybrand, 254 S.C. 14, 18 173 S.E.2d 148, 150(1970); *Harrell v. City of Columbia*, 216 S.C. 346,355 58 S.E.2d 91, 96 (1950)

Since the prerequisites for an election challenge are not met in this case this is not a ballot contest or an election challenge and Appellants attempts to cast it and hold that there is an exclusive

statutory remedy under one of those theories are misplaced and erroneous. No legislative scheme precludes a declaratory judgment action in this case under an election contest theory or a ballot challenge theory.

What this Case is.

An action seeking enforcement of Existing, Binding determinations by the Circuit Court.

At least two Circuit Court Judges had previously issued Orders determining that Kim Murphy lived in Lexington County, not Richland County⁵. The Court has an inherent authority to enforce its own decisions. Here, the decisions as to Murphy's residence in Lexington County are unstayed and constitute the law of the case. "An order that is not automatically stayed remains enforceable while pending appeal unless the party seeks a stay". *S. C. App. Ct. R. 225(c)(1)*. Because the Orders finding her a resident of Lexington County by clear and convincing evidence were unstayed, Murphy should have been collaterally estopped from challenging her residence and filing in Richland County as she was subject to a valid court judgment. These unstayed orders also should have been conclusive in the subsequent action between the parties, whether on the same or a different claim. *See e.g. Holmes v. E. Cooper Cmty. Hosp., Inc.* 408 S.C. 138, 758 S.E.2d 483 (2014) Murphy's filing for office as a candidate for a Richland County seat was a

⁵ In 2014 The Honorable J. Michelle Childs issued an order concluding "Based on the foregoing findings of fact, analysis, and conclusions of law, the Court finds by clear and convincing evidence that (1) Appellant (Kim Murphy) is a resident of Lexington County, not Richland County and (2) Appellant does not meet the requirements and lacks the legal capacity to hold the office of Board trustee under S.C. Act 326 of 2002 §9." Order in Case No. 2013-CP-40-1897 filed October 30, 2014, p.10. In April of 2016, the Honorable Doyet A. Early, III, circuit Court Judge also found that Mr. Gantt was entitled to Summary Judgment on Ms. Murphy's claims against him for conspiracy and defamation. This Order was based, inter alia, on the fact that Ms. Murphy resided in Lexington County. In written findings and recommendations referenced in Judge Benjamin's Order (p.2) Retired Circuit Judge G. Thomas Cooper, Jr. also found that Ms. Murphy's residence was in Lexington County.

willful violation of an existing court Order. Neither during this action nor in her appeal has she offered any evidence or argument as to why Judge Cooper's, Judge Benjamin's or Judge Early's orders do not collaterally estop her from taking any actions as a Richland County Resident. Similarly, she has offered no evidence that contradicts the finding from 2013 that she lives in Lexington County. In fact, her testimony indicates a likelihood that she resides in Lexington County⁶. Moreover, her conduct emphasizes her willingness to continuously re-litigate the case that she lost in 2013 and again in 2014 and 2016.

Choosing to file for office in Richland County and continuing to appeal Court Orders holding that she lives in Lexington County without taking any affirmative action to demonstrate facts to the contrary, as well as her claims here that the Court lacks jurisdiction⁷ appear to be nothing more than an effort to "keep the ball in the air," to avoid final judgment in the matter. Apparently, Appellant wants to be able to keep arguing that she lives in Richland County for a political purpose regardless of whether she does or not. The Respondents and the general public have a need and desire for finality and a determination that answers the question, "does she or does she not?" The necessity of finality is yet another reason the declaratory judgment action is necessary and appropriate. This situation seems to be just the kind of circumstance contemplated by the General Assembly where there was a need for the court "to afford relief from uncertainty and insecurity with respect to rights status and other legal relations". Otherwise, these parties stay

⁶ Murphy wrote an e-mail to her surveyor stating: "The only thing that bothers me about documenting the location is that if Rocky Ford point they used is for whatever reason deemed to be the same as the point referenced in statute, it's very possible that using the iron stake at the other end of the line, I believe I would be in Lexington County." (ROA pp. ____ (TR p 227-228))

⁷ It is interesting that the only real claims in this appeal deal with Appellant asserting that the Court lacked jurisdiction under the Declaratory Judgment Act to make its declaration – no new facts are alleged which might tend to support an argument that Murphy doesn't live in Lexington County. Perhaps that is because there is no evidence to support that claim.

in what appears forever be a conflict. An argument that if the election were held and she lost (had she been allowed to remain on the ballot) the claims would have been moot further evinces that apparent goal. Appellants' actions reflect a willingness to ignore the decisions of our state courts and her desire to persist to act in a manner to cause harm, expense and uncertainty to the public. The declaratory judgment action is an appropriate means to remedy that issue and to obtain finality and certainty in an election matter before an election might have more confusion. With this appeal, Kim Murphy continues a pattern of ignoring precedent in an apparent effort to relitigate the issue as to where her residence is located *ad infinitum*.

I. *The Circuit Court had Jurisdiction under the Declaratory Judgment Act to adjudicate the Claim.*

A. *Murphy raised the Jurisdiction / Standing issue in her answer and failed to file a Rule 59(e) S.C.R.C.P. motion to preserve her grounds on Appeal.*

In paragraph 26 of her Answer to the Amended Complaint, Murphy affirmatively alleged that Plaintiff lacked standing and that “The responsibility to make such a determination is specifically delegated by legislature [sic] to the Richland County Board of Voter Registration and Elections.” (ROA. P. _____). She failed to raise this issue and preserve it by way of a Rule 59(e)⁸ S.C.R.C.P. motion.

B. *There is no exclusive statutory provision that usurps the Court's jurisdiction over this matter under the Declaratory Judgment Act.*

⁸ Murphy failed to preserve any issue on appeal by way of a S.C.R.C.P. Rule 59(e) motion.

Most telling here is that Appellant argues that the statutory provision concerning appeal of elector registrations is an exclusive scheme which gives exclusive jurisdiction to the Board of Elections with appeal to the Court of Common Pleas. Appellant also asserts (as the Court determined) that this process is inapplicable and that, “only persons entitled to judicial review before the Circuit Court are persons who have [been] denied registration or restoration.” That being the case, the General Assembly provides no exclusive statutory process to be used by party who has been unable to disqualify a person who has applied to run for office. Because there is no legal process or remedy in statute which covers the situation at hand, it is impossible for Appellant to show that an overriding legislative scheme exists that takes jurisdiction away from the Circuit Court under the Declaratory Judgment Act.

Contrary to Appellant’s argument *S.C. Code Ann. §7-3-25* (2016) does not create a right of appeal for a decision by a party to the State Election Commission. That statute only gives the Election Commission the ability to correct failures by local boards, apparently on its own initiative⁹. The Appellant cites no authority for this allegation other than asserting incorrectly that “This statute makes it clear that the General Assembly intended the process of contesting the status of an elector . . . to be a purely executive branch process and not one for the judicial branch”. (Brief of Appellant p. 8) Appellant’s reliance on this procedure as a final process is misplaced. The statute gives no basis for appeal and creates no right in any party save the State Election

⁹ According to Murphy’s petition to enforce the stay, the State Election Commission did, in fact, take some action pursuant to this section. Paragraph 6 of that Petition avers: “Defendant Kim Murphy also received a letter from Marci Andino, Executive Director of the South Carolina Election Commission, dated October 10, 2016 (attached hereto as Exhibit D), explaining that, based on the findings of the Court in the October 20, 2016 Order, Ms. Murphy’s voter registration certificate number in Richland County had been removed from the active voter registration list.” So, to the extent the statute afforded the State Election Commission the ability to correct errors by the local Board of Elections and Voter Registration, it did.

Commission to act independently. It is also notable that *S.C. Code Ann. §7-3-20(c)* (2016) establishes the powers of the Executive Director of the State Election Commission but does not address appeals from local Boards of Elections and Voter Registration.

C. State Statute, not an agreement between County Assessors defines the County Line.

Appellant asserts that the Circuit Court acted to resolve a boundary dispute where it found Ms. Murphy to be a Lexington County resident. County boundary lines are set out in the Code. Contrary to the Appellant's arguments, counties do not have an ability to adjust their boundaries¹⁰. While Counties have agreed to tax parcels which, like that owned by Ms. Murphy's husband, exist in two counties¹¹, they do not have the legal authority to change the line for purposes of voting. Here, each of the precinct and other voting maps locate Ms. Murphy's residence inside of Lexington County. Moreover, the testimony in the record is clear that the authorities in the State Revenue and Fiscal Affairs Office find the county line well defined as to the precinct and county lines. Furthermore, there is no doubt a review of the official maps developed by the Legislature confirms that Ms. Murphy's residence is located wholly within the boundaries of the Chapin Precinct in Lexington County¹². The Revenue and Fiscal Affairs Office is the office designated by the General Assembly to maintain the official maps. According to Mr. Rainwater, the director of that office, the county line near Ms. Murphy's residence is clear (ROA P. _____ Tr p. 29) and there is no dispute as to the location of the county line at that point (ROA __. Tr. P. 30.) Ms. Murphy's residence is located more than .1-mile northwest of the county line in Lexington County.

¹⁰ In order to change or alter a county line, it is necessary to comport with the procedure enumerated in Chapter 5 of Title 4 of the Code. This involves following the procedure set out in *S.C. Code Ann.* §4-5-120 (2016), *et. seq.* The Boundary lines of Lexington and Richland Counties have not been altered using this process to move Ms. Murphy's residence from Lexington to Richland County.

¹¹ Liz McDonald, Richland County Assessor testified that Richland and Lexington Counties' assessors have a "gentlemen's agreement" to use the tax map GIS lines as the location of the county lines for tax purposes. This agreement is not in writing and has not been approved by the county councils for either county. (ROA pp. _____ Tr. 184)

¹² See *e.g.* Affidavit of Frank Rainwater, September 6, 2016 (ROA at P. _____) Affidavit of William F. Roberts, Jr. (ROA at P. _____)

There is a significant public impact to allowing persons to vote in and run for office in the wrong county or precinct, it can cause an election to be successfully challenged. (ROA _____, (Tr. p. 68)). Additionally the citizens of one county lose representation and in the other have their representation enhanced. ROA at P _____ (Tr. p 70). Every official map maintained by the Revenue and Fiscal Affairs Office places Ms. Murphy's residence in Lexington County.

Moreover, testimony adduced during the trial demonstrates why Ms. Murphy's property has been carried in Richland County rather than in Lexington County for Taxation. Mr. Cobb testified that when he went to file the plat, individuals at the Lexington County Planning Commission instructed him to relocate the county line shown on his plat to a location consistent with the tax parcel maps then being used by Lexington and Richland County. To receive approval of his subdivision plat and have it recorded, Cobb – without additional survey – changed the location of the “approximate county line” on his plat from the location line, which passed through “Rocky Ford” the landmark specified in *S.C. Code Ann.* §4-3-370 (2016) and *S.C. Code Ann.* §4-3-460 (2016) as the official boundaries for Richland and Lexington Counties to instead reflect the tax map parcels being used by the counties. (ROA pp _____ (TR pp 175-177.). Murphy built her residence on the property and the Richland County assessed her home for tax purposes based upon the changed (and erroneous) location of the “approximate county line” shown on Mr. Cobb's plat.¹³¹⁴

D. *While Appellant has couched her arguments as essentially a claim that Respondents Failed to Exhaust Administrative Remedies while not pleading that Affirmative Defense.*

¹³ Murphy probably helped this happen by applying for her building permit in Richland County and affirmatively taking other actions to claim a Richland County address, despite the fact that her home is, and always has been located inside the statutory boundaries of Lexington County.

¹⁴ Mr. Cobb concedes that his plat would have shown Murphy's property in Lexington County had his original “approximate county line” remained in place. ROA p. _____ (TR. p. 177).

the statutory scheme providing for administrative appellate review is not a bar to a Court taking jurisdiction under the Uniform Declaratory Judgment Act.

In her appeal Murphy makes three arguments which assert a lack of subject matter jurisdiction. Respondents have addressed each directly. Underlying each of those arguments is a claim that Respondents failed to exhaust their administrative remedies in Appellant's claims that an exclusive statutory scheme existed relating to an elector challenge, voter challenge, an election challenge and a legislative process for settling a dispute between counties as to the location of the county boundary. However, our Court has found that exhaustion of remedies is not a claim involving subject matter jurisdiction but rather it is "generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional" *Storm M.H. v. Charleston County Bd. of Trs.*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012) quoting *Ward v. State*, 343 S.C.14, 17 n5, 538 S.E.2d 245, 246 n5 (2000). Moreover, the Court held that "Whether administrative remedies must be exhausted is a matter within the trial judge's sound discretion and his decision will not be disturbed on appeal absent an abuse thereof" *Storm, supra* at 400 S.C. 487, 735 S.E. 2d 497 quoting *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582 (1994)

Most importantly the Court made significant findings in *Storm, supra*, which are equally applicable here. Time for further administrative appeal and potential delay is problematic because of, in this case, the immediate need for ballots to be printed and the fact that the case presents issues of important public interest and a resolution promotes judicial economy¹⁵. See e.g. *Cabiness*

¹⁵ Considering Ms. Murphy's litigious nature, a final binding decision on her residence by this court will likely be dispositive of at least two other appeals before the Court of Appeals as well as other potential claims likely to arise in the future.

v. *Town of James Island*, 393 S.C. 176, 712 S.E. 2d 416 (2011) (addressing issues in the interest of judicial economy to supply a sufficient analytical framework for future cases): *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001) (recognizing that an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest.) In this circumstance not only did Plaintiffs plead the important public interest Amended Complaint ¶¶ (ROA. pp. ____), but the nature of the controversy – whether or not Murphy was qualified to serve, the confusion of the public about an incorrect ballot and the potential repetition of proceedings to remove Murphy from the Board (or stop her from being seated¹⁶) all are issues that created a need for an expedited decision that is particularly within the purview of the Declaratory Judgment Act¹⁷. As the statute specifically contemplates the use of the act “to settle and to afford relief from uncertainty and insecurity with respect to rights status and

¹⁶ Which would have been particularly cumbersome in that School Board members are generally installed within a week of the certification of election results.

¹⁷ In Judge G. Thomas Cooper’s report of February, 2013, he identified some of these important issues. There he commented:

Should Mrs. Murphy remain a member of the Board of Trustees, numerous potential negative legal problems could arise for District Five. Bonding authorities may not be willing to issue bonds based on Mrs. Murphy’s vote. Suspensions or dismissal of district personnel, or students may be questionable based on Mrs. Murphy’s vote. Can her presence be counted for existence of a quorum? Could Mrs. Murphy represent the district at a public forum or at statewide meetings? Could she be elected Chairperson of the Board given the irrefutable evidence that she does not meet the “must reside” provision of the statute? These and any other issues should give District Five Board of Trustees grave concerns. In my opinion, the only appropriate course of action is to recognize the existence of “cause” under S.C. Code Ann. §59-19-60, thus granting the Board the power to proceed with the removal process as outlined in the statute.

Judge Cooper’s comments demonstrate the urgency and importance of having the question as to Murphy’s qualifications as a candidate adjudicated prior to the election and the appropriateness of the method used to consider the issues.

other legal relations. It is to be liberally construed and administered.” *S.C. Code Ann* §15-53-130 (2016).

II. The Court had the authority to make its declaration as to the location of Murphy’s residence under the Declaratory Judgment Act.

Appellant argues that *S.C. Code Ann* §27-2-105 (2016) acts as a bar to the Court determining the county of Ms. Murphy’s residence, again ignoring the facts and the substantial clear and convincing evidence that her residence is located in Lexington County. This argument also ignores the plain language of the statute – which does not create an exclusive method to determine the location of a parcel within South Carolina. As Mr. Rainwater stated so eloquently in his direct examination, “I mean, I do not believe I need a survey to determine that the State House is on the Richland County side of the Congaree River. We have a coordinate that identifies where that is, and its simply an easy drawing from that point.” ROA p. _____ (TR p 37) His point being that since his office has documented the location of Rocky Ford at least since 1997, there is no need to survey to determine that Ms. Murphy’s property is located in Lexington County.

No expert witness has concluded that the boundary is ill defined. Appellant wishes to avail herself of a law designed to be utilized where there is an ill-defined boundary or where there is a dispute between Counties. Here, the election maps and research done clearly indicates the location of Ms. Murphy’s residence. The Counties have reached a gentleman’s agreement as far as taxation is concerned. Lexington County has agreed to accept Ms. Murphy for voting purposes. The only conflict or controversy extant is the one that she has created by both refusing to abide by

the facts as found by the court and insisting that she lives in Richland County, where she or her own actions created all of the evidence that supports her claim. Her testimony is illuminating.:

Q. And from what you've heard today, every document that supports that you're a resident off Richland County is based upon the tax map, isn't it?

A. "It's, it's based upon the, the tax map and an agreement that was made between the two counties in 1978¹⁸.

A clear reading of Ms., Murphy's testimony and the record throughout this proceeding reflects the truth. Even if the procedure under *S.C. Code Ann. §27-2-105* (2016) took place, Ms. Murphy would be running to the AAJ protesting that. She has her reality and in her mind, she lives in Richland County – because she chooses to – and no factual determination will disabuse her of that notion.

(ROA p. _____ TR p.224). This being despite the numerous pieces of evidence and testimony in the record that proves clearly and convincingly that her residence is located several hundred feet inside of Lexington County.

III. *Precedent supports the Court's intervention in a dispute about whether or not a candidate is qualified to run for and hold office.*

This Court's decision in *Ravenel v. Dekle*, 265 S.C. 364, 218 S.E. 2d 521 (1975). Provides precedent for a court's intervention to ascertain qualifications of a candidate prior to an election.

Interestingly, there prior to a challenge to his eligibility, Ravenel had filed an action in Richland

¹⁸ Testimony in the record clarifies that there was no agreement between the Counties, but only an agreement between the respective assessors as to which county would tax the respective parcels, a practice about which the Court may take judicial notice, but not a practice that establishes legal residency, merely a tax allocation agreement between the respective counties. Both Ms. Murphy and Richland County Assessor Liz McDonald concurred that the agreement was between the Assessors.

County where the court declared that he was “not ineligible to enter the Democratic primary” *Id.* at 264 S.C. 366. Thereafter an action was filed in the court of Common Pleas seeking to enjoin Ravenel’s name from being placed on the ballot. That action, similar to the case at bar alleged that Ravenel had not been a “citizen and resident of this State for a period of five years next preceding the date of election.” *Id.* at 264 S.C. 366. There, the Court took original jurisdiction on the matter, found facts and concluded that Ravenel was not qualified. In that case, as here, the evidence was not greatly, if at all in conflict.

That decision as well as the action for declaratory judgment in this case, reflects the sound public policy behind preventing an unqualified person from standing for office and then having to deal with the myriad potential issues that might arise after that person is elected. Act 326 of 2002 §9 requires that “three trustees must reside in Richland County and Four must reside in Lexington County.” Ms. Murphy was aware that Courts of Competent Jurisdiction and the state agency responsible for mapping had determined that she lived in Lexington County and should have been assigned to vote in a Lexington County precinct. Despite this knowledge, she took no affirmative action to remedy her residence and offered for election in a county where she didn’t legally reside. Here, those consequences could have been expensive for the public and Mr. Gantt and would have stood to create unnecessary political and practical conflict and uncertainty.

Candidates swear an oath when they offer for office. In that oath, required by *S.C. Code Ann.* §7-11-15 (2016) which certifies that they meet the qualifications for office. Here, Murphy signed such a pledge that she met the qualifications for the office sought. She signed that pledge with full knowledge that the court had previously found her ineligible to serve in the position that she sought and affirmed her removal from that position. That filing itself created a controversy

that gave the Court additional grounds for subject matter jurisdiction allowing it to hear and rule on the case.

Conclusion

The Circuit Court had subject matter jurisdiction to consider and act on Mr. Gantt and Mr. White's declaratory judgment action. The record substantiates the decisions of the Circuit Judge both in her analysis of applicable law in making a determination that jurisdiction was present and in finding clear and convincing evidence to support her findings of fact and conclusions of law.

Murphy wishes to argue against all manner of authorities that she lives in Richland County because it carries her residence on the County tax maps and she pays taxes there. She also endeavors to assert that there is some kind of dispute as to the location of the county line solely because Richland County has improperly located her residence inside its tax map borders when it actually lies within Lexington County. Actually, her residence is located on the Richland County GIS and she is taxed in Richland County largely because of her own actions – filing an erroneous plat and obtaining a building permit in Richland County.

The simple fact is that Murphy can offer no evidence to oppose the fact that the official South Carolina precinct and voting district maps place her residence in the Chapin Precinct of Lexington County. Her myriad efforts to contest the Circuit Court's jurisdiction are meritless. The Court should not allow the effort to create confusion. It should uphold the correct decision as articulated by the Honorable Judge Toal.

For the foregoing reasons, Gantt and White respectfully ask this Honorable Court to affirm the decision of the Lower Court.

Respectfully Submitted,

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Columbia, South Carolina
August 18, 2017

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

AUG 18 2017

Jean Hoefler Toal, Special Circuit Court Judge S.C. SUPREME COURT

Case No. 2016-CP-40-5431
Appellate Case No. 2016-002134

Robert Gantt and Edward K. White.....Respondents,

v.

Samuel J. Selph as Director, and Marjorie Johnson, Adell Adams, E. Peter Kennedy,
Sylvia Holley and Jane Emerson as the Members of the Board of Voter Registration and
Elections of Richland County, The Board of Voter Registration and Elections of Richland
County and Kim Murphy, Defendants,

Of whom Kim Murphy is theAppellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief complies with Rule 211(b), SCACR.


Michael H. Montgomery

August 18, 2017
Columbia, South Carolina

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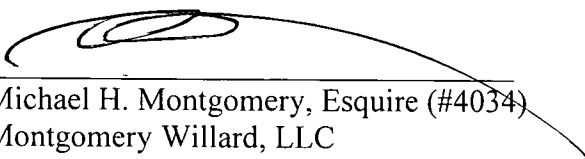
Samuel J. Selph as Director, and Marjorie Johnson, Adell Adams, E. Peter Kennedy, Sylvia Holley and Jane Emerson as the Members of the Board of Voter Registration and Elections of Richland County, The Board of Voter Registration and Elections of Richland County and Kim Murphy, Defendants,

Of whom Kim Murphy is the Appellant.

PROOF OF SERVICE

I hereby certify that I, the undersigned member of Montgomery Willard, LLC, have caused Respondent Robert Gantt’s Initial Brief and Designation of Matter to be Included in the Records on Appeal by service of the same on Counsel for Appellant by depositing a copy of it in the United States Mail, postage prepaid, on August 18, 2017, addressed to Brian Gambrell, Esquire, The Law Offices of Jason Taylor, 810 Dutch Square Blvd., Suite 112, Columbia, South Carolina 29210 and by service on Respondent White by depositing a copy of it in the United States Mail, postage prepaid, on August 18, 2017 addressed to William Spilane, Esquire, 9365 Two Notch Road, Columbia, South Carolina 29223,

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August 18, 2017
Columbia, South Carolina