

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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OCT 27 2017

S.C. 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 HarrisAppellant,

v.

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

APPELLANT’S RETURN IN OPPOSITION TO RESPONDENT LINDA
BLACKMON-BRACE’S MOTION FOR COSTS

Appellant, through her undersigned counsel, respectfully opposes Respondent
Linda Blackmon-Brace’s (Blackmon-Brace) Motion for Costs filed in this action.

Appellant was served with this Motion via US Mail and received the Motion on Tuesday,
October 17, 2017.

PROCEDURAL HISTORY

This case was decided by the Court on September 7, 2017. Appellant filed a
timely Petition for Rehearing, which was denied on September 28, 2017. The Remittitur

was issued on September 28, 2017. Blackmon-Brace thereafter filed this Motion for Costs on October 13, 2017.

Blackmon-Brace seeks fees and costs in this appeal pursuant to SCACR 222, 240, and 269. Blackmon-Brace first argues that Appellant's protest and subsequent appeals were meritless and only continued to cause unnecessary delay. Appellant filed this election protest and the ensuing appeals in good faith, believing the Lancaster City Council District Three election was tainted by fraud and fraudulent behavior. Appellant was given only two hours' notice of the protest hearing, which was held immediately after certification of the election results, and she was, therefore, unable to subpoena these witnesses. Likewise, the Office of Voter Registration was unable to respond at all to the duly issued subpoena for records and information. To attempt to give appellant some access to the evidence, she was given a fifteen (15) minute break *during* the hearing, in which she was allowed to gather as much evidence as she could within that time. Even the Election Commission found its own process "unfair." Notwithstanding the decisions of the lower tribunals and this Court, Appellant has always maintained that the tactics Blackmon-Brace employed during the election were improper. Appellant followed the rules of the election protest procedure, and the Appellate Court Rules. The case was appealable. The case was ultimately decided, not on the merits, but because Appellant had failed to file a Rule 59 Motion. Just because Appellant did not ultimately prevail on the merits of the case does not mean that the matter was frivolous as contemplated by Rule 269, SCACR.¹

¹ Further, although this Court has the power at any time to entertain a Motion to Dismiss, Blackmon-Brace never filed such a motion. *Levy v. Williams*, 9 S.C. 153 (SC 1876).

Blackmon-Brace contends that even the motions Appellant made were in contravention of public policy and only filed in an attempt to delay what she alleges was an inevitable outcome. This Court issued a letter at the very beginning of this appellate process indicating that the case would be expedited, and that the parties should not expect any extensions. Appellant never requested any extensions in this case. The motions filed were necessary and were briefed and considered accordingly.

FACTS OF THE CASE

Although this appeal was decided based upon Appellant's failure to file a Rule 59 Motion, and not on the merits of the case, Respondent's Motion for Thirty Thousand Dollars in legal fees is based on her allegations regarding Appellant Harris' motives in bringing the appeal. Blackmon-Brace's allegations regarding Harris' motives in bringing this appeal, itself necessitates a thorough examination of the Facts of the Case as stated in the Final Brief of the Appellant. And an examination of the facts, even in a light favorable to Respondent Blackmon-Brace, reveals that Ms. Harris brought this appeal, not for a frivolous reason or for the purpose of delay, but for the legitimate reason to try to ensure what she believed would be a fair and just election result.²

Though they were ultimately disregarded by this Court, all of the briefs filed by Respondent Lancaster County Election Commission agreed with the Appellant, both in the facts and the appeal process.

Appellant Jackie Harris should not have to pay Thirty Thousand Dollars (\$30,000.00) in legal fees to Respondent, in addition to her own legal fees in bringing this

² In fact, Appellant lists *numerous* violations of ethical conduct and behavior, specific examples of fraud and fraudulent behavior, and a scheme of soliciting paper absentee ballots that contravenes any tenets of election practice. (See Appellant's Final Brief, pp. 2-11)

elections appeal – which she maintains was in the interest of ensuring a fair and just election.

An examination of the underlying facts makes it clear that Ms. Harris' appeal was not "frivolous," as the Respondent contends, but was brought in good faith, raising genuine questions of law and serious questions about the integrity of this election. Ms. Harris' appeal was anything but frivolous.

CONCLUSION

This entire situation has been unfortunate from the months preceding the 2016 election. It has been harmful to our city and a source of dismay throughout the electorate. The decisions of the Election Commission and the Circuit Court both expressed frustration with the process. Blackmon-Brace indicates that Appellant had ulterior motives of undue delay; however, there has been absolutely no evidence to that conclusion. Moreover, if the Court takes a cursory glance at the merits of the case that were argued, though not fully considered due to the conclusion that such arguments were not properly preserved, it is apparent that Appellant was working in what she believes in good faith to be the best interest of the electorate, and that she should not now be punished for doing so. In the Atlantic Beach cases, this Court held that "*shenanigans*" in municipal elections would not be tolerated. *Cole v. Town of Atlantic Beach Election Commission*, 393 S.C.264, 275 (S.Ct., 2011) Appellant brought this protest and appeal to bring attention to the shenanigans committed by Respondent Blackmon-Brace. Appellant is confident that had this appeal not been dismissed for failure to file a Rule 59 Motion, and had the Court examined the case on its merits, it would have ruled for the Appellant. Appellant maintained that such motion was not necessary because, as an elections appeal,

this appeal was brought as a matter of right and not through the process of certiorari. However, the fact that this Court disagreed with Appellant on this matter does not render her appeal “frivolous.” Although Appellant did not prevail in the ultimate decision of this Court, her appeal and this process brought many issues to light, especially in the legislative arena. Appellant respectfully requests that the Court deny Blackmon-Brace’s Motion for Costs and requests for attorneys’ fees pursuant to any authority.

Respectfully Submitted,

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October 24, 2017

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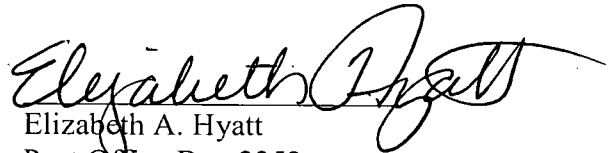
PROOF OF SERVICE

I certify that I have served the Appellant's Return in Opposition to Respondent Linda Blackmon-Brace's Motion for Costs on all parties by depositing a copy of it in the United States Mail, postage prepaid, on October 27, 2017, addressed as follows:

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October 27, 2017