

THE STATE OF SOUTH CAROLINA
In Supreme Court

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OCT 30 2017

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

S.C. SUPREME COURT

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-BraceRespondents.

**RESPONDENT LANCASTER COUNTY ELECTION COMMISSION’S RETURN
TO RESPONDENT LINDA BLACKMON-BRACE’S MOTION FOR COSTS**

Respondent Linda Blackmon-Brace seeks the Court’s assessment of attorney fees in the amount of \$4,467.00 and additional costs in the amount of \$512.65 from the Lancaster County Elections Commission (“Commission”) upon the grounds that the appellate filings presented by the Commission were frivolous pursuant to Rule 269. The Commission opposes the motion and requests that the motion as to this Respondent be denied.

BACKGROUND

The Commission accepts Respondent Blackmon-Brace’s reciting of the chronology of relevant dates and filings noted in her motion, but objects to the characterization of the Commission’s standing as a “prevailing party” in the circuit court or the assertion that the Commission sought to endorse Appellant’s position by asking for a reversal from this Court. Both are incorrect.

ARGUMENT

The Commission, like every judicial and quasi-judicial body, is charged with the responsibility of, not only impartiality, but also insuring that all parties appearing before the body

receive due process throughout the hearing. It was this second element of “due process” that the Commission voiced in the Circuit Court and attempted to present to this Court in the filing of its two briefs. It came as no surprise to the Commission that Respondent Blackmon-Brace, having obtained from the Commission a successful decision in a very convoluted hearing, would vehemently oppose all attempts by the Commission to express its concern with the process and procedure under which the Commission was required by the State Elections Commission’s counsel and South Carolina statutory law to render its decision. The published record before the Commission was replete with statements from the Commissioners themselves as to their displeasure with the brevity of the notice provided to both parties prior to the hearing and the time limitation imposed that prevented both parties the opportunity to present a full airing of their respective positions.

Further, the record before the Circuit Court indicated a reiteration by the Commission’s counsel as to those same concerns. Particularly, a) that the parties were given less than three hours notice prior to the calling of the appeal hearing; and 2) that the hearing was cut short because of the state-mandated time requirement that prevented, not only the two parties, but also the Commission from thoroughly reviewing the claims made and the documentary evidence presented by both parties. Nevertheless, so as to comply with state law, a decision, although faulty, was rendered.

Only through the appeal by Appellant Harris could the Commission make known its concern and objection to the process under which it was required to act. The specific facts and circumstances of this case, in the opinion of the Commission, made ripe for judicial consideration the question of whether or not a statutorily imposed time limit of forty eight (48) hours following notice of a candidate’s appeal should prevail and take priority over the legal principle of insuring that all parties receive due process. That, in summary, was the sole purpose in the Commission’s participation in the appeal process. The Commission neither took an interest in nor voiced any opinion of which of the two parties, Harris or Blackmon-Brace, should succeed in the appeal. Clearly to do so would have been improper. The Commission has accepted the decision of this Court that the Commission’s filing should be stricken. But the Commission verily believes that its continuing effort to express its concern in the lack of due process was not frivolous.

It is without merit to suggest, as Respondent Blackmon-Brace has done, that the Commission was a prevailing party. The appeal taken by Harris necessarily and rightly named the Commission as a Respondent since it was from the Commission’s decision that errors were alleged. Clearly, Respondent Blackmon-Brace was the sole prevailing party at every level of the appeal and, ultimately, was declared by this Court as the rightful winner of the contested election. Referring in part to Rule 222(a), “...costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed.”

While Respondent Blackmon-Brace alleged previously that the Commission's filings amounted to a cross-appeal, Respondent knew that not to be the case. The Commission never presented to any court at any level either a document or a verbal representation that the Commission should or could be considered as an appellant.

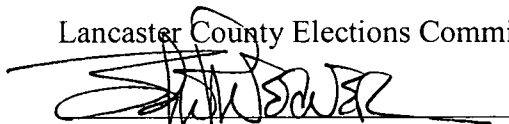
Lastly, in reviewing Respondent Blackmon-Brace's cite of two cases in support of its motion, I'on v. Town of Mount Pleasant (a zoning case) and SCDOT v. M&T Enterprises, et al. (a landlord –tenant/condemnation case), it is suggested that these cases have some meaningful significance to the case at hand and whether or not the issue of due process was first raised in the Commission's brief to this Court. The Commission asserts these two cases in no way are relevant when considering whether or not there was merit to the Commission's assertion that due process was denied to all parties, including the Commission in carrying out its responsibilities.

CONCLUSION

Based upon the foregoing, Respondent Lancaster County Elections Commission respectfully requests that this Court deny the award of costs and attorney fees against this Respondent based upon the allegation of the Commission's frivolous filing. Alternatively, the Commission requests that any award be consistent with this Court's order fated July 24, 1997.

Respectfully submitted,

Lancaster County Elections Commission



John L. Weaver

SC Bar No. 5981

jweaver@lancastercountysc.net

Post Office Box 1809

Lancaster, South Carolina 29721

(803) 416-9426

Lancaster, South Carolina
October 25, 2017

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PROOF OF SERVICE

I, attorney for Respondent Lancaster County Elections Commission, certify that I have served a copy of the Return to Respondent Blackmon-Brace's Motion for Costs upon all parties by depositing a copy in the United States Mail, postage prepaid, on October 25, 2017, addressed as follows:

Elizabeth A. Hyatt, Esquire
Post Office Box 2252
Lancaster, SC 29721
Attorney for Jackie Harris

Mitchell A. Norrell, Esquire
Post Office Box 994
Lancaster, SC 29721
Attorney for Lancaster Municipal Election Commission

Robert E. Tyson, Jr. Esquire
Post Office Box 11449
Columbia, SC 29211
Attorney for Linda Blackmon-Brace


John L. Weaver