

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

CASE NO.: 2018-CP-26-02196

Len Anthony, Saundra Anthony, Renee Iannone, Joseph Iannone, William Pace, Sr., Susan Pace, Joseph Hains, Kim Hains, Angela Travis, Curtis M. Wood, John Hamilton McGarity, Robert Gardner, Joyce Gardner, William Seymour, Emma Seymour, Nancy Ellis, Lori Polofsky, Jeffrey Polofsky, Daniel Carioggia, Laura Carioggia, William V. Josephs, Jr., James Shortle, Elizabeth Shortle and Simon M. Downs, Jr.,

Plaintiffs,

vs.

City of North Myrtle Beach,
Defendant,

**ORDER GRANTING
MOTION TO DISMISS**

RECEIVED
AUG 27 2018
SC Court of Appeals

This matter comes before the Court on the motion of the Defendant City of North Myrtle Beach (City) to dismiss the Plaintiffs' lawsuit because Plaintiffs have not alleged that their standing is created by statute or that Plaintiffs have suffered any concrete and particularized injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). *Bodman v. State*, 403 S.C. 60, 67, 742 S.E.2d 363, 366 (2013). The City contends the issues raised by the Plaintiffs do not come within the public importance exception to the State's standing requirements.

Plaintiffs' Allegations

Plaintiffs allege the City is not properly enforcing State statutes regulating public parking in certain areas under the City's jurisdiction. Plaintiffs allege they live in close proximity to areas and the City's alleged failure to enforce State parking statutes properly creates safety hazards for the general public that could lead to possible future personal injuries. Plaintiffs do

not allege any particularized or individual injuries to themselves in their complaint. Plaintiffs seek a Writ of Mandamus to force the City to enforce State statutes in the City and a Declaratory Judgment declaring that the City must enforce S.C. Code §56-5-2530 which prohibits parking in median areas except “in compliance with law.” The City contends that regulation of public parking inside the City’s jurisdiction is a matter of local government discretion. S.C. Code Ann § 56-5-710 expressly provides that Title 56, Chapter 5 of the South Carolina Code of Laws shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of police power from regulating the standing or parking of vehicles.

Discussion

“Standing to sue is a fundamental requirement in instituting an action.” *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). Under South Carolina’s current jurisprudence, there are three ways in which a party can acquire this fundamental threshold of standing: (1) by statute; (2) through what is called “constitutional standing”; and (3) under the public importance exception. *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008).

1. Standing by Statute

Plaintiffs allege: S.C. Code Ann. § 56-5-2530 provides, in relevant part, as follows: “Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall ... [s]top, stand or park a vehicle ... [i]n the area between roadways of a divided highway, including crossovers. That statute does not grant standing on nearby property owners to sue the City for exercising its discretion on law enforcement matters. See *Doe v. Marion*, 373 S.C. 390, 396, 645 S.E.2d 245,

248 (2007) (the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability).

2. *Constitutional Standing.*

As to constitutional standing, one of the core requirements is that the plaintiff suffered a “‘concrete and particularized’ ” injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)); *Bodman v. State*, 403 S.C. 60, 67, 742 S.E.2d 363, 366 (2013)(a private individual may not invoke the judicial power to determine the validity of an executive or legislative act unless the private individual can show that, as a result of that action, a direct injury has been sustained, or that there is immediate danger a direct injury will be sustained). Here, to the extent Plaintiffs have suffered or will suffer any harm as a result of the Defendant’s discretion in connection with the exercise of its police powers, Plaintiffs’ proximity to the grass medians alone as alleged in their complaint is not enough to confer standing on them. *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). If any of the Plaintiffs suffers an individualized direct harm as a result of the Defendant’s failure to properly exercise its police powers, that Plaintiff may then have constitutional standing under certain circumstances. Plaintiffs do not have constitutional standing under the allegations alleged in their complaint. *Id.*

3. *Public importance exception.*

The courts have limited the application of the public importance exception. *Bodman v. State*, 403 S.C. 60, 68, 742 S.E.2d 363, 367 (2013). The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of “future guidance” that gives meaning to an issue which transcends a purely private matter and rises to the level of

public importance. *ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008).

Whether an issue of public importance exists necessitates a cautious balancing of the competing interests presented. An appropriate balance between the competing policy concerns underlying the issue of standing must be realized. Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.

The issues in the present case involve simple statutory constructions of SC Code Ann §56-5-2530 and §56-5-710. Where the question is one of simple statutory construction, a trial court should not deny a meritorious motion to dismiss. *See Kubic v. MERSCORP Holdings, Inc.*, 416 S.C. 161, 168, 785 S.E.2d 595, 598 (2016).

Conclusion and Order

The Court finds that regulation of public parking inside the City under the alleged facts is a matter of discretion for local authorities and the above Plaintiffs do not have standing to bring the above captioned lawsuit. The Court finds that Plaintiffs' complaint should be dismissed under Rule 12 (b). SCRC.P.

AND IT IS SO ORDERED.

s/ Benjamin H. Culbertson
Hon. Benjamin H. Culbertson
Circuit Court Judge 15th Judicial
Circuit

June 19, 2018



Horry Common Pleas

Case Caption: Len Anthony , plaintiff, et al VS North Myrtle Beach City Of
Case Number: 2018CP2602196
Type: Order/Dismissal

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

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