

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

City of Barnwell, Town of Williston and Town
of Blackville,

Plaintiffs,

v.

County of Barnwell and Barnwell County
Economic Development Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL
CIRCUIT

C.A. No.: 2017-CP-06-00113

[PROPOSED] REVISED ORDER DENYING
PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES

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SC Court of Appeals

Plaintiff Municipalities have moved for an award of attorneys' fees to be paid by defendant County of Barnwell (the "County").² This Court issued its order denying that motion on October 31, 2018 (the "October 31 Order"); and Plaintiff Municipalities have moved under SCRCivP Rule 59(e) for reconsideration of the October 31 Order. This Order replaces the October 31 Order.

¹ References to the trial in this matter are by page and line number to the Transcript of Hearing of April 2, 2018, cited as "Tr." References to exhibits are to the exhibit number as "Ex. [No.]" and may include page numbers within the exhibit. Plaintiffs' exhibits have been designated P-A-01 through P-A-30; and defendant Barnwell County's exhibits have been designated D-A-01 through D-A-45. There is some duplication of exhibits between those introduced by plaintiffs and those introduced by defendant Barnwell County. Where the same exhibit appears in both lists, citations here will be by plaintiffs' exhibit numbering. Defendant Barnwell County Economic Development Corporation did not offer any additional exhibits. All offered exhibits were admitted into evidence without objection, by stipulation as to their authenticity by all parties. See Tr. p. 23, lines 20-21; p. 37, lines 4-9; and p. 68, line 21 – p. 69, line 3. In addition, the Court may take judicial notice of exhibits that are public records pursuant to Rule 901(b)(7), SCRE (public records are self-authenticating) and the Court's inherent power to take judicial notice of legislative facts (see Notes to Rule 201, SCRE).

² Plaintiff Municipalities have not requested payment of attorneys' fees from either the co-defendant Barnwell County Economic Development Corporation (the "Corporation") or from the constructive or resulting trust that this Court found to exist in favor of the Plaintiff Municipalities. Consequently, this order does not address any additional issues that might relate to such claims.

“Attorney’s fees are not recoverable unless authorized by contract or statute.” *S.C. Dept. of Soc. Servs. v. Tharp*, 312 S.C. 243, 245, 439 S.E.2d 854, 856 (1993). Plaintiffs do not claim that any contract authorizes an award to them of attorneys’ fees, but instead allege entitlement to an award under S.C. Code § 15-77-300 and/or S.C. Code § 62-7-1004.

S.C. CODE § 15-77-300

(A) In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:

- (1) the court finds that the agency acted without substantial justification in pressing its claim against the party; and
- (2) the court finds that there are no special circumstances that would make the award of attorney's fees unjust.

The agency is presumed to be substantially justified in pressing its claim against the party if the agency follows a statutory or constitutional mandate that has not been invalidated by a court of competent jurisdiction.

Plaintiff Municipalities claim to be the prevailing party in this lawsuit; and for purposes of this motion, I find that they are the prevailing party.³

As such, they claim entitlement to attorneys’ fees under S.C. Code § 15-77-300. That statute, however, permits the awarding of attorneys’ fees to the prevailing party “unless the prevailing party is the State or any political subdivision of the State.” [Emphasis added.] Here, the prevailing parties, and the ones seeking attorneys’ fees, are three municipalities. Without any

³ The two prior orders of this Court in this lawsuit that make the Plaintiff Municipalities the prevailing party are under appeal. In the event that either or both of those orders are modified as a result of that appeal, the determination of whether Plaintiff Municipalities are the prevailing party may change.

question, municipalities such as the Plaintiffs are “political subdivisions of the State.”⁴ The Plaintiff Municipalities have admitted in their Amended Complaint in this action (at para. 2) that they “are municipal corporations and political subdivisions of the State”

Consequently, Plaintiff Municipalities are expressly excluded from the benefit of this statute. In *S.C. Dept. of Soc. Servs. v. Tharp, supra*, regarding this statute, the Court found that “an agency of the State, was clearly the prevailing party and, accordingly, the statute does not authorize an award of attorney's fees.” *Id.*, 312 S.C. at 246, 439 S.E.2d at 856.⁵

Plaintiff Municipalities argued at the hearing on their motion that the “unless” clause does not mean what it says – that instead, it means only that political subdivisions should not be allowed, under this statute, to obtain attorneys’ fees from persons or entities that are not political subdivisions.⁶ Thus, Plaintiffs argued, because they here seek attorney’s fees against only another political subdivision, the “unless” clause is no impediment to their claim.

That argument, however, is unavailing. The statute clearly and plainly says that it does not apply if the prevailing party is a political subdivision.

Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261

⁴ “A political subdivision is a division or subdivision of the State invested with governmental functions.” *Willis Const. Co. v. Sumter Airport Comm'n*, 308 S.C. 505, 509, 419 S.E.2d 240, 241 (Ct. App. 1992), citing *Jackson v. Breeland*, 103 S.C. 184, 88 S.E. 128 (1916). Municipalities, under both S.C. Const., art. VIII, and S.C. Code Title 5, have been invested with governmental functions. See also S.C. Const. art. X, § 14(1) and S.C. Code § 6-21-30.

⁵ At the hearing on this motion, Plaintiff Municipalities argued that *S.C. Dept. of Soc. Servs. v. Tharp, supra*, is distinguishable. It is not: it states clearly that a State agency or political subdivision cannot collect fees under this statute. But, distinguishable or not, *S.C. Dept. of Soc. Servs. v. Tharp* is not Plaintiffs’ obstacle here. Their obstacle is the statute itself and its plain language. The unequivocal “unless” clause would still be there, even if *Tharp* had never been litigated.

⁶ Plaintiff Municipalities at the hearing offered no support for their suggestion of intended meaning.

(1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992).

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Had the General Assembly meant to enact what the Plaintiff Municipalities claim, it could easily have done so: *viz.*, "unless the losing party is neither the State nor any political subdivision of the State." But it did not do so; it did something quite different; and this Court will not amend the General Assembly's decision here.

The Plaintiff Municipalities claim in their motion to be the prevailing party; and this Court has found that they are. The Plaintiff Municipalities claim in their Amended Complaint to be political subdivisions; and this Court has found that they are. S.C. Code § 15-77-300 explicitly states, with no further qualification, that it does not allow an award of attorneys' fees if the prevailing party is a political subdivision. The claim by the Plaintiff Municipalities for attorneys' fees under S.C. Code § 15-77-300 is therefore denied.

Having determined that S.C. Code § 15-77-300 does not apply, this Court need not consider the other aspects of that statute that are required before a court can make an award of fees thereunder.

S.C. CODE § 62-7-1004

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

The Plaintiff Municipalities claim (Amended Complaint, para. 25), and the court has found (Order, p.22, para. 10), that "the nature of the acts of the [Plaintiff Municipalities] in transferring

the real and personal properties to the Corporation created a trust that was direct, resulting, constructive, or charitable in nature.” [*Emphasis added*]. The instruments that the Plaintiff Municipalities contend constitute their contract do not expressly describe or mention a trust in favor of the Plaintiff Municipalities. Rather, the trust in favor of the Plaintiff Municipalities is only inferred from the nature of certain acts. But S.C. Code § 62-7-1004, the statute on which the Plaintiff Municipalities rely for attorneys’ fees, is part of the South Carolina Uniform Trust Code. The Uniform Trust Code limits its scope (including S.C. Code § 62-7-1004), as follows:

This article applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. . . . This article does not apply to constructive trusts, resulting trusts [*Emphasis added.*]

S.C. Code § 62-7-102. Consequently, the alleged trust that the Plaintiffs have sought to enforce does not come within the scope of the Uniform Trust Code and so is not authorized for an award of attorneys’ fees under S.C. Code § 62-7-1004.

The claim by the Plaintiff Municipalities for attorneys’ fees under S.C. Code § 62-7-1004 is therefore denied.

Additionally, S.C. Code § 62-7-1004 appears in Part 10 of Article 7 of the S.C. Uniform Trust Code. Part 10 deals with the rights of beneficiaries as against the trustee, and is titled “Liability of Trustees and Rights of Persons Dealing with Trustees.” The various sections in that part all deal with that issue of trustee responsibility, liability, exculpation, and release. Section 62-7-1004, relied upon by the Plaintiffs for attorneys’ fees, was first enacted in 2005 (S.C. Act No. 66, § 1), and again without change in 2013 (S.C. Act No. 100, § 2)). The Reporter’s Comments for that section, printed with both enactments, and set forth in S.C. Code of Laws Ann. 2009 and Supp. 2017, states the following:

The court may award a beneficiary litigation costs if the litigation is deemed beneficial to the trust. Sometimes, litigation brought by a beneficiary involves an

allegation that the trustee has committed a breach of trust. On other occasions, the suit by the beneficiary is brought because of the trustee's failure to take action against a third party, such as to recover property properly belonging to the trust.

Neither situation is the case here. The constructive trust beneficiaries, Plaintiff Municipalities, have not alleged a breach of trust by the alleged trustee Corporation; nor have they alleged a failure by the Corporation to take action. Rather, they have alleged that the County has violated a contract with the Plaintiff Municipalities and has attempted to take assets belonging to a trust of which they are the beneficiaries. Consequently, even if there were an express trust in favor of the Plaintiff Municipalities, this present lawsuit is not within the ambit of S.C. Code § 62-7-1004, and so is not authorized for an award of attorneys' fees thereunder. For this separate and independent reason, also, the claim by the Plaintiff Municipalities for attorneys' fees under S.C. Code § 62-7-1004 is denied.

Moreover, S.C. Code § 62-7-1004 applies only "[i]n a judicial proceeding involving the administration of a trust." This present lawsuit is not such a proceeding. Rather, this case has been about whether a legislative enactment by a county council violated a contract that was alleged to be binding on that county council. Although the Plaintiff Municipalities alleged the existence of a non-express trust in their favor and denied the existence of the express trust in the County's favor, and although this Court has found accordingly, the administration of neither of those trusts was at issue. Insofar as the case related to a trust, the issues involved what trust or trusts existed and who were its/their beneficiaries. Again, even if there were an express trust in favor of the Plaintiffs, this present lawsuit is not within the ambit of S.C. Code § 62-7-1004, and so is not authorized for an award of attorneys' fees thereunder. For this separate and independent reason, also, the claim by the Plaintiff Municipalities for attorneys' fees under S.C. Code § 62-7-1004 is denied.

Finally, even if this were an "administration of a trust" proceeding involving an express trust, the authority of the court to award attorneys' fees is constrained by what "justice and equity

may require.” Although this Court has determined against the County, the County did not act without substantial justification in presenting its positions. Moreover, there are special circumstances that would make the award of attorneys’ fees here unjust. Those circumstances include (1) the fact that County Ordinance No. 2014-9-306-0 (Ex. P-A-04) (required by the Plaintiff Municipalities in 2014 as a condition of the return of property and relied upon by the Plaintiff Municipalities in this lawsuit as the heart of the alleged contract) provided expressly that the assets were to be held in trust not for the Plaintiff Municipalities but for the County, and (2) the fact that, because the Plaintiff Municipalities’ taxpayers are a subset of the County’s taxpayers, the only real transfer if attorneys’ fees are awarded against the County would be from taxpayers in unincorporated areas of the County to the Plaintiff Municipalities. For this separate and independent reason of what justice and equity require, the claim by the Plaintiff Municipalities for attorneys’ fees under S.C. Code § 62-7-1004 is denied.

CONCLUSION

The Plaintiff Municipalities’ motion for attorneys’ fees is denied.

AND IT IS SO ORDERED.

DOYET A. EARLY III
South Carolina Circuit Judge

, 2018
_____, South Carolina



Barnwell Common Pleas

Case Caption: City of Barnwell , plaintiff, et al VS County of Barnwell, et al ,
defendant, et al
Case Number: 2017CP0600113
Type: Order/Attorney Fees

So Ordered

s/D.A. Early III 2136