THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Jennifer McCoy, Circuit Court Judge

Appellate Case No. 2018-001784

Charleston County School District Board of Trustees,
Dr. Gerrita Postlewait, in Her Capacity as Superintendent of Charleston County School District, Kim Jackson, in Her Capacity as Principal of Mt. Pleasant Academy .... Appellants

v.

Travis J. McCory and Alicia S. McCory .... Respondents.

FINAL BRIEF OF APPELLANTS

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I. STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court err, in its statutory construction of S.C. Code of Laws § 59-63-30(c), by interpreting the statute as entitling a student to demand attendance at a particular school within a school district based on student ownership of real property?

II. Did the Circuit Court err, in its statutory construction of S.C. Code of Laws § 59-63-30(c), by interpreting the term "assessed value" to mean "market value"?

II. STATEMENT OF THE CASE

On August 21, 2018, Respondents filed this declaratory judgment action seeking a declaration of their daughter's rights under S.C. Code of Laws § 59-63-30(c) to attend Mount Pleasant Academy ("MPA"), an elementary school in Charleston County School District ("District"). (R. p. 10, Complaint.) In response, on August 29, 2018, the District filed a motion to dismiss the complaint pursuant to Rule 12(b)(6), SCRCP. (R. p. 40, Motion to Dismiss.) On August 30, 2018, The Honorable Jennifer B. McCoy, Circuit Court Judge, heard both the Respondents' request for declaratory judgment and the District's motion to dismiss, and the Circuit Court ruled at that time granting Respondents' requested declaratory relief and denying the District's motion to dismiss. (R. p. 102.) On September 7, 2018, the Circuit Court entered a further order granting Respondents' requested declaratory judgment finding that, pursuant to S.C. Code Ann. § 59-63-30, the Charleston County School Board must immediately admit the Respondents' daughter as a student of MPA. (R. p. 66, Order (Declaratory Judgment).) The District thereafter appealed from the Circuit Court's declaratory

judgment to the Court of Appeals.

III. STATEMENT OF FACTS

Respondents are parents of an elementary school-aged daughter; they brought this declaratory judgment action pursuant to the South Carolina Declaratory Judgment Act, S.C. Code of Laws § 15-53-10, *et seq.* for a declaration of their daughter's right to attend MPA under S.C. Code Ann. § 59-63-30(c). (R. p. 3, Complaint.) Respondents do not reside in the MPA attendance area as established by the District. Rather, Respondents reside with their daughter at 8 Trumbo Street, Charleston, South Carolina. (R. p. 6, Complaint ¶ 1.) Consequently, Respondents reside within the District in the elementary school attendance zone of Memminger Elementary School ("MES") and not in the attendance zone for MPA. (R. pp. 24, 31, Complaint Exhs. D, G.) Under District policy JFAA (Admission of Resident Students), Respondents' daughter is entitled to attend MES or apply to attend one of several magnet schools. (R. p. 53.)

Respondents did not want their daughter to attend MES, and they initially applied for a transfer for their daughter to MPA by application to the relevant constituent boards of the District. (R. p. 71, Transcript of Record.) The constituent boards generally control admission of students to the District's non-magnet schools. *See Stewart v. Charleston County School District*, 386 S.C. 373, 688 S.E.2d 579 (Ct. App. 2009). The transfer request was granted, but because of over-enrollment at MPA, Respondents' daughter was placed on an enrollment waiting list. (R. pp. 83, 97-101, Transcript of Record.)

In addition to seeking a school transfer from the constituent boards, Respondents also transferred to a trust for the benefit of their daughter a one-percent

interest in a parcel of land having an address of 511 McCants Street, Mount Pleasant, South Carolina, which property is located in the MPA attendance zone. (R. p. 7, Complaint ¶¶ 4, 6.). The tax-assessed value of this parcel of land is listed at $15,240; A one-percent interest in the property equals $152.40. (R. p. 84, Transcript of Record. R. pp. 104-5, tax record.) Thereafter, Respondents sought to enroll their daughter in MPA, asserting it to be the proper school for their daughter to attend, based on her beneficial interest in the property at 511 McCants Street in Mount Pleasant under § 59-63-30(c). (R. pp. 7, 8, 12, 19, 24, 36, Complaint ¶ 7 and Exhs. A, B, D, H.)

Respondents claimed that the District must enroll their daughter at MPA based on the location of the real property in Mount Pleasant in which she has a one-percent beneficial interest. The District responded that the Respondents' daughter is entitled to attend MES based on her residence at 8 Trumbo Street in Charleston and could attend MPA based on her position on the waiting list by way of the school transfer approved by the constituent board, but the location of the real property in which a child has a beneficial interest is not determinative of her school attendance zone. Rather, her attendance rights were controlled by Policy JFAA because she was a resident student of the District.

IV. STANDARD OF REVIEW

This appeal is from a declaratory judgment ultimately interpreting various statutory provisions of S.C. Code of Laws § 59-19-90 and §§ 59-63-30, -31, and -32. There are no material factual disputes for purposes of this appeal and interpreting a statute is a question of law.[1] *See Jones v. State Farm Mutual Automobile Insurance Co.*,

[1] The undisputed facts are:

1. Respondents' daughter resides in the MES attendance area.

364 S.C. 222, 612 S.E.2d 719 (Ct. App. 2005). Further, "[w]here the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and a court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Moreover, in reviewing matters within the discretion of school boards, the Supreme Court has noted that, in general, courts will not disturb matters within a school board's discretion unless there is clear evidence of corruption, bad faith, or a clear abuse of power. Furthermore, an appellate court will not substitute its judgment for that of a school board's in view of the powers, functions, and discretion that must necessarily be vested in such boards if they are to execute the duties imposed upon them. *Davis v. Greenwood School Dist. 50*, 365 S.C. 629, 635, 620 S.E.2d 65, 58 (2005). "[This] court has recognized that judicial review of such decisions must be limited to allow educational authorities to exercise the discretion necessary to carry out the duties imposed upon them." *Palms v. School Dist. of Greenville County*, 408 S.C. 576, 578-579, 758 S.E.2d 919, 920 (Ct. App. 2014) (internal quotations omitted).

V. ARGUMENT

A. The Circuit Court Erred In Interpreting S.C. Code Ann. § 59-63-30(c) As Entitling A Student To Attend A Specific School.

The Circuit Court's declaratory judgment order found that S.C. Code Ann.

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2. Respondents' daughter owns a 1% beneficial interest in real property located within the MPA attendance area, which property has an "assessed value" of $15,240 and a "market value" of $278,000. (R. pp. 84, 97, Transcript of Record; R. pp. 104-5, tax record.)
3. Respondents' daughter has sought admission to MPA pursuant to § 59-63-30(c) and policy JFAB.
4. Respondents' daughter has been granted by the District's constituent board a transfer from MES to MPA, but at the time of the hearing had been placed on an enrollment waiting list due to over-crowding at MPA.

§ 59-63-30 required students, who are entitled to attend a school of the District by virtue of owning real property in the District under §59-63-30(c), must be treated as residing at the location of such real property for purposes of assignment to a particular school in the District. This interpretation of § 59-63-30(c) is clearly erroneous and not only impermissibly adds words to the statute that simply are not there, but fails to harmonize § -30(c) with § 59-19-90(9), which specifically addresses student school assignment.

The statutes establishing a student's right to attend a school district, and a school board's authority to assign students to specific schools in a school district, are distinct, unambiguous and clear.

1. S.C. Code Ann. § 59-19-90(9)

First, S.C. Code § 59-19-90(9) gives the District the authority to determine which schools students will attend within the District. It provides: "[t]he board of trustees shall also: (9). . . determine the school within its district in which any pupil shall enroll." Echoing this general provision, the local legislation applying to the District provides: "Section 7. Power of trustees in constituent districts. The trustees in each of the constituent districts shall have the power in their respective districts, subject to the appeal to the Board of Trustees of the Charleston County School District. . . (1) [t]o. . . determine the school within such constituent district in which any pupil shall enroll." *Act. No*. 340, § 7(1), 1967 S.C. Acts 470. Accordingly, the statutes make clear that school boards of trustees have the responsibility and authority to determine in which specific school a pupil is eligible to enroll.

2. S.C. Code Ann. § 59-63-30

Second, S.C. Code § 59-63-30 sets forth the conditions under which a

student is "entitled to attend the public schools of any school district, without charge. . .," and it does not create any entitlement for a student to attend any specific school. Section 59-63-30 provides two ways a student may establish an entitlement to attend the District's schools without charge:

> (a) Such child resides with its parent or legal guardian;
> (b) The parent or legal guardian, with whom the child resides, is a resident of such school district; or
> (c) The child owns real estate in the district having an assessed value of three hundred dollars or more.

S.C. Code of Laws § 59-63-30(a), (b), (c). Additionally, a child who does not reside with a parent or legal guardian and is homeless, emancipated, or in foster care or its equivalent, may be entitled to attend the District without charge as provided for in §§ 59-63-31 and -32.

Here, the Respondents' daughter is entitled to attend the *Charleston County School District* without charge under § 59-63-30(a) and (b). Respondents, however, based their current claim on their enrollment of their daughter under § 59-63-30(c), which only applies when a student lives with parents or guardians who are not residents of the school district. However, even in this instance, nothing in § -30(c) compels a child's enrollment or assignment to a *specific school* within the District. Indeed, the South Carolina Attorney General has repeatedly addressed this precise issue concerning the harmonization and interplay of S.C. Code § 59-19-90(9) and § 59-63-30(c). Recently, in an opinion requested by James N. Epps, Jr., Ph.D., Superintendent of Fort Mill School District 4 of York County, the Attorney General's office stated:

> Section 59-63-30 does not expressly address the question, but § 59-19-90(9) empowers Boards of Trustees to ". . .determine the school within [the] district in which any pupil shall enroll. . . ." Giving

> § 59-19-90(9) its plain meaning. . . requires the conclusion that the power of school districts to determine pupil assignments is not altered by the provisions of school attendance based upon property ownership under § 59-63-30. *Sutherland Statutory Construction*, Vol. 2A §51.02; *see also Lewis v. Gaddy*, 254 S.C. 66, 173 S.E.2d 376 (1970). Therefore, property ownership within a district does not, itself, entitle a student to demand attendance at a particular school within that district.

South Carolina Attorney General Opinion 11-646, dated May 20, 2011, quoting South Carolina Attorney General Opinion 88-48, June 3, 1988, 1988 WL 383531. (R. pp. 49-51.)

Likewise, in *Wharton v. Abbeville Sch. Dist. No. 60*, 608 F. Supp. 70 (D.S.C. 1984), Judge G. Ross Anderson, Jr. discussed a school board's authority under § 59-19-90 to assign students to specific schools:

> South Carolina law grants a child of school age the right to a free education but does not confer a right upon pupils to attend a specific school. In fact, South Carolina law gives the Board of Trustees exclusive authority to operate or not operate any public school or schools. The Federal Court should not interpose and substitute its judgment and authority for that of local and state school authorities unless and until such actions by the Federal Court are clearly warranted to safeguard and protect rights guaranteed by the Constitution.

Id. at 75, citing *Bradford v. Sch. Dist. No. 20, Charleston, S.C.*, 244 F. Supp. 768 (D.S.C. 1965). Judge Anderson went on to conclude that:

> Pursuant to the provisions of S.C. Code Ann. § 59-19-90 (1976), as amended, the authority to manage and control local educational institutions of this district and the sole and exclusive authority to operate any public school or schools within the district rests with the local school board, <u>no statutory or property right is granted to anyone... to</u>

select the school which they will attend.

Id. at 77 (emphasis added). Moreover, the District's policy JFAB specifically addresses this issue, stating:

> **Students Who Own Real Property:**
>
> The location of real property owned by a student who is attending school in the district pursuant to S.C. Code Ann § 59-63-30(c) does not dictate the school or attendance area in which the student will attend.

(R. p. 36, Complaint Exh. H.)

Whether or not Respondents seek to enroll their child in the District under § 59-63-30(a), (b) (residence in the District) or § -30(c) (child owns property in the District), the District assigns a student to a particular non-magnet school based on the residence of the student's parents or legal guardian, with whom the student resides, when applicable. Accordingly, because the Respondents' daughter resides with them, she is assigned to a specific school under policy JFAA. Respondents' daughter was assigned to MES pursuant to policy JFAA before her transfer request to attend MPA was granted by the constituent board.

3. S.C. Code Ann. § 59-63-32 Is Not Applicable

Respondents further contend the affidavit they submitted attesting to their daughter's ownership of real estate (R. pp. 8, 29, Complaint, ¶ 11 and Exhibit F) brings her desired school enrollment under § 59-63-32. This argument is entirely misplaced; section 59-63-32 only relates to requirements for a child to enroll in a school district under § 59-63-31. *See* Section 59-63-32(B) ("The school district must also require an adult to complete and sign an affidavit: (1) confirming the qualifications set out in Section 59-63-31(1)(c) establishing residency of the child in the school district."). As

discussed above, § 59-63-31 addresses qualifications for children who do not qualify to attend a school district under § 59-63-30 and who are emancipated, homeless, or otherwise do not reside with a parent or legal guardian- none of which qualifications apply to Respondents' daughter. Accordingly, any reliance on §§ 59-63-31 and -32, is entirely misplaced.

4. S.C. Code Ann. §§ 59-19-90(9) and 59-63-30(c) Are Not In Conflict.

As discussed in *TNS Mills, Inc. v. S.C. Department of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1988), "[s]tatutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers. [Citation omitted.] Subtle or forced construction of statutory words for the purpose of expanding a statute's operation is prohibited." *Id.* Here, a practical and fair interpretation of § 59-63-30(c) would not include adding additional terms inconsistent with § 59-19-90(9) that would allow a student to jump to the front of a waiting list to compel enrollment in a specific school. "We are not at liberty, under the guise of construction, to alter the plain language of [a] statute by adding words which the Legislature saw fit not to include." *Shelley Construction Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 28, 336 S.E.2d 488, 491 (Ct. App. 1985).

Consequently, there is no statutory conflict or ambiguity requiring statutory interpretation or declaratory judgment for Respondents. Instead, the statutory scheme is unambiguous. The District has clear statutory authority under § 59-19-90(9) to apply District policies JFAA and JFAB to assign Respondents' child to MES, or permit a transfer to MPA. Likewise, it is clear that Respondents' daughter is entitled to attend school in the District without charge under § 59-63-30.

To hold otherwise, as the Circuit Court erroneously did, requires not only ignoring § 59-19-90(9) and the rules of statutory construction, but also requires improper consideration of a non-justiciable matter statutorily assigned to school officials discretion under *Palms v. Greenville County Sch. Dist.*, 408 S.C. 576, 758 S.E.2d 919 (Ct. App. 2014) and *Redmond v. Lexington County Sch. Dist. No. Four*, 445 S.E.2d 441 (S.C. 1994) (under § 59-19-90 school board's discretion can only be challenged upon clear abuse of discretion).

The Respondents have sought to rely on the South Carolina Supreme Court's decision in *Storm M. H. ex rel. McSwain v. Charleston County Bd. Of Trustees*, 400 S.C. 478, 735 S.E.2d 492 (2012). The Supreme Court's decision in *McSwain*, however, does not support the Circuit Court's construction of Respondents' rights under § 59-63-30(c). Indeed, in *McSwain*, the Supreme Court explicitly affirmed the District's authority under § 59-19-90(9) to assign students to specific schools.

> In construing the language of this section [§ 59-19-90(9)], we agree with the Board that the General Assembly conferred discretionary authority on a board of trustees to set attendance criteria for particular schools and to determine which school in its district a student may attend.

Id. at 489, 735 S.E.2d at 498. The Supreme Court did conclude, however, that the District could not revoke a student's admission to a District- wide magnet school based solely on a county residency requirement.

> However, the Board's subsequent attempt to rescind that [school admission] decision is unavailing because, in making its decision, the Board relied on the unlawful policy purporting to mandate Charleston County residency as a requirement for acceptance at AMHS. . . . Thus, while we agree with the Board that Section 59-63-30 does not

> necessarily confer a child the right to attend a particular school within a school district, CCSD may not utilize this provision to revoke admission to a child qualifying to attend school in the district by virtue of property ownership rather than residence under the auspices of exercising its Section 59-19-90(9) right to transfer and assign children to a particular school.

Id.

Accordingly, the *McSwain* decision is inapplicable on its facts to the present case. *McSwain* deals with the revocation of a student's admission to a magnet school and the proposition that § 59-63-30(c) is inconsistent with a county residency requirement to attend the District's magnet schools. This construction of § 59-63-30(c) as preventing discrimination in student assignment based on county-level residency is not the same as reading § 59-63-30(c) as requiring that the District affirmatively consider a student to be residing at the location of real estate owned in her name under § -30(c). In other words, had the District sought to revoke approval of the Respondents' daughter's transfer from MES to MPA based on consideration of her residency under § -30(c), then the revocation of her approved transfer would perhaps run afoul of the holding in *McSwain*, but nothing in the holding of *McSwain* commands consideration of the specific location of property within a school district in making student school assignment decisions, as erroneously found by the Circuit Court below.

Here, consistent with the holding in *McSwain*, the Respondents' daughter is not being disadvantaged or denied enrollment in any school because of her qualification to attend the District's schools based on property ownership. To the contrary, Respondents seek to stand the import of *McSwain* on its head, by seeking to use

§ -30(c) to gain an enrollment preference that is simply not provided for in § -30(c) and would be contrary to the express authority granted to the District by § 59-19-90(9).

Consequently, the Circuit Court erred in finding § -30(c) grants a statutory or property right to students to attend a specific school within a school district, and the District respectfully contends the Circuit Court's decision should be reversed.

B. The Circuit Court Erred In Concluding "Assessed Value" Means "Market Value" In § 59-63-30(c).

The Circuit Court below improperly determined that "assessed value" as used in § 59-63-30(c) equates to "market value." In order for a student to qualify to attend the District's schools under § -30(c), "[t]he child [must] own [ ] real estate in the district having an assessed value of three hundred dollars or more." The Circuit Court concluded this statutory provision only requires a child to own real estate having a market value of three hundred dollars or more. (R. p. 102, Transcript of Record.) This conclusion is plan error. The District has applied the term "assessed value" to mean "tax-assessed value." *See McSwain*, 400 S.C. at 483, 735 S.E.2d 495. The District's construction of the meaning of assessed value is consistent with the rules of statutory construction.

This specific question of the meaning of "assessed value" was addressed in *Hamilton Bail Bondsman Service v. Brown*, 318 S.C. 89, 456 S.E.2d 395 (1995). *Brown* involved a similar statutory interpretation of the meaning of "assessed value." The Supreme Court addressed the issue of whether "assessed value" is the value the county tax assessor places on real property before or after application of the tax assessment multiple. The Supreme Court concluded the term "assessed value" means the property value <u>after</u> application of the assessment multiple. *Id.* at 91, 456 S.E.2d at 396.

The Court stated: "there is a clear distinction between actual market value and 'assessed value' of property . . . the term 'assessed value' means value determined after application of the tax assessment multiple." *Id.* (emphasis original).

Here, applying this meaning of "assessed value" to Respondents' daughter's one-percent interest in the property with an assessed value of $15,240, her interest totals only $152.40, which is well below the § -30(c) minimum amount of $300.00. Given the plain meaning of "assessed value" as discussed in *Brown*, the Circuit Court erred in finding "assessed value" equates to "market value" and that Respondents' daughter met the statutory ownership threshold sufficient to invoke § -30(c). The Circuit Court's declaratory judgment in favor of Respondents, therefore, should be reversed on this additional ground.

VI. CONCLUSION

For the foregoing reasons, the District respectfully asks the Court to vacate the declaratory judgment entered by the Circuit Court below and enter judgment in favor of Appellants.

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Initial Brief of Respondents complies with Rule 208(b), SCACR.

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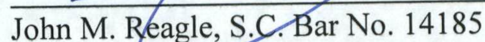

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