

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

---

APPEAL FROM WILLIAMSBURG COUNTY

Court of Common Pleas

Ferrell Cothran

---

Case No. 2012-212819

---

Marion L. Driggers

Appellant

v.

Daniel Shearhouse Clerk of Supreme Court

Honorable Jean Teal

Honorable Costa Pleicones

Respondent

Honorable Donald Beatty

Honorable John Kittredge

Honorable Kay Hearne

---

REPLY BRIEF

---

Marion L. Driggers – Prose

3497 Hebron Road

Lake City, South Carolina 29560

(843) 598-0735

**RECEIVED**  
MAR 14 2013  
**SC Court of Appeals**

## Table of Contents

Cases .....	Page 1
Statutes.....	Page 1
Court Rules .....	Pages 1
Reply Brief .....	Pages 2 & 3
Conclusion.....	Page 3
Arguments.....	Page 4

### **Cases**

1. Bus. License Opposition Comm. v. Sumter Cnty., 304 S.C 232, 403 S.E.2d 638 (1991)
2. Frazer v. Badger, 361, S.C. 94, 101, 603 S.E.2d 587, 590 (2004)
3. Jensen v. S.C. Dep't of Soc. Servs., 297 S.C. 323, 333, 377 S.E.2d 524, 531-32 (Ct. App. 2009)
4. Richard Freemantle v. Joey Poston
5. Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)
6. Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006)
7. Sloan Constr. Co. v. Southco Grassing, Inc., 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008)

### **Statutes**

S.C. Code 30-4-(10-165)

S.C. Code 30-8-240

S. C. Code 30-8-250

### **Court Rules**

Rule 220

Rule 242

Reply Brief

Statement of the Case

This case began when I issued an FOIA complaint. FOIA was on the Top of the page. The Clerk of Court of Williamsburg accepted it as an FOIA. The Clerk of the Supreme Court and the Judges accepted it as an FOIA. It was stated in the transcript that it was an FOIA, nothing more.

The only reason the respondents can't accept this fact is that they know that the Supreme Court is a public body. Statute <sup>p 37</sup> 30-4-100 states to apply to the Circuit Court for relief. This does not sound ambiguous to me.

The argument on mootness is ridiculous. The Court did not follow State Statutes, if it met on any occasion, whether it is for Writ of Certiorari or Certification. If they admit that they did not keep transcripts, then they have committed a crime (30-4-100), (30-4-110).

The next item comes on the 12(b) (6) dismissal. Quoting from opinion # 27138 "on appeal from the dismissal of a case pursuant to Rule 12(b) (6), an appellate court applies the same standard of review as the trial court." *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Id.* (internal quotations omitted). Of the facts alleged and inferences deducible therefrom would entitle the plaintiff to any relief, then dismissal under Rule 12(b) (6) is improper. *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008).

The Court also addressed Statutory Standing on opinion # 27138.

"In following the legislature's unmistakable intent, this Court disagreed and stated '(FOIA) permits any citizen to apply to the circuit court for injunctive relief. Accordingly, respondents have standing to challenge the Delegation's procedures under the FOIA.'" *Id.*; see also *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006) ("[T]his Court has held that standing under FOIA does not require the information seeker to have a personal stake in the outcome." (Internal quotations omitted)); *Bus. License Opposition Comm. v. Sumter Cnty.*, 304 S.C. 232, 403 S.E.2d 638 (1991) (holding appellants are entitled to litigate the nature and effect of a violation of FOIA and the appropriate relief, if any, to be awarded).

The legislature has specifically conferred standing upon any citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive relief, or both. Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required. Therefore, the trial court erred in finding Appellant lacked standing to assert his FOIA claims. On remand, Appellant shall be entitled to pursue his FOIA claims seeking declaratory and injunctive relief.

The next defense of immunity is also addressed in section IV of opinion # 27138.

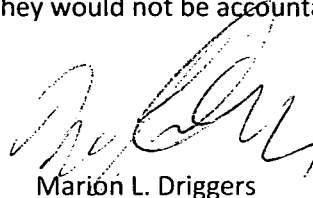
Appellant also argues the trial court erred in alternatively dismissing the action on the bases of the affirmative defense of legislative immunity and pursuant to Rule 12(b) (8), SCRC, since there was not a duplicative action already pending in trial court. We agree and find dismissal on the grounds of legislative immunity and Rule 12(b) (8) was improper pursuant to Rule 220 (b)(1), SCACR, and the following authorities: *Frazer v. Badger*, 361, S.C. 94, 101, 603 S.E.2d 587, 590 (2004) ("immunity under the [Tort Claims] statute is an affirmative defense that must be proved by the defendant at trial."); *Jensen v. S.C. Dep't of Soc. Servs.*, 297 S.C. 323, 333, 377 S.E.2d 524, 531-32 (Ct. App. 2009) (finding that Rule 12(b)(8) should be interpreted "narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8)").<sup>4</sup>

The other issues that are created by the respondents is just more legal jargon, like the response that this was not an FOIA. The only reason counsel brings this up is that she knows that the statutes presented and Opinion # 27138 show that these people broke the law. After all we all know that the reason we go to court is Justice, not Legal technicalities.

In closing, to save the taxpayers money for this case I will agree for this case to be certified to the Attorney General's Office to hear or to be presented to the legislature to hear to get the real intent of their laws.

#### Conclusion

This case has far more importance to the general public than Rocky Disabato v. SCACA Case# 2011-CP-40-2044. If the courts are handled like Mrs. Cundari wants, you could easily influence a few Judges on multi-million dollar cases and they would not be accountable to anyone. This is what the FOIA was created for.



Marion L. Driggers

3497 Hebron Road

Lake City, SC 29560

Pro Se

(843) 598-0735

## Arguments

The Supreme Court could control all cases in writs and certifications if no records were available to the Public.

Marion L. Driggers

3497 Hebron Road

Lake City, South Carolina 29560

(843) 598-0735

January 29, 2013

STATE OF SOUTH CAROLINA ) IN THE COURT OF APPEALS  
COUNTY OF WILLIAMSBURG )  
Marion L. Driggers, ) Appellate Case No.: 2012-212819  
Plaintiff, )  
V. )

) **CERTIFICATE OF SERVICE**  
)  
)

Daniel Shearhouse, Honorable Jean Toal, )  
Honorable Costa Pleicones, Honorable )  
Donald Beatty, Honorable John Kittredge, )  
Defendants. )

\_\_\_\_\_)  
I, Marion L. Driggers Pro Se Plaintiff, do hereby certify that I have served all counsel in this action with a copy of the document below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Document: Reply Brief  
Counsel: Tina Cundari Sowell & Gray  
P O Box 11449  
Columbia. South Carolina 29211

\_\_\_\_\_  
Marion L. Driggers  
3497 Hebron Road  
Lake City, South Carolina 29560  
(843) 598-0735

January 29, 2012

CERTIFICATE OF COUNSEL  
THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM Williamsburg County

Court of Common Pleas

Appellate Case No. 2012-212819

Marion L. Driggers,  
Plaintiff,

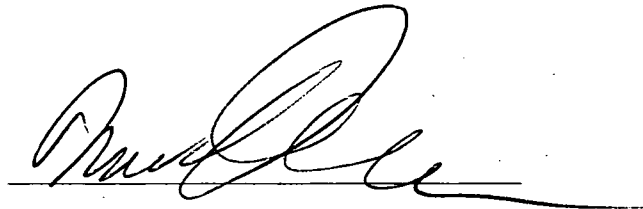
v.

Daniel Shearhouse, Honorable Jean Toal,  
Honorable Costa Pleicones, Honorable  
Donald Beatty, Honorable John Kittredge,  
Defendants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Appellate Court Rules.

January 29, 2013



Marion L. Driggers  
3497 Hebron Road  
Lake City, South Carolina 29560  
(843) 598-0735

**RECEIVED**  
MAY 03 2013

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

)

IN THE COURT OF APPEALS

COUNTY OF WILLIAMSBURG

)

Marion L. Driggers,

)

Appellate Case No.: 2012-212819

Plaintiff,

)

V.

)

)

**CERTIFICATE OF SERVICE**

)

Daniel Shearhouse, Honorable Jean Toal,

)

Honorable Costa Pleicones, Honorable

)

Donald Beatty, Honorable John Kittredge,

)

Defendants.

)

)

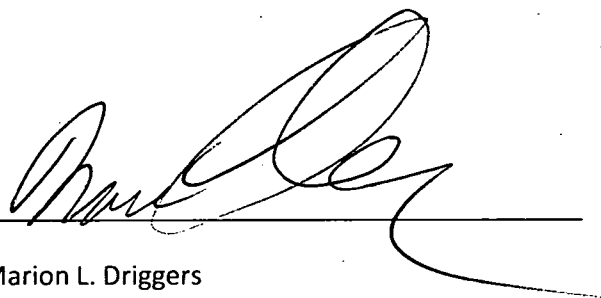
I, Marion L. Driggers Pro Se Plaintiff, do hereby certify that I have served all counsel in this action with a copy of the document below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Document: Reply Brief

Counsel: Tina Cundari Sowell & Gray

P O Box 11449

Columbia. South Carolina 29211



Marion L. Driggers

3497 Hebron Road

Lake City, South Carolina 29560

(843) 598-0735

January 29, 2013

**RECEIVED**

MAY 03 2013

**SC Court of Appeals**