THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William Jeffrey Young, Circuit Court Judge

Case No. 2010-CP-26-5964

William H. Bailey, Jr., Appellant,

v.

City of North Myrtle Beach, a South Carolina Municipal Corporation, Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This case revolves around Appellant William Bailey's claim that he was entitled to a grievance hearing following his retirement from Respondent City of North Myrtle Beach's employment. As is relevant to this appeal, the procedural history of this case is as follows. Appellant filed this action in the Horry County Court of Common Pleas on July 6, 2010. In his verified complaint, Appellant sought a declaration of the trial court that he could not be denied a hearing before the City's grievance committee following his retirement, that the City could not offer him a name clearing hearing pursuant to *Board of Regents v. Roth*, 408 U.S. 564 (1972), and that legal counsel for the City could not advise the grievance committee in any grievance that Appellant might be granted. He also sought injunctive relief to enforce the foregoing matters. (R. p. 26, ¶¶ 25-27, 29).

On or about August 31, 2011, the circuit court, Judge Benjamin H. Culbertson presiding, heard argument on a motion for summary judgment filed by Appellant. By order dated November 22, 2011, Judge Culbertson denied Appellant's motion for

summary judgment. The court further held that Appellant's causes of action seeking a grievance hearing were moot because the City had abolished its grievance procedure. (R. pp. 4-5).

Appellant sought leave to alter or amend his complaint on December 14, 2011. By way of a Form 4 order signed July 23, 2012 and filed July 31, 2012, the circuit court denied Appellant's motion to amend and ordered the remaining cause of action for declaratory relief set for trial. (R. p. 6). The matter came before the circuit court, Judge William Jeffrey Young presiding, for a one-day, non-jury trial on October 11, 2012 for determination of the sole issue remaining before the court – whether at the time of his retirement from the City, Appellant was entitled to a grievance hearing over his retirement. By order dated November 13, 2012, Judge Young ruled that there was no justiciable case or controversy before the court for determination and that, even if there were, Appellant was not entitled to a grievance hearing because he retired. (R. pp. 8-19).

Appellant filed a motion for reconsideration on November 26, 2012[1], which the circuit court denied on January 12, 2013. (R. pp. 20-22). On or about January 25, 2013, Appellant noticed the instant appeal.

[1] Although the order granting judgment in the City's favor was filed November 27, 2012, it had been signed by the judge on November 13, 2012, and transmitted to the parties prior to its being filed.

STATEMENT OF FACTS

Appellant is the former Director of Public Safety for the City of North Myrtle Beach. He testified that he was employed with the City in various capacities for about 20 years and had a good work record until recent events. (R. p. 169, *ll.* 7-9, 17-19). Those recent events surrounded the theft of Appellant's service weapon from the glovebox of his personal vehicle. (R. p. 170, *ll.* 4-13). In the wake of this incident, Appellant was demoted. (R. p. 118, *l.* 25 – p. 119, *l.* 2; p. 170, *ll.* 19-21). Appellant was granted a hearing before the City's grievance committee regarding his demotion, and the committee recommended upholding the demotion. (R. p. 119, *ll.* 10-14).

Former City Manager John Smithson[2] testified that, during the grievance over Appellant's demotion, Appellant lied about matters surrounding the theft of his gun and what he had reported to the City about the theft. (R. p. 120, *ll.* 3-7). As a result, Smithson met with Appellant on April 28, 2010, and told him that he could resign, or he would be fired, and that Smithson needed the decision by 3:00 p.m. the following day. (R. p. 119, *l.* 18 – p. 120, *l.* 7). Appellant testified that he understood if he resigned, he would not be allowed to grieve his separation from employment. (R. p. 188, *ll.* 10-20). Smithson and Appellant both testified that the meeting concluded with Appellant's storming out, and Appellant testified he told Smithson he would not resign. (R. p. 121, *ll.* 15-20; p. 171, *l.* 19 – p. 172, *l.* 6).

The next day, a Thursday, Appellant's attorney contacted the City to find out what benefits Appellant would receive at separation. (R. p. 198, *ll.* 8-15). This began two days of negotiations between Appellant's counsel and Steve Savitz, whose law firm

[2] Smithson retired from the City in July 2010. (R. p. 115, *ll.* 11-12).

represents the City in employment matters, to determine if an amicable parting could be arranged. Late in the evening of Friday, April 30, the negotiations ended without any agreement. (R. p. 122, *l.* 18 – p. 123, *l.* 4; p. 153, *l.* 11 – p. 154, *l.* 8; p. 197, *l.* 21 – p. 198, *l.* 21).

Savitz testified that, after he ended his conversation with Appellant's counsel, he spoke with Smithson by phone. Smithson told Savitz that he would consider Appellant's termination date to be April 30, instead of April 29 as he had previously indicated in his ultimatum to Appellant. (R. p. 153, *l.* 11 – p. 154, *l.* 19). Smithson testified he made the change because the parties were in negotiations during the initial deadline. (R. p. 124, *l.* 19 – p. 125, *l.* 2). Smithson and Savitz also testified that Smithson considered that, by making the termination effective April 30, Appellant may qualify for retiree health insurance benefits under the City's group health plan if he retired. (R. p. 128, *l.* 12 – p. 129, *l.* 8). As of April 30, however, both believed that Smithson had terminated Appellant's employment. (R. p. 135, *ll.* 8-15; p. 152, *l.* 19 – p. 153, *l.* 1).

Appellant, however, retired from employment on April 30, 2010, before the City could terminate his employment. Appellant testified that he either spoke by phone with a representative of the South Carolina Police Officer's Retirement System ("PORS"), or met with the representative in person, on April 29. (R. p. 198, *l.* 23 – p. 199, *l.* 13). During the conversation, he told the representative he wanted to know if he could retire were he to "quit" on April 29. (R. p. 200, *ll.* 10-13). Appellant further testified that, despite his previous assertion that he would not resign, he was considering all of his options. (R. p. 200, *ll.* 14-21). Ultimately, Appellant arranged to purchase five years of service in the PORS, which permitted him to retire with a full pension. (R. p. 164, *l.* 11 –

p. 165, *l.* 25; p. 318; p. 243). He completed the purchase on April 30, 2010, by delivering a personal check for the purchase amount to the PORS. (R. p. 243). At the same time, Appellant elected to retire, conceding under questioning that he did so because he believed he was unemployable. (R. p. 201, *l.* 19 – p. 203, *l.* 2). According to PORS records, Appellant's last day of service was April 30, 2010, and his first day of retirement was May 1, 2010. (R. pp. 235, 243).

On May 28, 2010, Appellant submitted a request to the City for a grievance hearing over his separation from employment. (R. p. 195, *l.* 16 – p. 196, *l.* 8; pp. 224-225). In the request, Appellant asserted that he was "forced into taking early retirement." (*Id.*) Just days later, the *Sun News* ran an article concerning the retirement in which Appellant's counsel was interviewed. The article read in relevant part:

> Bailey filed his retirement paperwork when the state office opened at 8:30 a.m. on April 30, [Appellant's Counsel] Moss said – *before City Manager John Smithson could take any threatened disciplinary action.*
>
> "We were still negotiating with the city at the time William drove to Columbia," Moss said. "*The city didn't even know he had retired.*"

(R. p. 192, *l.* 14 – p. 194, *l.* 18; pp. 319-320 (emphasis added)). Appellant's counsel also wrote to Savitz, informing him on May 24, 2010, by email "on the morning of April 30, 2010, . . ., [Appellant] elected to retire . . ." (R. p. 165, *ll.* 2-11; p. 318).

In response to Appellant's request for a grievance hearing, Savitz wrote to Appellant's counsel to discuss scheduling and other administrative issues relating to the grievance hearing. (R. p. 166, *l.* 12 – p. 167, *l.* 20; pp. 222-223). Shortly afterward, Appellant filed a verified complaint with the Court in his other lawsuit, asserting several

causes of action relating to his separation from employment.[3] In the verified complaint, Appellant asserted that he was "constructively dismissed" and the subject of a "wrongful constructive discharge." (R. p. 189, *l.* 10 – p. 192, *l.* 13). Appellant admitted that he swore to the accuracy of the complaint in the verification. (*Id.*) He further testified that he believed the terms "constructive discharge" and "constructively dismissed" meant that he had been forced to do something he did not want to do, *i.e.*, retire. (*Id.*)

Savitz testified that his law partner, Linda Edwards, was primarily responsible for advising the City concerning its handling of Appellant following the incident with his service weapon. (R. p. 149, *ll.* 14-16; p. 150, *ll.* 1-5). Savitz further testified that it was the firm's common practice to select another of the firm's lawyers to advise a grievance committee to avoid any appearance of conflict with the lawyer advising the municipality's management. (R. p. 149, *ll.* 12-19). Savitz handled the separation negotiations in April because Edwards was unavailable those days. (R. p. 151, *ll.* 8-19). Ultimately, Edwards later reviewed the matter and determined that Appellant was not entitled to a grievance hearing. (R. p. 206 – p. 207, *l.* 23; pp. 226-227). On July 2, she wrote Appellant's counsel:

> I reviewed William Bailey's request for a grievance hearing. After reviewing his letter, as well as the allegations of his complaint filed in Horry County, I have determined that because Mr. Bailey chose to retire in lieu of being terminated, he is not entitled to a hearing before the City's grievance committee.

(R. p. 226, ¶ 1). Edwards conceded in the letter that Appellant may be entitled to a

[3] *See Bailey v. City of North Myrtle Beach, et al.*, C.A. No. 2010-CP-26-5145. (Supp. R pp. 2-34).

hearing to clear his name and offered such a hearing to Appellant.[4] (R. p. 207, *l.* 24 – p. 209, *l.* 6). Appellant's counsel responded to Edwards by letter dated July 5, rejecting both the City's conclusion that Appellant was not entitled to a grievance hearing and rejecting the offer of a name clearing hearing. (R. p. 210, *ll.* 3-17; pp. 322-323).

Following Smithson's retirement in July 2010, the City hired Mike Mahaney as city manager.[5] (R. p. 142, *ll.* 4-9). The City operates under the council-manager form of government. (R. p. 147, *ll.* 9-12). Under the council-manager form of government, the city manager makes personnel decisions such as hiring and discharge. *See* S.C. Code § 5-13-90 (1) (vesting power of employment and discharge in city manager). State law further provides that, if a city has a grievance committee, the committee only makes recommendations to the individual vested with hiring and discharge authority. *See* S.C. Code § 8-17-140. State law also requires that, if a city has a grievance procedure, the procedure must substantially conform to the statute's requirements, one of which is that the city manager is the ultimate decision-maker on grievances. *Id.*; S.C. Code § 1-17-160 (addressing city manager's role in grievances). Assistant City Manager Steve Thomas testified that Mahaney was concerned that he had to make discharge decisions in the first instance, then review the grievance committee's recommendations. (R. p. 143, *l.* 20 – p. 146, *l.* 12). Mahaney asked Thomas to review whether the City could repeal its grievance

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[4] Under federal constitutional law, "a public employer cannot deprive a[n] . . . employee of his 'freedom to take advantage of other employment opportunities.'" *Sciolino v. City of Newport News*, 480 F.3d 642, 645-646 (4th Cir. 2007) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972)). Accordingly, a "liberty interest" under the Fourth Amendment is implicated by public announcement of the reasons for an employee's discharge. *Id.* (citing *Johnson v. Morris*, 903 F.2d 996, 999 (4th Cir. 1990). This liberty interest gives rise to a due process right to notice and to be heard – not for the purpose of remaining employed, but "merely to clear one's name against unfounded charges." *Johnson*, 903 F.2d at 999 (internal citations and quotations omitted).

[5] The transcript mistakenly refers to Mr. Mahaney as Mike "Payne" and "Mr. MeHaney."

procedure, and Thomas submitted a recommendation to City Council that it do so on May 16, 2011. (R. pp. 308-314). Ultimately, the recommendation was adopted, and the City repealed its grievance procedure during the pendency of this lawsuit. (R. p. 146, *ll.* 1-12).

STANDARD OF REVIEW

"In actions at law, on appeal of a case tried without a jury, the lower court must be affirmed where there is any evidence which reasonably supports the judge's findings." *Sloan v. Greenville County*, 356 S.C. 531, 544, 590 S.E.2d 338, 345 (Ct.App. 2003); *see also, Strickland v. Prudential Ins. Co. of Am.*, 278 S.C. 82, 85, 292 S.E.2d 301, 303 (1982); *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976); *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 280, 580 S.E.2d 163, 165 (Ct.App. 2003). In reviewing actions at law, the "scope of review is limited to the correction of errors of law." *Lozada v. South Carolina Law Enforcement Division*, 395 S.C. 509, 511-512, 719 S.E.2d 258, 259 (2011) (citing *S.C. Dept. of Transp. v. Horry County,* 391 S.C. 76, 81, 705 S.E.2d 21, 24 (2011)).

"A declaratory judgment action is neither legal nor equitable, and therefore, the standard of review is determined by the nature of the underlying issue." *Id.* (quoting *Auto Owners Ins. Co. v. Newman,* 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009)). "Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law." *Noisette v. Ismail*, 299 S.C. 243, 247, 384 S.E.2d 310, 312 (Ct.App. 1989). Even where equitable relief is sought, this alone "does not, however, require the case be treated as an equitable action in

toto." *Sloan*, 356 S.C. at 544, 590 S.E.2d at 345. "Rather, we must look to the 'main purpose' of the suit to determine its characterization." *Id.* (citing *Williams v. Wilson*, 349 S.C. 336, 340, 563 S.E.2d 320, 322 (2002); *Insurance Financial Servs., Inc. v. South Carolina Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978); *Floyd v. Floyd*, 306 S.C. 376, 380, 412 S.E.2d 397, 399 (1991) (As we interpret the main purpose rule, its primary function is to administratively categorize an action in which parties seek both equitable relief and legal redress.); *Alford v. Martin*, 176 S.C. 207, 212, 180 S.E. 13, 15 (1935) ("The character of an action is determined by the complaint in its main purpose and broad outlines and not merely by allegations that are merely incidental.")). As is relevant to the instant appeal, when an "action involves the interpretation of . . . statutes, it is an action at law." *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 606-607, 663 S.E.2d 484, 487 (2008).

While Appellant's complaint also sought injunctive relief, the "main purpose" of the complaint was to determine the City's authority to refuse Appellant's request for a grievance. (R. p. 26, ¶¶ 25-27). In particular, the complaint sought a determination that:

> a. The City Manager has no authority under the South Carolina Code or the Ordinances of the City of North Myrtle Beach to deny Plaintiff a hearing before the City Grievance Committee; and
>
> b. The City Manager has no authority to vary the Ordinances of the City by expending taxpayer monies on a form of "public hearing" alien to the laws of the State of South Carolina and the City; and . . .

(R. p. 27, ¶¶ A.a.-A.b.). Further, the portion of Appellant's complaint that sought injunctive relief was no longer before the court at the time of trial, having been disposed

of previously by Judge Culbertson. (R. pp. 4-5). Accordingly, the trial dealt only with the interpretation of statutes setting out the authority of the City and its city manager. Therefore, the case is properly viewed as one at law. *Bramlett v. Young*, 229 S.C. 519, 533, 93 S.E.2d 873, 880 (1956) ("The appeal must be considered in the light of the general rule that the theory pursued in the trial Court with respect to the relief sought and grounds therefor, must be adhered to in the appellate Court."); *see also, Sloan*, 356 S.C. at 546, 590 S.E.2d at 346 (noting that the appellate court may look to the entirety of the circumstances to determine whether the case is one in equity or at law).

Because the case is an action at law, "the findings of fact of the judge will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). "The judge's findings are equivalent to a jury's findings in a law action." *Id.*

ARGUMENT

1. The Trial Court Correctly Held That Injunctive Relief Was Not Available to Appellant.

To the extent Appellant challenges Judge Culbertson's interlocutory ruling that Appellant's cause of action for injunctive relief was moot (R. pp. 4-5), the lower court's ruling was correct and should be upheld. In the order, Judge Culbertson ruled that "[s]ince [the City] has abolished its grievance procedure, any decision by the Court would be of no effect." (*Id.*). In so doing, the court correctly acknowledged that it was without power to require the City to have a grievance procedure or to conduct grievance hearings.

Whether to have a grievance procedure is left to the discretion of municipal

governments. S.C. Code § 8-17-120 provides that the "governing body of any . . . incorporated municipality in this State *may* by ordinance or resolution adopt a plan for the hearing and resolution of employee grievances . . . " (emphasis added). The permissive language of the statute plainly contemplates that municipalities are not required to have a grievance procedure and only applies if a municipality does, in fact, have a grievance procedure. *See Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007) ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.") Quite simply, there is nothing in the statute to indicate the legislature intended to mandate grievance procedures.

While no appellate court in this state has addressed the permissive nature of grievance procedures in South Carolina, a federal district court has. In *Baxley v. City of North Charleston*, 533 F.Supp. 1248 (D.S.C. 1982), the U.S. District Court dealt with a claim by a North Charleston police officer that the city had denied him a grievance hearing under the County and Municipal Employees Grievance Procedure Act but had granted him a hearing pursuant to city ordinance. *Id.* at 1254. The city's ordinance, however, provided for grievances being heard by the mayor. *Id.* Reciting the procedural history of the case, the district court noted that the officer had sought a rule to show cause in the Court of Common Pleas, attempting to stop the hearing provided for by city ordinance. Noting that state law "does not require any county or municipality to adopt a plan for hearing employee grievances," but only to "conform to the guidelines set forth in the act" if it did, the district court explained that the Court of Common Pleas had not required the city to provide the officer a hearing that accorded with the County and

Municipal Employee Grievance Act. *Id.* Instead, the court had ruled that the city had no grievance procedure and invalidated the city ordinance as inconsistent with the Act. *Id.*

The takeaway from *Baxley* and the plain language of the Act itself is that no law required the City to have a grievance procedure. Accordingly, even if the lower court had been inclined to grant Appellant injunctive relief, it could not have done so because it lacked any authority to require the City to have a grievance procedure. Therefore, the lower court's decision, embodied in the Order of November 22, 2011, that the claim for injunctive relief was moot should be upheld.

2. The Trial Court Correctly Held That There Was No Justiciable Case or Controversy Before The Court For Determination.

A. The Uniform Declaratory Judgment Act and mootness.

An action for a declaratory judgment proceeds under the state's Uniform Declaratory Judgment Act ("Act"), S.C. Code §§ 15-53-10, *et seq.* Pursuant to the Act, the court may "refuse to render or enter a declaratory judgment or decree when such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." S.C. Code § 15-53-70. Whether to grant a declaratory judgment rests with the sound discretion of the court. *Garris v. Governing Bd. of South Carolina Reinsurance Facility*, 319 S.C. 388, 390, 461 S.E.2d 819, 820 - 821 (1995) (citing *Ott v. Tindal*, 297 S.C. 395, 377 S.E.2d 303 (1989)); *Williams Furniture Corp. v. Southern Coatings & Chem. Co.*, 216 S.C. 1, 6-7, 56 S.E.2d 576, 578 (1949).

Our Supreme Court has held that "the existence of an actual controversy is essential to jurisdiction to render a declaratory judgment." *Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970). Thus, "to maintain an action under the [Act],

there must exist a justiciable controversy." *Id.* In *Power*, the high court cited the following definition of a justiciable controversy:

> A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.

Power, 255 S.C. at 154, 177 S.E.2d at 553 (quoting *Guimarin & Doan v. Georgetown Textile & Mfg. Co.*, 249 S.C. 561, 566, 155 S.E.2d 618, 621 (1967)). Further, the Act does not require the courts to render purely advisory opinions. *Power, supra*; *City of Columbia v. Sanders*, 231 S.C. 61, 67-68, 97 S.E.2d 210, 212 (1957).

The trial court in this case properly found the *Power* case controlling. In *Power*, the police chief and a patrolman of the City of Laurens sought to enlarge their jurisdiction outside the city's borders to aid in the investigation of crimes and apprehending of suspects who fled the jurisdiction. To that end, they sought to be commissioned as constables with state-wide jurisdiction by the governor. *Power*, 255 S.C. at 152, 177 S.E.2d at 552.

The governor refused, believing that making the appointments would constitute dual office holding by the plaintiffs. *Id.* The governor was otherwise willing to make the appointments. *Id.* at 154, 553. Accordingly, the plaintiffs sought a declaratory judgment to determine whether their holding both the office of constable and police officer would constitute dual office holding.

The Supreme Court raised the issue of jurisdiction *sua sponte* and concluded that it could not grant the declaratory judgment. Despite the fact that the governor was willing to make the appointment, the decision to do so was nevertheless discretionary –

that is, the court could not force the governor to make the appointment. Thus, any decision by the court "would settle no legal rights of the parties." *Id.* Rather, it "would be only advisory and, therefore, beyond the intended purpose and scope of a declaratory judgment." *Id.* at 154-155, 553.

Here, Appellant sought a determination that he was entitled to a grievance hearing due to his separation from employment. The lower court had already correctly ruled that it could not grant injunctive relief to require the City to give Appellant a grievance hearing because the City had no grievance procedure. (R. pp. 4-5). At bottom, the declaration Appellant sought was: *if* the City still had a grievance procedure, he *would have been* entitled to a grievance hearing. Nothing could be more "contingent, hypothetical, or abstract." *Power*, 255 S.C. at 154, 177 S.E.2d at 553. Even if the Court had been inclined to grant Appellant a declaratory judgment, it would not have served any purpose. Appellant would not get a grievance hearing because the Court could not require the City to give him one, and the parties' rights as to each other would not change.

Because any ruling by the trial court would not have served to clarify the parties' rights or status as to each other, the lower court properly found there was no justiciable controversy.

B. The exceptions to the doctrine of mootness do not apply in this case.

There are three exceptions to the mootness doctrine. "First, if the issue raised is capable of repetition but generally will evade review, the appellate court can take jurisdiction." *Sloan v. Greenville County*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (citing *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001)).

"Second, an appellate court *may* decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Id.* (emphasis in original). And third, "if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." *Id.* As will be shown below, none of these three exceptions applies to this case.

1. The issue in the present case is not capable of repetition yet evading review.

This Court may take jurisdiction of a case, "despite mootness, if the issue raised is capable of repetition, but evading review." *Sloan v. Greenville County*, 356 S.C. 531, 554, 590 S.E.2d 338, 350 (Ct. App. 2003).[6] In *Sloan*, the plaintiff sought a declaration that Greenville County had violated its procurement ordinances related to construction projects. Due to the nature of the awarding process, which had the goal and effect of accelerating the awarding and completion of projects, the projects at issue were completed prior to the start of trial. *Id.* at 555. Because the challenged procedure by design was likely to result in completion of projects before challenges could be heard, this Court found that "it is improbable similar challenges can navigate the litigation process before the question becomes a purely academic one." *Id.* Accordingly, the case was one that was capable of repetition but evaded review.

The Supreme Court has similarly held that, where the nature of the challenged action is of such short duration that it normally cannot be reviewed prior to completion, the doctrine may apply. In *Treasured Arts, Inc. v. Watson*, 319 S.C. 560, 463 S.E.2d 90

[6] There are several reported and unreported cases in this Court and the Supreme Court with the caption *Sloan v. Greenville County*, all of which stem from Sloan's challenges to Greenville County's procurement ordinance in the awarding of various projects.

(1995), the Supreme Court considered the case of a computer graphics company that instituted a promotional instant win game as part of its marketing efforts. By the time the case was litigated, the promotion had expired. Accordingly, the Supreme Court held that injunctive relief was unavailable. However, the high court, in a footnote, noted that the declaratory judgment action was not moot under the doctrine of capable of repetition yet evading review. This was because the challenged action was of too short a duration to be fully litigated prior to expiration and there was a reasonable expectation the same complaining party would be subjected to the same action again. 319 S.C. at 564, 463 S.E.2d at 92 (citing *Weinstein v. Bradford*, 423 U.S. 147 (1975)).

In *South Carolina Dept. of Mental Health v. State*, 301 S.C. 75, 390 S.E.2d 185 (1990), the Supreme Court allowed review of a challenge to the family court's power to commit a juvenile to the custody of the Department of Mental Health despite the fact that, by the time of review, he had been released. And in *Evans v. South Carolina Department of Social Services*, 303 S.C. 108, 399 S.E.2d 156 (1990), the high court reviewed an order of the family court requiring DSS to reveal the name of an adoptive child's birth father and birth mother so that notice of the adoption could be provided to the birth father. Despite the fact that the birth mother eventually provided DSS with the name of the birth father prior to review, the Supreme Court held that review was appropriate because the situation was a "recurring dilemma which may unnecessarily interfere with the adoption process." *Id.*, at 110, 157 n.1.

The present case is not one that is capable of repetition yet evades review. This Court and the Supreme Court's application of this doctrine have been limited to instances in which the matter under review is of a short or finite duration, but presents a recurring

problem that needs to be addressed. In the present case, Appellant presented no evidence that the City's repeal of its grievance procedure will impact him, or anyone else, going forward. There is no evidence that the City has a history of re-establishing and abolishing its grievance procedure such that other employees or former employees might fall into a situation similar to Appellant's. This is simply not a case where repetition is probable. In fact, it is quite the opposite. For the situation to repeat itself, the City would have to re-establish its grievance procedure, refuse to give an employee a grievance, the employee would have to sue over the denial, and the City would have to abolish the grievance procedure again. Appellant offered no evidence that this chain of events has happened in any other circumstances, or is likely to happen again. In short, this is a one-off situation.

2. This case is not a matter of imperative and manifest urgency about an issue of important public interest such that the Court must establish a rule for future conduct.

The Supreme Court has recognized an exception to mootness holding that "an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of public importance." *Sloan v. Greenville County*, 361 S.C. 568, 570-1, 606 S.E.2d 464, 465-6 (2004) (quoting *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001)). "Whether a particular suit raises 'questions of imperative and manifest urgency' must be decided on an individual basis." *Id.*

In *Sloan*, the plaintiff brought an action against Greenville County seeking a declaration that it had violated its procurement ordinance in the awarding of certain construction projects. The projects were completed prior to the time the matter was heard. Relying on a previous decision that the expenditure of public funds was "of

immense public importance," the Court of Appeals reasoned that the awarding of the construction contracts was a question of public importance justifying review despite the case's otherwise being moot. *Id.* (citing *Sloan v. School Dist. of Greenville Co.*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000)).

Holding that the Court of Appeals had applied the wrong standard, the Supreme Court explained that the focus should not have been on "public importance" but whether there was also "imperative and manifest urgency." *Id.* The Supreme Court further held that categorical exceptions to mootness for a matter of public importance are "inconsistent with the limited nature of the exception for questions of 'imperative and manifest urgency.'" *Id.* There was no urgency in the *Sloan* case because, in the time since the actions were commenced, the Court of Appeals had issued two opinions on the adequacy of the county's determinations under its procurement code, which provided guidance that the plaintiff was seeking. In addition, the county's procurement code had been amended to require a monitor, public notice and an opportunity to be heard. Accordingly, there was "no imperative or manifest urgency in obtaining an advisory opinion on the application of an obsolete procurement ordinance to these completed projects." *Id.*, at 572, 467.

The lesson of *Sloan* is that the second exception requires the presence of both elements: the matter must be one of public importance and there must be a question of imperative and manifest urgency. Here, like in *Sloan*, the City has repealed its grievance procedure during the pendency of the lawsuit. Appellant sought a determination that, under the City's now-repealed grievance procedure, he would have been entitled to a grievance hearing despite his having retired. Like in *Sloan*, there is no urgency presented

in obtaining an advisory opinion on how a now-abolished procedure would have applied. Further, where the *Sloan* case unquestionably dealt with a matter of public importance, Appellant offers no evidence of such public interest here. This is not a matter involving the expenditure of public funds in which the public undoubtedly has an interest. The question Appellant sought to have answered was whether he was entitled to a grievance hearing – an issue of importance to him and him alone. Appellant's complaint does not allege, nor has he offered any evidence, that the public at-large has any interest in his receiving a grievance hearing. Accordingly, the exception for matters of public importance where there is manifest urgency does not apply.

3. The exception for decisions affecting future events or having collateral consequences does not apply.[7]

Our courts have recognized that "if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). Despite this recognition, few if any cases have applied the doctrine in this state. In the criminal law context, our Supreme Court has held that, where a conviction has continuing or collateral consequences for a defendant, he may continue an action for post-conviction relief. *Jackson v. State*, 331 S.C. 486, 490, 489 S.E.2d 915, 917 n.2 (1997).

While it is not clear that the *Jackson* case applies in the civil law context, the Court need not wrestle with the question for long. This is because Appellant offers no

[7] Confusingly, Appellant does not argue this exception applies in his argument against the trial court's determination that there was no justiciable controversy. Instead, Appellant mentions the exception in his argument against the trial court's alternative ruling that, by retiring, Appellant was not entitled to a grievance. Nevertheless, in an abundance of caution, the City will address this exception as well.

evidence or explanation for how the matter before the lower court had any collateral consequences or would affect future events. Appellant has filed a separate lawsuit alleging numerous causes of action stemming from the events surrounding the theft of his service weapon and his separation from employment. Appellant failed to explain – to this Court or the court below – how any of the causes of action in that matter are impacted by a determination of whether he was entitled to have a grievance hearing under a now-repealed grievance procedure. The Court is not obligated to scour the record in search of some support for Appellant's view – essentially doing Appellant's job for him. *See Muhammad v. Giant Food, Inc.*, 108 Fed.Appx. 757, 764 (4th Cir. 2004) (citing *Ritchie v. Glidden Co.*, 242 F.3d 713, 723 (7th Cir.2001)). Accordingly, this Court should reject any assertion this exception to mootness applies.

Even if the Court were inclined to entertain argument by Appellant on this exception despite the lack of evidence of collateral consequences, the exception plainly does not apply. While no South Carolina appellate court appears to have addressed the exception, other states' courts have, and they have generally limited the doctrine to cases where the judgment, if left undisturbed, may affect a constitutionally-protected liberty interest, future employment, may subject the individual to enhanced administrative penalties, or may stigmatize the individual. As the North Carolina Supreme Court has explained, the classic example of collateral legal consequences arises in the context of criminal appeals when the defendant has completed his sentence during the pendency of the appeal.

> In such cases, the appellate court decision would presumably have no effect on the punishment already carried out, and the appeal would, pursuant to the general rule, appear to be moot. The effects of a criminal

> conviction, however, extend far beyond the sentence imposed. The mere fact of conviction may result in various adverse consequences for the individual, including loss of citizenship rights, impeachment if called as a witness, and enhancement of sentencing if convicted of another crime. *See, e.g., Carafas v. LaVallee,* 391 U.S. 234, 237, 88 S.Ct. 1556, 20 L.Ed.2d 554 (1968) ("In consequence of [the defendant's] conviction, he cannot engage in certain businesses; he cannot serve as an official of a labor union ...; he cannot vote ...; he cannot serve as a juror." (footnotes omitted)). Accordingly, these collateral legal consequences give the defendant-appellant "a substantial stake in the judgment of conviction which survives the satisfaction of the sentence imposed on him." *Fiswick v. United States,* 329 U.S. 211, 222, 67 S.Ct. 224, 91 L.Ed. 196 (1946).

In re A.K., 628 S.E.2d 753, 756 (N.C. 2006).

In the civil context, a judgment may have collateral legal consequences if the law imposes burdens or removes rights or privileges as a result of the judgment. Thus, in *In re Hatley*, 231 S.E.2d 633 (N.C. 1977), the court held that an involuntary commitment order may carry collateral legal consequences because it could be the basis of future commitment orders. And in *In re Barbosa*, 580 S.E.2d 359 (N.C. 2003), the court held that an order finding neglect carried collateral legal consequences despite the child's being returned to his parents prior to adjudication of the appeal. *See also, In re A.K., supra*. This is because an adjudication of neglect can be the basis for later proceedings to terminate parental rights or further findings of neglect. *Id.* Because such parental rights are fundamental liberty interests, the court held that they necessarily involved collateral legal consequences. *Id.* at 758-9.

Other courts that have looked at the topic have also done so in the context of specific burdens imposed or liberties removed as a result of the judgment. *See, e.g., Williams v. Ragaglia*, 802 A.2d 778 (Conn. 2002) (revocation of foster care license not mooted by award of custody of children where judgment may result in future contact with

Department of Children and Families, could lead to disclosure to other government agencies and could lead law enforcement to treat allegations more seriously than otherwise); *Kahl v. Director, North Dakota Dept. of Transp.*, 567 N.W. 197 (N.D. 1997) (administrative suspension of license not mooted by expiration of suspension because driver could face enhanced penalties for future violations); *Town of Wallingford v. Dept. of Public Health*, 817 A.2d 644 (Conn. 2003) (passage of law resolving land use issue did not render appeal of administrative agency moot where agency's claim of jurisdiction over town carried consequence of additional regulatory burdens on town).

Here, as noted above, Appellant fails to point to evidence that the trial court's ruling, if left undisturbed, would have collateral consequences for him. The court's decision imposes no special burdens on him, nor does it remove any right he has or stigmatize him in any way. Further, the exception lends itself to cases where the issue was not moot during the proceedings below, but has become moot while on appeal. Else there would be no judgment below that had collateral legal consequences. Here, Appellant's claim was rendered moot during the pendency of the proceedings below – not on appeal. The lower court's ruling does nothing more than hold that the claim is, in fact, moot. Such a ruling does not carry any collateral consequences. By its nature it affects only the underlying issue itself. Accordingly, the third exception has no application to this case.

C. Appellant's remaining objections to the trial court's ruling are not preserved for appeal.

1. Appellant's contention that the City's ordinances prohibit it from denying him a grievance is not preserved for appeal, nor were the City's ordinances offered in evidence at trial.

Appellant appears to argue in his brief that the City's ordinances prohibited it from denying Appellant a grievance since, he argues, he was entitled to a grievance up to the point that the City abolished the grievance procedure. (Brief of Appellant, pp. 12-14). Specifically, he cites a section of the City's ordinances that purports to state that repeal of an ordinance will not affect any right already accrued. (*Id.*, p. 12). This argument is not preserved for appeal because it was not raised to the trial court for a ruling. It is well settled that this Court will not review matters that were not first presented to and ruled on by the lower court. *See Dunes West Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 302, 737 S.E.2d 601, 613 n.11 (2013) ("Appellant cannot present [an] argument for the first time on appeal."); *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 330, 730 S.E.2d 282, 287 (2012) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *Rivera v. Newton*, 401 S.C. 402, 408, 737 S.E.2d 193, 196 (Ct.App. 2012) (party failed to preserve argument "by failing to raise this issue to the trial court").

"Error preservation principles are intended to enable the trial court to rule after it has considered all relevant facts, law and arguments." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 372, 628 S.E.2d 902, 919 (Ct.App. 2006). Therefore, "[t]he general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal." *State v. Porter*, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct.App. 2010). Accordingly, this argument should not be considered on appeal.

Besides not being argued to the trial court, the City's ordinances were not even offered into evidence in the trial court.[8] "Local ordinances are not in this state subject to judicial notice." *Hill v. City of Hanahan*, 281 S.C. 527, 529, 316 S.E.2d 681, 683 (Ct.App. 1984) (citing *Robinson v. Brown*, 260 S.C. 104, 194 S.E.2d 249 (1973)). If Appellant intended the trial court to construe the City's ordinances, the obligation was on him to make them part of the record before the lower court. *Id.*; *see also, Harkins v. Greenville County*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000) ("this Court cannot take judicial notice of such local ordinances"); *Bales v. Aughtry*, 302 S.C. 262, 264, 395 S.E.2d 177, 178 n.1 (1990) ("We express no opinion regarding the propriety of allowing leave benefits to elected officials under the applicable county ordinances. *These ordinances were not made part of the record in this case and are not subject to judicial notice.*") (emphasis added); *accord, Kincaid v. Landing Development Corp.*, 289 S.C. 89, 92-93, 344 S.E.2d 869, 872 (Ct.App. 1986) (because no ordinance adopting building code was offered into evidence, trial court erred in charging the jury violation of the building code). Because Appellant failed to offer the ordinances into evidence at trial and to argue their application to the lower court, he is barred from raising them now on appeal.

[8] Appellant asserts without citation to any authority that, pursuant to SCRE 201, the trial court and this Court may take notice of the City's ordinances. Plainly, Appellant is mistaken. The rules of evidence were adopted effective September 3, 1995. Our Supreme Court has held as recently as 2000, however, that our courts will not take judicial notice of local ordinances. *Harkins v. Greenville County*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000).

2. Appellant's assertion that he was denied an opportunity to clear his name is inconsistent with the evidence and is not before the Court because it was not pled and was not raised to the trial court.

To the extent Appellant argues on appeal that he sought and was denied an opportunity to clear his name, his argument finds no basis in the evidence and is foreclosed because he did not plead the issue, nor did he raise it to the trial court.

As an initial matter, Appellant's late-breaking assertion flies in the face of his actions and the evidence in the record. The City, in fact, did offer Appellant a name clearing hearing pursuant to *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972). (R. p. 206, *l.* 13 – p. 209, *l.* 6; pp. 226-227; *see also,* foot note 4, *supra.*) Appellant, however, rejected the offer of a name clearing hearing, calling the idea "Nonsense." (R. p. 210, *ll.* 3-17; p. 322, ¶ 1). In fact, Appellant's complaint in this matter sought to *enjoin* the City "from conducting any . . . public hearing except in accordance with the provisions of the City Personnel Manual; . . ." (R. p. 27, ¶ B.b.). Accordingly, Appellant cannot now complain that he was not offered a name clearing hearing. *See Charleston County School District v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E.2d 362, 364 (Ct. App. 2001) ("It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. Any allegations, statements, or admissions contained in a pleading are conclusive against the pleader, and a party cannot subsequently take a contrary or inconsistent position.") (internal citations omitted).

More importantly for purposes of appeal, however, is the fact that Appellant did not argue to the trial court that he was denied a name clearing hearing. As set forth above in Argument 2.C.1, this Court will not review issues not first raised to and ruled on by the trial court. *Dunes West Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 302,

737 S.E.2d 601, 613 n.11 (2013) ("Appellant cannot present [an] argument for the first time on appeal."); *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 330, 730 S.E.2d 282, 287 (2012) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *Rivera v. Newton*, 401 S.C. 402, 408, 737 S.E.2d 193, 196 (Ct.App. 2012) (party failed to preserve argument "by failing to raise this issue to the trial court"). The "general rule of issue preservation" that "if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal" applies as much to this issue as to Appellant's contention regarding the City's ordinances. *State v. Porter*, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct.App. 2010).

In fact, the issue was not even before the lower court because it was not pled in the complaint. "It is well settled that ordinarily a party may not receive relief not contemplated in his pleadings." *Heins v. Heins*, 344 S.C. 146, 152, 543 S.E.2d 224, 227 (Ct. App. 2001) (citing *Loftis v. Loftis*, 286 S.C. 12, 331 S.E.2d 372 (Ct. App. 1985)); *see also, Bass v. Bass*, 272 S.C. 177, 249 S.E.2d 905 (1978) (court erred in awarding relief on issue that "simply was not before the court"). Since the matter was not before the trial court, it is also not properly before this Court. *E. L. Long Motor Lines, Inc. v. South Carolina Public Service Commission*, 233 S.C. 67, 74, 103 S.E.2d 762, 766 (1958) ("Since this ground of appellants is not responsive to the issues raised by the pleadings, it was not properly before the trial Judge and, therefore, is not properly before this Court.").

In sum, the trial court properly found Appellant's claim for declaratory relief was moot because there was no relief the court could grant. No exception to mootness

applied, and Appellant's remaining objections to the trial court's ruling were not put before the lower court and are not preserved for appeal.

3. The Trial Court Properly Found That, If There Were A Justiciable Controversy, Appellant Was Not Entitled To A Grievance Hearing Because He Retired.

A. The trial court's ruling is supported by the evidence in the record.

In the alternative, the lower court held that, even if it had jurisdiction to grant a declaratory judgment, Appellant would not have been entitled to the relief he sought. Finding the issue to be whether Appellant was terminated from employment, or whether he retired, the trial court held that, if he were terminated, the City's grievance procedure in effect at the time of his separation from employment would have allowed him to grieve. If instead he retired, however, Appellant was not entitled to a grievance hearing. (R. pp. 16-19).

Grievance procedures among municipalities are not required, *see, Baxley v. City of North Charleston*, 533 F.Supp. 1248 (D.S.C. 1982) (discussed at Argument 1, *supra*), but where they are in place, they must substantially conform to the South Carolina County and Municipal Employees Grievance Procedure Act. *Id.*; *see also*, S.C. Code § 8-17-120 (if a grievance procedure is adopted, it "shall conform substantially to the guidelines set forth in this article"). The statute provides that grievances include such disciplinary action as "dismissal, suspensions, involuntary transfers, promotions and demotions." *Id.* Likewise, the City's grievance procedure provided:

> A grievance is defined as any complaint by an employee that he has been treated unlawfully or in violation of City policies with regard to matters pertaining to his employment by the City. This definition includes, but is not limited to, discharge, suspension, involuntary transfer, promotion and demotion. . . .

(R. p. 215). No provision is made in either the law, or the City's grievance procedure, for grieving a resignation by retirement from employment. Further, Appellant conceded at trial that employees who resign do not get a grievance hearing. (R. p. 188, *ll.* 10-20).

Our Supreme Court has held that employees who resign under threat of termination are not entitled to a grievance hearing. *Eubanks v. Smith*, 292 S.C. 57, 62, 354 S.E.2d 898, 901 (1987). In *Eubanks*, the City of Myrtle Beach's building department director, electrical inspector and plumbing inspector discovered allegedly falsified test scores on electrical and plumbing exams of applicants and reported the matter to the city manager. The city manager ordered an investigation and brought in the State Law Enforcement Division. During the course of the investigation, the city manager issued press statements implying the employees were guilty of criminal conduct and that disciplinary action would be taken. *Id.* at 899-900. Ultimately, the city manager presented the employees with the choice of resigning or being terminated. The building department director, Wiggins, resigned, and the other two employees were terminated. *Id.*

All three employees requested a grievance hearing. The city provided a hearing for the two employees who were terminated; however, Wiggins' request was denied because he had resigned. Wiggins sued, claiming he was wrongfully denied a grievance. The Supreme Court summarily rejected Wiggins' contention, holding he was not entitled to a hearing "because he resigned as an alternative to being terminated." *Id.*

Here, like in *Eubanks*, City Manager Smithson presented Appellant with a choice: resign or be fired. While Appellant adamantly maintained at trial that he did not willingly resign, that was not the question before the lower court. The question was

whether, faced with a choice between resigning or being fired, Appellant chose – albeit under pressure – to resign by retiring. The trial court properly found that the evidence was undisputed that he did so.

Appellant admitted at trial that on April 30, 2010, he purchased five years of service and filed his paperwork seeking to retire. More telling, however, was the position Appellant took numerous times in the days immediately following his retirement. Appellant wrote in his grievance request that he was "forced into taking early retirement." (R. p. 224, ¶ 1). Further, Appellant's counsel, who was intimately involved in the negotiations that followed Smithson's ultimatum, gave an interview in the *Sun News* in which he claimed that Appellant retired before the City could take any threatened disciplinary action. (R. pp. 319-320). Appellant has also sworn under oath in a verified complaint filed in another action that he was "constructively dismissed" and "constructive[ly] discharge[d]." (Supp. R p. 14, ¶ 101, pp. 22-23, ¶ 147)[9]. A verified complaint is the equivalent of an affidavit. *See Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 471, 570 S.E.2d 197, 203 (Ct. App. 2002).

A constructive discharge is a well-settled term of art meaning that an employee is compelled to resign, rather than actually being terminated by the employer. *See Graves v. Horry-Georgetown Technical College*, 391 S.C. 1, 9-10, 704 S.E.2d 350, 355 (Ct. App. 2010) (constructive discharge where "employer deliberately makes the working conditions intolerable in an effort to induce the employee to quit"); *Cole v. Lexington-Richland School Dist. 5*, 2011 WL 441974, *2 (D.S.C. Feb. 8, 2011) (unpublished)

[9] Citation is to the verified complaint filed by Appellant against the City and others in his other lawsuit, 2010-CP-26-5145.

(allegations employee given "option to resign from her position or be terminated [and who] tendered her letter of resignation under duress . . . to prevent a termination from appearing on her employment record . . . are sufficient to raise a valid claim for constructive discharge in the form of forced resignation"); *accord, Tracey v. Sconnix Broadcasting of South Carolina, Inc.*, 284 S.C. 379, 381, 325 S.E.2d 542, 544 (1985) (noting when employee contracts to fill a position, material change in duties or reduction in rank constitutes "constructive discharge"); *Barr v. Board of Trustees of Clarendon County School Dist. No. 2*, 319 S.C. 522, 528, 462 S.E.2d 316, 319 (S.C. Ct. App. 1995) (analyzing allegation that an involuntary transfer was a constructive discharge). In the face of Appellant's own sworn allegations and coupled with the position he took both in requesting his grievance and in the media, it is impossible to conclude anything other than Appellant opted to retire in lieu of being discharged from employment.

In an action at law, "the findings of fact of the judge will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). "The judge's findings are equivalent to a jury's findings in a law action." *Id.*

Here, there is ample evidence that the Appellant retired in lieu of being fired. While he may not have wanted to retire at the particular time, or under the particular circumstances, and while he may not have retired had the City not threatened him with termination, he nevertheless chose retirement instead of termination. Accordingly, even if the Court had jurisdiction to grant a declaratory judgment, Appellant is not entitled to that relief because he was not entitled to a grievance hearing.

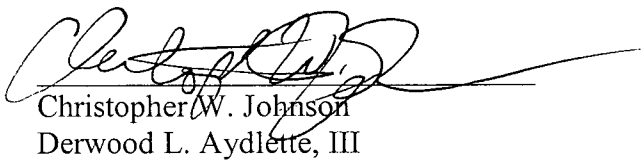
B. Appellant's remaining objection lacks merit.

Appellant's remaining objection to the trial court's alternative ruling confusingly refers back to his arguments on mootness. (Appellant's Brief, pp. 27-28). Essentially Appellant argues that, because the trial court's ruling on the merits of the issue may have collateral consequences in his other lawsuit against the City, the action was not moot. As an initial matter, and as the City pointed out in Argument 2.B.3, *supra*, Appellant offered no evidence of how the trial court's ruling would have any collateral impact on his other lawsuit, nor does that particular exception apply as a matter of law. Nevertheless, Appellant argues that, essentially, because a ruling on the merits of his claim would have some unspecified collateral consequences, the trial court should not have ruled on the merits of his claim. Appellant devoted half of his brief to arguing that his claim before the lower court was not moot. If that were the case, the lower court would naturally have to rule on the merits of his claim. By Appellant's logic, however, such a ruling would be improper because it may affect his claims in his other lawsuit. This argument makes no sense and is without merit. Appellant invoked the aid of the courts by filing the instant lawsuit. Having done so, he cannot be heard to complain when the court rules on his claim. Further, Appellant, as the plaintiff in both this lawsuit and his other one, "is the master of the complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 398-99 (1987). As the master of his complaints, he could have joined this case with the causes of action in his other lawsuit, but he chose not to do so. Accordingly, he cannot now complain that the result in this case may have some unspecified effect on his other lawsuit. Quite simply, whatever collateral consequences the outcome of this litigation may or may not have, having made his bed, Appellant must now lie in it.

CONCLUSION

The lower court correctly held that there was no justiciable controversy and, therefore, that Appellant's claim was moot. Further, because Appellant retired, the lower court correctly held that, if there were a justiciable controversy, Appellant was not entitled to a grievance hearing. Accordingly, the judgment of the trial court should be affirmed.

Respectfully submitted,



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December 19, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William Jeffrey Young, Circuit Court Judge

Case No. 2010-CP-26-5964

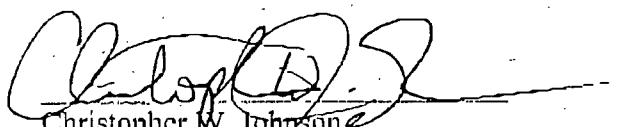
William H. Bailey, Jr., Appellant,

v.

City of North Myrtle Beach, a South Carolina Municipal Corporation, Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.



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December 23, 2013

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I hereby certify that I have this day caused to be served a copy of the Final Brief of Respondent on counsel of record by deposit in the United States mail, first-class postage prepaid, addressed to:

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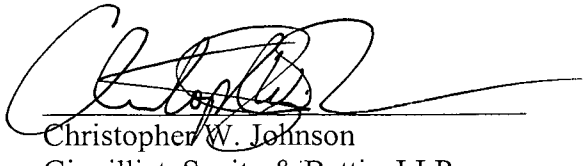

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