THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

J. Ernest Kinard, Circuit Court Judge

Case No. 2013-CP-27-00322
Appellate Case No. 2015-000310

George M. Hood — Appellant,

v.

Jasper County — Respondent.

RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

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2. DID THE TRIAL JUDGE CORRECTLY CONCLUDE THAT APPELLANT WAS NOT ENTITLED TO A DECLARATORY JUDGMENT THAT JASPER COUNTY'S ABOLISHMENT OF HIS POSITION VIOLATED THE PROVISIONS OF THE HOME RULE ACT FOUND AT S.C. CODE §§ 4-9-30(6) AND 4-9-610(8)?

STATEMENT OF THE CASE

Appellant Dr. George M. Hood is the former chairman of County Council and, most recently, deputy administrator of Jasper County. In its fiscal year 2011-2012 budget, County Council approved funding for a deputy county administrator position. That position was filled by Appellant in December 2011. Following the seating of newly elected council members in January 2013, County Council voted to amend its 2012-2013 budget to remove funding for and to abolish the deputy county administrator position. Following the third reading of the ordinance, Appellant's employment was terminated on January 28, 2013.

Appellant sued the County seeking a declaratory judgment that Council's actions abolishing his position violated the S.C. Constitution's requirement of separation of powers and the Home Rule Act's grant of authority to county councils. At the trial of the matter on December 1, 2014, and prior to taking any testimony, the parties agreed that the facts could be stipulated and the matter submitted to the trial judge for decision. The parties filed their Joint Stipulation of Facts on January 2, 2015, and provided the trial court argument and analysis in the form of proposed orders submitted on December 31, 2014. Judge Kinard issued his Order in

favor of the County, which was filed January 30, 2015 and served on Appellant on February 9, 2015.

STATEMENT OF FACTS

The parties stipulated to the facts of this case, and the Record on Appeal includes a copy of the stipulated facts. The following facts, taken from the parties' stipulation, are relevant to the resolution of this appeal:

Appellant Dr. Hood is the former deputy county administrator for Jasper County. (R. p. 44, ¶ 9, p. 47, ¶ 20) Jasper County operates under the council-administrator form of government. (R. p. 43, ¶ 3) Council voted in June 2011 to approve a budget that included funding for a deputy county administrator position in its Fiscal Year ("FY") 2011-2012 budget. (R. p. 43, ¶ 4) Both public opinion and Council were divided over whether the position should have been included in the budget, and the budget passed by a 3-to-2 vote. (R. p. 44, ¶ 7) Council elections were held in June 2012. (R. p. 45, ¶11) As a result of the elections, two new councilmembers were seated who had not voted on the budget that included the deputy county administrator position. (R. p. 44, ¶ 7, p. 45, ¶ 11) Councilmembers Blackshear and Gregory were replaced by councilmembers Clark and Johnson, who were seated in January 2013. (R. p. 45, ¶ 11)

After the new councilmembers were seated in January 2013, Council passed an ordinance amending its FY 2012-2013 budget to remove funding for and eliminate the deputy county administrator position. (R. p. 45, ¶ 12) The ordinance reads in relevant part:

> **BE IT ORDAINED** by the Jasper County Council in council duly assembled and by the authority of the same:
>
> 1. The FY 2012-2013 Budget of Jasper County is hereby amended so as to reduce from Department 051 – Administration – all funding for salary and wages, FICA – Employer, SC Retirement, Medical, for the position of Deputy County

> Administrator not committed for services provided through the effective date hereof; provided however, nothing herein shall be construed so as to prohibit the Finance Director from disbursing sums authorized to be disbursed pursuant to Section 14 of the Jasper County Personnel Policies and Procedures Manual for the position of Deputy County Administrator.
>
> 2. It is hereby ordered that the job description of the Deputy County Administrator shall be and it is strickened [sic] from the approved list of job descriptions for Jasper County.

(R. p. 63) The ordinance was approved on January 28, 2013, by a vote of 4 to 1, with Councilmembers Etheridge, Sauls, Clark and Johnson voting for, and Councilmember Drayton voting against. (R. p. 45, ¶ 13) Following Council's vote, the County Administrator notified Appellant that his employment was terminated. (R. p. 47, ¶ 20)

ARGUMENT

1. Council's elimination of Appellant's position did not violate S.C. Const. Art. I, § 8's requirement of separation of powers.

Jasper County's elimination of Appellant's position did not violate the state Constitution's requirement of separation of powers because that provision does not apply to local government. Article I, § 8 provides:

> In the government *of this State*, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

S.C. Const. Art. I, § 8 (emphasis added). Long ago, the South Carolina Supreme Court held that the doctrine applies to state, not local, government. In *Gaud v. Walker*, 214 S.C. 451, 477, 53 S.E.2d 316, 328 (1949), a taxpayer brought a challenge to legislation that allowed the voters of Charleston County to select among two plans for county government, called "Plan A" and "Plan

B." Among the challenges was that the proposed plans would combine executive and legislative functions into one governing body. The Supreme Court rejected this argument and held:

> It is next contended that Plan A conflicts with Article 1, Section 14[1] of the Constitution, in that it seeks to combine in the County Council both legislative and executive functions. It has been held that this section of the Constitution refers to the government of the State and to State officers, and not to the government of municipal corporations.

Id. Accordingly, the exercise of executive authority by County Council does not violate the Constitution's guarantee of separation of powers.

Further undermining Appellant's position is the fact that the Constitution specifically authorizes the legislature to provide for county government in this state. S.C. Const Art. VIII, § 7. The legislature did that by way of the Home Rule Act. S.C. Code § 4-9-10, *et seq.*; *see also*, *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993) ("[B]y enacting the Home Rule Act, . . . , the legislature intended to ... restore autonomy to local government.").[2] Moreover, in one form of county government, the council form, the General Assembly explicitly combined the legislative and executive duties in the county council. S.C. Code §§ 4-9-20, 4-9-310. Under Appellant's theory, the several counties that operate under the council form of government would all be doing so unconstitutionally.

Appellant's argument on appeal that the Supreme Court's decision in *Gaud* is no longer valid due to passage of the Home Rule Act is without merit. If anything, the Home Rule Act and the provisions of Article VIII of the Constitution that authorized home rule support the high court's holding in *Gaud.* Article VIII specifically authorized the legislature to design local

---

[1] The language now found at Article I, § 8 was previously found at Article I, § 14.
[2] *Williams* dealt with the analogous provisions of the Home Rule Act that apply to cities and towns.

government structures. Further, the General Assembly ratified Article VIII's home rule provisions in 1973 and passed the Home Rule Act, S.C. Code §§ 4-9-10, *et seq.*, in 1975,[3] well after the 1949 decision in *Gaud* (which itself relied on cases going back to 1910). *Gaud*, 214 S.C. at 477, 53 S.E.2d at 328 (*citing City of Spartanburg v. Parris*, 85 S.C. 227, 67 S.E. 246 (1910); *City of Greenville v. Pridmore*, 86 S.C. 442, 68 S.E. 636 (1910)). Accordingly, the legislature passed the Home Rule Act fully cognizant of the Supreme Court's *Gaud* decision. If the General Assembly believed the decision had been wrongly decided, it could have expressly overruled the decision when it passed home rule, but it did not. *See e.g.,* S.C. Code § 15-78-10 (*overruling McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985)). Therefore, *Gaud* remains valid and is the law of this state until repealed by decision of the Supreme Court or passage of legislation by the General Assembly.

Because separation of powers is not implicated by local government structure and because the Constitution authorized the General Assembly to provide for the design of county governments, there is no constitutional violation.

2. County Council had authority to abolish the deputy county administrator position under S.C. Code §§ 4-9-30(6) and 4-9-630(8).

The Home Rule Act provides that in a council-administrator form of government like Jasper County the council may establish and abolish positions within the county. Because that is precisely what the Jasper County Council did, there was no violation of the Act in the abolition of Appellant's position.

This is essentially a matter of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Lambries v. Saluda County Council*, 409 S.C. 1, 10, 760 S.E.2d 785, 789 (2014). "Where the statute's language is

[3] The Home Rule Act took effect July 1, 1976.

plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.*, at 10-11, 760 S.E.2d at 790. However, if the statute is ambiguous, "the court must construe its terms." *Id.* at 10, 760 S.E.2d at 789. "Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014).

The provisions of Title 4, Chapter 9 of the S.C. Code are plain and unambiguous in their application. By its own terms, Chapter 9 provides that County Council has authority to "establish . . . positions in the county . . . and to abolish any such . . . positions." S.C. Code § 4-9-30(6). This is what Council did when it passed the budget ordinance funding the deputy county administrator position and later passed the ordinance to strip funding for and eliminate the deputy county administrator position. Likewise, Chapter 9 also provides that, in county-administrator governments like Jasper County's, the administrator is "responsible for employment and discharge of personnel . . . subject to the appropriation of funds by the council for that purpose." S.C. Code § 4-9-630(8). The county administrator carried out his authority when he terminated Appellant's employment following Council's vote to eliminate the position. Had the administrator continued to employ Appellant, it would have violated § 4-9-630(8)'s requirement that funds be appropriated by council for that purpose since Council had stripped funding for the position.

On appeal Appellant makes much of the county administrator's statement in response to his request for a grievance that, "The decision to eliminate the position of Deputy County Administrator was made by Jasper County Council and not by me." (R. p. 47, ¶ 22) Appellant appears to contend this means that the county administrator did not terminate Appellant's

employment. This goes too far. The administrator's statement is nothing more than a statement of what happened: Council eliminated Appellant's position. It does not change the fact that, following the elimination, the county administrator terminated Appellant's employment.

Appellant also asserts that the reference in § 4-9-30(6) to the "positions" that council may "establish" and "abolish" refers only to those positions directly under council's (versus the administrator's) control. Assuming that the word "positions" created an ambiguity and, thus, a need for statutory construction, Appellant's reading would auger conflict in the home rule statutes. There are very few "positions" that are subject to appointment and discharge by council in the county-administrator form of government – the county administrator and clerk to council being the primary two.[4] Both positions, however, are created by statute – not by Council – and must be filled. S.C. Code § 4-9-110 ("The council *shall* appoint a clerk to record its proceedings . . .") (emphasis added); S.C. Code § 4-9-620 ("The council *shall* employ an administrator . . .") (emphasis added). Because both positions are created by statute and because Council is required by statute to fill them, these cannot be among the "positions" Council is authorized to "establish" or "abolish" under § 4-9-30(6). Because there are no other positions over which Council has appointment and discharge authority, Appellant's reading would render the grant of authority to create and abolish positions in § 4-9-30(6) meaningless. Courts will apply an interpretation that gives effect to all parts of a statute rather than one that does not. *Nucor Steel v. S.C. Pub. Serv. Comm'n*, 310 S.C. 539, 545, 426 S.E.2d 319, 323 (1992) ("The well-settled rule in South Carolina is that, where possible, all provisions of a statute must be given full force and effect.").

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[4] The Council also appoints the register of deeds in Jasper County. S.C. Code § 30-5-12(A). Like the administrator and clerk to council, however, the Council is required to appoint a register of deeds. *Id.* ("The governing bodies of . . . Jasper . . . count[y] shall appoint the register of deeds for its county . . .") Since the position is created by the legislature and Council is required to fill it, it is clear that Council could not abolish that position.

Appellant further makes the untenable argument that the deputy county administrator position was not "necessary and proper to provide services of local concern for public purposes," and therefore, County Council lacked authority to abolish the position. *See* S.C. Code § 4-9-30(6) (council has authority to "to establish such ... positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions thereof and to regulate, modify, merge or abolish any such ... positions,..."). If that were the case, then the creation and funding of the position were void *ab initio*, because the statute's requirement that a position be "necessary and proper" clearly applies in the first instance to the position's creation. Put another way, Appellant cannot argue that abolition of his position was prohibited because the position was not "necessary and proper" without also conceding that the position was not authorized to be created in the first place. To the extent Appellant's argument on this score makes any sense at all, it does not advance his cause.

Appellant argues as an additional ground that, because the County was not experiencing a budget shortfall, it was improper for the Council to eliminate the deputy county administrator position mid-way through the budget year. Appellant further claims that, if there had been a shortfall, a reduction in force should have been undertaken by the administrator. As an initial matter, nothing in Chapter 9 or any of the Home Rule Act limits Council's authority to abolish a position to budget shortfalls. Essentially, Appellant questions the wisdom of council's decision, calling it an "illusory and ineffective" way to save the county money. (R. p. 11, lines 6-7, p. 35, lines 6-7) It is well established that a Court may not review questions that attack the wisdom of Council's policies. *S.C. Pub. Interest Found. v. Jud. Merit Selection Com'n*, 369 S.C. 139, 143, 632 S.E.2d 277, 278 (2006) ("[T]he courts will not rule upon questions which are exclusively or predominately political in nature rather than judicial.") (*citing Chicago & S. Air Lines v.*

Waterman S.S. Corp. Civil Aeronautics Brd., 333 U.S. 103, 111, 68 S.Ct. 431, 92 (1948)); *see also, Japan Whaling Ass'n v. Am. Cetacean Soc.*, 478 U.S. 221, 230, 106 S.Ct. 2860, 2866 (1986) ("The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of another branch of government."). Accordingly, the Court must decline to sit in judgment of the wisdom of Council's decision despite Appellant's wishes to the contrary.

Furthermore, Appellant takes exception to the fact there was no initial County Council ordinance establishing the deputy county administrator position. This point is irrelevant. As set forth above, County Council has the authority to establish and abolish positions. Here, County Council in 2011 voted 3-2 to approve a budget that established and funded the deputy county administrator position. (R. p. 43, ¶ 4, p. 44, ¶ 7) Funding the position clearly established it. In 2012, the membership of County Council changed. (R. p. 45, ¶ 11). Once the new members took their positions in January 2013, the body voted 4-1 to abolish and de-fund the deputy county administrator position. (R. p. 45, ¶ 13) De-funding the position clearly abolished it. At all times relevant to the establishment and abolishment, and corresponding funding and de-funding, of the position, County Council clearly acted within the bounds of its authority as granted by S.C. Code § 4-9-30(6). Magic words or incantations are not required to effectuate the creation of the position. Appellant is simply trying to cloud the waters with this specious argument.

Appellant also takes exception to the fact that Respondent's budget for fiscal year 2012-2013 had been approved and, thus, argues eliminating the deputy county administrator position did not save money. This point is also irrelevant. As Appellant correctly noted, counties are given the authority to set their own budgets. S.C. Code § 4-9-140. They have plenary power in this area. Appellant is questioning the wisdom of County Council's budgetary decisions and

asking the Court to sit in judgment. As set forth above, the case law is clear this sort of judicial review is inappropriate.

3. Even if Appellant were correct, his employment was terminable at-will.

In his Amended Complaint, Appellant requested that the Court determine that his discharge was unlawful and, among other things, grant him reinstatement. (R. p. 17, ¶ 30) However, Appellant did not plead that he was other than an at-will employee. *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614, 713 S.E.2d 634, 636 (2011) ("In South Carolina, employment at-will is presumed absent the creation of a specific contract of employment."). "An at-will employee may be terminated at any time for any reason, with or without cause." *Id.* "The doctrine in its pure form allows an employer to discharge an employee without incurring liability for good reason, no reason, or bad reason." *Culler v. Blue Ridge Elec. Co-op., Inc.*, 309 S.C. 243, 245, 422 S.E.2d 91, 92 (1992).

Despite Appellant's argument to the contrary, the county administrator clearly terminated the Appellant after County Council lawfully abolished and defunded the position and he notified the Appellant of the termination. Again, had the administrator continued to employ Appellant, he would have violated S.C. Code § 4-9-630(8)'s requirement that he employ and discharge personnel subject to appropriated funds. But even if the Court believed that Council's ordinance was unlawful and did not *require* the county administrator to terminate Appellant's employment, it does not matter because the administrator did so anyway.

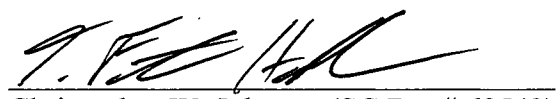
Because Appellant's employment could be terminated for any or no reason, he is not entitled to reinstatement simply because the administrator was mistaken about the need to terminate his employment. *See Bookman v. Shakespeare Co.*, 314 S.C. 146, 442 S.E.2d 183 (Ct. App. 1994) (rejecting claim that employer's improper investigation led to his termination and explaining "[h]ad the employer conducted the investigation and determined the altercation

resulted from the [coworker's] harassment, [the employer] was nevertheless free to fire Bookman for any reason or no reason."). For this additional reason, Appellant is not entitled to a declaratory judgment in his favor.

CONCLUSION

For the reasons set forth above, the judgment of the Circuit Court should be affirmed.

Respectfully submitted,



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Dated: September 15, 2015

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RESPONDENT'S CERTIFICATE OF COMPLIANCE WITH RULE 211(b) OF THE SOUTH CAROLINA APPELLATE COURT RULES

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I, T. Foster Haselden, certify that the Respondent's Final Brief complies with South Carolina Appellate Court Rule 211(b).

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September 15, 2015