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D E R F N E R
& A L T M A N

December 12, 2018

RECEIVED

DEC 17 2018

SC Court of Appeals

Supreme Court of South Carolina
Daniel E. Shearouse, Clerk of Court
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

RE: *State of South Carolina, Henry McMaster, Lt. Governor and President of the South Carolina Senate, Jay Lucas, Speaker of the South Carolina House of Representatives, and Alan Wilson, Attorney General of South Carolina v. Thomas Waller, Larry Jackson, P. Dale Kittles, Charles L. Maus, and Terry C. Weeks*

2015-CP-24-00514

Dear Mr. Shearouse:

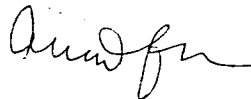
Please find enclosed an original and one copy of the following relative to the above referenced matter:

1. Appellants' Notice of Appeal;
2. Copy of the Honorable Frank R. Addy's Order of November 14, 2018;
3. Proof of Service upon Respondents' counsel; and
4. My firm's check in the amount of \$250.00 representing the filing fee relative to said appeal.

Please file the original Notice of Appeal and Proof of Service and return clocked-in copies to me in the enclosed self-addressed stamped envelope. Please contact me with any questions you may have regarding the above matter.

Yours Very Truly,

DERFNER & ALTMAN, LLC



Armand Derfner

AGD/rs

Enclosures

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DEC 20 2018

S.C. SUPREME COURT

ARMAND DERFNER | SAMUEL H. ALTMAN | JONATHAN S. ALTMAN

843.723.9804 (PHONE) | 843.723.7446 (FAX) | 575 KING STREET | SUITE B | CHARLESTON, SOUTH CAROLINA 29403 | DERFNERALTMAN.COM

cc: Office of Court Administration, South Carolina Court of Appeals
Greenwood County Clerk of Court
J. Emory Smith, Esq.
Tracey C. Green, Esq.
Patrick Dennis, Esq.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS)
CASE NO.: 2015-CP-24-514)

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SC Court of Appeals

Filed CP 9th JUD Cir Greenwood, SC
2018 NOV 14 PM 2:55

THOMAS WALLER, LARRY JACKSON,)
P. DALE KITTLES, CLAUDE L. MAUS,)
and TERRY C. WEEKS,)
Plaintiffs,)

ORDER OF VACATUR

vs.)

THE STATE OF SOUTH CAROLINA)

KEVIN L. BRYANT, Lt. Governor)
of the State South Carolina,)
JAY LUCAS, Speaker of the South)
Carolina House of Representatives, and)
ALAN WILSON, Attorney General of)
South Carolina,)
Defendants.)

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S.C. SUPREME COURT

THIS MATTER CAME BEFORE THE COURT pursuant to Defendants' motion to vacate the Court's order of May 18, 2018.

In its Order dated May 18, 2018, the Court essentially found that the Memorial in question was the private property of the American Legion and was not, by virtue of its placement on public land, automatically and/or unequivocally dedicated to public use. Based upon the specific facts of this case, the Court ruled that Section 10-1-165 does not apply to the Memorial; therefore, ruling upon the constitutionality of Section 10-1-165 was unnecessary. In its Order, the Court granted Plaintiffs partial summary judgment.

After the Court issued its Order, Defendants filed motions to reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure but did not move for a stay under Rule 62.

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While those motions were pending, the plaques on the Memorial were changed in the manner sought by Plaintiffs. Defendants maintain that the individual who changed the Memorial is not a party to this action, and subsequent pleadings are silent as to the existence of any association or agency relationship between the individual and the parties to this action. Defendants request that the Court vacate the May 18, 2018 Order as being rendered moot by subsequent events.¹

After reviewing the motions, facts, and applicable law, the Court finds that its previous Order has been rendered moot. The plaques at the heart of this litigation have in fact been changed; therefore, a “live controversy” between the parties no longer exists. The previous Order “no longer [has] any practical legal effect upon an existing controversy because an intervening event render[ed] any grant of effectual relief impossible.” *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006).

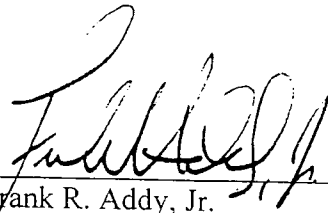
Although the Court is comfortable that the findings made in the May 18, 2018 Order comport with established legal principles and dictate the result reached, the Order has clearly been rendered moot by subsequent events. Accordingly, the Court grants Defendants' motion, and the Order of May 18, 2018 is vacated.² All pending motions for reconsideration are also rendered moot for the above stated reasons.

WHEREFORE, the May 18, 2018 Order is hereby vacated, and this litigation is concluded.

¹ The Court notes that nowhere in their motions do Defendants seek or request restoration of the original plaques.

² Of course, to the extent any party, individual, interested person, or organization may have relied upon the May 18, 2018 Order in the interim, any actions in reliance are protected from further scrutiny. *See generally United States v. Moore*, 586 F.2d 1029, 1033 (4th Cir. 1978); *United States v. Brady*, 710 F. Supp. 290, 295 (D. Colo. 1989); *Davis v. Virginia*, 68 Va. App. 725, 732-33, 813 S.E.2d 547, 550-51 (2018).

IT IS SO ORDERED.



Frank R. Addy, Jr.
Resident Judge
Eighth Judicial Circuit

November 14, 2018
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Circuit Court Judge

Case No.: 2015-CP-24-00514

State of South Carolina, Henry McMaster, Lt. Governor and
President of the South Carolina Senate, Jay Lucas, Speaker of
the South Carolina House of Representatives, and Alan Wilson,
Attorney General of South Carolina,

.....Respondents,

v.

Thomas Waller, Larry Jackson, P. Dale Kittles, Charles L. Maus,
and Terry C. Weeks,

.....Appellants.

NOTICE OF APPEAL

Thomas Waller, P. Dale Kittles, Charles L. Maus, and Terry C. Weeks (hereinafter "Appellants") appeal the order and final judgment of The Honorable Frank R. Addy, Circuit Court Judge, dated November 14, 2018. Said Order vacated the May 18, 2018 Order on the grounds of mootness and constituted a final judgment because it further decreed that "this litigation is concluded." The order and final judgment being appealed from involves and rules on a challenge to the constitutionality of a state law, S.C. Code Ann. § 10-1-165, the South Carolina Heritage Act. Appellants received notice of the entry of this order on November 19, 2018.

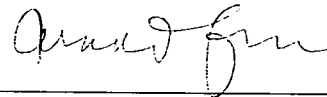
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SC Court of Appeals

December 12, 2018



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Samuel H. Altman, Esq.
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Charleston, SC 29403

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Greenwood, SC 29646

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1630 Meeting Street, #2
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Attorneys for Appellants

Other Counsel of Record

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Columbia, SC 29202

Patrick Dennis, Esq.
P.O. Box 11867
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SC Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Circuit Court Judge

Case No.: 2015-CP-24-00514

State of South Carolina, Henry McMaster, Lt. Governor and
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Attorney General of South Carolina,

..... Respondents,

v.

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and Terry C. Weeks,

..... Appellants.

PROOF OF SERVICE

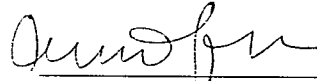
I certify that I have served Appellants' Notice of Appeal on Respondents State of South Carolina, Henry McMaster, Lt. Governor and President of the South Carolina Senate, Jay Lucas, Speaker of the South Carolina House of Representatives, and Alan Wilson, Attorney General of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on December 12, 2018, properly addressed to their attorney(s) of record as follows:

J. Emory Smith, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Tracey C. Green, Esq.
WILLOUGHBY & HOEFER, P.A.
930 Richland Street
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Columbia, SC 29202

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Attorneys for Appellants

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2015-CP-24-514

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S.C. SUPREME COURT

THOMAS WALLER, LARRY JACKSON,)
P. DALE KITTLES, CLAUDE L. MAUS,)
and TERRY C. WEEKS,)
Plaintiffs,)

ORDER OF VACATUR

vs.)

THE STATE OF SOUTH CAROLINA)
KEVIN L. BRYANT, Lt. Governor)
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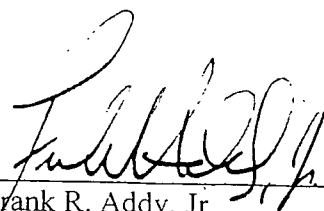
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IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Frank R. Addy, Jr.", written over a horizontal line.

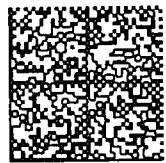
Frank R. Addy, Jr.
Resident Judge
Eighth Judicial Circuit


November 14, 2018
Greenwood, South Carolina

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SC Court of Appeals

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