

STANDARD OF REVIEW

Any party may move for a judgment on the pleadings under Rule 12(C), SCRPC. “A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint, which if resolved in favor of the plaintiff, would entitle him to judgment.” Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991). “If, on a motion for judgment on the pleadings, matters outside of the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.” Brown v. James, 389 S.C. 41, 47, 697 S.E.2d 604, 607 (Ct. App. 2010).

Summary judgment is appropriate when there is no genuine issue of material fact such that the nonmoving party must prevail as a matter of law. Rule 56(C), SCRPC. “When determining if any triable issue of fact exist, the evidence and all reasonable inferences must be viewed in a light most favorable to the nonmoving party.” Fleming v. Rose, 350 S.C. 448, 493, 567 S.E.2d 857, 860 (2002).

LEGAL ANALYSIS

Public Bodies for purposes of application of the FOIA are defined in South Carolina Code § 30-4-20(a):

"Public body" means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in § 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter. South Carolina Code Annotated 1976 § 30-4-20(a)

South Carolina Educational Credit for Exceptional Needs Children Fund is statutorily defined as a corporation that does not receive, have or spend public funds.

On May 23, 2018, the South Carolina Supreme Court held that the legislature did not intend FOIA to apply where a more specific reporting statute applies. DomainsNewMedia.com, LLC, v. Hilton Head Island-Bluffton Chamber of Commerce, 423 S.C. 295, 814 S.E.2D 513 (2018).

In DomainsNewMedia.com, the court held that the Chamber of Commerce was not subject to FOIA, that the governmental funds they received were subject to “narrow and targeted” reporting requirements outlined in two different statutes, and that because of this specialized reporting, the more general FOIA requirements did not apply.

Educational Credit for Exceptional Needs Children Fund registers with the Secretary of State as a public charity under Section 509 and reports to the Secretary of State as contemplated for entities not subject to FOIA. The funding is not state funding, but rather private donations. Exceptional SC receives no support from state funding. The State has provided an avenue for Exceptional SC to exist, and for that reason this program is highly regulated and reporting intensive, like the Chamber of Commerce.

On May 18, 2018, the Governor of South Carolina signed H. 4077 into law. South Carolina Code, Annotated 1976 Title 12, Chapter 6, Section 3790(B)(4):

In concert with the public charity directors, the department shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to two percent of the fund for administration and related costs. The department and the public charity may not expend public funds to administer the program. Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants

must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act. [emphasis added]

This new bill is explicit instruction from the legislature that FOIA does not apply to the normal operations of the Defendant. Likewise, according to the South Carolina Freedom of Information Act, public meetings in which applications for scholarships are reviewed and scholarships are awarded are exempt from FOIA disclosure and can be closed meetings.

CONCLUSION

This Court finds there is no genuine issue of material fact, that Defendant, South Carolina Educational Credit for Exceptional Needs Children Fund, is not a “public body” as defined by South Carolina Freedom of Information Act. Therefore, FOIA does not apply to the defendant and the Defendant is entitled to summary judgment as a matter of law.

For the foregoing reasons, Plaintiff’s Renewed Motion for Summary Judgment, Plaintiff’s Motion to Compel Discovery and Plaintiff’s Motion for Contempt are denied. Defendant’s Motion for Judgment on the Pleadings and Defendant’s Motion for Summary Judgment are granted.

AND IT IS SO ORDERED.

s/ The Honorable DeAndrea Gist Benjamin
Presiding Judge

Columbia, South Carolina
December 21, 2018



Richland Common Pleas

Case Caption: Jefferson Davis Jr vs S C Educational Credit For Exceptional Needs
Children Fund
Case Number: 2017CP4006976
Type: Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161