

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

**RECEIVED**

Sylvia Lockaby,

AUG 29 2019

C.A. No. 2018-CP-23-00731

Plaintiff,

SC Court of Appeals

v.

**ORDER GRANTING SUMMARY JUDGMENT**

City of Simpsonville, Janice Curtis, and Adam Randolph,

Defendants.

This matter is before the Court on Defendants' Motion for Summary Judgment ("Motion"). By way of general background, Plaintiff Sylvia Lockaby, a former Simpsonville City Council ("Council") member, seeks to recover damages under the South Carolina Tort Claims Act (the "Act")<sup>1</sup> and/ or 42 U.S.C. § 1983 based on a ruling by the presiding officer at a Council meeting.

The Court heard the motion on April 25, 2019. In response to Plaintiff's request for a continuance and her argument that she desired additional discovery prior to a ruling on the Motion, the Court granted Plaintiff an additional fifteen days to complete discovery and supplement the record after the hearing. Plaintiff availed herself of that opportunity and conducted an additional deposition, which was submitted to the Court for its review. The Court has considered all memoranda, arguments, and evidence presented to it in connection with the Motion and has determined that the Motion should be granted for the reasons set forth below.

<sup>1</sup>Per prior order of the Court, there are no claims under the Act against the individual defendants.

### SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56, SCRCP. “Summary judgment is appropriate in those cases where plain, palpable, and undisputable facts exist on which reasonable minds cannot differ.” *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984).

The Court must view the facts and inferences in the light most favorable to the nonmoving party. *See Thomas v. Waters*, 315 S.C. 524, 527, 445 S.E.2d 659, 661 (Ct. App. 1994). When the nonmoving party bears the burden of proof as to an issue, a party seeking summary judgment may meet this standard by pointing out to the trial court “that there is an absence of evidence to support the nonmoving party’s case.” *Richardson v. State-Record Co.*, 330 S.C. 562, 566, 499 S.E.2d 822, 825 (Ct. App. 1998). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). A nonmoving party cannot evade summary judgment by creating and relying on “an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

If a motion has been properly made and supported in accordance with Rule 56, the non-moving party may not rest on its pleadings but must come forward with specific facts showing that there is a genuine issue for trial. Rule 56(e), SCRCP; *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 580, 602 S.E.2d 389, 392 (2004). This showing must be based on evidence that would be admissible at trial. *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002).

## UNDISPUTED FACTS

Lockaby is a former member of the Council for the City of Simpsonville (“City”). All of the facts underlying her Complaint occurred at the February 9, 2016 Council meeting.<sup>2</sup>

### **I. Conduct of City Council Meetings.**

Council meetings are controlled by the Simpsonville Code of Ordinances (“Code”) and Robert’s Rules of Order (“Robert’s Rules”).<sup>3</sup> Lockaby has agreed that the November 24, 2015 revision of the Code is the version applicable to the February 9, 2016 Council meeting.<sup>4</sup> At that time, the latest edition of “Robert’s Rules of Order, Newly Revised” was the 11<sup>th</sup> edition.<sup>5</sup> Janice Curtis (“Curtis” or the “Mayor”) served as Mayor of the City and presided over Council meetings.<sup>6</sup> Adam Randolph, an officer of the City’s Police Department, was also present at the meeting and functioned as the sergeant-at-arms.<sup>7</sup>

### **II. The February 9, 2016 City Council Meeting.**

This lawsuit arises out of a debate between Lockaby and Curtis during the February 9, 2016 Council meeting. The exact exchange immediately prior to Lockaby’s exit from the meeting appears in the Minutes as follows:

**Mayor Curtis:** [Gavels 3 times] Order. Order. Order.

**Councilmember Lockaby:** You going to throw me out?

<sup>2</sup> The veracity of the minutes of that meeting is not in dispute and have been confirmed by the Plaintiff to the extent she was present. Lockaby Dep. at 20:25-21:13.

<sup>3</sup> Code at 2-63 (“[e]xcept as otherwise required by state law or ordinance, all proceedings of council shall be governed by the latest edition of ‘Robert’s Rules of Order, Newly Revised[.]’”).

<sup>4</sup> Lockaby Dep. at 11:5-13; *see also* Long Aff. at ¶ 4.

<sup>5</sup> Long Aff. at ¶ 6.

<sup>6</sup> Lockaby Dep. at 13:9-11; Code at §§ 2-34, -63.

<sup>7</sup> Lockaby Dep. at 29:13-17; Code at § 2-67(b) (“Any law enforcement officer who is serving as sergeant-at-arms of city council shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the city council meeting. Upon instruction of the presiding officer, it shall be the duty of such law enforcement officer to remove from the city council meeting any person who is disturbing the proceedings of the city council.”).

**Mayor Curtis:** [Gavels] Order.

**Councilmember Lockaby** You going to threaten to throw me out?

**Mayor Curtis:** Keep it up and you'll find out.

**Councilmember Lockaby:** I guess I will.

**Mayor Curtis:** Okay.

**Councilmember Lockaby:** I'm keeping it up.

**Mayor Curtis:** [Gavels] Mr. Holmes will you please answer her question? Thank you.

**Councilmember Lockaby:** I know if you want to answer her question, I haven't asked one.

**Mayor Curtis:** Can I get the police officer from the back to enter the front, please?

**Officer:** Need her out?

**Mayor Curtis:** I need her out.

**Officer: Councilmember Lockaby,** will you come with me, please?

**Mayor Curtis:** We'll take a five minute recess. [Gavels.]

**Councilmember Lockaby** leaves the council chamber at 7:30pm.

Lockaby did not challenge any ruling from the presiding officer, although she acknowledged in her deposition that a member of Council could challenge or appeal a ruling from the presiding officer.<sup>8</sup>

The audio recording was paused when the Mayor gaveled the recess.<sup>9</sup> With respect to what happened between the transcript portion of the Minutes and when Lockaby left City Hall, Lockaby testified as follows in her deposition:

A. I asked her if she was gonna throw me out like she just did Mr. Graham. She said if you keep on, I will; and I said, I'm keeping on, because I still had the floor, and about that time is when she called Mr. Randolph up.

Q Okay. What happened then?

<sup>8</sup> Lockaby Dep. at 26:17-18, 17:8-15; *see also* Minutes of February 9, 2016 Council meeting showing there was an appeal of a ruling from the presiding officer earlier in the same meeting.

<sup>9</sup> Long Dep. at 16:25-17:2.

A He said, do you need her out? She says, I need her out; so I gathered my stuff and I walked out.

Q Did you say anything else before you walked out?

A I don't believe I did.

Q Did you walk out by yourself?

A My husband was there with me.

[. . .]

Q Did you appeal the ruling from the mayor?

A No.

Q Did Officer Randolph, or anyone else, touch you?

A No, ma'am.

Q Were you, in any way, detained?

A I don't know what you mean by, detained. I was with an officer, for a few minutes there, while I was escorted out of the building.

Q Who was that?

A Officer Randolph.

Q Did he ever leave the council chambers?

A He walked out with me to make sure I got out of the building.

Q Are you sure about that?

A Yes.

Q Did he leave the building?

A He walked me outside of the door -- to the best of my knowledge, he walked me outside of the door, and then my husband and I went and got in the car.

Q Did anyone tell you what to do after you left the council chambers?

A No, they did not. There was nobody out there but me and my husband.

Q Did Officer Randolph say anything to you?

A I don't think he did.

Q Other than the language in the minutes, the transcript in the minutes, did anyone tell you that you needed to go anywhere specific, or needed to do anything specific?

A No.<sup>10</sup>

Q Will you look for me at paragraph 25, on page four, and it says there that you were, "Seized and escorted away from the council chambers in the custody of Defendants Randolph and Simpsonville." Can you tell me, based on your memory of that night, what that means?

A I was escorted out.

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<sup>10</sup> Lockaby Dep. at 25:22-27:23.

- Q But you mentioned earlier that no one touched you.  
A He did not touch me; he escorted me out.  
Q Okay. Do you believe that Officer Randolph was doing anything other than acting as the sergeant-at-arms for the meeting, at the direction of the mayor?  
A That's exactly what he was doing.  
Q Do you believe Mayor Curtis was doing anything other than acting as the presiding officer of the meeting?  
A Yes.  
Q Okay. Tell me about that.  
A I believe she was. I believe she was being vindictive.  
Q Okay. But you do agree, she was the presiding officer of the meeting at the time?  
A Yes.  
Q And as the presiding officer, she would perform all those functions of the chair, from Robert's rules?  
A Yes. Or the code of conduct, whatever it was.  
Q Okay. How do you contend you were unlawfully detained?  
A I was escorted out of the meeting; I was not allowed to stay in the meeting; I was not allowed to represent my ward or the rest of the city.  
Q Because of the direction given by the presiding officer at the meeting?  
A Yes.  
Q How were you arrested?  
A I think you've already asked me, and I've answered this. He escorted me out of the building. I'm sure if I had not gone willingly, then I would have been physically escorted out.  
Q But that didn't happen?  
A He did not touch me.<sup>11</sup>

As shown in this testimony, Lockaby did not challenge the ruling; no one touched her; and she was not given any instruction about where to go or what she could say after she left the meeting. Lockaby does not make any allegations other than with respect to this meeting.

### DISCUSSION

With respect to the matters reflected in the Minutes, the Minutes are the only admissible evidence.

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<sup>11</sup> Lockaby Dep. at 29:3-30:23.

A town council has the express duty to keep minutes of its proceedings which shall be a public record. S.C. Code Ann. § 5-7-250(b) (1976). Municipal records properly authenticated or verified are the only competent evidence of the proceedings of the transactions of the governing body. 5 E. McQuillan, *The Law of Municipal Corporations* § 14.05 (3d ed. 1989). Parol evidence cannot be admitted to explain, enlarge, or contradict minutes of the proceeding of a town council unless the minutes are incomplete or ambiguous. *Id.* § 14.07. Otherwise, parol evidence could render official minutes uncertain and unreliable so that the minutes would fail to afford dependable evidence of the proceedings of the municipal body. *Id.*

*Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant*, 308 S.C. 205, 208, 417 S.E.2d 579, 581 (1992).

**I. Lockaby failed to avail herself of the remedy provided in Robert's Rules.**

As set forth above, Council meetings are subject to the Code, and the Code provides in § 2-63 that Council meetings are governed by Robert's Rules. This is consistent with S.C. Code Ann. § 5-7-250(b) ("The council shall determine its own rules and order of business and shall provide for keeping minutes of its proceedings which shall be a public record.").

Under § 24 of Robert's Rules, any ruling by the presiding officer may be appealed. This includes the ruling in question here. Under that same rule, "[m]embers have no right to criticize a ruling of the chair unless they appeal from his decision." The appeal provision is in place to give the Council as a whole the opportunity to correct any ruling made by the presiding officer immediately after it is made.<sup>12</sup> If Lockaby had appealed the ruling and received a second, the full Council would have voted and the majority would have prevailed.

Lockaby did not appeal the ruling at issue in this case, and therefore her claims are barred for failure to exhaust internal remedies. As set forth by the South Carolina Supreme Court,

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<sup>12</sup> Lockaby's counsel's argument at the hearing that there was not time to object is simply incorrect. The requirement for an appeal at the time of a ruling in a meeting is not unlike the requirement for lawyers to make a contemporaneous objection at trial.

The general rule is that administrative remedies must be exhausted absent circumstances excusing application of the general rule. *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 442 S.E.2d 582 (1994); *Andrews Bearing Corp. v. Brady*, 261 S.C. 533, 201 S.E.2d 241 (1973). “A general exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that a pursuit of them would be a vain or futile act.” *Moore v. Sumter County Council*, 300 S.C. 270, 273–74, 387 S.E.2d 455, 458 (1990) (citing 82 Am.Jur.2d *Zoning and Planning* § 332 at 903 (1976)). Futility, however, must be demonstrated by a showing comparable to the administrative agency taking “a hard and fast position that makes an adverse ruling a certainty.” *Thetford Properties IV Ltd. P'ship v. U.S. Dep't of Hous. and Urban Dev.*, 907 F.2d 445, 450 (4th Cir.1990).

The question of whether to require the plaintiff to exhaust administrative remedies is a matter within the sound discretion of the trial judge. *Andrews Bearing Corp.*, 261 S.C. at 536, 201 S.E.2d at 243. A matter within the sound discretion of the trial judge will not be disturbed on appeal absent an abuse of discretion. *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990). “An abuse of discretion occurs where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support.” *Id.*

*Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 438, 629 S.E.2d 642, 650 (2006).

The place to resolve these disputes is in the Council Chambers, not years later in a courtroom. These considerations are applicable regardless of whether the Mayor's ruling was correct. If Lockaby believed the Mayor's ruling was in error, she was free to challenge it at the meeting.

This is similar to the rule that members of a legislative body that are unhappy with the decision of a governmental entity lack standing to seek recourse in the courts. *Newman v. Richland Cnty. Historic Pres. Comm'n*, 325 S.C. 79, 82-84, 480 S.E.2d 72, 74–75 (1997). As set forth there,

The proper analogy is not to a corporation and its directors, but to a legislative body and its members. **We have been unable to find any case which permits a disappointed legislator to attack a decision of her own body, either through a declaratory judgment or through a direct “appeal” of the decision.**

*Id.* (emphasis added).

South Carolina courts are not in the business of second-guessing activity at city council meetings, and the Court will refrain from doing so in this case. The Court, in its discretion, finds summary judgment for the Defendants is appropriate on this basis.

**II. Lockaby's claims are barred by legislative immunity.**

The actions in question here are limited to one ruling by the Mayor as presiding officer and the actions of the sergeant-at-arms serving at the instruction of the presiding officer. As such, the actions at issue are subject to absolute legislative immunity and do not give rise to liability under 42 U.S.C. § 1983 or the South Carolina Tort Claims Act ("Act"). The Court finds that the action in question was legislative in nature, and that summary judgment is appropriate on this ground. Plaintiff's argument that there was not a vote by Council as a whole on the ruling is unavailing as Lockaby was free to appeal, which would have triggered a vote if seconded by another member of Council.

**A. The Fourth Circuit has found that disciplinary actions taken by a local legislative body against a member of that body are part of the legislative process and are subject to legislative immunity.**

Local legislative bodies are clothed with absolute immunity for their legislative actions. *Bruce v. Riddle*, 631 F.2d 272, 279 (4th Cir. 1980). "Absolute legislative immunity attaches to all actions taken in the sphere of legitimate legislative activity." *Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998) (internal quotation marks omitted).

The Fourth Circuit has found this general rule applies to disciplinary action taken by a local legislative body against one of its members. *Whitener v. McWatters*, 112 F.3d 740, 741 (4th Cir. 1997). In that case, Whitener, a county supervisor, was disappointed with the outcome of a "straw vote" relating to committee assignments. *Id.* Following the vote, Whitener confronted several other supervisors. *Id.* When those supervisors complained, the board voted to censure Whitener and to strip him of his committee assignments for a year. *Id.* Whitener

brought action under 42 U.S.C. § 1983. *Id.* The Fourth Circuit affirmed the dismissal of Whitener’s complaint because the board’s actions “were protected by absolute legislative immunity.” *Id.* at 745. As stated in the opening paragraph of *Whitener*, “[b]ecause we hold that a legislative body’s discipline of one of its members is a core legislative act, we affirm.” *Id.* at 741. In reaching this result, the *Whitener* court traced the idea of immunity from the common law forward to the ratification of the United States Constitution, and reasoned,

Thus, Americans at the founding and after understood the power to punish members as a legislative power inherent even in “the humblest assembly of men.” This power, rather than the power to exclude those elected, is the primary power by which legislative bodies preserve their “institutional integrity” without compromising the principle that citizens may choose their representatives. Further, because citizens may not sue legislators for their legislative acts, legislative bodies are left to police their own members. Absent truly exceptional circumstances, it would be strange to hold that such self-policing is itself actionable in a court.

This history and long practice confirm that the disciplinary action taken by the [Defendant] against one of its members was legislative in nature. And [Plaintiff’s] own contentions confirm that his conduct was legislative. He alleges that he harbored an unpopular voting position on the Board; that he expressed his position using abusive language; and that the Board disciplined him for it. While he was arguably disciplined for speech, it was legislative speech, which is protected from executive or, in the United States, judicial interference, but not from the legislative body’s judgment. As legislative speech and voting is protected by absolute immunity, the exercise of self-disciplinary power is likewise protected.

*Id.* at 744 (internal citations omitted). Quite simply, “legislatures may discipline members for speech with the corollary immunity from executive or judicial reprisal for doing so.” *Id.* Under this authority, the Court grants summary judgment as to Lockaby’s claim under 42 U.S.C. § 1983.

**B. The actions in question are also subject to legislative immunity under the Act and the law of South Carolina.**

The Act “is the exclusive civil remedy available for any tort committed by a government entity, its employees, or its agents except as provided in § 15–78–70(b).” *Wells v. City of*

*Lynchburg*, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct. App. 1998); *see* S.C. Code Ann. § 15-78-200 (2005) (“Notwithstanding any provision of law, this chapter, the ‘South Carolina Tort Claims Act’, is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee’s official duty.”). Thus, if there is immunity under the Act, Lockaby has not stated any tort claims against the City.

The Act extends immunity to “legislative, judicial, or quasi-judicial action or inaction.” S.C. Code Ann. § 15-78-60(1). In addition, South Carolina courts recognize common law legislative immunity. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 637, 743 S.E.2d 808, 815 (2013) (“the Board’s entitlement to immunity is supported by common law that interprets and applies principles of legislative immunity, a doctrine that has not been supplanted by the [Act].”; *Richardson v. McGill*, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979) (“A sound public policy has long recognized an absolute immunity of members of legislative bodies *for acts in the performance of their duties.*”) (emphasis added).

Here, Lockaby’s claims stem from the conduct of a Council meeting at which Curtis was serving as presiding officer, Lockaby was present as member of Council, and Randolph was serving as sergeant-at-arms. There is no question but that the Mayor and Randolph were acting in the performance of their duties at all relevant times.

As stated by the South Carolina Attorney General’s Office,

[I]t appears the power of a legislative body to discipline one of its members would be considered an inherent “legislative power.” And, as we have expressed in prior opinions of this Office, these legislative powers are applicable to local legislative bodies such as a municipal council. Accordingly, as a legislative body, we believe it is likely a court would find a municipal council has the authority to discipline one of its members as an inherent legislative power. It follows that this inherent authority could include removal of a member from a council meeting.

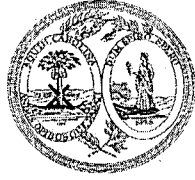
2016 WL 3355910, at \*3 (S.C.A.G. May 31, 2016)(citing *Whitener*, 112 F.3d at 744); *see also* S.C. Code Ann. § 5-7-250(b) (providing city councils may set their own rules and order of business); S.C. Code Ann. § 30-4-70(d) (providing that the South Carolina Freedom of Information Act does not prohibit the removal of persons from meetings).

In light of *Whitener* and similar South Carolina authority, the Defendants' actions relating to Lockaby at the February 9, 2016 Council meeting arise from legislative action and are immune from suit under the Act or by operation of common law legislative immunity. Therefore, summary judgment is appropriate at this time as to any claims made pursuant to the Act.

#### **CONCLUSION**

For these reasons, the Court finds there is no genuine issue as to any material fact and that judgment is appropriate as a matter of law with respect to all remaining claims. Accordingly, the Court grants Defendants' Motion for Summary Judgment.

**IT IS SO ORDERED.**



Greenville Common Pleas

**Case Caption:** Sylvia Lockaby vs. Simpsonville City Of , defendant, et al  
**Case Number:** 2018CP2300731  
**Type:** Order/Summary Judgment

So Ordered

s/ Robin B. Stilwell 2158