(5)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE FIRST JUDICIAL CIRCUIT
Dorchester County Court of Common Pleas
Honorable Kristi L. Harrington, Presiding

Appellate Case No. 2018-001262

Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all others similarly situated, George Resnick; William A. Harbeson; James Stephen Green, Jr.; Homer P. Gonzales; Gerald E. Ziegler; David Messinger; and South Carolina Public Interest Foundation ..... Appellants,

v.

Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh III, in his official capacity; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Famsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees ..... Respondents.

FINAL BRIEF

Adam Jordan Mandell
94 Pleasant Street
Cambridge MA 02139

Charles J. Boykin
Boykin & Davis, LLC
220 Stoneridge Drive, Suite 100
Columbia SC 29210

Tierney Felicia Dukes
PO Box 11844
Columbia SC 29211

Kenneth A. Davis
Christopher S. Elliott

P.O. Box 11844
Columbia, South Carolina 29211
Telephone: 803-254-0707
Facsimile: 803-254-5609

Attorneys for Respondents Dorchester County School District Four & Dorchester County School District Four Board

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTION FOR THE STATE OF SOUTH CAROLINA

STATUTES

ACTS

POLICIES

STATEMENT OF ISSUES ON APPEAL

I. WHETHER APPELLANTS PROPERLY PRESERVED THEIR GROUNDS FOR APPEAL PERTAINING TO DISTRICT FOUR AS THEY DID NOT RAISE THEM PRIOR TO THEIR MOTION TO ALTER OR AMEND.

II. WHETHER THE CIRCUIT COURT ERRED IN DISMISSING APPELLANTS' CLAIM AGAINST DISTRICT FOUR FOR DOUBLE TAXATION IN THAT DISTRICT FOUR IS NOT A TAXING ENTITY.

III. WHETHER THE CIRCUIT COURT ERRED IN DISMISSING APPELLANTS' CLAIM AGAINST DISTRICT FOUR FOR VIOLATION OF ACT 388 IN THAT DISTRICT FOUR IS NOT A TAXING ENTITY AND NOT A NECESSARY PARTY TO THIS ACTION.

IV. NOTWITHSTANDING THE CIRCUIT COURT'S ORDER OF DISMISSAL WITH PREJUDICE, WHETHER APPELLANTS' ACTION SHOULD BE DISMISSED WITHOUT PREJUDICE AS THE CIRCUIT COURT CANNOT EXERCISE JURISDICTION OVER IT PURSUANT TO THE REVENUE PROCEDURES ACT.

STATEMENT OF THE CASE

Appellants commenced this action by filing a Summons and Complaint on May 2, 2016. On May 6, 2016, Appellants filed an Amended Complaint against several Defendants including Dorchester County School District Four and its Board of Trustees (hereinafter "District Four").[1] In this Amended Complaint, Appellants alleged two causes of action against District Four: 1) that District Four taxed the Appellants, and those similarly situated to the Appellants, in violation of Act 388; and 2) that District Four engaged in double taxation.[2] (R. pp. 178-79).

In its Amended Complaint, Appellants alleged that District Four pays for school resource officers with revenue derived from property taxes levied against owner-occupied homes. (R. p. 178, ¶ 98). Appellants contend this method of taxation violates Act 388 (S.C. Code Ann. § 12-37-220(B)(47)(a), (c)) and amounts to double taxation. (R. p. 178).

In response to this Amended Complaint, the County and Town filed motions to dismiss. By Consent Order filed December 28, 2016, the parties resolved these motions. (R. pp. 24-32). Per this Order, the Appellants were granted leave to file a Second Amended Complaint so long as they agreed to withdraw "any claim or cause of action based on the refund, assessment and/or collection of South Carolina taxes." (R. p. 28, ¶¶ 3-4).

Appellants filed their Second Amended Complaint on December 12, 2016, wherein they restyled their tax-based claims against the Respondents.

---

[1] Appellants alleged causes of action against Defendants associated with six separate government entities: Dorchester County (hereinafter "County"), the Town of Summerville (hereinafter "Town"), Dorchester County Sheriff's Department (hereinafter "Sheriff's Dept."), Dorchester County School District Two (hereinafter "District Two"), District Four, and the Dorchester County Career and Technology Center (hereinafter "DCCTC").

[2] Appellants alleged these same tax-based claims against all Defendants named in the Complaint. Additionally, Appellants alleged non tax-based claims against other Defendants in this action which were unrelated to its claims against District Four.

Instead of claiming that District Four violated Act 388 by "taxing owner-occupied residences for the purpose of a school operating expense," Appellants alleged that District Four was "expending funds obtained by taxing owner-occupied residences for the purpose of a school operating expense." (R. p. 178, ¶ 98; p. 136, ¶ 100). Additionally, Appellants changed their claim for "illegal double taxation" to "illegal double expenditures." (R. p. 178; p. 136).

In response to Appellants' Second Amended Complaint, the County, Town, and Sheriff's Dept. filed motions to dismiss. (R. pp. 496-568). As to Appellants' tax-based claims, the County and Town argued that the Circuit Court lacked jurisdiction to hear these claims based on the provision in The South Carolina Revenue Procedures Act ("RPA") which requires that property tax disputes be resolved through the County Board of Assessment Appeals and then the Administrative Law Court. See S.C. Code Ann. § 12-60-10, *et seq.* As argued by the County and Town, Appellants' tax-based claims were subject to dismissal without prejudice such that these claims could then be filed with the Administrative Law Court.

District Four also filed a motion to dismiss the Appellant's Second Amended Complaint on June 21, 2017. In its motion, District Four joined in the argument by the County and Town that Appellants' tax-based claims were subject to dismissal without prejudice pursuant to the RPA. (R. p. 477). Additionally, District Four asserted it was entitled to an order dismissing Appellants' tax-based claims with prejudice as District Four is not authorized to impose a tax and, therefore, could not be held liable for violating a tax statute or double taxation. (R. pp. 477-82).

On December 12, 2017, Appellants filed a Memorandum in Opposition to Defendants' Motions in response to all motions to dismiss filed in the action. (R. p. 437). In this Memorandum, Appellants did not address District Four's motion for dismissal with prejudice, nor did they dispute District Four's claim that it was not authorized to impose a tax. (R. p. 437-66).

The Circuit Court heard Respondents' motions on December 12, 2017. At this hearing, Appellants failed to address District Four's motion for dismissal with prejudice, nor did they dispute District Four's claim that it was not authorized to impose a tax and, therefore, could not be held liable for Appellants' tax-based claims. (R. pp. 340-402).

The Circuit Court issued two orders of dismissal which were filed on March 15, 2018. In its order addressing District Four's motion only, the Circuit Court dismissed Appellants' claims against District Four with prejudice.[3] (R. pp. 3-11).

On April 3, 2018, Appellants filed a motion to alter and/or amend the Circuit Court's order granting District Four's motion for dismissal with prejudice. (R. pp. 413-21). In this motion, and for the first time in this action, Appellants offered arguments in response to District Four's motion for dismissal with prejudice. (R. pp. 413-21). Included in these arguments was Appellants' present contention that District Four is a necessary party to this action.

By order filed June 11, 2018, the Circuit Court denied Appellants' motion to alter and/or amend. Appellants now appeal.

[3] In its other order of dismissal filed March 15, 2018, the Court dismissed Appellants' tax-based claims against the County and Town without prejudice. (R. pp. 12-23). In doing so, the Court found that Appellants' tax-based claims should be adjudicated by the Administrative Law Court in accordance with the RPA. (R. p. 23).

STANDARD OF REVIEW

In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-48 (2007). (citations omitted). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. Id. If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. Id.

ARGUMENT

I. APPELLANTS' APPEAL IN REGARD TO DISTRICT FOUR SHOULD BE DISMISSED AS APPELLANTS HAVE FAILED TO PRESERVE THEIR APPEAL WITH RESPECT TO DISTRICT FOUR.

The Appellants argue that the lower court erred in dismissing Appellants' claims against District Four because the District is a necessary party to this action. However, Appellants did not preserve this argument for this Court's review as Appellants did not respond to the arguments raised in District Four's motion to dismiss until the filing of their motion to alter or amend under Rule 59(e).

It is well established in South Carolina that a party must raise all issues and arguments before the lower court prior to pursuing such issues and arguments on appeal. Elam v. S.C. DOT, 361 S.C. 9, 23, 602 S.E.2d 772, 779 (2004). "Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." Id., 361 S.C. at 23, 602 S.E.2d at 779-80; see also Gause v. Smithers, 403 S.C. 140, 151, 742 S.E.2d 644, 650 (2013). Any objection to an issue or argument "must be

sufficiently specific to inform the trial court of the point being urged by the objector." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Further, "[a]n issue may not be raised for the first time in a motion to reconsider." Johnson v. Sonoco Prods. Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009).

In the present case, District Four raised several arguments in its motion to dismiss to support dismissal of the Appellants' claims against District Four. Specifically, District Four argued, and the lower court agreed, that the Appellants' tax-based claims against District Four should be dismissed because (1) District Four lacks taxing authority; and (2) the State statute under which the Appellants seek relief establishes a system where the State, not the County, provides the funding to the District for the expenses which are in dispute in this action. District Four presented these arguments in its Memorandum of Law in Support of its Motion Dismiss filed on December 11, 2017, and reiterated these arguments during the hearing held on December 12, 2017.

Despite filing a Memorandum in Opposition to District Four's Motion to Dismiss and appearing at the December 12, 2017 hearing, Appellants failed to offer arguments in opposition to District Four's grounds for dismissal. Rather, Appellants raised its present contentions in this appeal for the first time in their motion to alter or amend filed April 3, 2018.

Consequently, because the Appellants failed to properly assert their present position prior to the lower court's ruling, Appellants may not now raise this issue on appeal. Accordingly, Appellants have failed to preserve this issue for appellate review, and this Court should affirm the lower court's dismissal of the Appellants' claims against District Four.

II. NOTWITHSTANDING APPELLANTS' FAILURE TO PRESERVE ITS APPEAL AGAINST DISTRICT FOUR, APPELLANTS' DOUBLE TAXATION CLAIM IS SUBJECT TO DISMISSAL WITH PREJUDICE AS IT IS UNSUPPORTED BY LAW.

In their Second Amended Complaint, Appellants allege that District Four engaged in "illegal double expenditures," a cause of action identical to its "illegal double taxation" claim in their Amended Complaint. (R. p. 136; p. 178). Because District Four is not a taxing entity, it cannot be held liable for double taxation.

Double taxation does not occur unless there is "an identity of taxing authority, taxing period, taxing purpose, and person and property taxed." Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 369, 223 S.E.2d 592, 596 (1976). Pursuant to S.C. Const. Art. X, § 6, "the General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State, including . . . school districts." However, the grant of taxing authority is permissive, and the South Carolina Constitution does not require the General Assembly to vest taxing authority in each school district.

Pursuant to S.C. Code Ann. § 59-73-20, some school districts have the authority to impose a tax for school purposes. This section was last amended in 1962. In 1986, the Legislature created District Four by consolidating Dorchester County School Districts One and Three. Act 536 of 1986, Part I, Section 4, states in relevant part that the "Executive Committee of Dorchester County School District No. 4 shall promptly prepare and submit to the appropriate taxing authority a budget for the ensuing year." A plain reading of this language establishes that the legislation creating District Four explicitly withholds the taxing authority granted to other school districts under S.C. Code Ann. § 59-73-20.

District Four's policies reflect that it does not have taxing authority. District Policy DC provides "[e]ach school district's taxing authority is established by state law. In Dorchester County, that authority is vested in Dorchester County Council within statutory limitations."

Because District 4 does not have the authority to impose a tax as a matter of law, Appellants' claim that District Four engaged in double taxation fails as a matter of law and must be dismissed with prejudice.

III. NOTWITHSTANDING APPELLANTS' FAILURE TO PRESERVE THE ISSUE, APPELLANTS' CLAIM THAT DISTRICT FOUR VIOLATED ACT 388 IS SUBJECT TO DISMISSAL WITH PREJUDICE.

A. DISTRICT FOUR IS NOT A TAXING ENTITY AND CANNOT BE HELD LIABLE FOR VIOLATING A STATUTE WHICH GOVERNS TAXATION.

In their Second Amended Complaint, Appellants allege that District Four violated Act 388 by expending funds obtained by taxing owner-occupied residences for the purpose of a school operating expense. (R. p. 136, ¶ 100). Because District Four is not a taxing entity but rather an entity which only engages in spending tax revenue, it cannot be held liable for violating a statute which governs the collection of taxes.

The portion of Act 388 at issue in this case reads as follows:

> [O]ne hundred percent of the fair market value of owner-occupied residential property eligible for and receiving the special assessment ratio allowed owner-occupied residential property pursuant to Section 12-43-220(c) is exempt from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt.

S.C. Code Ann. § 12-37-220(B)(47)(a). To reimburse school districts for the amounts exempt under Act 388, the State collects an additional one percent sales tax which it credits

to the Homestead Exemption Fund. S.C. Code Ann. §§ 12-36-1110 to 1130. From the tax revenue deposited into the Homestead Exemption Fund, the State reimburses school districts for the tax revenue lost as a result of the owner-occupied residential property exemption set forth in Act 388. S.C. Code Ann. § 11-11-156(A)(1). Specifically, the reimbursement to the school district "consists of an amount equal dollar for dollar to the revenue that would be collected by the district from property tax for school operating purposes imposed by the district on owner-occupied residential property for that fiscal year as if no reimbursed exemptions applied." Id.

In the present case, Appellants allege that District Four has violated Act 388 because the arrangement assigning school resource officers to District Four's schools requires the expenditure of tax revenue from exempt property for school operating purposes. (R. p. 129, ¶¶ 80, 81). Act 388 creates specific exemptions from the ad valorem taxation of specified property, including designated owner-occupied residential property. Because Act 388 is not a general prohibition against the expenditure of tax revenue but the actual imposition of a specific tax, Act 388 does not apply to entities, like District Four, which do not have the authority to impose a tax as a matter of law.

Therefore, Appellants are not entitled to relief on their Act 388 claim as a matter of law, and this Court should dismiss this claim against District Four with prejudice.

B. DISTRICT FOUR IS NOT A NECESSARY PARTY TO THIS ACTION.

In its appeal, Appellants contend that District Four is a necessary party to this action. However, because District Four's involvement in this action is unnecessary, it is entitled to an order dismissing it from this litigation.

"A party is not a necessary party unless it has rights which must be ascertained and settled before the rights of the parties to the action can be determined." Owen Steel Co. v. S.C. Tax Com., 281 S.C. 80, 85, 313 S.E.2d 636, 639 (Ct. App. 1984).

Appellants' claims against District Four are summarized by paragraph 78 of their Second Amended Complaint. In this paragraph, Appellants allege that Dorchester County Council raised the millage on all real property in the county, to include owner-occupied property, in order to provide SROs to District 2, District 4, and DCCTC. (R. p. 128, ¶ 78); See also Ex. 8 to the Am. Compl. incorporated by reference into the Sec. Am. Compl. (R. pp. 224-232).[4]

Taking Appellants' allegations as true, District Four is not a necessary party to this action as it is a recipient of property tax revenue, not a collector. Appellants allege the County increased the property taxes on owner-occupied property in Dorchester County to pay for SROs in District Four schools, an act which Appellants contend violate Act 388. Determining whether Appellants are correct in this assertion will not require District Four to remain a party in this lawsuit. Whether this lawsuit adversely affects the amount of funding provided to District Four is outside the control of the District just as the collection of this funding is outside of District Four's control.

Because District Four's rights need not be ascertained or settled to adjudicate this matter, District Four is not a necessary party to this lawsuit and should be dismissed from participating further in these proceedings.

[4] Respondents note for the Court that this Exhibit was erroneously identified as Exhibit 6 in its Initial Brief.

IV. ALTERNATIVELY, APPELLANTS' CLAIMS AGAINST DISTRICT FOUR SHOULD BE DISMISSED WITHOUT PREJUDICE AS THESE CLAIMS ARE EXCLUSIVELY GOVERNED BY THE SOUTH CAROLINA REVENUE PROCEDURES ACT.

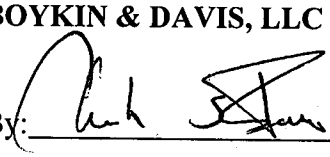
District Four hereby joins in the arguments asserted by the Town Respondents in Section I. of Respondents' Brief and incorporates those arguments herein.

CONCLUSION

For the foregoing reasons, the Circuit Court's dismissal of Appellants' claims with prejudice should be affirmed. In the alternative, Appellants' claims against District Four should be dismissed without prejudice.

Respectfully Submitted,

BOYKIN & DAVIS, LLC

By: 

Kenneth A. Davis
Christopher S. Elliott

P.O. Box 11844
Columbia, South Carolina 29211
Telephone: 803-254-0707
Facsimile: 803-254-5609

Attorneys for Respondents Dorchester County School District Four & Dorchester County School District Four Board

March 18, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE FIRST JUDICIAL CIRCUIT
Dorchester County Court of Common Pleas
Honorable Kristi L. Harrington, Presiding

Appellate Case No. 2018-001262

Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated; Weatherstone Property Owners Association, individually, and on behalf of all others similarly situated, George Resnick; William A. Harbeson; James Stephen Green, Jr.; Homer P. Gonzales; Gerald E. Ziegler; David Messinger; and South Carolina Public Interest Foundation ..... Appellants,

v.

Dorchester County; Dorchester County Council; David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council; Town of Summerville; Summerville Town Council; William E. McIntosh III, in his official capacity; Dorchester County Sheriff; Luther C. Knight, in his official capacity; Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Famsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; Dorchester County School District Four; Dorchester County School District Four Board; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees ..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that the Final Briefs of Appellant complies with Rule 211(b) SCACR.

By: _____

Kenneth A. Davis
Christopher S. Elliott

BOYKIN & DAVIS, LLC
P.O. Box 11844
Columbia, South Carolina 29211

Telephone: 803-254-0707
Facsimile: 803-254-5609

Attorneys for Respondents Dorchester County School District Four & Dorchester County School District Four Board

March 18, 2019
Columbia, South Carolina