

State of South Carolina
County of Anderson

Court of Common Pleas

Phillip Ashley)
)
 Plaintiff,)
 v.)
)
 Anderson County School District Two Board of)
 Trustees)
)
 Defendant.)

Transcript of Record
2019-CP-04-01118

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JAN 30 2020

SC Court of Appeals

June 27, 2019
Anderson, South Carolina

B E F O R E:

The Honorable J. Cordell Maddox, Judge.

A P P E A R A N C E S:

Bruce Byrholdt, Esquire
Attorney for the Plaintiff

Kurt Tavernier, Esquire
Attorney for the Plaintiff

Kenneth Childs,
Attorney for the Defendant

David Duff,
Attorney for the Defendant

David Lyon,
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E X

WITNESS

PAGE

No Witnesses.

E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EVD.</u> |
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No Exhibits.

P R O C E E D I N G S

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3 THE COURT: Okay. We're back on -- on the
4 record. Let me -- let me -- because, again -- and
5 y'all -- y'all, how about moving down here so she
6 can hear you. It doesn't matter.

7 THE ATTORNEYS: (Complying.)

8 THE COURT: As I told you off the record, I had
9 a jury trial this week so we always have some with
10 backup in case the jury trial resolves itself, and
11 it -- it resolved itself. So today is -- we had 29
12 motions scheduled. And because of a hard drive
13 failure, I haven't had the ability to look at
14 anything.

15 But I understand that this motion, which has
16 generated so much interest, is a -- involves a
17 resignation or alleged resignation, a resignation of
18 a school board member and that there's been a
19 declaratory judgment filed asking me to rule on the
20 resignation of the -- on the resignation; is that
21 correct.

22 MR. BYRHOLDT: That's correct. Of the school
23 board member.

24 THE COURT: Of the school board member. And
25 that matter is going to be heard at a later date,

1 but it's going to be expedited. And y'all have
2 agreed to get together, do an order shortening the
3 time filing on the pleadings, and then we'll set
4 another hearing on the declaratory judgment action
5 which would end this matter as far as court
6 involvement at this level; is that correct? That's
7 why we're here today?

8 MR. TAVERNIER: That's correct, Your Honor.

9 THE COURT: Your motion for a stay?

10 MR. TAVERNIER: That's correct. That's what
11 was pending for today, but we have agreed to some
12 modifications.

13 THE COURT: Okay. All right. And -- and just
14 for the record, there was some discussion off the
15 record, but I don't want anybody to think that
16 anything really substantial is going on.

17 My concern, that I expressed to the lawyers,
18 was that we were -- you got stuck on a roster with
19 obviously some different kinds of things, and that
20 there was a pending action that my understanding is
21 will be fully pled and ready for me to rule within
22 30 days.

23 And the concern on both sides was -- off the
24 record -- was what do you do in the meantime? And I
25 was hesitant to order a stay because that seemed to

1 me to be a little too intrusive on the school
2 board's actions.

3 So what I told both parties that I was willing
4 to do off the record and I'm saying on the record,
5 is that I'm willing to take this matter under
6 advisement. I have not read anything. I did not
7 know this case was on the roster until lunch until I
8 was told.

9 So what I'm willing to do is, read the
10 documents, take this matter under advisement for
11 30 days. Which, quite frankly, in effect neither
12 party wants me to do. Both parties are not happy
13 with me doing it, but what it allows me to do, is it
14 allows me to build in a little bit of time for the
15 parties to finish up their pleadings.

16 And the concern was, what -- what happens with
17 the school board between now and the time that I
18 rule? Because it will be a 30 days -- I'll have to
19 take it under advisement for 30 days.

20 And, basically, what I think should happen
21 here, and I just -- I don't need you to agree that
22 you agree with it, but I need you to under -- tell
23 me you understand, is that Mr. Shirley -- who I
24 think is the school board member who -- who either
25 resigned or alledgedly resigned -- will remain on

1 the board because I'm taking this matter under
2 advisement and then can participate in school board
3 activities that are routine.

4 Obviously, we're coming up on a school year
5 quick. There's going to be hiring and firing of
6 teachers and other matters that the school board has
7 to handle. But because it's under advisement and
8 because the subject matter of the matter under
9 advisement is a stay, then this -- I would order and
10 hope that y'all would agree that the school board
11 cannot hire or fire anyone at the district level
12 pending a decision by me on the declaratory
13 judgment.

14 Now, that doesn't make anybody happy, but it --
15 it sort of freezes this thing and prevents the
16 school board from doing anything that later might be
17 overturned.

18 And here's the -- here's my logic behind it.
19 If I deny the stay and this declaratory judgment,
20 which is a lawsuit going along over here, if I deny
21 the stay and Mr. Shirley is allowed to vote and they
22 make a district-level decision and then I rule
23 against Mr. Shirley, then you're right back at the
24 beginning with whatever the school board did because
25 if I rule against Mr. Shirley, then his resignation

1 is final, then the school board couldn't do what
2 they had to do.

3 It works exactly the same in the opposite
4 logically than the opposite, that is that if I deny
5 the declaratory judgment and some action is taken,
6 then you're back at the beginning with someone
7 addressing the Court and asking me to resolve
8 something that's been done by the school board that
9 has a questionable member. And I'm not -- I only
10 say that "questionable" because there's a question.
11 I don't -- I'm not making any decision on it.

12 So it seems to me to be completely logically
13 intact to take it under advisement. Let the
14 declaratory judgment move along at an expedited
15 basis. Let the school board perform all of its
16 functions, but prohibit them from hiring or firing
17 at the district level which, I think, takes care of
18 the problem, at least pending the fact that within
19 30 days all of the pleadings will have been filed
20 and we can hold the hearing on the declaratory
21 judgment, or as some of you said, I can rule based
22 on memorandum. I don't mind. Whatever you --
23 whatever you want me to do.

24 Now, again, I know all of y'all are unhappy
25 with that, and I'm not trying to push it down the

1 road. It's just I don't see any other real option
2 today. So I'm not asking you to tell me you're
3 happy because I can tell you're not, but do you
4 understand what I'm doing here today, Mr. Tavernier?

5 MR. TAVERNIER: We do, Your Honor.

6 THE COURT: Mr. Byrholdt, sir?

7 MR. BYRHOLDT: Yes, sir.

8 THE COURT: And Mr. ---

9 MR. CHILDS: Yes, Your Honor. We understand.

10 THE COURT: And -- and can you -- can you
11 all -- y'all get together and do an order that
12 basically implements this and freezes this for at
13 least -- it's really -- I mean, I -- I need to be
14 honest, 30 days is when the pleadings will be filed.

15 There's no way that the pleadings will be filed
16 on the 30th day and we'll have a hearing on the
17 31st. It is more likely to be 30 to 45 days, but
18 normally a lawsuit -- a declaratory judgment action
19 would take a year to 18 months to finish. These
20 parties have agreed to do it within 30 days. And
21 I'm perfectly fine to schedule around my schedule a
22 hearing date, if that's what you want me to do.

23 MR. BYRHOLDT: Yes, sir.

24 THE COURT: Anything you want to add to that?

25 MR. TAVERNIER: No, Your Honor. The lines of

1 communication are open. David and Mr. Childs and I
2 will be able to speak. Mr. Byrholdt's open at seven
3 o'clock in the morning when I am, so we -- we'll get
4 things taken care of.

5 THE COURT: I believe he's insinuating that
6 y'all don't open as early as he is, but I doubt
7 that's true. Anything y'all want to add to it?

8 MR. CHILDS: No, Your Honor.

9 THE COURT: Okay. Like I said, I -- I --
10 whoever's out there that I'm sure is probably mad at
11 your lawyers, don't be. They -- they both want me
12 to do something that I think if I do will cause more
13 problems down the line, quite frankly, and you're
14 just going to have to bear with me.

15 These lawyers have as much experience as I do,
16 but from my point of view, granting the stay or
17 denying the stay will create a bigger problem today
18 than taking it under advisement, so okie doke.

19 MR. BYRHOLDT: Thank you, Your Honor.

20 THE COURT: Y'all do a -- do a scheduling order
21 so we can get all these pleadings filed and I'll
22 rule.

23 MR. TAVERNIER: Very good. Thank you.

24 THE COURT: And all of y'all, thank you for
25 coming. At least you got to see how court works.

(At 4:45 p.m., the proceedings concluded.)

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA
COUNTY OF Anderson

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 27th day of June, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 19, 2020

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter



DUFF | FREEMAN | LYON

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January 29, 2020

VIA ELECTRONIC AND U.S. MAIL

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JAN 30 2020

SC Court of Appeals

Re: **Phillip Ashley, Kevin Craft, and Jimmy Outzs, Respondents v. Anderson County School District Two Board of Trustees, Appellant**
Appellate Case No.: 2020-000003

Dear Counsel:

Attached is a copy of the Transcript from the June 24, 2019 hearing in this matter. The Transcript was ordered on January 3, 2020, and was received by our office on January 21, 2020, via email from Lisa M. Scott, Court Reporter.

As set forth in Rule 208(a), the Appellant's Initial Brief will be due within thirty (30) days after receiving the Transcript. Accordingly, by our calculations our Initial Brief shall be filed and served on or before February 20, 2020.

Please contact our office should you have any questions or concerns.

Respectfully,

Kim Chatman, Paralegal to
David N. Lyon

/kc
Attch

- c: David N. Lyon, Esquire (via email only)
- David T. Duff, Esquire (via email only)
- Kenneth L. Childs, Esquire (via email only)
- Office of the Court Administration (via email only)
- Clerk of the Appellate Court (via email only)