THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2019-CP-04-01118
Appellate Case No.: 2020-000003

Phillip Ashley, Kevin Craft, and Jimmy Ouzts,.....Respondents.

v.

Anderson County School District Two Board of Trustees,.....Appellant.

INITIAL BRIEF OF APPELLANT

David T. Duff (SC Bar #1768)
David N. Lyon (SC Bar #100676)
P.O. Box 1486
Columbia, SC 29202
Telephone: (803) 790-0603
Facsimile: (803) 790-0605
Email: dduff@dfl-lawfirm.com
Email: dlyon@dfl-lawfirm.com

Kenneth L. Childs (SC Bar #1217)
Email: kchilds.lawoffice@gmail.com

Attorneys for Appellant Defendant Anderson
County School District Two Board of Trustees

February 18, 2020
Columbia, South Carolina

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STATEMENT OF ISSUE ON APPEAL

Did the circuit court err in finding a vacancy exists on the Anderson County School District Two Board of Trustees when a Board member emailed an invalid resignation to his fellow Board members and rescinded it three days later, before the resignation was accepted by the Board?

STATEMENT OF THE CASE

This matter arises out of a dispute between the Respondents, who are three members of the seven-member Anderson County School District Two Board of Trustees, and the Appellant, the Board of Trustees (the "Board"). The dispute is over whether a vacancy exists on the Board as a result of Board member William R. ("Stu") Shirley sending an email to the Board stating he was resigning from the Board, effective immediately, and three days later, withdrawing his resignation, before the Board took any action to accept it. Respondents sought a declaratory judgment that Shirley had irrevocably resigned and that, as a result, a vacancy was created on the Board. The Honorable J. Cordell Maddox ruled that Shirley had resigned irrevocably, that a vacancy existed on the Board, and that the vacancy should be filled.

FACTS

Shirley's emailed resignation followed a contentious Board meeting on Monday, May 13, 2019, during which the Board planned to discuss matters related to the District Superintendent's contract. (Shirley Aff. ¶ 7). The Board received legal advice that board action negatively affecting the Superintendent's contract would result in lawsuits against the Board members individually and that any such legal action would not be covered by the District's insurance policy. (Shirley Aff. ¶ 7). While trying to leave the meeting, Shirley was confronted by three angry men, and he felt physically threatened by them. (Shirley Aff. ¶ 8). Shirley feared that his family might be threatened as well. (Shirley Aff. ¶ 8). Given the threat of litigation against him personally, and perceived threats of harm to him and his family, Shirley decided that he should resign from the Board. (Shirley Aff. ¶ 9).

The next day, Tuesday, May 14, 2019, Shirley emailed his fellow Board members stating that he had decided to resign from the Board, "effective immediately." (Shirley Aff. ¶ 10).

Although unknown to him at the time, Shirley's emailed resignation was not in compliance with the Board's policy requiring that a board member who intends to resign "... will announce his/her desire to resign from the board and submit a letter of resignation to the chairman of the board at least 30 days prior to the effective date of said resignation." (Shirley Aff. ¶ 11, Exhibit B).

On Friday, May 17, 2019, after further consideration of his hasty decision and pleas from constituents not to resign, Shirley withdrew his resignation by letter addressed to the Board Chairperson, Brenda Cooley. (Shirley Aff. ¶¶ 12-13). Cooley responded that day, acknowledging receipt of the withdrawal of his resignation, and notifying the other Board members. (Shirley Aff. ¶ 14).

At a special called meeting on May 22, 2019, Respondent Board member Phillip Ashley, relying on a legal opinion procured by the Anderson County Board of Education, asserted that Shirley had resigned and that a vacancy existed on the board. (Knight Aff. ¶ 9). Ashley made a motion that Shirley be removed, and the vote failed on a three-to-three tie vote, with Shirley abstaining. (Knight Aff. ¶ 10). Acting Board Chairperson Bonnie Knight[1] then sought a formal opinion from the South Carolina Attorney General as to the effect of Shirley's resignation and subsequent revocation of same. (Knight Aff. ¶ 11).

In an Opinion dated June 4, 2019, the Attorney General's office opined that a court would likely conclude a school board member may revoke a tendered resignation before it is accepted by the Board. 2019 WL 3243933 (S.C.A.G. June 4, 2019). The Opinion reiterated the Attorney General's Office's long-standing understanding of the common law in South Carolina that a public

[1] By this time, Board Chair Brenda Cooley was recuperating from medical issues and Knight, as Vice Chair, assumed the position of Acting Board Chair.

officer's resignation is not effective until it has been accepted by the public body obligated to receive it. *Id.* at *2-3.

On June 14, 2019, Respondents filed a declaratory judgment action, asking the circuit court to declare Shirley's resignation valid and irrevocable. (Complaint). Respondents also asked the Court to issue a "temporary stay of *all matters* before the Defendant Board until such time as the Court has rendered its determination regarding the validity of the Shirley resignation." (Complaint).

On June 27, 2019, the Honorable Judge J. Cordell Maddox held a hearing during which he granted Plaintiff's Motion for Temporary Stay in part.[2] (Order, July 1, 2019; Hearing Tr. 8, ln. 15-22). Judge Maddox stated that he would decide the declaratory judgment issue at a later time, either after a hearing or on the briefs which he ordered counsel to provide.[3] (Hearing Tr. 8, ln. 20-24).

On June 28, 2019, the Board filed its Answer and Counterclaim, asserting generally that Shirley's resignation was ineffective *ab initio* because it did not to comply with Board policies, which required 30-days' advance notice of resignation, and that even if it was effective, the withdrawal of Shirley's resignation was valid such that there was no vacancy. (Defendant's Answer).

On July 18, 2019, the parties submitted the briefs ordered by the court.

On November 15, 2019, the circuit court issued an Order declaring that Shirley's resignation "was valid and accepted before revocation occurred" and that a vacancy existed.

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[2] Specifically, Judge Maddox ordered that Shirley could participate as a lawful Board member in any business before the Board except that he could not vote on District-level hiring or firing decisions. (Hearing Tr. p. 8, ln. 12-23; Order, July 1, 2019).

[3] Ultimately, no further hearing was held, and as a result, no factual record was developed in this case beyond the facts asserted in the filed affidavits.

Order, Nov. 15, 2019. The court ordered a special election in accordance with S.C. Code Ann. § 8-1-145.

On November 19, 2019, Appellant moved for the court to reconsider its Order pursuant to Rule 59(e) SCRCP. Appellant asserted, among other things, that the court had wrongly determined that § 8-1-145 was applicable to and governed Shirley's resignation such that it was irrevocable and that no acceptance by the Board was required. Additionally, Appellant requested that the court reconsider the portion of its order, ordering a special election, on the grounds that as governed by local legislation, any vacancy on the Board is to be filled through appointment by the Anderson County Board of Education. *See* Act No. 227, 1983; *see also* S.C. Code Ann. § 59-19-60. Also, Appellant asserted that the Order relied upon disputed facts regarding alleged actions by the Board tending to suggest that Shirley's resignation had been accepted.

On November 27, 2019, the court issued an Amended Order, which only changed the final line of the Order, directing that the vacancy "be filled pursuant to the relevant laws of South Carolina," rather than via a special election as the previous order had stated.

Thereafter, and following an off-the record conference between the court and counsel for the parties, the court determined no further hearing was necessary for the court to rule on the effect of Shirley's emailed resignation. On December 23, 2019, the court generally denied Appellant's Rule 59(e) motion and issued its final Order.[4] The court ruled that "due to the effective resignation of Shirley, the Court finds there to be a vacancy on the Board of Anderson County School District Two and orders the vacancy to be filled pursuant to the relevant laws of South Carolina."

On January 2, 2020, the Board served and filed its Notice of Appeal.

[4] The court removed the disputed facts from its Order and noted that the issue of the Board's acceptance of Shirley's resignation was removed as a basis for finding for the Respondents.

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable but is determined by the nature of the underlying issue." *Felts v. Richland Cty.*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991); *Bundy v. Shirley*, 412 S.C. 292, 301, 772 S.E.2d 163, 168 (2015). An action involving the interpretation of statutes is an action at law. *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 606-07, 663 S.E.2d 484, 487 (2008). In an action at law, tried without a jury, the scope of appellate review "extends merely to the correction of errors of law." *Id.* (quoting *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000)). "Questions of statutory interpretation are questions of law, which this Court is free to decide without any deference to the tribunal below." *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016).

ARGUMENT

The circuit court erred in finding a vacancy exists on the Anderson County School District Two Board of Trustees because Shirley's resignation was void *ab initio*, but even if it was valid, it was withdrawn three days after it was sent to the Board and before the Board accepted it. This Court should reverse the lower court's ruling.

a. Shirley's emailed resignation was void *ab initio* because it did not comply with the Board's policies.

District Two Board Policy BBBC, provides that a Board member who intends to resign "... will announce his/her desire to resign from the board and submit a letter of resignation to the chairman of the board *at least 30 days prior to the effective date of said resignation.*" (Shirley Aff. ¶ 11, Ex. B) (emphasis added). Thus, Shirley's email stating he wished to resign "effective immediately" did not comply with the Board's own policies and was therefore not an effective

resignation. Accordingly, it was void *ab initio*, and the Board could not have accepted it, even if it had not been withdrawn three days later.

b. Even if his emailed resignation was proper and valid, Shirley was entitled to withdraw it before it was accepted by the Board.

For more than 100 years, the law in South Carolina has been that a public official may withdraw his or her resignation "at any time until the proper authority receives and accepts it." *State v. Stickley*, 80 S.C. 64, 61 S.E. 211, 213 (1908). Our Supreme Court adopted this principle in *Stickley*, which involved a factual scenario remarkably similar to the facts alleged here. In that case, the Town of Port Royal's Intendent, John Stickley, submitted a letter to the Wardens of the town stating: "Gentlemen: Please accept my resignation to take effect at once. Yours respectfully, [Signed] John Stickley." *Id.* at 64, 61 S.E. at 211. Like Shirley in the instant case, Stickley withdrew his resignation three days later at the request of voters in the town. *Id.* The question before the Court was "whether a public officer, who has tendered his resignation unconditionally, can withdraw the same before acceptance." *Id.* at 64, 61 S.E. at 213. The Court considered but rejected a line of case law holding that an unconditional resignation is irrevocable as soon as it is offered and cannot be withdrawn. *Id.* Instead, the Court adopted the common law principle from a separate line of cases holding that "resignation of a public officer is not complete until it is either expressly or by implication accepted by the proper authorities." *Id.* Accordingly, "[u]ntil the tender or offer to resign is accepted by the proper authority, it can be withdrawn." *Id.*

Stickley remains good law in South Carolina. *See, e.g., Rogers v. Coleman*, 245 S.C. 32, 34, 138 S.E.2d 415, 417 (1964) (assuming that resignations must be accepted by the public body to be effective). The Attorney General's office has repeatedly relied upon *Stickley* in opinions regarding the effectiveness of resignations of public officials and revocations of resignations, including the resignation at issue in this case. *See* 2019 WL 3243933 (S.C.A.G. June 4, 2019);

2015 WL 992703, at *2 (S.C.A.G. Feb. 20, 2015); 2013 WL 5763372, at *2 (S.C.A.G. Oct. 10, 2013);1996 WL 549527, at *2 (S.C.A.G. Aug. 7, 1996); 1986 WL 192036 (S.C.A.G. July 10, 1986); *See also S.C. Jur. Public Officers and Public Employees § 45* ("Mere announcement of a public officer's intent to resign is insufficient to effectuate the resignation. Rather, the public officer must intend to resign, actually tender his resignation, *and have the resignation accepted* by the appropriate public body." (emphasis added)); 3 *McQuillin Mun. Corp. § 12:173.4, Resignation of Officer* (3d ed.) ("Where the law requires that a resignation be acted upon, the resignation clearly can be withdrawn before it is acted upon.").

Stickley is nearly identical both factually and legally to the instant case. Like Port Royal's Intendent Stickley, Board member Shirley submitted a written resignation to the Board, the proper authority to receive it. Three days later, prior to the Board meeting or taking any action, Shirley withdrew the resignation and resumed his participation as a Board member. Accordingly, pursuant to *Stickley*, Shirley's withdrawal of his resignation was valid, it rescinded his resignation, and, accordingly, no vacancy was created on the Board.

c. Shirley's emailed resignation was not made pursuant to S.C. Code Ann. § 8-1-145 and was not intended to be irrevocable.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible." *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where, as here, "the language of the statute gives rise to doubt or uncertainty as to legislative intent, the construing court looks to the statute's language as a whole in light of its manifest purpose." *Ex parte Cannon*, 385 S.C. 643, 655, 685 S.E.2d 814, 821 (Ct. App. 2009).

"The construing court may additionally look to the legislative history when determining the legislative intent." *Id.*

Section 8-1-145 states:

> (A) A person holding an office in this State filled by a vote of qualified electors may submit a written irrevocable resignation from that office which is effective on a specific date.
>
> (B) An election must be held in accordance with the provisions of Section 7-13-190 or other applicable provisions of law to fill the office to be vacated as if the vacancy occurred on the date the written irrevocable resignation is submitted.
>
> (C) The newly elected official may not take office until the vacancy actually occurs.

No court has interpreted this statute. However, the Attorney General's analysis of this statute as it relates to the facts of this case, to include a consideration of legislative history, is thorough, well-researched, and convincing. *See* 2019 WL 3243933 at *3-4 (S.C.A.G. June 4, 2019).[5] Appellant adopted, cited to, and incorporated the Attorney General's analysis in its various filings before the court below and does so here, in advancing the following conclusion about the purpose and proper application of § 8-1-145:

> [T]he procedures for calling a special election in Section 8-1-145 are not intended to address every resignation of a public official in all instances. Rather, the legislative intent behind the adoption of Section 8-1-145 appears to address the limited situation where a public officer who holds elective office intends to accept another office, and in such a case to develop a mechanism for initiating a special election at an earlier date than would have otherwise been authorized by law. . . . A court would likely conclude that the General Assembly did not mean to rewrite common law regarding the resignation of public officers, but instead, it merely intended to provide a way for those elective officers who want to accept a new office to resign prospectively and thereby shorten the length of the vacancies that would otherwise occur.

[5] While South Carolina courts are not bound by Attorney General opinions, such opinions "should not be disregarded without cogent reason." *Price v. Watt*, 280 S.C. 510, 513, n. 1, 313 S.E.2d 58, 60 n.1 (Ct. App. 1984).

2019 WL 3243933, at *5.

Additionally, as discussed in the Attorney General's opinion, § 8-1-145 (A) states that a public official "*may* submit a written irrevocable resignation . . ." (emphasis added), which indicates that submitting resignations that are intended to be irrevocable are permitted, but not mandatory, and do not apply in every case. *Id.* The Attorney General's opinion notes that the prior iteration of the language contained in § 8-1-145 also used the term "may", further bolstering this interpretation. *Id.* Shirley's resignation did not state, nor obviously, did he intend the resignation to be irrevocable, and he did not intend to resign to accept another office.

In sum, statutory construction and legislative history demonstrates that § 8-1-145 was intended to create a process for prospective resignation to allow an elected official to resign from one public body to take a position on another public body. That is not the situation in this case: Shirley was not submitting a resignation so that he could assume another public office. He submitted his resignation for other reasons, and after several days, he reconsidered and properly and lawfully revoked his resignation.

d. Even if S.C. Code Ann. § 8-1-145 governs Shirley's resignation, it does not explicitly abrogate the common law that a resignation can be withdrawn before it is accepted by the public body.

As noted above, the rule adopted in *Stickley* and followed ever since is that a public official may rescind his resignation prior to that resignation being accepted by the public body. In its Order, the lower court concluded that because § 8-1-145 does not mention acceptance, the common law acceptance requirement must no longer apply. This is error.

Our Legislature "is presumed to enact legislation with reference to existing law, and there is a strong presumption it does not intend, by statute, to change common law rules." *Abba Equip., Inc. v. Thomason*, 335 S.C. 477, 483, 517 S.E.2d 235, 238 (Ct. App. 1999). "A strong

presumption also exists that the General Assembly does not intend to supplant common law principles when enacting legislation." *O'Laughlin v. Windham*, 330 S.C. 379, 384, 498 S.E.2d 689, 691 (Ct. App. 1998). Accordingly, statutes are generally "not to be construed as in derogation of common law rights if another interpretation is reasonable." *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 318, 433 S.E.2d 875, 884 (Ct. App. 1992), *adhered to on reh'g* (Apr. 29, 1993).

It is true that § 8-1-145 does not mention a requirement that the public official's resignation be accepted by the public body. However, the fact that acceptance is not mentioned in § 8-1-145 is not evidence that the legislature intended to do away with this requirement generally. To conclude that the legislature intended to eliminate the acceptance requirement, without their being explicit language to that effect, would be in derogation of the common law principle recognized in the *Stickley* case. Moreover, there is a reasonable interpretation of section 8-1-145 that is harmonious with the common law. Specifically, the prospective resignation procedure under § 8-1-145 would still need to be presented to and accepted by the public body that would be losing a member so that the body could initiate the necessary steps to fill the vacancy.

In this case, the Board took no action, formal or otherwise, in the three days between Shirley emailing his resignation and his subsequent withdrawal of the same. [6] Moreover, no Board meeting was called to address the attempted resignation wherein the Board might have accepted

[6] The lower court stated there was "no authority to indicate that a formal board measure had to be taken for acceptance to occur." Order 3-4, Nov. 15, 2019. There was no discussion below regarding what form Board acceptance would take, and there is no Board policy directly on point. However, because the Board must take action as a body, the Board would likely "accept" the member's resignation by voting to begin the necessary procedures to fill the vacancy. Such a process is not inconsistent with § 8-1-145, specifically subsection (C), which is, at least in part, concerned with establishing the date on which the technical vacancy occurs. *See Bradford v. Byrnes*, 221 S.C. 255, 262, 70 S.E.2d 228, 231 (1952) (explaining that even as "public officers hold over *de facto* until their successors are appointed or elected and qualify . . . [v]acancy nevertheless exists in the sense that successors may be appointed or elected as may be provided by law, qualify and take the offices . . .).

the resignation. Since Shirley's attempted resignation was not acted upon prior to its withdrawal, it had no lasting, legal effect. Therefore, Shirley's signed, written, withdrawal of his resignation was effective. In short, no vacancy was ever created, none exists now, and Shirley should retain his seat as a Board member.

CONCLUSION

For the reasons stated above, the decision of the lower court finding Shirley's resignation was irrevocable resulting in a vacancy on the Board should be reversed.

Respectfully submitted,

DUFF | FREEMAN | LYON, LLC

By: _____

David T. Duff (SC Bar #1768)
David N. Lyon (SC Bar #100676)
P.O. Box 1486
Columbia, SC 29202
Telephone: (803) 790-0603
Facsimile: (803) 790-0605
Email: dduff@dfl-lawfirm.com
Email: dlyon@dfl-lawfirm.com

Kenneth L. Childs (SC Bar #1217)
Law Office of Kenneth L. Childs
Email: kchilds.lawoffice@gmail.com

Attorneys for Defendant Anderson County School District Two Board of Trustees

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Phillip Ashley, Kevin Craft, and Jimmy Ouzts.....Respondents.

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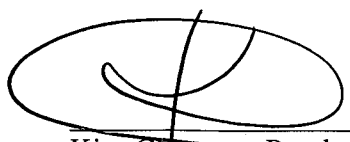
Anderson County School District Two Board of Trustees.....Appellant.

PROOF OF SERVICE

I certify that on February 18, 2020, I have served the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal on the Respondents, Phillip Ashley, Kevin Craft, and Jimmy Ouzts, by mailing copies to their respective counsel of record, via U.S. Mail, with proper postage attached, and addressed as follows:

Kurt Tavernier, Esquire
Law Offices of Kurt Tavernier, P.A.
117 West Benson Street
Anderson, South Carolina 29624

Bruce A. Byrholdt, Esquire
Byrholdt & Drawdy
2315 N. Main Street
Anderson, South Carolina 29621



Kim Chatman, Paralegal
DUFF | FREEMAN | LYON, LLC
P.O. Box 1486
Columbia, SC 29202
Telephone: 803.790.0603

DFL

DUFF | FREEMAN | LYON

ATTORNEYS AND COUNSELORS AT LAW

ATTORNEYS: David T. Duff *† | William C. Freeman | David N. Lyon | Tiffany L. Butler | Suzanne L. Hawkins

e-mail address:
dlyon@dfl-lawfirm.com

February 18, 2020

VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate St.
PO Box 11629 (29211-1629)
Columbia, SC 29201

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 Ms. Kitchings:

Enclosed herewith for filing is an original and two copies of the following documents:

1. Initial Brief of Appellant;
2. [Appellant's] Designation of Matter to be Included in the Record on Appeal; and
3. Proof of Service.

I would appreciate you date stamping the extra copies and providing them our office assistant for further processing.

The Respondents' attorneys of records are being served contemporaneously.

Thank you for your time and cooperation.

Sincerely,

David N. Lyon

DNL/kc
Encls

c: Kurt Tavernier, Esquire
Bruce Byrholdt, Esquire
Kenneth L. Childs, Esquire
David T. Duff, Esquire