THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Doyet A. Early, Circuit Court Judge

Appellate Case No. 2019-000648
Civil Action No. 2018-CP-40-02425

RECEIVED
MAR 19 2020
SC Court of Appeals

Jefferson Davis, Jr. ..... Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reams, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Dept. of Revenue, South Carolina Dept. of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40..... Respondents.

RESPONDENT EDCHOICE, INC., FKA AND INCORRECTLY IDENTIFIED AS FRIEDMAN FOUNDATION FOR EDUCATIONAL CHOICE, INC'S. RETURN TO APPELLANT'S MOTION TO STRIKE

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules ("SCACR"), Respondent EdChoice Inc., f/k/a and incorrectly identified as Friedman Foundation for Educational Choice, Inc. respectfully submits this Return to Appellant's Motion to Strike dated

March 9, 2020. As set forth below, the arguments asserted in the Appellant's Motion are incorrect. This Court should deny his Motion.

BACKGROUND

On May 3, 2018, the Appellant filed his Pro Se Complaint asserting numerous claims against an individual defendant (Ellen Weaver), a Corporate Defendant, (Palmetto Promise Institute or "PPI"), and John Doe(s) 1-20. Weaver and PPI filed a Motion to Dismiss. Judge Benjamin heard oral argument on October 1, 2018 and, at the completion of the hearing, orally granted in part and denied in part the Motion to Dismiss and gave leave to Appellant to amend his pleading by naming and serving the John Doe defendants. Judge Benjamin's Order further stated that the Appellant had "fifteen (15) days to appropriately amend the pleadings". The Appellant did not comply with that Order, and he did not serve EdChoice within the deadline. EdChoice timely filed its Motion to Dismiss the Amended Complaint and supporting Affidavit, outlining numerous bases for the dismissal of the Amended Complaint.

On February 12, 2019, Judge Early heard arguments on the new defendants' Motions to Dismiss and after hearing Oral Argument and reviewing Judge Benjamin's Amended Order, determined that the Amended Order required the Appellant to file and served the Amended Complaint by the deadline set therein. Accordingly, Judge Early filed an Order on February 19, 2019 dismissing with Prejudice all of Appellant's claims against the new defendants. The Appellant filed a Motion to Reconsider. Judge Early denied that Motion as well. This Appeal resulted.

In his Motion to Strike, the Appellant argues that the Respondents' briefs address issues not in evidence or relevant to the subject matter in the underlying hearing and that respondents have expanded the Record on Appeal to matters not addressed by the Court. Appellant asserts

that those matters should be stricken from the Record. Respondent EdChoice disagrees and requests the Court deny Appellant's Motion.

ARGUMENT

Pursuant to Rule 220(c) of the SCACR's, the Court may "affirm any ruling, order, decision or judgment upon ground(s) appearing in the Record on Appeal." In addition, as noted in *I'On, LLC v. Town of Mt. Pleasant*, 338 SC 406, 419, 526 S.E. 2d 716, 723 (2000), "under the present Rules, a respondent – the "winner" in the lower court – may raise on appeal any additional reasons the Appellate Court should affirm the lower court's ruling, regardless of whether those issues have been presented to or ruled on by the lower court."

In this instance, EdChoice, pursuant to the applicable rules, has the right to raise additional sustaining grounds on appeal, which it has done,. These additional sustaining grounds are set forth in EdChoice's Motion to Dismiss with attachments.

Moreover, the Appellant is incorrect regarding the alleged impropriety of the items EdChoice designated to be included in the Record on Appeal. The determination of what may be designated for inclusion in the record is governed by Rules 209(b) and 210(c), SCACR. These rules set forth two requirements for designation and inclusion in the record: 1) a matter must be relevant to the Appeal and 2) it must have been presented to the lower Court.

The items designated by EdChoice satisfy these requirements. In addition to the items designated by Cato Institute and Mr. Rich, and incorporated by reference in EdChoice's Record on Appeal, the only additional item that EdChoice designated for inclusion in the Record on Appeal was its Motion to Dismiss and attachments thereto, which were filed in advance of February 12, 2019 Hearing held by Judge Early. The pleadings, motions and memoranda incorporated by reference from Cato Institute and Rich's designation as well as EdChoice's

Motion to Dismiss and attachments thereto, are undisputedly relevant to an understanding and nature of the lawsuit, the claims asserted, whether or not the Appellant alleged claims upon which relief could be granted, as well as additional sustaining grounds.

Conclusion

For, the foregoing reasons, the Appellant's Motion to Strike should be denied.

Respectfully Submitted

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Columbia, South Carolina

3/15, 2020

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March 19, 2020

HAND DELIVERED

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

RECEIVED
MAR 19 2020
SC Court of Appeals

RE: Jefferson Davis, Jr., v. Ellen Weaver, et al.
Civil Action No. 2018-CP-40-02425
Appellate Case No. 2019-000648
Our File No. 033687/01500

Dear Ms. Kitchings:

Enclosed are the original and seven copies of EdChoice, Inc. f/k/a and Incorrectly Identified as Friedman Foundation for Educational Choice, Inc's. Return to Appellant's Motion to Strike. Please file the original and return a clocked in copy to us via our courier.

We are serving a copy of same to all parties of record.

Very truly yours,

Christopher J. Daniels

CJD:ss
Attachments
cc: Jefferson Davis, Jr., Pro Se (via U.S. mail and electronic mail)
J. Kenneth Carter, Jr., Esquire (via U.S. mail and electronic mail)

Ross C. DuRant, Esquire (via U.S. mail and electronic mail)
Douglas W. MacKelcan, Esquire (via U.S. mail and electronic mail)
Skyler C. Wilson, Esquire (via U.S. mail and electronic mail)
Tierney Dukes, Esquire (via U.S. mail and electronic mail)
Kenneth A. Davis, Esquire (via U.S. mail and electronic mail)
M. Dawes Cooke, Jr., Esquire (via U.S. mail and electronic mail)
Justin Novak, Esquire (via U.S. mail and electronic mail)
Geoffrey K. Chambers, Esquire (via U.S. mail and electronic mail)
William H. Davidson, II, Esquire (via U.S. mail and electronic mail)
Michael B. Wren, Esquire (via U.S. mail and electronic mail)
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Kathy R. Schillaci, Esquire (via U.S. mail and electronic mail)
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Miles Coleman, Esquire (via U.S. mail and electronic mail)
Benjamin Mustian, Esquire (via U.S. mail and electronic mail)
Jason P. Luther, Esquire (via U.S. mail and electronic mail)
Alan Jones, Esquire (via U.S. mail and electronic mail)
James Goldin, Esquire (via U.S. mail and electronic mail)
Mark V. Gende, Esquire (via U.S. mail and electronic mail)
Brandon R. Gottschall, Esquire (via U.S. mail and electronic mail)
Chad Connelly (via U.S. mail only)
John McCormick (via U.S. mail only)
Nate Leupp (via U.S. mail only)