

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

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

Case No. 2019=CP-04-011185-DR-23-3798
Appellate Case No.: 2020-000003

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

v.

Anderson County School District two Board of TrusteesAppellants

INITIAL BRIEF OF RESPONDENTS

Bruce A. Byrholdt (S.C. Bar No. 1071)
BYRHOLDT DRAWDY
2315 N. Main Street, Ste. 117
Anderson, SC 29621
864-261-3977

Law Offices of Kurt Tavernier, P.A.
Kurt Tavernier (S.C.Bar No. 12991)
117 West Benson Street
Anderson, SC 29624
864-222-9142
ATTORNEYS FOR RESPONDENTS

April 23, 2020

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. The Circuit Court did not err in finding Shirley's Resignation was valid and declaring a vacancy on Anderson District Two Board of Trustees.
 - a. Shirley's Resignation was not void *ab initio* as against board policy because Shirley was not aware of the policy.
 - b. Appellant's reliance on State v. Stickley is misplaced.

TABLE OF AUTHORITIES

Auto Owners Inc. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (SC 2008).

Barnacle Broad, Inc. v. Baker Broad Inc., 343 S.C. 140, 538 S.E.2d 672 (Ct.App. 2000).

Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

Townes Assocs., Ltd. vs. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

Sloan v. S.C. Bd. Of Physical Therapy Exam'rs., 370 S.C. 342, 469, 636 S.E.2d 598, 607 (2006).

State, ex rel. Munroe vs. City of Poulsbo, 109 Wash. App. 672, 37 P.3rd 319 (App. Ct. 2002)

State v. Stickley, 80 S.C. 64, 61 S.E. 211 (1908).

STATUTES

S.C. Code Ann. § 8-1-145.

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STATEMENT OF THE CASE

This case originates from the submittal of an emailed resignation by William R. "Stu" Shirley (Shirley) from the Anderson County School District 2, Board of Trustees (Board). Shirley sent the resignation to the other Board members, the School District Superintendent, the I.T. coordinator for the School District, the H.R. director for the School District and the local newspaper editor. The email stated "effective immediately, I resign". The resignation further stated that Shirley's school email account was no longer required and a directive that the resignation letter may be published in the newspaper. Three days later Shirley sent a letter to the Board Chairperson Brenda Cooley (Cooley), attempting to withdraw his resignation. Cooley claims to have "accepted" Shirley's attempted rescission on behalf of the Board. However, Cooley did not have the authority to take such action.

The Respondents in this matter are three Board members Phillip Ashley (Ashley), Kevin Craft (Craft) and Jimmy Ouzts (Ouzts) who took issue with the Cooley's handling of Mr. Shirley's attempted rescission on behalf of the Board

FACTS

The Board held its regularly scheduled meeting on May 13, 2019. During that meeting in executive session the Board received advice from its legal counsel that suggested if the Board took action to terminate the superintendent's contract it could possibly lead to legal action against the Board members individually and their actions might not be covered by the District's insurance policy.

On or about May 14, 2019, a member of the Defendant Board, Stu Shirley, (Shirley) tendered an email (Exhibit A – Plaintiff's Brief dated July 18, 2019 - Email) bearing **Subject: Resignation**. The Email was dated May 14, 2019 and was addressed to the acting Chairperson¹ of the Defendant Board, the other trustees of the Defendant Board, Dr. Richard Rosenberger, Elaine Rider with the News Chronicle, a local newspaper, Susan Shirley and Lester McCall. The Email contained an irrevocable resignation which stated: "Therefore, effective immediately, I resign."

As a result of the distribution of the Email to the respective parties, Shirley's name was removed from the School District Two School Board website and his email account was closed. In addition, the Belton News Chronicle published news of Shirley's resignation the very next day, on May 15, 2019, notifying the public at large of his resignation.

On or about May 17, 2019 Shirley submitted a letter (Exhibit C), attempting to rescind his previously submitted irrevocable resignation. This letter was directed solely to the Defendant Board Chair, Brenda Cooley. However, Ms. Cooley had "abdicated" her position as Chair and turned it over to Vice-Chair Bonnie Knight on May 13, 2019.

That same day, Brenda Cooley, Board Chair, wrote a letter back to Shirley on School District Two letterhead (Exhibit D) (Letter) claiming she "accepted" Shirley's attempted rescission on behalf of the Anderson County Board of Trustees District Two. However, Ms. Cooley cannot do that, either in her individual capacity or as Board Chairperson, because it is a violation of Board Policy BBAA. (Exhibit E). As mentioned earlier, Brenda Cooley had "abdicated" her position as Chair and turned it over to Bonnie Knight.

¹ Bonnie Knight is the acting Chairperson due to Brenda Cooley claiming an incapacitating illness as of May 13, 2019, however Cooley still sits on the Board and votes.

The recitation of facts in the Attorney General opinion (Opinion) states "Both letters were sent to all member of our Board, and to the administrator, Mr. Nimmer of the Anderson County Board." (Exhibit E, page 1). This is incorrect, the resignation email was sent to all Board Members. However, the attempted rescission was only sent to Brent Cooley, Chairperson.. Page 2 of the Opinion states: "There is no indication that either the Anderson County School District Two Board of Trustees or the Anderson County Board of Education accepted Stu Shirley's resignation before receiving notification of its withdrawal." This fact should have been resolved prior to the rendering of the Opinion. However, that begs the question: how does one not accept an irrevocable resignation which is "effective immediately"?

On or about May 22, 2019 Joey Nimmer, Administrator of the Anderson County Board of Education, received an email from an attorney (Ms. Lonesse Williams, with White & Story). (Exhibit H – Plaintiff Brief dated July 18, 2019)

The Board held a special called meeting on May 23, 2019. Ashley relying upon a legal opinion from the Anderson County Board of Education asserted Shirley had resigned and a vacancy existed on the Board. (Knight Aff. para 9). Ashley moved that Shirley be removed, and the vote failed on a three-three vote, with Shirley not participating in the vote. (Knight Aff. para 10). Knight sought an opinion from the South Carolina Attorney General to the effect of Shirley's resignation and subsequent revocation of his resignation. (Knight Aff. para. 11).

Respondents assert that facts presented to the Attorney General were incorrect and did not accurately present the facts to support the opinion. (Ex. G, Plaintiff's Brief filed July 18, 2019).

When the other four member of Board refused to cooperate in filing a joint submittal with the

Circuit Court to determine the issue of Shirley's resignation, Respondents were left no choice but to file . on June 14, 2019, a declaratory judgment action requesting the Circuit Court to declare Shirley resignation "effective immediately" valid and irrevocable. (Complaint). Respondents' further requested a stay of all matters before the Board pending the decision of the Circuit Court. (Complaint).

June 27, 2019, the Court held an off the record conference with all counsel in which the factual background and case procedures were agreed upon. The Court announced on the record how the matter would be handled going forward and that the parties had agreed that the Shirley could participate in Board business but could not vote on District level hiring or firing decisions. (Hearing transcript p. 8, l. 12-23; Order July 1, 2019; written order filed).

June 28, 2019, Appellants filed its Answer and Counterclaim. (Answer).

The Court ordered the parties to submit briefs by July 18, 2019.

The parties acknowledged that all facts were set forth in pleadings, affidavits and briefs of the parties.

On November 15, 2019, the Court issued its Order declaring Shirley's resignation "was valid and accepted before revocation occurred and a vacancy existed on the Board. (Order, Nov. 15, 2019).

November 19, 2019, Appellant moved the Court to reconsider its Order pursuant to S.C.R.Civ.P. 59(e).

November 27, 2019, the Court issued an Amended Order which only changed the final sentence, directing the vacancy "be filled pursuant to the relevant laws of South Carolina."

Subsequently, the parties and Court conferred off the record, and the Court with no objection by either party, determined no further hearings were necessary for the Court to rule on Shirley's resignation.

On December 23, 2019, the Court denied Appellant's Rule 59 motion and issued its Final Order holding "due to the effective resignation of Shirley, the Court finds a vacancy on the Board of School District Two and orders the vacancy to be filled pursuant to the relevant laws of South Carolina." (Final Order, Dec. 23, 2019.)

Appellant served and filed its Notice of Appeal on January 2, 2020.

STANDARD OF REVIEW

An action involving the interpretation of a statute is an action at law. Auto Owners Inc. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (SC 2008). In an action tried at law without a jury, the scope of appellate review "extends merely to the corrections of errors of law." Barnacle Broad, Inc. v. Baker Broad Inc., 343 S.C. 140, 538 S.E.2d 672 (Ct.App. 2000). A trial court's factual findings will not be disturbed on appeal unless a review of the record disclosed no evidence reasonably supporting the Court's findings. Townes Assocs., Ltd. vs. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

ARGUMENT

The Circuit Court did not err in finding Shirley's Resignation was valid and declaring a vacancy on Anderson District Two Board of Trustees.

a. Appellant's argument that Shirley's Resignation was void *ab initio* because it did not comply with board policy is without merit as Shirley was not aware of the Board policy.

Appellant argues Shirley's resignation was invalid because it was not made in compliance with Board policy that a letter of resignation must be submitted to the Chairman of the Board at least 30 days prior to the effective date of resignation. Appellant mistakenly seeks to rely upon the Board policy even though Shirley was not aware of this policy. (Shirley Aff.).

Respondent further assert statutory law (S.C.Code Sec. 8-1-145) would supersede any board policy.

b. Appellant's argument that Shirley's resignation although effective immediately could be withdrawn under the holding of State v. Stickley is misplaced.

Respondents agree that the law of South Carolina has been a public official may withdraw his or her resignation "at any time until the proper authority receives it and accepts it." State v. Stickley, 80 S.C. 64, 61 S.E. 211 (1908). However, the Circuit Court correctly noted that the Court in Stickley noted its' decision was made in the absence of a statute "(i)n the absence of statute this rule is supported by the better reasoning and greater weight of authorities. . ." Respondents assert the requirements of acceptance and/or withdrawal are no longer necessary in light of S.C. Code of Laws Sec. 8-1-145.

Respondents would also assert this Court should adopt the rational set forth in State, ex rel. Munroe vs. City of Poulsbo, 109 Wash. App. 672, 37 P.3rd 319 (App. Ct. 2002) in which the Court held a statute must be given its plain meaning and a resignation effective immediately could not be withdrawn."

c. Shirley's resignation fulfilled the requirement set forth in S.C. Code Ann. § 8-1-145.

South Carolina Code of Laws Sec. 8-1-145 states: "a person holding 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." Neither, the Attorney General, Appellant or Respondents are aware of any South Carolina court interpreting this statute prior to the Circuit Court in this case. However, a similar issue was addressed the Washington Court of Appeals in State, ex rel. Munroe vs. City of Poulsbo, 109 Wash. App. 672, 37 P.3rd 319 (App. Ct. 2002) in which the Court held a statute must be given its plain meaning and a resignation effective immediately could not be withdrawn."

"A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers." Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). The Court should give words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Sloan v. S.C. Bd. Of Physical Therapy Exam'rs., 370 S.C. 342, 469, 636 S.E.2d 598, 607 (2006). Appellants continued attempts to limit the authority of the statute despite its plain meaning is contrary to the Court's holding in Sloan v. S.C. Bd. Of Physical Therapy Exam'rs., 370 S.C. 342, 469, 636 S.E.2d 598, 607 (2006). There, as set forth by Judge Maddox in his Order states "The Court should give words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Sloan v. S.C. Bd. Of Physical Therapy Exam'rs., 370 S.C. 342, 469, 636 S.E.2d 598, 607 (2006).

Respondents agree with the Circuit Court's finding that Shirley's resignation was effective immediately under the clear, unambiguous language of Sec. 8-1-145 and there is no authority to indicate a

formal board measure must be taken for acceptance to occur and a vacancy exists on Anderson School District Two Board of Trustees.

The Appellant's continued reliance on the Attorney General's opinion is misplaced. As Judge Maddox clearly stated in his Order, "the Attorney General was forced to issue its opinion based on a request that did not include a comprehensive recitation of the issue before the Court." Judge Maddox was apprised of the facts and circumstances in their totality and based upon the facts determined their applicability under S.C. Code § 8 – 1- 145.

CONCLUSION

Respondents respectfully request the Order filed December 23, 2019 be affirmed.

Respectfully submitted,

s/ Bruce A. Byrholdt
Bruce A. Byrholdt (S.C. Bar No. 1071)
BYRHOLDT DRAWDY
2315 N. Main Street, Ste. 117
Anderson, SC 29621
864-261-3977

Law Offices of Kurt Tavernier, P.A.
s/Kurt Tavernier
Kurt Tavernier (S.C. Bar No. 12991)
117 West Benson Street
Anderson, SC 29624
864-222-9142
ATTORNEYS FOR RESPONDENTS

April 17, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
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The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

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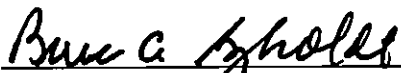
v.

Anderson County School District Two Board of TrusteesAppellants

Proof of Service

I Certify that on April 23, 2020, I have served the Corrected Initial Brief of Respondents on Appellant Anderson County School District Two Board of Trustees, by mailing a copy of same to their respective counsel, via U.S. Mail, with proper postage attached to the below addressees:\

David N. Lyon (SC Bar #100676)
David T. Duff (SC Bar #1768)
Kenneth L. Childs (SC Bar #1217)
P.O. Box 1486
Columbia, SC 29202



Bruce A. Byrholdt (SC# 1071)
BYRHOLDT DRAWDY
2315 N. Main Street
Suite 117
Anderson, SC 29721

RECEIVED
APR 27 2020
SC Court of Appeals

Byrholdt Drawdy

ATTORNEYS AT LAW, LLC

2315 N. Main Street, Ste. 117
Anderson, SC 29621

P. 864.261.3977
F. 864.261.3978

www.ByrholdtDrawdy.com
Sarah@ByrholdtDrawdy.com
Bruce@ByrholdtDrawdy.com

April 23, 2020

Clerk of Court
S.C. Court of Appeals
1015 Sumter Street
P.O. Box 11629
Columbia, South Carolina 29211

RE: Phillip Ashley, Kevin Craft and Jimmy Outzs.....Respondents.

v.

Anderson County School District two Board of TrusteesAppellant

Dear Clerk:

Enclosed please find Respondents Corrected Initial Brief (Table of Contents, Table of Authorities and Statement of Issue on Appeal had been left off), and Proof of Service. By Copy of this letter I am serving copy of same on the Attorneys for Appellant.

Thank you for your help.

With kind regards,


Bruce A. Byrholdt
Attorney for Respondents

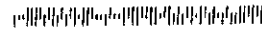
Enclosures (2)

David T. Duff (SC Bar #1768)
David N. Lyon (SC Bar #100676)
P.O. Box 1486
Columbia, SC 29202

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

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Byrholdt Drowdy
2315 N. Main Street
Suite 117
Anderson, SC 29621

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Clerk of Court
S.C. Court of Appeals
1015 Sumter Street
P.O. Box 11629
Columbia, South Carolina 29211