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 REPLY BRIEF OF APPELLANT

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May 12, 2020
Columbia, South Carolina

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ARGUMENT IN REPLY

a. Respondents' "Statement of the Case" and "Facts" sections are improper under the South Carolina Rules of Appellate Procedure because they lack citation to the record and contain contested factual and legal matters.

Appellant adopts and incorporates by reference the Statement of Case and Facts presented in its Initial Brief and urges the Court to adopt them. Appellant strongly objects to and asks the Court to disregard Respondents' "Statement of the Case" and "Facts" section in Respondents' Corrected Initial Response Brief, because Respondents make numerous factual assertions not supported by record evidence. Any assertion without citation to the record or lacking record evidence must be disregarded under SCACR 208 (b)(4), which provides that "[t]he brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal ... to support the salient facts alleged." In addition to lacking evidentiary support, some of Respondents' statements are contested factual matters in violation of SCACR 208(b)(1)(c), which states that "the statement [of the case] shall not contain contested matters . . . ." Without conceding that these statements are relevant to the appeal, Appellant contends the following statements are not supported by testimonial or documentary evidence in the record and are contested:

- At page 4, Respondents state: "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." There is no citation to testimony or documentary evidence to support this contention, and the circumstances surrounding the removal of Shirley's name and email address from the District's website remains a contested matter that was not resolved by the circuit court. *See* Defendant's Response to Plaintiff's Brief, p. 1, fn. 1. Accordingly, this statement should be stricken or disregarded.

- At page 4, Respondents state that Board Chairperson Brenda Cooley "'abdicated' her position as Chair and turned it over to Vice Chair Bonnie Knight . . . ." 'Abdicated' is a loaded term meant to cast aspersions on Ms. Cooley. The only evidence in the record is that Knight was the acting Chairperson while Cooley was recuperating from serious health conditions. *See* Defendant's Response to Plaintiff's Brief, p. 1, fn. 1.; Knight,

Aff. ¶ 6. Because Respondents' statement is contested, without evidentiary support, and not relevant to the issues presented to this Court for review, this statement is improper and should be stricken or disregarded.

- At pages 3-5, Respondents repeatedly and improperly refer to Shirley's "irrevocable resignation" and "attempted" rescission of his resignation. Whether Shirley's resignation is "irrevocable" and the impact of his letter rescinding the same goes directly to the contested legal issue at the heart of this appeal. Respondents' characterizations are therefore improper and should be stricken or disregarded.

- At page 4, Respondents state that on May 17, 2019, Chairperson Cooley "wrote a letter to Shirley on District letterhead 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." Because this statement is contested, without evidentiary support, and not relevant to the issues presented to this Court for review, this statement is improper and should be stricken or disregarded.

- At pages 5-6, Respondents state: "When the other four members of [the] Board refused to cooperate in filing a joint submittal with the circuit court to determine the issue of Shirley's resignation, Respondents were left with no choice but to file on June 14, 2019, a declaratory judgment action requesting the circuit court to declare Shirley's resignation 'effective immediately' valid and irrevocable." There is no evidence in the record that the Board's other four members refused to cooperate, and any such statement is contested. Because this statement is contested, without evidentiary support, and not relevant to the issues presented to this Court for review, this statement is improper and should be stricken or disregarded.

- At page 6, Respondents refer to an off-the-record conference with counsel and Judge Maddox, "in which the factual background and case procedures were agreed upon." What occurred in the off-the-record conference is, necessarily, not in the record. The on-the-record hearing that followed the "off-the-record" conference is in the record. Appellant objects to Respondents' assertion that "the factual background . . . was agreed upon" and that "the parties acknowledged that all facts were set forth in pleadings, affidavits and briefs of the parties." Because this statement is contested and is without evidentiary support, this statement is improper and should be stricken or disregarded. Additionally, this court should rely upon only those facts which are in the record, and not merely upon assertions that appear in briefs that are not otherwise supported by affidavits or documentary evidence.

As a result of Respondents' violations of this Court's rules and for the additional reasons listed above, Respondents' Statement of the Case and Facts section should be stricken or disregarded.

b. Shirley's resignation email was void *ab initio* and his lack of knowledge of the District's Board policy regarding resignations does not render the policy null and void.

Respondents argue that Shirley's ignorance of the District's Board Policy BBBC, requiring a letter of resignation to be submitted thirty (30) days prior to the effective date, precludes Appellant from arguing now that his resignation was void *ab initio*. Respondents provide no legal support for this contention nor is it logical. Shirley's apparent ignorance of this Board policy does not act to render the policy null and void, just as a person's ignorance of the law is no excuse for violating it. That Shirley acted in contradiction of the Board policy is further reason for this Court to find that the resignation never had any legal effect.

Further, Respondents argue that S.C. Code Ann § 8-1-145 supersedes the District's policies. As discussed more fully in Appellant's Initial Brief and below, § 8-1-145 does not govern this resignation. Even if the Court were to find, as the lower court did, that § 8-1-145 applies to the resignation at issue here, a resignation that is void *ab initio*, is without legal effect from the beginning, and therefore, further legal analysis of its legal effect is pointless. *See* Black's Law Dictionary (11th ed. 2019) (defining "Ab initio" as "From the beginning"); *see also Lukich v. Lukich*, 368 S.C. 47, 58, 627 S.E.2d 754, 760 (Ct. App. 2006), (Anderson, J. dissenting) ("An agreement is said to be 'void *ab initio*' if it has at no time had any legal validity.").

Accordingly, this Court may end its analysis here, and reverse the circuit court's decision on the grounds that Shirley's attempted resignation was void such that it never created a vacancy.

c. Shirley's emailed resignation, if it was ever valid, was properly withdrawn pursuant to *State v. Stickley*.

Respondents concede that the common law rule under *State v. Stickley* holds that a public official may withdraw his resignation at any time until "the offer to resign is accepted by the proper authority." 80 S.C. 64, 64, 61 S.E. 211, 212 (1908). In this case, the Board neither met nor took

any action to accept the resignation in the three days between Shirley's email and his letter withdrawing his resignation. Accordingly, under *Stickley*, Shirley properly and legally withdrew his resignation.

Respondents urge the Court to uphold the circuit court's finding that § 8-1-145, not *Stickely*, applies, arguing that the language of the statute is clear and unambiguous. As noted in Appellant's Initial Brief, there are numerous reasons why the statute's language cannot be deemed clear and unambiguous in application to the present case. The legislative history of § 8-1-145, as analyzed thoroughly and convincingly by the Attorney General, suggests this statute was intended for specific situations related to special elections. *See* 2019 WL 3243933 (S.C.A.G. June 4, 2019). Furthermore, the statute states a public official "may" submit a written irrevocable resignation, signifying that the official has the option of submitting a resignation which is specifically and explicitly irrevocable. *Id.* at *5. That the statute's language is discretionary lends further credence to the view that this statute was intended to apply only in "the limited situation where a public officer who holds an 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." *Id.* Finally, the interpretation of § 8-1-145, as advocated by Respondents, puts the statute directly in conflict with 100+ years of South Carolina common law, and our courts are loath to presume that the Legislature intended to abrogate the common law unless it was explicit in doing so. *See Abba Equip., Inc. v. Thomason,* 335 S.C. 477, 483, 517 S.E.2d 235, 238 (Ct. App. 1999) (noting that the 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").

Respondents further urge that this Court be guided by *State ex rel. Munroe v. City of Poulsbo*, 109 Wash. App. 672, 674, 37 P.3d 319, 320 (2002), a Washington State Court of Appeals

case, interpreting a Washington state statute. The statute at issue in *Munroe* bears little resemblance to § 8-1-145, and this Court need not seek guidance from other state courts on matters of statutory construction where, as here, the statutes are so markedly different. However, to the extent *Munroe* may be instructive, it serves to demonstrate that *Stickley* and § 8-1-145 address different situations and do not, in the words of the *Munroe* court, "answer the same question."

In *Munroe*, the court was focused on a single statute and its subsequent amendment related to the resignation of public officials. The statute, Wash. Rev. Code § 42.12.010 was first interpreted in the 1907 case of *Royse v. Superior Court for Kitsap County,* 46 Wash. 616, 91 P. 4 (1907). *Royse* considered Wash. Rev. Code § 42.12.010, in relation to Washington State's common law, which like South Carolina's common law rule announced in *Stickley*, viewed a public official's resignation incomplete until it had been accepted by the appropriate body. *Munroe,* 109 Wash. App. at 676, 37 P.3d at 322. In interpreting the statute, the *Royse* court found "[t]he silence of the statute in that regard should be construed to mean that the established common law method still obtains, and that a resignation is not complete until it has been accepted by the appointing power." *Id.* (citing *Royse*, 46 Wash. at 623, 91 P. at 4.). In 1981, Wash. Rev. Code § 42.12.010 was amended to clarify that a vacancy "shall be deemed to occur upon the effective date of the resignation." *Munroe,* 109 Wash. App. at 674, 37 P.3d at 320. The *Munroe* court found that "the plain language of the 1981 amendment responds to the same question [addressed in *Royce*]—what conduct creates a vacancy; but the statutory amendment provides a different answer, namely, a vacancy occurs upon the resignation's effective date." *Id.* at 678, 37 P.3d at 322.

Stickley and § 8-1-145 answer different questions. *Stickley* answers the question of when a public official can withdraw an ordinary resignation: the answer is, he may do so prior to acceptance by the appropriate public body. Section 8-1-145, read in its entirety, answers a

different, more narrow question: how may a public office holder set a specific date upon which an irrevocable resignation may be effective, such that he can take a new office once the vacancy in his old office occurs. The two questions are not coterminous and do not overlap in this case. Therefore, it cannot be said that § 8-1-145 clearly and unambiguously abrogates the common law as announced in *Stickley*.

Finally, Respondents attack the thorough and well-reasoned opinion of the South Carolina Attorney General, which found that § 8-1-145 was not applicable to the facts of this case and that the longstanding rule from *Stickley* should apply. Instead of offering any real rebuttal or counter-analysis of the Attorney General's legal arguments or analysis, Respondents assert, citing the circuit court's Order, that the Attorney General's opinion should be disregarded because the initial request for the AG's opinion "did not include a comprehensive recitation of the issue before the Court." Order. p. 4. Neither Respondents nor the Court below clarified what facts or issues were not presented to the Attorney General. There is no real or consequential difference between the facts and issues presented to the Attorney General and the facts and issues presented to the circuit court. The relevant facts are that Board Member Shirley submitted an arguably void resignation email on Tuesday and rescinded it three days later on Friday. In those three days, the Board did not meet or act to accept Shirley's resignation. Accordingly, even if Shirley's resignation was valid, his withdrawal of it was also valid, and a vacancy was never created.

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.

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Respectfully submitted,

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May 12, 2020
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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PROOF OF SERVICE

I certify that on May 12, 2020, I served the Initial Reply Brief of Appellant on the Respondents, Phillip Ashley, Kevin Craft, and Jimmy Ouzts, via e-filing, and by mailing copies to their respective counsel of record, via U.S. Mail, with proper postage attached, and addressed as follows:

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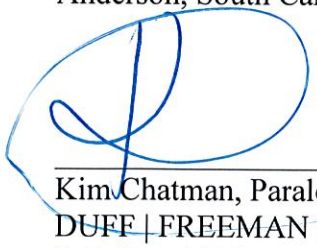

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May 12, 2020

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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 copy of the following documents:

1. Initial Reply Brief of Appellant; and
2. Proof of Service.

I would appreciate you date stamping and returning a copy of each document to our office.

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
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