

STATE OF SOUTH CAROLINA )  
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COUNTY OF LEXINGTON )  
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Jada Garris, )  
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Plaintiff, )  
 )  
v. )  
 )  
Lexington School District One, )  
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 )  
Defendant. )  
\_\_\_\_\_ )

**IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT**

Case No.: 2017-CP-32-04435

**ORDER GRANTING ATTORNEYS' FEES  
AND COSTS**

**RECEIVED**

**May 12 2020**

**SC Court of Appeals**

This matter came before the Court on a Motion for Costs and Fees after a bench trial on five separate alleged violations of the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, et seq., known as FOIA. The Court finds in favor of the PLAINTIFF.

**Introduction**

Plaintiff Jada Garris, a former Lexington School District One bus driver and current member of the Defendant Lexington School District One School Board (“the Board”), alleged at trial that the Defendant Board committed five violations of the Freedom of Information Act, SC. Code Ann. §§ 30-4-10, et seq. (“FOIA.”) After a bench trial, the Court found for the Plaintiff on one of the five alleged violations of FOIA, but found for the Defendant on all other counts.

**Factual Basis:**

Plaintiff first filed suit in December 2017, asserting 12 violations of the FOIA. Prior to trial, but not before Plaintiff sought counsel and incurred costs, Defendant produced the documents Plaintiff had been seeking. Plaintiff subsequently, and voluntarily, dismissed the seven public records violations on June 13, 2019. Plaintiff proceeded to trial on the five other alleged violations of FOIA, and prevailed on one count. In bringing this suit against the

Defendant, Plaintiff alleges that she spent \$48,995.80 (\$47,427.54 in attorneys' fees and \$1,568.26 in costs). This is supported by affidavits of her counsel, Andrew Radeker and Taylor Smith. Plaintiff further provided time cards detailing the time spent by each attorney on the matter, and listing their hourly rate which was \$350 and \$300 an hour respectively<sup>1</sup>. Lastly, Plaintiff provided affidavits of two other attorneys, Mr. Jay Bender and Mr. Robert Butcher. In these affidavits Mr. Bender and Mr. Butcher detail their experience with cases similar to the one brought by Plaintiff, and submit to the Court that the rates and total amount of fees submitted by Plaintiff's attorneys are reasonable.

In opposition, Defendant offers affidavits from Ms. Kathy Schillaci and Mr. Jonathan Milling, to demonstrate the rates these attorneys have charged for FOIA cases. These affidavits Defendant argues that because these attorneys, who have been practicing for longer than Plaintiff's attorneys, charged less than Mr. Radeker or Mr. Smith, Plaintiff's fees are not reasonable. As such, Defendant argues that the Court should reduce the fees and costs awarded to Plaintiff to these rates, if any are awarded. Additionally, Defendant argues that, because Plaintiff prevailed on only one claim, the court should further reduce any costs and fees awarded to reflect that Plaintiff prevailed on 1/5 of the allegations at trial.

#### **Discussion of Law:**

The Freedom of Information Act, or FOIA, requires that public bodies, such as the Lexington County School District One School Board, give the public written notice of their meetings in order to foster open governments<sup>2</sup>. Additionally, records of a public body must be made available for public inspection, unless those documents fall within the parameters of S.C.

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<sup>1</sup> The Court does note, however, that Plaintiff's Attorney Mr. Smith was originally billing at a rate of \$250 an hour, but that his rate was raised to \$300 an hour in November of 2017.

<sup>2</sup> S.C. Code Ann. § 30-4-80(A).

Code Ann. § 30-4-40.<sup>3</sup> When a party seeking relief under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.* (“FOIA”), prevails, “the may be awarded reasonable attorney’s fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney’s fees.”<sup>4</sup> S.C. Code Ann. § 30-4-10 does not define “prevailing party”, but the Supreme Court of South Carolina has previously stated that a prevailing party is “one who successfully prosecutes an action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered.”<sup>5</sup> Additionally, a party is not required to prevail on every allegation to be found a prevailing party.<sup>6</sup> While one who prevails at trial certainly qualifies as a “prevailing party”, when a public body only produces the requested information after suit is brought under FOIA, the plaintiff who sought the requested information is still the prevailing party.<sup>7</sup>

The six factors South Carolina courts traditionally consider in determining the amount of attorney’s fees to be awarded are (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for

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<sup>3</sup> S.C. Code Ann. §30-4-30.

<sup>4</sup> S.C. Code Ann. § 30-4-100(b).

<sup>5</sup> *Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 156, 711 S.E.2d 895, 897 (2011) (quoting *Heath v. County of Aiken*, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990) (alteration in original)).

<sup>6</sup> *Heath v. Cty. of Aiken*, 302 S.C. 178, 182, 394 S.E.2d 709, 711 (1990).

<sup>7</sup> *Sloan*, 409 S.C. 551, 762 S.E.2d 687, 689 (2014); *Sloan v. Friends of the Hunley, Inc.*, 393 S.C. 152, 711 S.E.2d 895, 897-98 (2011).

similar legal services; and (6) the beneficial results obtained<sup>8</sup>. The court must make specific findings as to each factor, but no one factor in and of itself is controlling.<sup>9</sup>

**Analysis:**

Under both the provisions of FOIA cited above, and relevant case law, Plaintiff was the prevailing party as she not only recovered documents from the Defendant prior to trial but prevailed on an allegation at trial. As such, Plaintiff is entitled to recover reasonable attorney's fees, as detailed in S.C. Code Ann. § 30-4-10. Though Defendant argues that, as a current member of the school board, Plaintiff cannot recover attorney's fees from Defendant. However, Defendant offers no case law to support this contention. Additionally, Plaintiff only recently became a member of the school board, and the lawsuit was started years prior to her ascension. In light of this fact, and the Plaintiff's status as the prevailing party, she is entitled to recover her fees.

Plaintiff has asserted that she has spent \$48,995.80 in pursuing claims against the Defendant. Plaintiff's attorneys submitted time cards to the Court to demonstrate the 132.34 hours spent on the case, their respective hourly rates, and the costs associated with the litigations. To support these figures Plaintiff submitted affidavits of two other attorneys within the same field, Mr. Bender and Mr. Butcher.

1. The Nature, Extent, and Difficulty of the Legal Services Rendered.

Plaintiff's attorneys began representing Plaintiff in June of 2017. Since that date Plaintiff's attorneys have spent a considerable amount of time, over 130 hours, preparing for and

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<sup>8</sup>See *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296 (1989); *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997); *Burton v. York Cty. Sheriff's Dept'*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004)

<sup>9</sup> *Horton v. Jasper Cty. Sch. Dist.*, 423 S.C. 325, 330, 815 S.E.2d 442, 445 (2018).

litigating this case. Plaintiff's attorneys settled some claims through negotiations with Defendants and proceeded to a week-long bench trial in October 2019. Defendant does not contest Plaintiff's assertions as to the nature, extent, or difficulty of the services rendered in this case. The Court finds that the nature, extent, and difficulty of the legal services rendered warrant an award of attorney's fees to Plaintiff.

2. The Time and Labor Necessarily Devoted to The Case.

As was discussed above, Plaintiff's attorneys spent numerous hours both preparing for and litigating this case. Defendant does not contest the amount of time Plaintiff's attorneys spent preparing, nor do they contest the amount of labor that preparation included. As such, the Court finds that Plaintiff presented sufficient evidence as to this factor to support an award of attorney's fees.

3. The Professional Standing of Counsel.

Plaintiff's attorneys, Mr. Radeker and Mr. Smith, have a combined 21 years of experience in civil litigation, including civil rights and constitutional rights cases, including pursuing FOIA cases. Plaintiff offered the affidavits of both Mr. Bender and Mr. Butcher to further demonstrate their professional standing amongst their peers. Both Mr. Bender and Mr. Butcher assert Plaintiff's attorneys are well regarded in their field and have the requisite amount of experience to handle a case such as this one. The Defendant does not dispute Plaintiff's attorneys' professional standing; as such, the Court finds that Plaintiffs have offered sufficient evidence as to this factor.

4. The Contingency of Compensation.

Plaintiff's attorneys undertook to represent Plaintiff on an hourly basis. Plaintiff is a former bus driver and a current school board member. Plaintiff's attorneys assert that they may have difficulty gaining full compensation, due to Plaintiff's financial situation, without an award of attorney's fees from the Court. The Defendant does not dispute the manner in which Plaintiff's attorneys chose to be compensated for their representation. As such, the Court finds that sufficient evidence exists to support this factor.

5. The Fee Customarily Charged in the Locality for Similar Legal Services.

Though Defendant does not dispute the manner in which Plaintiff's attorneys have chosen to be compensated, Defendant does dispute the rate charged by each attorney. As discussed above, Plaintiff submitted the affidavits of Mr. Bender and Mr. Bucher to support their contention that their hourly rate is similar to those customarily charged in the area for similar services. Defendants offered affidavits of two other attorneys, Ms. Schillaci and Mr. Milling to demonstrate the rates that these two attorneys charge, \$300 an hour and \$250 an hour, to represent clients in a FOIA case. Defendants contend that Plaintiff's rate should be reduced by 15% due to the discrepancies between the rates chosen by these attorneys and those chosen by Plaintiffs. However, Defendants did not offer affidavits directly disputing the amount charged by Plaintiff's attorneys, nor any case law to support their request to lower the rate chosen by Plaintiff's attorneys. Additionally, the affidavits of Ms. Schillaci and Mr. Milling were pulled from other cases as representations of rates in the community, but contain little detail as to the scope of their representation of the clients at issue in those affidavits, and contain no opinions by either attorney as to whether the rates chosen by Plaintiff's attorneys were reasonable. The Court finds that sufficient evidence exists to support Plaintiff's contention that the rates chosen by her

attorneys are similar to those charged in the area. As such, sufficient evidence exists to support this factor.

6. The Beneficial Results Obtained

Plaintiff contends that because she secured the release of several documents prior to trial, and because the Court found for her on one of five allegations presented at trial, Plaintiff's attorneys obtained a beneficial result. In looking at the time sheets submitted by Plaintiff's attorneys, no differentiation was made between each allegation when either attorney was logging the amount of time spent working on the case. As such it is difficult to parse out the amount of time and money each allegation represented in the total amount.

Defendants argue that no beneficial results were obtained, as Defendant no longer utilizes the procedure the Court found violated FOIA. Defendant contends that Plaintiff's attorney's fees should be reduced to 1/5 of the amount requested, or 1/12 to reflect the original 12 allegations, in order to reflect the only allegation Plaintiff prevailed on at trial. Neither method of calculation offered by the Defendant takes into account Plaintiff's status as the prevailing party concerning the documents Defendant turned over prior to trial. The Court agrees that the beneficial results obtained are minimal, and this factor cuts against the Plaintiff's request for fees and costs.

Though Defendant prevails on the last factor, the factors in *Burton* and *Speed* must be considered as a whole; no one factor is outcome determinative.<sup>10</sup> Plaintiff presented ample evidence to find in their favor on factors one through five, and in light of that, the Court finds that awarding Plaintiff her full costs and fees would represent a reasonable award.

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<sup>10</sup> *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997); *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004); *Horton v. Jasper Cty. Sch. Dist.*, 423 S.C. 325, 330, 815 S.E.2d 442, 445 (2018).

**Conclusion:**

For the reasons set forth above, the Court finds The Court finds in favor of PLAINTIFF GARRIS AND AWARDS ALL COSTS AND FEES REQUESTED AND INCURRED \$48,995.80 (\$47,427.54 in attorneys' fees and \$1,568.26 in costs).

IT IS SO ORDERED.

THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

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THE HONORABLE WILLIAM A. MCKINNON



Lexington Common Pleas

**Case Caption:** Jada Garris VS Lexington County School District One

**Case Number:** 2017CP3204435

**Type:** Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

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