

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Walton J. McLeod, Circuit Court Judge

CASE NO. 09-CP-40-01307
CASE NO. 13-CP-40-02159

RECEIVED
MAY 27 2020
SC Court of Appeals

Frieda H. Dortch, Appellant,

v.

City of Columbia, Planning & Development Services/Zoning Division a/k/a City of Columbia
Board of Zoning Appeals, Respondent.

REPLY
TO RESPONDENT CITY'S RETURN TO
APPELLANT DORTCH'S MOTION TO STRIKE, ETC.

M. Baron Stanton (S.C. Bar #7970)
STANTON LAW OFFICES, P.A.
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Columbia, SC 29202
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ATTORNEY FOR APPELLANT
FRIEDA H. DORTCH

This appeal is an appeal of an appeal of an appeal. Dortch appealed to the City of Columbia Board of Zoning Appeals (“BOZA”), the decisions of the zoning or building officers of the City, who denied her a permit to fix her house.

From the 2008 and 2013 determinations of BOZA, Dortch appealed to the Richland County Circuit Court.

From the March and April 2019 determinations of the Circuit Court, Dortch filed this appeal on May 15, 2019 to the South Carolina Supreme Court.

The S.C. Supreme Court transferred the case to this Court with the instruction that if it appears that the principal issue is the constitutionality of a statute or ordinance, this Court shall transfer the case back to the S.C. Supreme Court.¹ The parties have both filed their initial briefs and designations of matter to be included in the Record on Appeal.

On May 8, 2020, Appellant Dortch filed a motion pursuant to Rule 210 (c), SCACR, for an order striking from Respondent’s Designation of Matter to be Included in the Record on Appeal, three items, on the grounds that Rule 210 (c), SCACR prohibits their inclusion in the record. The items are three transcripts prepared in October of 2019 from three DVDs made by an unknown person or persons in 2008 and 2013 relating to the BOZA proceedings.²

¹Issue Number 1 of Dortch’s Initial Appellant’s Brief, discussed in the Brief at 20-33, is, “Is retroactive application of City Ord. §17-275 unconstitutional and is application of City Ord. § 17-202(e) to terminate Dortch’s vested right to have and maintain the up-and-down duplex which was her family home unconstitutional?” In its Initial Respondent’s Brief, the City concedes, “The principal issue addressed by Appellant in the appeal to this Court is whether the application of the zoning ordinance unconstitutionally terminated her vested rights.” (Init. Resp. Brf. at 9.)

²In its Initial Respondent’s Brief at 4, the City states, “A total of three hearings were held by the Board, of which there are video and audio recordings and written transcripts.” The transcripts referred to did not exist before the instant appeal and were not presented to the Circuit Court or Dortch for consideration of the appeals from BOZA.

Rule 210 (c) prohibits inclusion of “matter which was not presented to the lower court or tribunal.” In its Return, the Respondent City concedes the subject items themselves were not so presented.³ This fact should require striking the matter.

However, despite the explicit appellate rule, Respondent City contends in its Return that the transcripts, which it chose not to prepare or file or certify when Dortch was preparing and arguing her high-stakes appeals to the Circuit Court, should be helpful, now. Respondent contends these items should be allowed at this late date for “ease of reference” and because they would be “user-friendly.”

Appellant recognizes that in a given appeal from Circuit Court to this Court or the S.C. Supreme Court, the transcript of the Circuit Court proceedings often is not prepared until after the appeal, see Rule 207, SCACR (addressing ordering of transcript), and thus the transcript itself was not a thing “presented to the lower court.” Yet, in these instances, it is eligible to be included in the Record on Appeal, because specifically permitted by Rule 209 (a), and in most cases is prepared by a court reporter supervised by Court Administration, who was actually present at the proceedings, and who actually managed exhibits introduced into evidence, took notes, and made any recordings which were made.

These putative transcripts, however, were prepared October 21, 2010 by a private court reporter, not a Court Administration court reporter. Despite a caption page on each indicating the approximate Circuit Court caption and case numbers, the putative transcripts are not transcripts

³In fact, in its Initial Respondent’s Brief, the City argues that the Circuit Court’s consideration was limited to the record presented to it. Resp. Brf. at 4, n. 3 (“Those materials are limited to the transcripts, audio/video recordings, and other materials submitted by Respondent to the circuit court”). Respondent did not submit transcripts to the Circuit Court.

of proceedings before the Circuit Court. The transcripts are transcripts of DVD recordings of proceedings before BOZA in 2008 and 2013.

Those proceedings had different captions and case numbers, not appearing at all on the caption pages of the transcripts.⁴ The cover pages of the transcripts incorrectly identify them as “Depositions” of either an “Audio Meeting” or a “Video Meeting.”⁵ The putative transcript of the July 8, 2008 proceedings notes ten (10) times, that the proceedings are “inaudible,” the putative transcript of the September 9, 2008 proceedings notes twenty-two (22) times that the proceedings are “inaudible,” and the putative transcript of the February 12, 2013 proceedings notes eight (8) times that the proceedings are “inaudible.”⁶ It is clear that the person transcribing the DVDs in October 2019 was not present as a court reporter or otherwise at the 2008 and 2013 proceedings, and there is absolutely nothing to indicate that she had any personal knowledge about the manner of making the recordings, or the occurrences in the room not recorded. Respondent City attaches to its Return, her certificate that “the foregoing transcript is a true, accurate, and complete record.” However, her notations of inaudible portions indicate, to the contrary, that the transcript is not a complete record, and if the audio was bad enough to be

⁴For example, the actual paper records of the 2013 BOZA proceedings did not list a case name with a “versus” in it, and instead simply listed Dortch as “applicant” and “property owner,” in “Case Number 12-081-V,” whereas the putative transcript incorrectly uses the Court of Appeals case name and case file number and Circuit Court case numbers from both cases, but not the BOZA case number for the 2013 proceeding. The pertinent BOZA agenda page, and the “caption” page of the corresponding putative transcript are attached to this Reply.

⁵For example, the cover page of the putative transcript of the 2013 BOZA proceedings states that it is “Deposition of: Video Meeting 02/12/13 October 21, 2019 In the Matter of: Dortch, Frieda Vs. City Of Columbia, Et Al.” This cover page is attached to this Reply.

⁶The index pages listing these notations are attached to this Reply.

“inaudible” in some places, it was likely bad enough to be misunderstood in others, and thus, not accurate. The present stage of appeal is not the time to be doing audits and comparisons and revisions.

As noted, these putative transcripts were not included in the putative “records” of the BOZA proceedings which the City was required to file in the appellate proceedings in the Circuit Court. The transcripts did not exist at the time the Circuit Court considered the case, and therefore, the Circuit Court did not consider, and could not have considered them. The City did provide to the Circuit Court, the three DVDs, but no transcripts whatsoever.⁷ The putative transcripts should be stricken from Respondent’s Designation, and should not be included in the Record on Appeal.

The portion of Dortch’s motion addressed to allowing the DVDs themselves to remain on file with the Circuit Court and not be included in the prepared Record, or allowing only one copy of the items to be filed, has indeed been resolved by agreement of the parties. After consulting with the case manager on the likelihood of no problem with sending one of each DVD, the parties have agreed to do that, pending any other directive of the Court as to custody or number of additional copies.

⁷As recounted in Dortch’s Initial Appellant’s Brief at 5-6, n.1, the City did not file the putative record of the 2008 BOZA proceedings until approximately January 5, 2018, and never filed, as such, a record for the 2013 BOZA proceedings, but attached various papers to an April 30, 2013 motion filed in the Circuit Court. The subject transcripts were included in neither.

See and compare S.C. Code §§6-29-800(B) and 6-29-830(A). which require the officer from whom the appeal to the board is taken to immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken, which require filing the certified record of the BOZA proceedings within 30 days of appeal to Circuit Court, which require that the record so filed include a transcript of the sworn testimony taken, which require the record so filed to include a copy of the board’s written decision, and which require that the written decision of the board separately state the board’s findings of fact and conclusions of law.

For the foregoing reasons, Appellant Dortch requests the three putative transcripts never presented to the Circuit Court be stricken from Respondent's designation. Dortch also requests that the time for filing the Record be extended to a reasonable time of ten days after determination of this motion.

Respectfully submitted,

s/M. Baron Stanton

M. Baron Stanton

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1728 Main Street

P. O. Box 245

Columbia, South Carolina 29202

803-929-1484

ATTORNEY FOR APPELLANT
FRIEDA H. DORTCH

Date: 5/23/20

CITY OF COLUMBIA
BOARD OF ZONING APPEALS AGENDA

FEBRUARY 12, 2013 - 10:00 AM
EAU CLAIRE PRINT BUILDING
3907 ENSOR AVENUE (N. MAIN STREET AND MONTICELLO ROAD)
COLUMBIA, SOUTH CAROLINA

ERNEST W. CROMARTIE, III • PATRICK HUBBARD • CALHOUN MCMEEKIN, III • PRESTON YOUNG
PATRICIA DURKIN • REGGIE MCKNIGHT • CHUCK SALLEY

PRIOR TO ENTERING COUNCIL CHAMBERS, PLEASE TURN ALL ELECTRONIC DEVICES
(CELL PHONES, PAGERS, ETC.) TO THE SILENT, VIBRATE, OR OFF POSITION.

I. CALL TO ORDER and DETERMINATION OF QUORUM

II. CONSENT AGENDA

A. OLD BUSINESS

None.

B. NEW BUSINESS

1. 13-004-SE Dist. 3 2507 Devine Street (TMS# 11316-15-12) Special Exception to establish a residential dwelling unit in a commercial district (Penelope M. Noble)(C-2).
2. 13-006-SE Dist. 2 3122 B Beltline Boulevard (TMS# 14004-03-51) Special Exception to establish a non-emergency medical transportation service (Martin L. Smith, Midlands Transportation Service, LLC)(C-3).

III. REGULAR AGENDA

A. OLD BUSINESS

3. 12-081-V Dist. 3 825 and 825 ½ Heidt Street (TMS# 11409-15-03) Varlance to the minimum lot size requirements to reestablish a duplex (Freida S. Hatten Dortch) (RG-1, -DP).

B. NEW BUSINESS

4. 13-003-SE Dist. 2 1206 Heidt Street (TMS# 11410-02-17) Special Exception to expand a religious organization (Willie Williams, First Nazareth Baptist Church)(RG-2, -DP).
5. 13-005-SE Dist. 1 4913 N. Main Street (TMS# 11604-03-12) Special Exception to establish drinking establishment (Ravinder Thiara)(MX-1, -NC).
6. 13-007-SE Dist. 2 3922 W. Beltline Boulevard (TMS# 11609-08-02) Special Exception to establish service station (Krunal Parmar, Jay Hanuman LLC)(C-3).

Deferred

AUDIO TRANSCRIPT

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MEETING: Frieda H. Dortch, Appellant
vs.
City of Columbia, Planning &
Development Services/Zoning
Division a/k/a City of Columbia
Board of Zoning Appeals, Respondent

DATE: February 12, 2013

CALENDAR NO: 2019-000868 (2009CP4001307 and
2013CP4002159)

FILE NO: 5253.00614 and 5253.00714

REPORTED BY: Tia Shean, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Asheville, NC

(828) 785-5699



Deposition of:
Video Meeting 02/12/13

October 21, 2019

In the Matter of:
**Dortch, Frieda Vs. City Of Columbia,
Et Al.**

A. William Roberts, Jr & Assoc.
800-743-3376 | calendar-awr@veritext.com | www.veritext.com

<p>foregoing 36:6 forties 8:8 four 3:21 16:10 19:4,6 21:5 28:7 frieda 1:11 2:25 37:5 friendly 1:20 front 7:15,18,19 14:21 17:18 full 21:19 further 9:2 36:9</p>	<p>greenville 1:22 grossly 28:17 guess 15:22 19:23 25:7,21 33:4</p>	<p>historical 16:2 29:16,18 32:12 hit 9:7 hmm 8:3,12 17:14 22:1</p>	<p>inside 15:20 inspect 13:3 32:14 instance 30:25 intend 6:14,23 intention 21:1 interested 18:15 36:11 interpret 8:21 issue 20:13,25 24:5 30:20</p>
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Walton J. McLeod, Circuit Court Judge

RECEIVED
MAY 27 2020
SC Court of Appeals

CASE NO. 09-CP-40-01307
CASE NO. 13-CP-40-02159

Frieda H. Dortch, Appellant,

v.

City of Columbia, Planning & Development Services/Zoning Division a/k/a City of Columbia
Board of Zoning Appeals, Respondent.

CERTIFICATE OF SERVICE

I, M. Baron Stanton, do hereby certify that I have, on May 23, 2020 served the foregoing
Reply to City's Return to Motion to Strike, etc. upon the Respondent by causing a copy
thereof to be e-mailed as indicated in the attached e-mail copy pursuant to S.C. Sup. Ct. Ord.
2020-03-20-1, to the address indicated below:

peteb@rplfirm.com
(Peter M. Balthazor, Esquire)

s/M. Baron Stanton
M. Baron Stanton

B stanton

From: B stanton <bstanton@stantonlaw.com>
Sent: Saturday, May 23, 2020 4:26 PM
To: 'Pete Balthazor'
Cc: 'Barry Stanton'
Subject: RE: Dortch v. City Reply to Return to Motion to Strike, etc.
Attachments: Reply to Citys Return to Motion to Strike etc.pdf

Pete, attached is our Reply to your Return to our Motion to Strike, etc., which we are hereby serving.

Best,

Barry

Cell 803-530-2642
Offc. 803-9291484
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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

TELEPHONE 803-929-1484
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M. BARON STANTON
ATTORNEY AT LAW

Re: **Frieda H. Dortch**, Appellant v. City of Columbia, Planning & Development
Services/Zoning Division a/k/a City of Columbia Board of Zoning Appeals,
Respondent
Case No. 09-CP-40-1307
Case No. 13-CP-40-02159
Appellate Case No. 2019-000868

Dear Ms. Kitchings:

We enclose Dortch's Reply to Respondent City's Return to Appellant Dortch's Motion to Strike, etc., including proof of service.

Thank you for your assistance.

With kind regards,

Yours very truly,



M. Baron Stanton

MBS:dmy
Enclosure

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