THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2020-000770

Jada Garris,……..Respondent,

v.

Lexington County School District One, ……..... Appellant.

MOTION AND PETITION TO REQUIRE APPELLANT TO OBTAIN SUPERSEDEAS OR ALLOW TRIAL COURT TO ENFORCE ORDER

Respondent (hereinafter "Garris") hereby petitions this court pursuant to Rule 241, SCACR, for an order 1) stating that this appeal does not relieve the Appellant (hereinafter "the District") of its obligation to comply with an unappealed order of the trial court or 2) that requires the District to obtain a supersedeas (and sets out the required steps for it to do so) and, if the District does not take the required actions to obtain the supersedeas, provides that the trial court has the power and authority to enforce its order. The grounds for this motion are as follows:

1. The documents filed with the trial court that are submitted to this court with this motion are incorporated herein by reference.

2. This petition is verified by Garris in accordance with Rule 241(d)(3), SCACR.

3. The underlying case is one in which Garris obtained a judgment on November 22, 2019, that the District had violated the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.* ("FOIA"). The District has not appealed that order, and the time to appeal following the court's ruling on motions to reconsider has run.

4. Garris made a timely motion for attorneys' fees and costs under S.C. Code Ann. § 30-4-100(b). By order filed April 6, 2020, the trial court awarded Garris her attorneys' fees and costs but did not provide a deadline for the District to pay Garris the awarded sum. The District indicated that it was contemplating an appeal of that order, had no present plans to pay the awarded fees and costs, and did not plan to pay the awarded fees and costs if an appeal was brought.

5. Accordingly, Garris moved for the trial court to set a deadline for payment and clarify the nature of the order.

6. The trial court issued an order on that motion on April 17, 2020, directing the District to make payment to Garris by May 7, 2020. That order provides that "[t]he award of attorney's fees and costs addressed in the Court's prior order shall be paid electronically within twenty (20) days of the date of this Order. The Court declines to issue an advisory opinion as to the effect of any possible appeal."

7. The court declined to address the then-unripe controversy concerning the nature of the April 6 order granting Garris' motion for attorney's fees and costs and, accordingly, whether an appeal would

automatically stay the District's obligation to pay the money electronically, as the April 17 order directs.

8. By order filed on May 1, 2020, the court denied the District's motion to reconsider the April 6 order and extended the District's payment deadline to May 15, 2020.

9. The District appealed the April 6 order awarding the fees and costs and the May 1 order denying the District's motion to reconsider that April 6 order. The District did not appeal the April 17 order that directed the District to deliver the money to Garris by a certain date and by certain means.

10. The District has neither provided the funds in compliance with the April 17 order nor sought, much less obtained, a supersedeas. The District has insisted that its obligation to deliver the ordered money to Garris is automatically stayed by service of its notice of appeal and that it does not have to do anything to obtain a supersedeas.

11. Accordingly, Garris moved the trial court to issue a rule to show cause as to why the district should not either pay the money as ordered, seek and obtain a supersedeas, or be sanctioned for contempt.

12. The trial court determined that it should rule on this motion on the basis of written submissions from the parties. Both parties submitted memoranda.

13. Garris provided authorities and argument showing that 1) the District has failed to appeal an order that directs it to provided the awarded funds to Garris, 2) the orders at issue fall within an exception to the

automatic appellate stay, in any event, and 3) that Garris has made the required showing of the District's contempt, such that the court should issue a rule to show cause.

14. The District argued that the automatic appellate stay prevented it from having to comply with the trial court's orders. The District argued that only the Court of Appeals can address questions of whether the automatic appellate stay is in effect or whether the District is required to obtain supersedeas, contending that Garris had moved before the wrong court. The District also contended that it should be awarded attorneys' fees for its time spent dealing with the motion for a rule to show cause.

15. The trial court issued a Form 4 order on May 27, 2020, stating in its entirety as follows: "Plaintiff's Rule to Show Cause is DENIED and DISMISSED for lack of jurisdiction. See Rules 205 and 241, SCACR. Defendant's request for attorneys' fees for responding to the Rule to Show Cause is similarly DENIED for lack of jurisdiction."

16. The trial court erred in denying the motion and refusing to issue a rule to show cause.

17. The trial court erred in determining that it did not have jurisdiction to rule on Garris' motion. At the heart of that motion was a question about whether the appellate stay was in effect, and such questions are to be addressed by the trial court in the first instance. Rule 241(d)(1), SCACR.

18. In light of the trial court's denial of Garris' motion, Garris may now bring this petition to this court. Rule 241(d)(2), SCACR.

19. For two independent reasons, the appellate stay is not in effect with regard to the District's obligation to deliver the awarded money to Garris.

20. First of all, as shown by the District's notice of appeal and the copies of orders it submitted to this court, the District is not appealing the trial court's April 17, 2020, order, which directs that that "[t]he award of attorney's fees and costs addressed in the Court's prior order shall be paid electronically within twenty (20) days of the date of this Order." When it applies, the appellate stay applies to appealed orders, not ones that have not been appealed. The District is simply subject of an unappealed order, with which it has not complied, requiring it to pay money to Garris.

21. Even if that order were being appealed, however, it would not be stayed simply by the service of a notice of appeal alone. The trial court's directive to the District to pay by a certain deadline directs the delivery of personal property (money) and enjoins the District to pay the awarded fees and costs. See Mattison v. Stone, 99 S.C. 151, 82 S.E. 1046, 1047 (1914) (money is personal property); Gordon v. Busbee, 397 S.C. 119, 139, 723 S.E.2d 822, 833 (Ct. App. 2012) (same). Orders that do either of those things are not automatically stayed by an appeal. See Rule 241(b)(2)&(8), SCACR; S.C. Code Ann. § 18-9-150.

22. Further, Supreme Court precedent, albeit from the late 1900s, also provides that orders directing one party to pay money to another party are not automatically stayed by an appeal. Pelzer Mfg. Co. v. Cely, 40 S.C. 430, 18 S.E. 790 (1894).

23. The April 17 order provides that "[t]he award of attorney's fees and costs addressed in the Court's prior order shall be paid electronically within twenty (20) days of the date of this Order." That is a direction to deliver the money to Garris.

24. The April 17 order is also an injunction. An injunction is "[a] court order commanding or preventing an action." Black's Law Dictionary (11th ed. 2019). The April 17 order fits this bill: it enjoins, i.e., commands the District to pay Garris by a certain date.

25. There is no specific formula court to set the conditions for an appellant to gain a supersedeas for an injunction; rather, this appears to be committed to the discretion of the court. See Rule 241(b)(8), SCACR; cf. Atwood Agency v. Black, 646 S.E.2d 882, 883 (2007) (mentioning trial court's refusal to grant supersedeas of injunction pending appeal). There is, however, a specific manner in which supersedeas is to be obtained of an order directing the delivery of personal property:

> If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal unless the things required to be assigned or delivered be brought into court or placed in the custody of such officer or receiver as the court shall appoint or unless an undertaking be entered into on the part of the

> appellant, with at least two sureties and in such amount as the court or a judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

S.C. Code Ann. § 18-9-150.

26. An appellant can obtain a stay under this section by 1) depositing the subject personal property with the court, typically with the clerk of court, 2) by depositing it with "such officer or receiver as the court shall appoint[,]" or 3) by entering into an undertaking, "with at least two sureties and in such amount as the court or a judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal." Id.

27. The District has not done any of those things, yet the District has refused to comply with the trial court's orders.

28. This court should issue an order that either 1) states that this appeal does not relieve the District of its obligation to comply with the unappealed April 17 order, such that the trial court should hold contempt proceedings if the District does not comply or 2) that requires the District to obtain a supersedeas (and sets out the required steps for it to do so) and, if the District does not take the required actions to obtain the supersedeas, provides that the trial court has the power and authority to enforce its order.

29. The undersigned has served this document on opposing counsel by email to registered AIS email address on the date given below.

WHEREFORE Respondent prays for an order 1) stating that this appeal does not relieve the Appellant of its obligation to comply with the unappealed April 17,

2020, order of the trial court or 2) that requires the Appellant to obtain a supersedeas (and sets out the required steps for it to do so) and, if the Appellant does not take the required actions to obtain the supersedeas, provides that the trial court has the power and authority to enforce its order.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Taylor M. Smith IV
S.C. Bar No. 101584
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorneys for Respondent

June 5, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2020-000770

Jada Garris,……..Respondent,

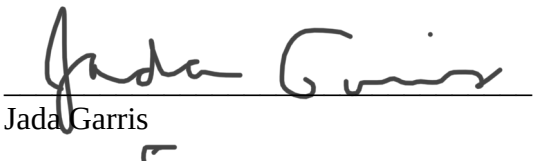
v.

Lexington County School District One, ……..... Appellant.

VERIFICATION OF MOTION AND PETITION TO REQUIRE APPELLANT TO OBTAIN SUPERSEDEAS OR ALLOW TRIAL COURT TO ENFORCE ORDER

I, Jada Garris, being the Respondent in the above-captioned appeal, hereby certify, depose, say, and verify that the facts stated in the motion and petition named above, with which this verification is being submitted, are true.

I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILLFULLY FALSE, I AM SUBJECT TO PUNISHMENT BY CONTEMPT.



Jada Garris

June 5, 2020

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**ELEVENTH JUDICIAL CIRCUIT**
COUNTY OF LEXINGTON)	
)	
Jada Garris,)	Case No.: 2017-CP-32-04435
)	
Plaintiff,)	
v.)	
)	**ORDER GRANTING ATTORNEYS' FEES AND COSTS**
Lexington School District One,)	
)	
Defendant.)	
_____)	

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[1]. 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 affidavidts 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[2]. Additionally, records of a public body must be made available for public inspection, unless those documents fall within the parameters of S.C.

[1] 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.
[2] S.C. Code Ann. § 30-4-80(A).

Code Ann. § 30-4-40. [3] 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."[4] 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."[5] Additionally, a party is not required to prevail on every allegation to be found a prevailing party.[6] 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.[7]

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

[3] S.C. Code Ann. §30-4-30.
[4] S.C. Code Ann. § 30-4-100(b).
[5] *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)).
[6] *Heath v. Cty. of Aiken*, 302 S.C. 178, 182, 394 S.E.2d 709, 711 (1990).
[7] *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[8]. The court must make specific findings as to each factor, but no one factor in and of itself is controlling.[9]

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 pursing 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

[8]*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 Dep't*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004)
[9] *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.[10] 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.

[10] *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.

_____

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

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP3204435

Jada Garris
PLAINTIFF(S)

Lexington County School District One
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff's Motion to Clarify is GRANTED IN PART. The award of attorney's fees and costs addressed in the Court's prior order shall be paid electronically within twenty (20) days of the date of this Order. The Court declines to issue an advisory opinion as to the effect of any possible appeal.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/17/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Lexington Common Pleas

Case Caption: Jada Garris VS Lexington County School District One

Case Number: 2017CP3204435

Type: Order/Electronic Form 4

So Ordered

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

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**ELEVENTH JUDICIAL CIRCUIT**
COUNTY OF LEXINGTON)	
)	
Jada Garris,)	Case No.: 2017-CP-32-04435
)	
Plaintiff,)	
v.)	
)	**DECISION OF THE COURT**
Lexington School District One,)	
)	
Defendant.)	
)	

This matter came before the Court on Defendant's Motion for Reconsideration 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 DENIES Defendant's motion.

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 Plaintiff on one of the five alleged violations of FOIA, but found for Defendant on all other counts. The Court then awarded Plaintiff attorneys fees and costs of $48,995.80 under S.C. Code Ann. § 30-4-10. Defendants then filed this Motion to Reconsider the fee award.

Factual Basis:

Defendants challenge the Court's award on three basis: 1) that there was no evidence in the record that Plaintiff voluntarily dismissed several of her allegations because she received documents requested under FOIA during the pendency of the lawsuit; 2) that Plaintiff is not the

prevailing party in the underlying matter and 3) that because Defendant prevailed on one factor of the *Burton* test, Plaintiff should not have been awarded her full costs and fees. The Court disagrees.

Analysis:

I. There was unrebutted testimony at trial that Plaintiff dismissed several of her allegations against Defendant only after Defendant turned over documents requested by the Plaintiff under FOIA.

There was unrebutted testimony at trial that Plaintiff received several documents from the Defendant during the pendency of this litigation. Though Defendants now argue that they substantially complied with all FOIA requests prior to trial, and only turned over one responsive document during the pendency of the trial. However, that was not reflected in the trial evidence. In fact, Plaintiff Garris testified she did not receive the last of the requested documents until June 2019, approximately 18 months after this action was filed. The Court therefore denies Defendant's Motion on this ground.

II. Plaintiff is the prevailing party in this matter, and as such is statutorily entitled to recover her attorney's fees and costs.

Under both the provisions of FOIA and relevant case law also cited in the previous Order, Plaintiff was and is the prevailing party. There was unrebutted trial testimony that several allegations were dismissed prior to trial only after documents were produced during litigation. Additionally, Plaintiff prevailed on another allegation at trial, proving that the Defendant violated FOIA. Defendant argues that because Plaintiff only prevailed on one allegation out of five, Defendant is in fact the prevailing party. The Court disagrees. Each side prevailed in part. Although S.C. Code Ann. § 30-4-100 does state "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" (emphasis added), the Court has discretion to either award the full amount or a

partial amount in this situation. In the Court's view, awarding some fraction of the attorney's fees would greatly reduce the incentive for filing FOIA claims. The Court also notes this matter went all the way to a trial, and the Plaintiff did prevail in part at trial. The Court therefore exercises its discretion and awards the full amount of fees. The Court denies Defendant's Motion on this ground.

III. The evidence provided by the Plaintiff as to the *Burton* factors justifies awarding Plaintiff her full costs and fees.

Defendant argues that Plaintiff's degree of success in the main action was minimal, in their opinion, and as such so the award of attorney's cost and fees should be reduced. Though Defendant is correct that Plaintiff only prevailed on one allegation of a violation of FOIA, the degree of a party's success must be measured as a whole. Here, even after being forced to turn over documents during the pendency of this litigation, the Defendant never conceded that they violated FOIA, forcing the Plaintiff to proceed to trial. Plaintiff then successfully proved at trial that Defendant violated FOIA. Reading *Burton* in the way argued by Defendant would mean the only way a prevailing party would receive the full amount of reasonable fees expended would be to prevail on every cause of action. This is not the law. A determination of the appropriate award of attorney's fees and costs is within the discretion of the Court, and in this case the Court has determined that Plaintiff is legally entitled to recover the full amount of $48,995.80.

Additionally, Defendant argued that the Court misunderstood their position as to whether they wished to challenge the amount of time Plaintiff's attorneys spent on the underlying case, as well as the amount each of Plaintiff's attorneys charged as an hourly fee. However, Defendant offered no affidavits of other attorneys directly challenging the fee each attorney charged as unreasonable or challenging the amount of time each spent on the underlying matter. In fact, the only evidence that the Defendant offered to challenge Plaintiff's assertions were affidavits from

attorneys on cases entirely separate from the underlying matter. In considering Plaintiff's counsel's assertions and Defendant's affidavits, the Court determined that both the fees charged by Plaintiff's counsel, and the amount of time billed, were reasonable. The Court does not see any basis to disturb that ruling today.

Finally, S.C. Code Ann. § 30-4-100 explicitly permits full attorney's fees to be awarded to a party who prevails only in part. The Court has chosen to do so in this case to prevent discouraging future FOIA plaintiffs.

Defendant's motion is denied on this ground.

Conclusion:

For the reasons set forth above, the Court DENIES Defendant's Motion to Reconsider on all grounds. The amount owed shall be paid to Plaintiff within fourteen (14) days of this order.

IT IS SO ORDERED.

THIS THE ____ DAY OF _____, 2020.

_____

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

STATE OF SOUTH CAROLINA **COUNTY OF LEXINGTON**	**IN THE COURT OF COMMON PLEAS** **CASE NO. 2017-CP-32-04435**
Jada Garris, individually, and on behalf of all others similarly situated, **Plaintiff,** **vs.** **Lexington County School District One,** **Defendant.**	**MOTION AND PETITION FOR RULE TO SHOW CAUSE WHY DEFENDANT SHOULD NOT COMPLY WITH ORDER OR BE HELD IN CONTEMPT**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff moves before this court pursuant to Rule 70, SCRCP, along with all other applicable law, for the issuance of a rule to show cause as to why the Defendant should not either be held in contempt and sanctioned or comply with this court's orders that direct the Defendant to pay the Plaintiff her attorneys' fees and costs in the above-captioned action.

The Plaintiff so moves on the following grounds:

1. The affidavit and verification of Taylor Smith that is filed with this motion is incorporated herein by reference.
2. The April 6, 2020, order in this case awarded the Plaintiff her attorneys' fees and costs but did not provide a deadline for the Defendant to pay the awarded sum to the Plaintiff. The Defendant indicated that it was contemplating an appeal of that order, had no present plans to pay the awarded fees and costs, and did not plan to pay the awarded fees and costs if an appeal was brought.
3. Accordingly, the Plaintiff moved for the court to set a deadline for payment and clarify the nature of the order.

4. The court issued an order on that motion on April 17, 2020, directing payment by May 7, 2020. That order provides that "[t]he award of attorney's fees and costs addressed in the Court's prior order shall be paid electronically within twenty (20) days of the date of this Order. The Court declines to issue an advisory opinion as to the effect of any possible appeal."
5. The court declined to address the then-unripe controversy concerning the nature of the April 6 order granting the Plaintiff's motion for attorney's fees and costs and, accordingly, whether an appeal would automatically stay the Defendant's obligation to pay the money electronically, as the April 17 order directs.
6. By order filed on May 1, 2020, the court denied the Defendant's motion to reconsider the April 6 order and extended the Defendant's payment deadline to May 15, 2020.
7. The question the court previously declined to address is now ripe. The Defendant has appealed but has neither provided the funds in compliance with the order of this court nor sought, much less obtained, a supersedeas.
8. By what it ordered, the court's April 17 order actually does answer the question of whether the Defendant's appeal automatically stays its obligation to provide this money. The notice of appeal did not stay that obligation. Money is personal property. Mattison v. Stone, 99 S.C. 151, 82 S.E. 1046, 1047 (1914); Gordon v. Busbee, 397 S.C. 119, 139, 723 S.E.2d 822, 833 (Ct. App. 2012). The court's directive to the Defendant to pay by a certain deadline directs the delivery of personal property (money) and enjoins the Defendant to pay the awarded fees and costs. Orders that do either of those things are not automatically stayed by an appeal. See Rule 241(b)(2)&(8), SCACR; S.C. Code Ann. § 18-9-150.

9. Plaintiff's counsel has brought this point to Defendant's counsel's attention and let them know that the Plaintiff would be taking appropriate steps to address any failure of the Defendant to comply with the court's order.

10. The Defendant has simply failed to do as it has been ordered to do and has failed to take the required steps to obtain a supersedeas. The Defendant is in contempt of this court.

The undersigned has consulted with opposing counsel about the matter subject of this motion but did not reach a consensual resolution of it.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Taylor M. Smith IV
S.C. Bar No. 101584
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
taylor@harrisonfirm.com
ATTORNEYS FOR PLAINTIFF

May 18, 2020

STATE OF SOUTH CAROLINA **COUNTY OF LEXINGTON**	**IN THE COURT OF COMMON PLEAS** **CASE NO. 2017-CP-32-04435**
Jada Garris, individually, and on behalf of all others similarly situated, **Plaintiff,** **vs.** **Lexington County School District One,** **Defendant.**	**AFFIDAVIT AND VERIFICATION OF TAYLOR SMITH**

Personally appeared before me Taylor M. Smith IV, who, first being duly sworn, deposes and says as follows:

1. My name is Taylor M. Smith IV. I am an attorney for the Plaintiff in the above-captioned lawsuit.
2. I have personal knowledge of the facts set forth in this affidavit and am competent to testify about them. I also verify that the facts stated in the motion and petition filed with this affidavit are true and correct.
3. On April 6, 2020, the court ruled on the Plaintiff's motion for attorneys' fees and costs, issuing an order that found 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)."
4. On April 16, 2020, the Plaintiff filed a motion to clarify and order deadline for payment.
5. On April 17, 2020, the court ruled on that motion and issued an order that directed that the "award of attorney's fees and costs addressed in the Court's prior order shall be paid electronically within twenty (20) days of the date of this Order."

6. On the morning of April 20, 2020, to aid with compliance of the court's April 17 order, my law partner emailed Defendant's counsel wiring instructions to our firm's trust account.
7. On May 1, 2020, the court denied the Defendant's motion to reconsider the decision awarding the Plaintiff her attorneys' fees and costs in an order that directed that the "amount owed shall be paid to Plaintiff within fourteen (14) days of this order."
8. Both in the Plaintiff's motion to clarify and order deadline and in later email correspondence my law partner Drew Radeker has communicated to the Defendant that the order awarding attorneys' fees and costs and the two orders following it that are mentioned above fall within an exception to the rule that service of a notice of appeal automatically stays the relief in an appealed order.
9. Defendant's counsel has stated that they believe that service of the Defendant's notice of appeal stays the Defendant's obligation to comply with this court's order and deliver the money to Plaintiff's counsel as the court has directed.
10. Submitted as an exhibit to this affidavit is a copy of email correspondence between counsel about this.
11. On May 12, 2020, the Defendant served a notice of appeal.
12. The Defendant has not sought a supersedeas.
13. This morning I logged into our law firm's trust bank account to review recent activity and noticed no deposit from a recent wire transfer or other evidence of any payment of funds by Defendant or its counsel.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

s/ Taylor Smith
Taylor M. Smith IV
S.C. Bar No. 101584

May 18, 2020

Columbia, South Carolina

Drew Radeker

From: Drew Radeker
Sent: Friday, May 8, 2020 9:00 PM
To: David Lyon
Cc: Dave Duff; Taylor Smith; Rhonda Schaub; Law clerk; Kim Chatman
Subject: RE: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

David:

I hope you and your family are doing well in this strange time. Thank you for letting us know that your client intends to appeal. I agree that the order at issue is not a money judgment; however, as discussed in a previous filing of ours, at least one other exception to the automatic appellate stay applies to it. Accordingly, service of a notice of appeal will not stay the court's order to pay the awarded fees and costs, and we will take such action as we deem appropriate if the defendant fails to comply with the order.

Thank you. Have a nice weekend.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
Telephone: (803) 779-2211
Facsimile: (803) 779-6700
www.harrisonfirm.com

From: David Lyon <dlyon@dfl-lawfirm.com>
Sent: Wednesday, May 6, 2020 1:51 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Dave Duff <dduff@dfl-lawfirm.com>; Taylor Smith <Taylor@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Law clerk <lawclerk@harrisonfirm.com>; Kim Chatman <kchatman@dfl-lawfirm.com>
Subject: RE: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

Taylor, Drew
If you haven't already been advised, I wanted to let you know that the Lexington One Board voted 5-1 last night to appeal the circuit court's April 6 order awarding the Plaintiff $48,995.80 in attorney's fees and costs. Time for appealing that order was stayed by our timely filing of the Rule 59 motion. Now that that motion was denied, on May 1, we have 30 days to serve the notice of appeal, though we probably will serve the notice early next week. It is our position that service of the notice of appeal will act to automatically stay the matter and relief ordered in the appealed order, and that the exception to automatic stay under Section 18-9-130 for money judgments does not apply.

David N. Lyon

Duff Freeman Lyon
P.O. Box 1486
Columbia, SC 29202
Ph. (803) 790-0603
Fax (803) 790-0605
Firm Website www.dfl-lawfirm.com

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Monday, April 20, 2020 8:52 AM
To: David Lyon <dlyon@dfl-lawfirm.com>
Cc: Dave Duff <dduff@dfl-lawfirm.com>; Taylor Smith <Taylor@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Law clerk <lawclerk@harrisonfirm.com>; Kim Chatman <kchatman@dfl-lawfirm.com>
Subject: RE: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

David:

Following up on Friday's order in this case, wiring instructions to our trust account are attached to this message.

Thank you.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
Telephone: (803) 779-2211
Facsimile: (803) 779-6700
www.harrisonfirm.com

From: David Lyon <dlyon@dfl-lawfirm.com>
Sent: Wednesday, April 15, 2020 8:06 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Dave Duff <dduff@dfl-lawfirm.com>; Taylor Smith <Taylor@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Law clerk <lawclerk@harrisonfirm.com>; Kim Chatman <kchatman@dfl-lawfirm.com>
Subject: RE: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

Drew,

The District has a right to appeal the court's decision and would have 30 days from the final order to file the notice. Obviously, the Board has not had a chance to make a decision as to whether to appeal, nor has their time to decide run. If the Board decides to appeal, I would assume the Order would be stayed and payment would be delayed pending resolution of the appeal. For all of these reasons, I think any sort of motion seeking a specific date of payment is premature. Certainly, if the Board decides not to appeal, the District would submit the payment soon after their decision.
Let me know if you want to discuss further.
David

David N. Lyon
Duff Freeman Lyon
P.O. Box 1486
Columbia, SC 29202
Ph. (803) 790-0603
Fax (803) 790-0605
Firm Website www.dfl-lawfirm.com

DFL
DUFF | FREEMAN | LYON
ATTORNEYS AND COUNSELORS AT LAW

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Tuesday, April 14, 2020 2:35 PM
To: David Lyon <dlyon@dfl-lawfirm.com>
Cc: Dave Duff <dduff@dfl-lawfirm.com>; Taylor Smith <Taylor@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Law clerk <lawclerk@harrisonfirm.com>; Kim Chatman <kchatman@dfl-lawfirm.com>
Subject: RE: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

David:

Judge McKinnon's order doesn't explicitly direct your client to pay the attorney's fee award within a specific time. Accordingly, I ask that we agree on a date for your client to do that. If we haven't done that by the end of tomorrow, time constraints will compel us to make a motion seeking clarification or amendment of the order in that regard. If we make such a motion, though, we can always still come to an agreement on this later before it gets ruled on.

Thanks. Let me know if and when you can. Stay safe and stay home.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
Telephone: (803) 779-2211
Facsimile: (803) 779-6700
www.harrisonfirm.com

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Sunday, April 12, 2020 2:19 PM
To: David Lyon <dlyon@dfl-lawfirm.com>
Cc: Dave Duff <dduff@dfl-lawfirm.com>; Taylor Smith <Taylor@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Law clerk <lawclerk@harrisonfirm.com>; Kim Chatman <kchatman@dfl-lawfirm.com>
Subject: Re: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

Thanks. Happy Easter.

Drew Radeker

Sent from my iPhone - please excuse any typos

> On Apr 12, 2020, at 2:17 PM, David Lyon <dlyon@dfl-lawfirm.com> wrote:
>
> Drew,
> I hope you are well.
> We have received the Order and are considering the various options available moving forward. We will be in touch soon.
> David
>
> David N. Lyon
> Duff Freeman Lyon
> P.O. Box 1486
> Columbia, SC 29202
> Ph. (803) 790-0603
> Fax (803) 790-0605
> Firm Website www.dfl-lawfirm.com
>
> <image001.jpg>
>
> *The information contained in this message may be privileged and/or confidential and protected from disclosure. If the reader of this message is not the intended recipient or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately and delete all copies of the material.*

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Tuesday, April 7, 2020 3:51 PM
To: David Lyon <dlyon@dfl-lawfirm.com>; Dave Duff <dduff@dfl-lawfirm.com>
Cc: Taylor Smith <Taylor@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Law clerk <lawclerk@harrisonfirm.com>; Kim Chatman <kchatman@dfl-lawfirm.com>
Subject: RE: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

Gentlemen, I hope this message finds you both doing well. I trust you have both seen the attached order. I know this is a challenging time for everyone, including administratively. I write to ask about what the estimated timeline

is for when we might receive the funds for the fees and costs awarded in this order.

Given our working remotely, it would probably be best for all concerned if the funds were wired to us (as this would minimize potential COVID-19 transmission chances).

Thank you. Stay safe.

Drew Radeker

-----Original Message-----
From: David Lyon <dlyon@dfl-lawfirm.com>
Sent: Thursday, March 19, 2020 4:28 PM
To: McKinnon, William A. <wmckinnonj@sccourts.org>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Dave Duff <dduff@dfl-lawfirm.com>; McKinnon, William A. Law Clerk (Dakota Knehans) <wmckinnonlc@sccourts.org>; Taylor Smith <Taylor@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Law clerk <lawclerk@harrisonfirm.com>; Kim Chatman <kchatman@dfl-lawfirm.com>
Subject: RE: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

Judge McKinnon,
We have just filed the attached Defendant's sur-reply to Plaintiff's last memorandum in support of the petition for attorney's fees. I am filing the unstamped copy, as the stamped copy is not yet available from the public index, and I'm not sure if it will be today.
We will look forward to your ruling on the briefs.
Thank you for your flexibility in helping the parties resolve this matter expeditiously.
David

David N. Lyon
Duff Freeman Lyon
P.O. Box 1486
Columbia, SC 29202
Ph. (803) 790-0603
Fax (803) 790-0605
Firm Website www.dfl-lawfirm.com

-----Original Message-----
From: McKinnon, William A. <wmckinnonj@sccourts.org>
Sent: Tuesday, March 17, 2020 3:45 PM
To: David Lyon <dlyon@dfl-lawfirm.com>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Dave Duff <dduff@dfl-lawfirm.com>; McKinnon, William A. Law

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Jada Garris, individually, and on behalf of all others similarly situated, Plaintiff, v. Lexington County School District One, Defendant.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT C.A. No.: 2017-CP-32-04435 **DEFENDANT'S RETURN TO PLAINTIFF'S MOTION FOR RULE TO SHOW CAUSE**

Defendant Lexington County School District One ("Defendant" or "District"), hereby responds to Plaintiff's Motion pursuant to Rule 70, SCRCP, for the issuance of a Rule to Show Cause as to why the District should not be held in contempt and sanctioned for failing to comply with the Court's Orders directing Defendant to pay attorney's fees and costs to Plaintiff. For the reasons more fully discussed below, the District cannot be held in contempt.

STATEMENT OF THE CASE/PROCEDURAL HISTORY

On April 6, 2020, the Court issued an Order awarding Plaintiff the entire amount of her requested attorney's fees and costs ($48,995.80), having found that she was a prevailing party in this FOIA action. On April 16, 2020, Defendant filed and served a Rule 59 Motion to Alter or Amend the Judgment, asking the Court to reconsider its April 6 Order. Also on April 16, Plaintiff filed a "Motion to Clarify and Order Deadline for Payment." Plaintiff's Motion refers to conversations between Plaintiff's counsel and defense counsel regarding when payment would be made and a dispute between the parties over whether the notice of appeal would stay the Court's Order. Plaintiff argued that the automatic stay should not apply, citing Rule 241(b)(1), (2) & (8), SCACR, as possible exceptions. In addition to seeking a deadline for the issuance of the payment

of attorney's fees, Plaintiff also requested a ruling on the question of whether the automatic stay applied.

On April 17, 2020, the Court granted Plaintiff's Motion in part, stating: "The award of attorney's fees and costs addressed in the Court's prior order shall be paid electronically within twenty (20) days of the date of this Order. The Court declines to issue an advisory opinion as to the effect of any possible appeal."

On May 1, 2020, the Court denied the Defendant's Rule 59 Motion to Reconsider the April 6 Order and established a new payment deadline of May 15, 2020. Thereafter, on May 5, 2020, Defendant's Board voted 5-1 to appeal the April 6 Order and subsequent May 1 decision denying the District's Rule 59 Motion. On May 6, the District's counsel informed Plaintiff's counsel via email of the Board's decision and the anticipated filing of the notice of appeal.

On May 12, 2020, Defendant served and filed its Notice of Appeal. On the same date, the undersigned sent via email and regular mail a letter to the Court alerting it to the disagreement between the parties over whether the appeal stayed the Court's Orders to pay Plaintiff's attorneys fees and costs.

In connection with discussions by defense counsel with the Board of Trustees of Defendant District regarding the District's rights of appeal, counsel informed the Board that filing an appeal would stay the order to pay the fees/costs. (See Affidavit of Cynthia S. Smith, Chairperson of Defendant District's Board of Trustees, filed contemporaneously herewith and discussed below). Accordingly, the District has not issued any payment of fees or costs to Plaintiff.

ARGUMENT

What underlies Plaintiff's attempt to have the District held in contempt is a dispute over whether, upon appeal, the automatic stay under Rule 241, SCACR, applies to the Court's April 6 Order and May 1 decision awarding Plaintiff all of the attorney's fees and costs. It is the District's position that no exception to the automatic stay applies and that the general rule, that the notice of appeal stays the order appealed from, governs. It is Plaintiff's position that one or more exceptions can be made to apply.

As a threshold matter, disputes over the application of exceptions to the automatic stay rule are to be resolved by the Court of Appeals, not the circuit court. In the publication Appellate Practice in South Carolina, Third Edition, co-authored by former Chief Justice Jean Hoefer Toal, it is stated at page 344: "Rule 241(b) SCACR, does not provide a procedure for settling disputes over the applicability of an exception to the Rule. When no procedure is specified, authority to resolve such a dispute is vested in the appellate court in which the appeal is pending, not the circuit court." In support of this statement, the publication cites two decisions, including *State v. Cooper*, 342 S.C. 389, 398, 536 S.E.2d 870, 876 (2000), for the proposition that the Court of Appeals has the power and the authority to rule upon issues arising under the appellate court rules, including those arising under the predecessor to Rule 241. Therefore, the District submits that the dispute at the heart of this matter must be addressed to the Court of Appeals, where the District's appeal of the attorney's fees/costs award is currently pending. For this reason alone, Plaintiff's contempt motion must be summarily denied.

Should this Court determine to consider the issues raised in Plaintiff's contempt motion, that motion should be denied for the basic reason that the District has not acted in "willful

disobedience" of the Court's order to pay. "Contempt results from the willful disobedience of a court order." *Am. Fed. Bank, FSB v. Kateman*, 335 S.C. 273, 276–77, 516 S.E.2d 1, 2 (Ct. App. 1999) (quoting *Henderson v. Henderson*, 298 S.C. 190, 197, 379 S.E.2d 125, 129 (1989)).

As attested to by the District's Board Chair, Cynthia S. Smith in her affidavit, in its consideration of whether to appeal the Court's fees/costs award, the District was advised by counsel that the filing of a notice of appeal would stay the Court's order to pay the fees and costs until the appeal was resolved. Counsel's advice was based on there being no statute, court rule, or case law holding that the general rule does not apply to a case such as this one. *See* Rule 241(b) (stating exceptions to the general rule are found in a statute, a court rule or case law). Additionally, this Court correctly and expressly declined to issue an advisory opinion as to the applicability of the automatic stay. Thus, given the Board's reliance on counsel's advice that an automatic stay of the pay order is triggered by the appeal, and there being no ruling from this Court to the contrary, it cannot be found that the District willfully disobeyed the Court's order; therefore, there can be no finding of contempt.

To the extent the District must, before this Court, address "the merits" of Plaintiff's claimed exemptions to the automatic stay rule, the following response is offered. First, Plaintiff's counsel has apparently conceded that attorney's fees are not money judgments, such that Rule 241(b)(1) would apply. South Carolina case law draws a distinction between "money judgements" of the type contemplated by S.C. Code Ann. § 18-9-130 and attorney's fees. *See Woodside v. Woodside*, 290 S.C. 366, 378, 350 S.E.2d 407, 415 (Ct. App. 1986) ("Historically, in this state an order for attorney fees has not been treated as a judgment that can be executed upon until it has at least been settled on appeal"). *See also State v. Cooper*, 342 S.C. 389, 399, 536 S.E.2d 870, 876 (2000)

(finding expert fees are not money judgments "not within the contemplation of 18-9-130" because they are "incidental to the case and do not constitute a traditional [money] judgement").

Plaintiff's counsel further asserts that "at least one other exception applies;" specifically, that Rule 241(b)(2) ("Judgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150") may apply or that Rule 241(b)(8) ("An appeal from an order granting an injunction or temporary restraining order") may be applicable. The lack of certainty about which, if either, of these exceptions applies demonstrates that there is no clear exception to the general rule and therefore, the automatic stay rule should apply.

The Rule 241(b)(2) exception for "Judgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150" cannot apply. While Plaintiff cites two decisions, (*Mattison v. Stone*, 99 S.C. 151, 82 S.E. 1046, 1047 (1914) and *Gordon v. Busbee*, 397 S.C.119, 139, 723 S.E.2d 822, 833 (Ct. App. 2012)), for the proposition that money is "personal," as opposed to real, property, neither of these cases interpret Rule 241(b)(2) and neither involve an awarding of attorney's fees/costs as an "assigning or delivering" of personal property. Even if money were considered "personal property" within the meaning of § 18-9-150, a judicial "awarding" of fees is not what is meant by an "assignment or delivery."

Plaintiff also postulates that Rule 241(b)(8), which provides an exemption for "an appeal from an order granting an injunction or temporary restraining order" may apply. However, it is apparent that the District is not appealing the granting of injunctive relief, but rather the awarding of statutory attorney's fees. In sum, neither of the exceptions to the automatic stay rule cited by Plaintiff apply.

CONCLUSION

For the above reasons, Plaintiff's contempt motion, initially, is an improper vehicle for resolving a dispute regarding the automatic stay rule under Rule 241, SCACR, an issue which properly should be brought before the appellate court. Further, the District cannot be held in contempt because it acted with counsel's advice and not in willful disregard of any court order. Finally, on the merits of the underlying issue, no recognized exception to the automatic stay rule applies. Accordingly, Plaintiff's contempt motion should be denied, and Defendant should be awarded reasonable attorney's fee for the cost of responding to this improper and baseless motion.

Respectfully Submitted,

DUFF | FREEMAN | LYON, LLC

By: *s/David N. Lyon*

David T. Duff (SC Bar #1768)
David N. Lyon (SC Bar #100676)
P.O. Box 1486
Columbia, SC 29202
Telephone: (803) 790-0603
Facsimile: (803) 790-0605
dduff@dfl-lawfirm.com
dlyon@dfl-lawfirm.com

Attorneys for Defendant Lexington County School District One

May 26, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Jada Garris, individually, and on behalf of all others similarly situated, Plaintiff, v. Lexington County School District One, Defendant.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT C.A. No.: 2017-CP-32-04435 **AFFIDAVIT OF CYNTHIA S. SMITH**

PERSONALLY APPEARED before me, Cynthia S. Smith, and after being first duly sworn, deposes and says:

1. I, Cynthia S. (Cindy) Smith, am the Chair of Board of Trustees (the "Board") for the Lexington School District One (the "District"). The District is the Defendant in the above matter, and now, the Appellant in the appeal of this matter.
2. I am over 18 years of age and I have personal knowledge of the matters set forth in this Affidavit.
3. I have served on the Board for nearly 20 years. I am also very familiar with this litigation, having served as a witness in the trial on the matter.
4. I am submitting this affidavit in support of the District's return to Plaintiff's Rule to Show Cause Motion filed on May 17, 2020. I am making these statements in my capacity as Board Chair, for the purpose of supporting this motion only. I am doing so without waiving, and expressly preserving, any attorney client privilege as to discussions

with the Board's attorney.

5. On May 5, 2020, the Board met for its regularly monthly meeting. During the meeting's executive session, at the request of the Board, legal counsel for the District met with the Board, to discuss a possible appeal of the award of attorney's fees and cost to the plaintiff. During that discussion, counsel informed the Board of the Court's deadline to pay the attorney's fees, May 14. Counsel further explained that the filing of an appeal, as is usually the case when appeals are taken, would stay the Court's Order awarding attorneys' fees and that if the appeal were filed before May 14, 2020, the District should not pay the attorney's fees. Counsel indicated that the appeal could be filed before May 14, 2020.
6. That evening, the Board voted 5-1 to appeal the Court's decision.
7. The appeal of the Court's Order was filed on May 12, 2020, and counsel informed the District that day that the appeal had been filed.
8. Based on the advice of counsel, with filing of the appeal the District did not pay the attorney's fees. However, in not paying, it was not the Board's intention to disobey a court order but rather to act as we were guided by legal counsel concerning the decision to appeal.

FURTHER AFFIANT SAITH NOT.

Signature: Cynthia S Smith

Name: Cynthia S. Smith

Title: Chair

SWORN to before me this 25th
Day of May 2020.

Dyan M Joly
Notary for the State of South Carolina

My Commission Expires: 8/5/26

Dyan M Joly
Notary Republic, State of South Carolina
My Commission Expires August 5, 2026

STATE OF SOUTH CAROLINA **COUNTY OF LEXINGTON**	**IN THE COURT OF COMMON PLEAS** **CASE NO. 2017-CP-32-04435**
Jada Garris, individually, and on behalf of all others similarly situated, **Plaintiff,** **vs.** **Lexington County School District One,** **Defendant.**	**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION AND PETITION FOR RULE TO SHOW CAUSE WHY DEFENDANT SHOULD NOT COMPLY WITH ORDER OR BE HELD IN CONTEMPT**

The Plaintiff submits this memorandum concerning her motion and petition seeking the issuance of a rule to show cause as to why the Defendant should not either be held in contempt and sanctioned or comply with this court's orders that direct the Defendant to pay the Plaintiff her attorneys' fees and costs in the above-captioned action. In addition to what is set forth here, the Plaintiff refers the court to her said motion.

DEFENDANT HAS NOT DONE WHAT IT MUST TO OBTAIN SUPERSEDEAS

The Defendant has indicated that serving a notice of appeal was all that was required to stay its obligation to comply with this court's orders directing payment of the Plaintiff's attorneys' fees and costs by the court's ordered deadline. That is not so.

First of all, as shown by the Defendant's notice of appeal and the copies of orders it submitted to the Court of Appeals, the Defendant is not appealing the court's April 17, 2020, order, which clarified the April 6, 2020, order and directs that that "[t]he award of attorney's fees and costs addressed in the Court's prior order shall be paid electronically within twenty (20) days of the date of this Order." It appears that considerations concerning whether there is an appellate stay are not at issue, since this order is not being appealed.

Even if it were being appealed, however, it would not be stayed simply by the service of a notice of appeal. The court's directive to the Defendant to pay by a certain deadline directs the delivery of personal property (money) and enjoins the Defendant to pay the awarded fees and costs. See Mattison v. Stone, 99 S.C. 151, 82 S.E. 1046, 1047 (1914) (money is personal property); Gordon v. Busbee, 397 S.C. 119, 139, 723 S.E.2d 822, 833 (Ct. App. 2012) (same). Orders that do either of those things are not automatically stayed by an appeal. See Rule 241(b)(2)&(8), SCACR; S.C. Code Ann. § 18-9-150.

The court's April 17, 2020, order provides that "[t]he award of attorney's fees and costs addressed in the Court's prior order shall be paid electronically within twenty (20) days of the date of this Order." That is a direction to deliver the money to the Plaintiff.

An injunction is "[a] court order commanding or preventing an action." Black's Law Dictionary (11th ed. 2019). The court's April 17, 2020, order fits this bill: it enjoins, i.e., commands the Defendant to pay the Plaintiff by a certain date.

The Defendant cites State v. Cooper, 342 S.C. 389, 399, 536 S.E.2d 870, 876 (2000), and Woodside v. Woodside, 290 S.C. 366, 378, 350 S.E.2d 407, 415 (Ct. App. 1986), for the proposition that this court's order to pay the attorneys' fees and costs its not a money judgment. First, whether the order is a money judgment is not the issue. Second, Woodside was decided under the law as it was before the adoption of the South Carolina Appellate Court Rules, and Woodside is not about either of the exceptions to the automatic appellate stay at issue here. Third, Cooper is also not on all fours with this case, as it was about the payment of fees directly to an expert, and the Cooper opinion expressly distinguishes between the payment to a non-party and the direction of payment to a party – the latter of which is what we have here. Cooper, 342 S.C. at 399.

The Defendant would have to seek and obtain supersedeas in order to have the court's order stayed. Rule 241(c)&(d), SCACR. "Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal." Rule 241(d)(1), SCACR.

There is no specific formula court to set the conditions for an appellant to gain a supersedeas for an injunction; rather, this appears to be committed to the discretion of the trial court. See Rule 241(b)(8), SCACR; cf. Atwood Agency v. Black, 646 S.E.2d 882, 883 (2007) (mentioning trial court's refusal to grant supersedeas of injunction pending appeal). There is, however, a specific manner in which supersedeas is to be obtained of an order directing the delivery of personal property.

> If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal unless the things required to be assigned or delivered be brought into court or placed in the custody of such officer or receiver as the court shall appoint or unless an undertaking be entered into on the part of the appellant, with at least two sureties and in such amount as the court or a judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

S.C. Code Ann. § 18-9-150. An example of a trial court order dealing with a supersedeas under this section is submitted with this memorandum as Exhibit A. (This is submitted as an example only.) An appellant can obtain a stay under this section by 1) depositing the subject personal property with the court, typically with the clerk of court, 2) by depositing it with "such officer or receiver as the court shall appoint[,]" or 3) by entering into an undertaking, "with at least two sureties and in such amount as the court or a judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal."

The Defendant has not done any of that. In any event, as discussed above, the Defendant has not appealed the court's April 17 order. The Defendant has simply allowed the payment deadline set by this court to pass without complying and without seeking, much less obtaining, a supersedeas of its obligation.

THE DEFENDANT SHOULD BE MADE TO SHOW CAUSE WHY IT SHOULD NOT BE HELD IN CONTEMPT

Contempt proceedings are a proper vehicle to address a party's noncompliance with an order. See Grossheusch v. Cramer, 377 S.C. 12, 29-30, 659 S.E.2d 112, 121 (2008). "A party who refuses to abide by an injunction entered by the court would of course be in contempt of court and subject to sanctions, and our jurisprudence clearly establishes that the proper procedure to determine whether a party should be held in contempt is to bring a summons and a rule to show cause." Id.

"Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct." Ex parte Lipscomb, 398 S.C. 463, 469, 730 S.E.2d 320, 323 (Ct. App. 2012) (quoting Widman v. Widman, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001)). "Once the moving party has made out a prima facie case [for contempt], the burden then shifts to the respondent to establish his . . . defense and inability to comply with the order." Id. (brackets added by Court of Appeals, quoting Ex parte Cannon, 385 S.C. 643, 661, 685 S.E.2d 814, 824 (Ct. App. 2009)).

If the contemnor-respondent is unable to show why he should not be held in contempt, the next part of the analysis is how to go about sanctioning the contemnor-respondent and whether he should be held in civil or criminal contempt. Generally, courts look to the following:

> Civil contempt must be shown by clear and convincing evidence. Poston v. Poston, 331 S.C. 106, 113, 502 S.E. 2d 86, 89 (1998). Criminal contempt must be shown beyond a reasonable doubt. Id. In

> determining whether a contempt sanction is criminal or civil, one must identify the purpose for which the sanction is imposed. Whereas civil contempt is either coercive or remedial in nature, criminal contempt is purely punitive. Id. at 111, 502 S.E. 2d at 88. Incarceration may be either civil or criminal. Id. at 112, 502 S.E. 2d at 89. The distinguishing factor is whether the incarceration is for a definite period of time, which is the hallmark of criminal contempt, or whether the contemnor may avoid or cut short the incarceration by complying with the court's directive, which indicates civil contempt. Id. The difference between the two is substantial because the constitutional safeguards provided in the Sixth Amendment may be triggered in criminal contempt proceedings. A contemnor has a constitutional right to a jury trial before a criminal sentence of more than six months incarceration may be imposed. Curlee v. Howle, 227 S. C. 377, 385, 287 S.E.2d 915, 919 (1982).

DiMarco v. DiMarco, 393 S.C. 604, 607, 713 S.E.2d 631, 633 (2011).

The Plaintiff is not asking the court to jump straight to sanctioning the Defendant. The Plaintiff, rather, has proposed that the court summon the Defendant to appear before this court and either show that it has complied with the order to deliver the funds to the Plaintiff or show cause, if any it has, why it should not be held in contempt and sanctioned.

WHAT SHOULD HAPPEN NOW

The Defendant has not obtained or even sought a supersedeas, so the issue before the court is contempt. The court should issue to the Defendant a rule to show cause. The Plaintiff has provided a proposed draft rule to show cause. The court could require the Defendant to submit its response to the rule in writing, rather than have an in person hearing.

If the court then determines that the Defendant is in contempt, an appropriate sanction would be to order the Defendant to provide the funds at issue to the Plaintiff by a certain date, not far in the future, and order that an additional amount to be paid to the Plaintiff accrue periodically until the Defendant complies (say, $1,000 per week of noncompliance). This would be a coercive, and, thus, civil contempt remedy. DiMarco, 393 S.C. at 607.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Taylor M. Smith IV
S.C. Bar No. 101584
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com
taylor@harrisonfirm.com
ATTORNEYS FOR PLAINTIFF

May 26, 2020

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

U.S. Bank, NA as trustee relating to the Chevy Chase Funding, LLC Mortgage Backed Certificates, Series 2004-B,

Plaintiff,

vs.

Alyce F. Otto, individually; Alyce F. Otto, Trustee Under declaration of Trust of Alyce F. Otto dated November 17, 2009, TD Bank, NA; The United States of America, acting by and through its agency the Internal Revenue Service; Laura Kerhulas Giese, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004; Mark Warner Kerhulas, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004; Jackson L. Munsey, Jr.; Citibank, NA

Defendants,

AND

Alyce F. Otto, Trustee Under declaration of Trust of Alyce F. Otto dated November 17, 2009,

Plaintiff,

vs.

Jackson L. Munsey, Jr.,

Defendant.

IN THE COURT OF COMMON PLEAS OF
THE SEVENTH JUDICIAL CIRCUIT

CASE NOS.: 2012-CP-42-3549
AND
2012-CP-42-2874

ORDER DENYING

MOTION TO RECONSIDER

This matter came before me upon the Motion to Reconsider filed by Jackson L. Munsey, Jr., for this Court to reconsider its previous order filed February 17, 2020, in the above-captioned consolidated actions. Upon review of the Motion to Reconsider, this Court's Order as To Bond

and Judgment, as well as the pleadings, the Motion to Reconsider filed by Jackson L. Munsey is DENIED.

Munsey's counsel has earlier indicated to the court that Munsey will likely appeal. The Order entered by this Court on February 17, 2020 deals with the Bond presently being held by the Clerk of Court as well as the entry of a personal judgment against Jackson L. Munsey, Jr.

After computation and credits, the personal judgment entered against Jackson L. Munsey, Jr., was found to be $210,143.05. Section 18-9-130(A)(1) provides that "Notice of Appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution. **Based on the foregoing Section, a stay of execution of the personal judgment against Jackson L. Munsey, Jr., in the amount of $210,143.05 pending appeal will be granted in the event a bond or other surety to guarantee the payment of the foregoing judgment pending appeal in the amount of $210,143.05 is deposited with the Clerk of Court.**

As to the bond presently being held by the Clerk of Court, and the Order entered by this Court on February 17, 2020 directs the how the Appeal Bond is to be distributed by the Clerk of Court. Under S.C. Code Ann. § 18-9-150, when an appeal is brought of a judgment that directs the delivery of personalty, the appeal stays execution of the judgment if "the things required to be assigned or delivered be brought into court[.]" The bond funds are presently being held by the Clerk of Court. Accordingly, in the event that Munsey serves and files a notice of appeal of the aforesaid order on or before March 18, 2020, the Spartanburg County Clerk of Court shall continue to hold the bond funds until the issuance of a remittitur. If Munsey does not serve and file a notice of appeal of the aforesaid order on or before March 18, 2020, the clerk shall disburse the bond funds in accordance with this Court's Order filed February 17, 2020.

And IT IS SO ORDERED.

The Honorable Gordon G. Cooper
Master-in-Equity for Spartanburg County

Spartanburg Common Pleas

Case Caption: Us Bank Na , plaintiff, et al VS Alyce F Otto , defendant, et al

Case Number: 2012CP4203549

Type: Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP3204435

Jada Garris
PLAINTIFF(S)

Lexington County School District One
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff's Rule to Show Cause is DENIED and DISMISSED for lack of jurisdiction. See Rules 205 and 241, SCACR.

Defendant's request for attorneys' fees for responding to the Rule to Show Cause is similarly DENIED for lack of jurisdiction.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/27/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Lexington Common Pleas

Case Caption: Jada Garris VS Lexington County School District One

Case Number: 2017CP3204435

Type: Order/Electronic Form 4

So Ordered

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

RECEIVED
Jun 05 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2020-000770

Jada Garris,……..Respondent,

v.

Lexington County School District One, ……..... Appellant.

PROOF OF SERVICE

I certify that I served the respondent's motion and petition to require appellant to obtain supersedeas or allow trial court to enforce order in this case by providing a copy of it by email to opposing counsel at the email addresses shown below and on the date shown below:

David T. Duff, Esq.
dduff@dfl-lawfirm.com

David N. Lyon, Esq.
dlyon@dfl-lawfirm.com

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Taylor M. Smith IV
S.C. Bar No. 101584
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorneys for Respondent

June 5, 2020