

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

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

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

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

v.

Anderson County School District Two Board of TrusteesAppellants

MEMORANDUM IN SUPPORT OF RESPONDENTS' MOTION TO DISMISS

STATEMENT OF THE CASE

This case originates from the submittal of an emailed resignation by William R. "Stu" Shirley (Shirley) from the Anderson County School District 2, Board of Trustees (Board). Shirley sent the resignation to the other Board members, the School District Superintendent, the I.T. coordinator for the School District, the H.R. director for the School District and the local newspaper editor. The email stated "effective immediately, I resign". (Tr. p. 101). The resignation further stated that Shirley's school email account was no longer required and a directive that the resignation letter may be published in the newspaper. (Tr. p. 101). Three days later Shirley sent a letter to the Board Chairperson Brenda Cooley (Cooley), attempting to withdraw his resignation. (Tr. p. 103). Cooley claims to have "accepted" Shirley's attempted

rescission on behalf of the Board. (Tr. p. 104). However, Cooley did not have the authority to take such action.

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

FACTS

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

On or about May 14, 2019, a member of the Defendant Board, Stu Shirley, (Shirley) tendered an email bearing **Subject: Resignation**. (Tr. p. 1010) The Email was dated May 14, 2019 and was addressed to the acting Chairperson¹ of the Defendant Board, the other trustees of the Defendant Board, Dr. Richard Rosenberger, Elaine Rider with the News Chronicle, a local newspaper, Susan Shirley and Lester McCall. The Email contained an irrevocable resignation which stated: "Therefore, effective immediately, I resign." (Tr. p. 101).

As a result of the distribution of the Email to the respective parties, Shirley's name was removed from the School District Two School Board website and his email account was closed. In addition, the Belton News Chronicle published news of Shirley's resignation the very next day, on May 15, 2019, notifying the public at large of his resignation. (Tr. p. 102).

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

On or about May 17, 2019 Shirley submitted a letter, attempting to rescind his previously submitted irrevocable resignation. (Tr. p. 103). This letter was directed solely to the Defendant Board Chair, Brenda Cooley. However, Ms. Cooley had "abdicated" her position as Chair and turned it over to Vice-Chair Bonnie Knight on May 13, 2019.

That same day, Brenda Cooley, Board Chair, wrote a letter back to Shirley on School District Two letterhead claiming she "accepted" Shirley's attempted rescission on behalf of the Anderson County Board of Trustees District Two. (Tr. p. 104). However, Ms. Cooley cannot do that, either in her individual capacity or as Board Chairperson, because it is a violation of Board Policy BBAA. (Tr. p. 105). As mentioned earlier, Brenda Cooley had "abdicated" her position as Chair and turned it over to Bonnie Knight.

The recitation of facts in the Attorney General opinion (Opinion) states "Both letters were sent to all member of our Board, and to the administrator, Mr. Nimmer of the Anderson County Board." (Tr. p. 107). This is incorrect, the resignation email was sent to all Board Members. However, the attempted rescission was only sent to Brent Cooley, Chairperson. (Tr. p. 104). Page 2 of the AG Opinion states: "There is no indication that either the Anderson County School District Two Board of Trustees or the Anderson County Board of Education accepted Stu Shirley's resignation before receiving notification of its withdrawal." (Tr. p. 108). This fact should have been resolved prior to the rendering of the Opinion. However, that begs the question: how does one not accept an irrevocable resignation which is "effective immediately"?

On or about May 22, 2019 Joey Nimmer, Administrator of the Anderson County Board of Education, received an email from an attorney (Ms. Lonesse Williams, with White & Story). (Tr. p. 116 – 117).

The Board held a special called meeting on May 23, 2019. Ashley relying upon a legal opinion from the Anderson County Board of Education asserted Shirley had resigned and a vacancy existed on the Board. (Tr. p. 40, para. 9). Ashley moved that Shirley be removed, and the vote failed on a three-three vote, with Shirley not participating in the vote. (Tr. p. 40, para. 10). Knight sought an opinion from the South Carolina Attorney General to the effect of Shirley's resignation and subsequent revocation of his resignation. (Tr. p. 40, para. 11).

Respondents assert that facts presented to the Attorney General were incorrect and did not accurately present the facts to support the opinion. (Tr. p. 107 – 114).

When the other four member of Board refused to cooperate in filing a joint submittal with the Circuit Court to determine the issue of Shirley's resignation, Respondents were left no choice but to file on June 14, 2019, a declaratory judgment action requesting the Circuit Court to declare Shirley resignation "effective immediately" valid and irrevocable. (Tr. p. 26 – 30).

Respondents' further requested a stay of all matters before the Board pending the decision of the Circuit Court. (Tr. p. 31 - 32).

June 27, 2019, the Court held an off the record conference with all counsel in which the factual background and case procedures were agreed upon. The Court announced on the record how the matter would be handled going forward and that the parties had agreed that the Shirley could participate in Board business but could not vote on District level hiring or firing decisions. (Tr. p. 144, l. 12-23; Tr. p. 22).

June 28, 2019, Appellants filed its Answer and Counterclaim. (Tr. p. 59 - 66).

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

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

On November 15, 2019, the Court issued its Order declaring Shirley's resignation "was valid and accepted before revocation occurred and a vacancy existed on the Board. (Tr. p. 13 - 18).

November 19, 2019, Appellant moved the Court to reconsider its Order pursuant to S.C.R.Civ.P. 59(e). (Tr. p. 132 - 136).

November 27, 2019, the Court issued an Amended Order which only changed the final sentence, directing the vacancy "be filled pursuant to the relevant laws of South Carolina." (Tr. p. 7 - 12).

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

On December 23, 2019, the Court denied Appellant's Rule 59 motion and issued its Final Order holding "due to the effective resignation of Shirley, the Court finds a vacancy on the Board of School District Two and orders the vacancy to be filled pursuant to the relevant laws of South Carolina." (Tr. p. 1 - 6)

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

ARGUMENT

In the instant matter Mr. Shirley's death and the filling of that seat by Anderson County School Board effectively ended the controversy. The case is fact specific and there is no relief to be afforded either party by the Court of Appeals.

Respondents, in response to the Appellant's filing to appeal Judge Maddox's Order of December 23, 2019, filed a Motion to Lift the Automatic Stay. Appellants have essentially made

the Respondents' case for dismissal in their "Defendant's Memorandum of Law in Opposition to Plaintiffs' Application to Lift Automatic Stay" (copy attached) stated in their first argument that "lifting the automatic stay would necessarily cause the primary contested issue in this case to become moot and the appeals court would lose jurisdiction. (Defendant's Memorandum p. 3)

"An appellate court will not pass judgment on moot and academic questions; it will not adjudicate a matter when no actual controversy capable of specific relief exists." *Sloan v. Greenville Cty.*, 380 S.C. 528, 528, 353, 670 S.E. 663, 667 (Ct. App.2009) (Citing *Curtis v. State*, 345 S.C. 557, 567, 549 S.E. 2d.591 (2001)). In addition, the Appellant argued "none of the court's mootness doctrines apply in this case". See *Curtis*, 345 S.C. at 568, 549 S.E. 2d (listing the three general exceptions to the mootness doctrine. (Defendant's Memorandum p. 4)

"A case becomes moot when judgment, if rendered, will have no practical effect upon the existing controversy." *Jones v. Dillon-Marion H.R. Dev. Comm'n*, 277 S. C. 533, 536, 291 S.E.2d 195, 196 (1982). (Defendant's Memorandum p. 3) They also state therein that the primary contested issue in this case is whether Board member Shirley irrevocably resigned such that there existed a vacancy on the Board. Judge Maddox's Order found a vacancy existed and directed the vacancy to be filled. The Appellate goes on to argue in opposition to the lifting the stay, that if the vacancy were filled then Mr. Shirley would not be able to return to the Board. If the Court of Appeals were to reverse Judge Maddox's ruling, that decision would have no effect, meaning the primary question of whether Shirley resigned such that a vacancy exists on the Board will have become moot. (Defendant's Memorandum p. 3)

Mr. Shirley's death rendered this matter moot. "Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief. *South Carolina*

Public Interest Found. V. S.C. Dep't of Transp., 770 S.E.2d 399, 412 S.C. 18 (S.C. App. 2015)
(citing *Sloan v. Greenville Cty.*, 380 S.C. 528, 528, 353, 670 S.E. 663, 667 (Ct. App.2009).

Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS

July 14, 2020

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Phillip Ashley, Kevin Craft and Jimmy Ouzts,
in their capacities as the elected Trustees of
Anderson County School District Two Board
of Trustees

Plaintiff,

v.

Anderson County School District Two Board
of Trustees,

The Defendant Anderson County School District Two Board of Trustees ("Defendant

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2019-CP-04-01118

**DEFENDANT'S MEMORANDUM
OF LAW IN OPOSITION TO
PLAINTIFFS' APPLICATION TO
LIFT AUTOMATIC STAY**

Board"), respectfully submits this Memorandum of Law in Opposition to Plaintiff's Application to Lift Automatic Stay. Under the applicable law, the Defendant Board's Notice of Appeal to the Court of Appeals of South Carolina automatically stayed matters decided in this Court's Order of December 23, 2019, and no exception to the automatic stay is applicable in this case. Accordingly, Plaintiffs' Application to Lift Automatic Stay should be denied.

I. INTRODUCTION

This matter arises out of a dispute between the Plaintiffs, who are three members of the Anderson County School District Two Board of Trustees, and the Defendant Board over whether a vacancy occurred when Board Member Stu Shirley submitted an email resignation on May 14, 2019, but rescinded that resignation three days later on May 17, 2019, before it had been accepted by the Defendant Board.

On June 14, 2019, Plaintiffs filed a declaratory judgment action asking this Court to declare Shirley's resignation valid and irrevocable pursuant to School Board policy and South Carolina Law. The parties submitted affidavits and briefs. No fact hearing was held.

On December 23, 2019, this Court issued its final Order in the case. Specifically, this Court ruled that “due to the effective resignation of Shirley, the Court finds there to be a vacancy on the Board of Anderson County School District 2 and orders the vacancy to be filled pursuant to the relevant laws of South Carolina.” Order, p. 4.

On January 2, 2020, the Defendant Board served and filed its Notice of Appeal with the South Carolina Court of Appeals. Pursuant to S.C. Code 18-9-220, and Rule 241, SCACR, the Defendant Board’s Notice of Appeal acts to automatically stay matters decided in this Court’s Order of December 23, 2019.

On January 6, 2020, Plaintiffs filed an Application to Lift the Automatic Stay. Plaintiffs’ Application to Lift the Automatic Stay should be denied for the following reasons.

II. ARGUMENT

A. The Defendant Board’s Notice of Appeal Automatically Stayed Matters Decided in this Court’s Order, and No Statute, Court Rule, or Judicial Opinion Establishes an Exception Applicable in this Case.

“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order ... on appeal, and to automatically stay the relief ordered in the appealed order.” Rule 241(a), SCACR. *See also* S.C. Code Ann. § 18-9-220 (“[T]he notice of appeal shall stay proceedings in the court below upon the judgment appealed from.”). “Exceptions to the general rule are found in statutes, court rules, and case law” and are clearly stated therein. Rule 241(b), SCACR. In this case, as in the great majority of cases, the general rule applies.

Under S.C. Code Ann. § 18-9-220 and Rule 241, SCACR, the Defendant Board’s Notice of Appeal to the South Carolina Court of Appeals acts to automatically stay matters decided in this Court’s December 23, 2019 Order. There is no statute, court rule, or judicial opinion that establishes an exception to the general rule applicable in this case. Therefore, this Court should hold that the

general rule is operative, and that the matters decided in this Court's Order are automatically stayed for the duration of the appeal.

B. Lifting the Automatic Stay is Not Necessary to Preserve Jurisdiction of the Appeal or to Prevent a Contested Issue from Becoming Moot.

Rule 241(c)(2), SCACR directs that in determining whether the automatic stay should be lifted, the Court "should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." In this case, lifting the automatic stay is not necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot. In fact, the opposite is true: lifting the automatic stay would necessarily cause the primary contested issue in this case to become moot and the appeals court would lose jurisdiction.

1. Lifting of the Stay Would Moot the Primary Issue on Appeal.

"A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy." *Jones v. Dillon-Marion H.R. Dev. Comm'n*, 277 S.C. 533, 536, 291 S.E.2d 195, 196 (1982). The primary contested issue in this case is whether Board member Shirley irrevocably resigned such that there is a vacancy on the Board. This Court's Order, having found such a vacancy exists, directs that this vacancy be filled. If the automatic stay is lifted, the Order must take effect and Mr. Shirley's vacant seat must be filled. If the vacancy is filled, Mr. Shirley would not be able to return to the Board if the Court of Appeals finds that his resignation was ineffective or was effectively and properly rescinded. In such a case, a ruling by the Court of Appeals in favor of the Defendant Board would have no effect, meaning that the primary question of whether Shirley resigned such that a vacancy exists on the board will become moot.

2. Lifting the Stay Would Preclude Appellate Jurisdiction.

"An appellate court will not pass judgment on moot and academic questions; it will

not adjudicate a matter when no actual controversy capable of specific relief exists." *Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (citing *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001)). Here, if the Order is in effect, then Shirley's seat must be filled. If the seat is filled, the question of whether Shirley's actions resulted in vacancy on the Board will be purely academic. The Court of Appeals could find that Shirley's rescinded resignation did not create a vacancy. If, in the meantime, the seat is filled, an opinion favorable to the Defendant Board by the Court of Appeals could not restore Shirley to the Board. Additionally, none of the exception to the court's mootness doctrine apply in this case. *See Curtis*, 345 S.C. at 568, 549 S.E.2d at 596 (listing the three general exceptions to the mootness doctrine).

III. CONCLUSION

The facts of the case present just the kind of controversy for which the automatic stay exists. The automatic stay will prevent Mr. Shirley's seat from being filled while the Court of Appeals considers whether his resignation was irrevocable such that a vacancy was created on the Board. Allowing the Order to go into effect means that Shirley's seat would be filled by another person, which would effectively end the controversy and preclude any meaningful relief by the Court of Appeals. For these reasons, the Court should deny Plaintiffs' Application to Lift Automatic Stay.

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Respectfully submitted,

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February 3, 2020
Columbia, South Carolina

ELECTRONICALLY FILED - 2020 Feb 03 3:17 PM - ANDERSON - COMMON PLEAS - CASE#2019CFP0401118

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

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

Case No. 2019-CP-04-01118
Appellate Case No.: 2020-000003

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

v.

Anderson County School District Two Board of TrusteesAppellants

PROOF OF SERVICE

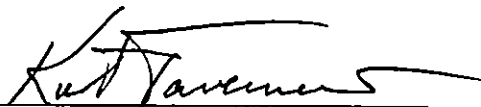
I hereby certify that on July 31, 2020, I served the Respondents' Motion to Dismiss on the Appellant, by mailing copies to via U.S. mail, with proper postage attached and addressed to the following:

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July 29, 2020

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
P.O. Box 11629 (2911-1629)
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RE: Phillip Ashley, Kevin Craft and Jjimmy Ouzts, Respondents v. Anderson County
School District Two Board of Trustees, Appellant
Appellate Case No. 2020-000003

Dear Ms. Kitchings:

Enclosed herewith for filing is an original copy of the following documents:

1. Respondents' Motion To Dismiss, the original and six copies;
2. Proof of Service upon Appellate counsel;
3. Filing fee;


I would appreciate you clocking a copy and returning to my office in the SASE I
have enclosed.

I am serving Appellant's counsel of record by copy of this letter.

Thank you in advance for your consideration. Should you need anything further,
please do not hesitate to call.

Very truly yours,

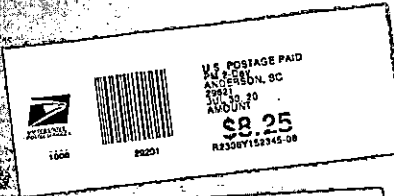
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Enclosures

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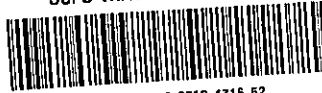
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EXPECTED DELIVERY DAY: 08/03/20

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SC Court of Appeals

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