THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

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

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

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

v.

Anderson County School District Two Board of Trustees,……Appellant.

RETURN TO RESPONDENTS' MOTION TO DISMISS THE APPEAL

Appellant Anderson County School District Two Board of Trustees hereby responds to Respondents' Motion to Dismiss this Appeal. Respondents argue that the Appeal should be dismissed because it is now moot. Appellant asserts this Appeal meets one or more exceptions to this Court's mootness doctrine.

This Appeal arises out of a dispute between the Respondents, who are three members of the seven-member Anderson County School District Two Board of Trustees, and the Appellant, the District's Board of Trustees (the "Board" or the "District Board"). The dispute is over whether a vacancy was created on the Board as a result of Board member William R. ("Stu") Shirley sending an email to the Board stating he was resigning from the Board, effective immediately, and three days later, withdrawing his resignation, before the Board took any action to accept the

resignation. The relevant facts for the purpose of this Motion are as follows. [1]

On Tuesday, May 14, 2019, Mr. Shirley emailed his fellow Board members stating that he had decided to resign from the Board, "effective immediately." (R. p. 53).

On Friday, May 17, 2019, after further consideration of his hasty decision and pleas from constituents not to resign, Mr. Shirley withdrew his resignation by letter addressed to the Board Chairperson, Brenda Cooley. (R. p. 54).

Respondents believed Mr. Shirley's resignation was final and irrevocable. Appellant believed it was not final and that, if the resignation email was even valid, Mr. Shirley could legitimately rescind it.

Acting Board Chairperson Bonnie Knight sought a formal opinion from the South Carolina Attorney General as to the effect of Mr. Shirley's resignation and subsequent rescission of same. (R. p. 40). In an Opinion dated June 4, 2019, the Attorney General's office opined that a court would likely conclude a school board member may revoke a tendered resignation before it is accepted by the Board. 2019 WL 3243933 (S.C.A.G. June 4, 2019); *see also* (R. pp. 42-50). The Attorney General's office reviewed the facts of Mr. Shirley's resignation and analyzed the question under the common law as first recognized in *State v. Stickley*, 80 S.C. 64, 61 S.E. 211 (1908) and South Carolina Code Ann. § 8-1-145. *Id*. The Attorney General's office opined that Section 8-1-145 applied to a specific circumstance not applicable here, and that *Stickley* was the governing law in this case, such that Mr. Shirley validly rescinded his resignation and no vacancy was created. *Id*.

On June 14, 2019, Respondents filed a Declaratory Judgment action, asking the circuit

[1] A more thorough recitation of the facts and procedural history of this case is contained in Appellant's Final Brief and is not repeated here for the sake of brevity.

court to declare Mr. Shirley's resignation valid and irrevocable. (R. pp. 24-30). On December 23, 2019, the court issued its final Order. (R. p. 1-6). The court ruled that "due to the effective resignation of Mr. Shirley, the Court finds there to be a vacancy on the Board of Anderson County School District Two and orders the vacancy to be filled pursuant to the relevant laws of South Carolina." (R. p. 4). On January 2, 2020, the Board served and filed its Notice of Appeal.

On May 4, 2020, Mr. Shirley unexpectedly passed away. On June 25, 2020, the Anderson County Board of Education appointed Marion Nickles ("Nickles") to fill the seat vacated by Mr. Shirley's death. Thereafter, at the District Board's June 30, 2020 meeting, Mr. Nickles was sworn in.

ARGUMENT

Respondents assert that Mr. Shirley's death and the subsequent appointment of Mr. Nickles to fill the seat moots this Appeal. It should not.

Ordinarily, South Carolina appellate courts "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Id*. (quoting *Mathis v. South Carolina State Highway Dep't,* 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). However, "[i]n the civil context, there are three general exceptions to the mootness doctrine." *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001).

> First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. *See generally Byrd v. Irmo High Sch.*, 321 S.C. 426, 468 S.E.2d 861 (1996); *Citizen Awareness Regarding Educ. v. Calhoun County Publ'g, Inc*., 185 W.Va. 168, 406 S.E.2d 65 (1991) (holding an appellate court could consider newspaper's appeal from trial court's injunction compelling newspaper to publish political

> action advertisement even though case was moot because issue was capable of repetition yet evaded review). Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. *See* generally *Berry v. Zahler*, 220 S.C. 86, 66 S.E.2d 459 (1951) (the court recognized that questions of public interest originally encompassed in an action should be decided for future guidance however abstract or moot they may have become in the immediate contest). Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case. *See* 5 Am.Jur.2d Appellate Review § 649 (1995).

Id. In this case, the second and third exceptions apply.

This case involves the operation of local government and the acts of elected officials; specifically, if and when a public officer can rescind a resignation from public office. Because this case presents "questions of public interest," potentially relevant to hundreds of municipal boards, county boards, and school boards across South Carolina, this Court should still decide the case "for future guidance, however abstract or moot" the case has now become as a result of Board member Shirley's death. *Berry*, 220 S.C. at 89, 66 S.E.2d at 461. The need for future guidance is heightened in this case because there are now two conflicting interpretations of S.C. Code § 8-1-145: the Attorney General's opinion, and the circuit court's order in this case. Neither are precedential, but both may be persuasive. Though there is nothing in this record that allows the Appellant to assert that the factual scenario presented here is common, it is imperative for a court to provide clarity as to if and when an elected official can rescind his/her resignation from public office. With no authoritative interpretation of this statute, board members and public bodies are without direction as to what the consequences of a hasty resignation and equally hasty recission of such a resignation would be. Accordingly, it is highly likely that in a future similar situation, with board members disagreeing as to the effectiveness of the rescinded resignation, a similar lawsuit, pitting a board against its individual members, could emerge. Because the issue in this case impacts

the very important areas of local governance and the acts of elected officials, Appellant urges this Court to hear the appeal under the public interest exception.

Additionally, the decision by the trial court could affect future events or have collateral consequences for decisions made by the Appellant District Board. Specifically, any 4-3 vote taken by the Board after May 14, 2019 (the date of Mr. Shirley's resignation letter) where Mr. Shirley was the deciding vote, could be open to challenge on the grounds that he resigned and therefore vacated his seat as of that date. Such challenge could come from Respondents, District employees, or citizens who believe they have been adversely affected by Board decisions and who might attempt to assert that any vote Mr. Shirley took after his resignation was invalid. Appellant believes that all of Mr. Shirley's votes were valid, under the principle of *de facto* board membership.[2] Nevertheless, a finding by this Court that the Appeal is moot allows the lower court's order to stand. This arguably exposes the District to legal challenges, regardless of whether such challenges have merit.

CONCLUSION

For the above reasons, the Appellant respectfully requests that Respondents' Motion to Dismiss be Denied and that the Appeal be allowed to proceed.

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[2] *See Bradford v. Byrnes*, 221 S.C. 255, 262, 70 S.E.2d 228, 231 (1952) ("in the absence of pertinent statutory or constitutional provision, public offices hold over *de facto* until their successors are appointed or elected and qualify"); *Rogers v. Coleman*, 245 S.C. 32, 34, 138 S.E.2d 415, 417 (1964) ("the attempted resignation of these respondents was of no effect and their tenure in office, together with the duties and responsibilities thereof, must be held to continue, since no successors have qualified").

Respectfully submitted,

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PROOF OF SERVICE

I certify that on *August 20, 2020*, I served the *Return to Respondents' Motion to Dismiss the Appeal*, on the Respondents, Phillip Ashley, Kevin Craft, and Jimmy Ouzts, by electronically mailing copies of same to their respective counsel of record as follows:

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