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Sep 11 2020

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2020-001135
Case No. 2015-CP-40-01805

Wendy BrawleyRespondent-Appellant,

v.

Richland County, South Carolina,Appellant-Respondent.

**REPLY TO RETURN IN OPPOSITION TO
MOTION TO HOLD APPEAL IN ABEYANCE**

Appellant-Respondent (“Richland County”) disputes that Judge Benjamin retains jurisdiction to enter judgment pursuant to her own orders wherein Judge Benjamin expressly declared that Respondent-Appellant (“Rep. Brawley”) was entitled to an award of attorneys’ fees and costs. The sole basis of Richland County’s reasoning is a strained contention about whether a “motion” for attorneys’ fees was timely filed. Richland County has failed to meaningfully distinguish this case from this court’s precedents. *See Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d. 750 (1997) (“Although service of notice of an intent to appeal divests the lower court of jurisdiction over the order appealed, the lower court retains jurisdiction over matters not affected by the appeal.”) (citing Rule 204, SCACR); *see also Carolina Bus. Brokers v. Strickland*, 301 S.C. 434, 439, 392 S.E.2d 469, 472 (Ct. App. 1990) (holding trial court retained jurisdiction the amount of attorneys’ fees to award despite notice of appeal because it is unaffected by the appeal itself).

In its Response, Richland County ignores the fact it had ample notice both of Rep. Brawley's numerous request for attorneys' fees and costs and Judge Benjamin's repeated orders stating that Rep. Brawley was entitled to an award of attorneys' fees and costs - prior to Rep. Brawley's submission of the affidavit that constituted her application for a specific amount of attorneys' fees and costs.

First, Richland County received notice of Rep. Brawley's request for a judgment that included reasonable costs and attorneys' fees under the Freedom of Information Act ("the Act") when Rep. Brawley sought that relief in her Complaint itself. A copy of the Complaint is filed herewith as **Exhibit F**. Under Rep. Brawley's "Prayer for Relief", the Complaint states: "WHEREFORE, having duly complained of each Defendant, Plaintiffs pray the court to enter judgment against Defendant and award the Plaintiffs ... reasonable costs and attorneys' fees...." Richland County has neither argued or appealed that the Complaint sufficiently set forth a claim of relief for attorneys' fees and costs under Rule 8(a), SCRCF, and so the sufficiency of the claim for relief in Rep. Brawley's Complaint is the law of this case.

Rep. Brawley's prayer for a judgment that includes reasonable attorneys' fees and costs under the Act against Richland County is not "an application to the court for an order" that even requires a Motion under Rule 7, SCRCF. Richland County confuses the law by implying that there is precedent requiring a formal post-trial motion under the Act when Richland County cites to caselaw instead construing the South Carolina Frivolous Proceedings Sanctions Act ("FCPSA"). See Return to Motion, p. 2, citing *Holmes v. East Cooper Community Hospital, Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2014) and *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 570 S.E.2d 187 (Ct. App. 2002). Richland

County's Response fails to disclose that our Legislature expressly mandated a post-proceeding motion for an award of attorneys' fees under the FCPSA. S.C. Code Ann §15-36-10(C)(1) ("At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, **upon motion of the prevailing party**, the court shall proceed to determine if the claim or defense was frivolous.") (emphasis added).

In contrast to the FCPSA, our Legislature included no such requirement in the Act. For the court to read additional requirements into the Act as hurdles for plaintiffs to obtain the relief contemplated by the Legislature fails to give effect to S.C. Code Ann § 30-4-100(a) and is disharmonious with the legislative intent; as our Legislature and Supreme Court has stated:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials **at a minimum cost or delay** to the persons seeking access to public documents or meetings

Honoring legislative intent as expressed in FOIA by awarding attorney's fees in these circumstances may serve as an impetus for public bodies to comply with a FOIA request and thus avoid the imposition of an attorney's fee award.

Sloan v. Friends of Hunley, Inc., 393 S.C. 152, 158, 711 S.E.2d 895, 898 (2011) (quoting S.C. Code Ann. § 30-4-15 (emphasis in the Court's opinion)).

Not only did Richland County receive proper notice of Rep. Brawley's claim for relief, including reasonable attorneys' fees and costs, through her Complaint, Rep. Brawley

specifically sought permission at trial and in open court, as permitted by Rule 7(b)(1), SCRCPP, to submit proof of attorneys' fees through an Affidavit once Judge Benjamin had ruled on the issue of prevailing party. Judge Benjamin agreed that proof could be submitted following her final ruling and that another hearing would be had on the issue of attorneys' fees:

MR. BLAKE: Your Honor, I put this in the pretrial brief, because obviously a request for attorney's fees and costs, can we preserve that as a post-order motion? I don't want to have to pull together all that, because we have to redact a lot of the time that was spent representing the other Defendant or the other Plaintiff in the case. **So can we submit our affidavit in support of fees and costs after you rule on who the prevailing party is? Or would you like it in the proposed order?**

THE COURT: Well –

MR. LINDEMANN: Part of the problem with that, Your Honor, from my perspective, even if Your Honor rules in their favor on this particular FOIA request, I mean, a substantial amount -- parts of this case we were the prevailing party, already are the prevailing party, on three out of four FOIA requests, plus the total injunctive relief cause of action. So, you know, ultimately we are going to be -- want to be able to argue to you that, you know, even if they prevail on that one particular issue, they are entitled to no or very limited attorney's fees and costs.

THE COURT: All right. So what we'll do is wait, because I have got to review the cases.

MR. BLAKE: Right. True.

THE COURT: And Mr. Lindemann says there are none in South Carolina other than -- and he cited a Supreme Court case, and we'll do some research. Is it Kissinger?

MR. LINDEMANN: Kissinger. Would you like a copy of that, Your Honor?

THE COURT: If you have a copy, that would be great. And any other cases you all want me to review, you can go ahead and send those with your proposed orders. **So what we'll do is wait for the ruling. And then once we get the ruling, if I rule in your favor, I'm sure we will have to have another hearing about attorney's fees.**

(Transcript dated Sept. 5, 2019, pp. 303-304, included as **Exhibit G**) (emphasis added).

“The award of fees and costs to the prevailing person or entity in a suit brought pursuant to section 30–4–100(a) is entrusted to the discretion of the trial court.” Sloan v. S.C. Dep't of Revenue, 409 S.C. 551, 556, 762 S.E.2d 687, 690 (2014) (J. Pleicones, concurring in part and dissenting in part) (citing S.C. Code Ann. § 30–4–100(b) (2007)). Following the trial, Judge Benjamin exercised her discretion twice, on February 13, 2020 and again on July 16, 2020, and announced that she was awarding attorneys’ fees and costs to Rep. Brawley. (Motion to Hold Appeal in Abeyance, pp. 17-18; 35.) In her ruling on July 16, 2020, Judge Benjamin directed Rep. Brawley to submit both a schedule of fees and a motion that provided the support for the schedule. Judge Benjamin did not provide a time limit for Rep. Brawley to do so, but she specifically gave Richland County fifteen (15) days to respond to Rep. Brawley’s submission.

On the tenth¹ day following Judge Benjamin’s order dated July 16, 2020, Rep. Brawley submitted both the schedule of fees and the support for the fees sought as an “Affidavit as to Attorneys’ Fees and Costs” pursuant to the request she made in open court at trial. Therefore, even if this court believes some additional application under Rule 7, SCRPC, was required within the ten (10) day period that Rep. Brawley possessed to file a motion for reconsideration of the Order dated July 16, 2020, the Affidavit was timely, was signed by counsel, included both the schedule of fees and the legal and factual basis for the award of fees, and otherwise met all of the requirements of an application to the court contemplated by Rule 7, SCRPC. Richland County then responded to the Affidavit on

¹ The tenth day technically fell on a Sunday, July 25, 2020, and so the Affidavit was filed and served on the following day.

August 11, 2020, on the fifteenth (15th) day following Rep. Brawley's application for a specific amount of fees and costs and prior to filing this appeal. Accordingly, Richland County's current opposition to holding this appeal in abeyance while Judge Benjamin determines the amount of fees and costs to enter into her judgment is textbook example of wrongly elevating form over substance. *See Chapman v. S.C. Dep't of Soc. Servs.*, 420 S.C. 184, 189, 801 S.E.2d 401, 404 (Ct. App. 2017) (holding that when a letter contains the same information required by a particular form, the ALC mistakenly elevated form over substance); *Gordon v. Busbee*, 367 S.C. 116, 120-21, 623 S.E.2d 857, 859-60 (Ct. App. 2005) (reversing the circuit court's dismissal of an action for failure to file a specific probate court form when the appellant's filing accomplished precisely what the probate court form required, and to affirm would be to elevate form over substance where the purpose of the form, to provide notice of a claim against the estate, was satisfied.)

Given the foregoing, no grounds exist to distinguish *Jackson* or its predecessor, *Carolina Bus. Brokers*. In *Jackson*, the Supreme Court held that, under Rule 204, SCACR, the trial court retained jurisdiction to determine the amount of attorneys' fees and costs because the Plaintiff had timely requested fees prior to the notice of appeal. 326 S.C. at 311, 486 S.E.2d at 761. Rep. Brawley did so on at least three (3) occasions in this case. Likewise, In *Strickland*, the court held that where the trial court found an entitlement to 'the costs of this action, including attorney's fees in an amount to be determined by this Court', that an intervening notice of appeal prior to the trial court's hearing on the amount of attorneys' fees and costs does not deprive the trial court of determining the amount of fees and costs. 301 S.C. at 439, 392 S.E.2d at 472. In accordance with these authorities, Rep. Brawley respectfully requests that her Motion to Hold Appeal in Abeyance be granted

in order to avoid the potential for multiple appeals once Judge Benjamin in fact enters judgment upon the amount of fees and costs awarded to Rep. Brawley.

s/ Shaun C. Blake

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Counsel for Appellant-Respondent

EXHIBIT F

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
)
CIVIL ACTION NO.: 2015-CP- -

Hopkins and Lower Richland Citizens
United, Inc. and Wendy Brawley,

Plaintiffs,

COMPLAINT

v.

Richland County, South Carolina,

Defendant.

JEANETTE M. MOON
C.C.P. & C.S.
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RICHLAND COUNTY
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Plaintiffs, complaining of the Defendant, would respectfully show unto this Court the following:

INTRODUCTION

1. This is an action pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, etc. Plaintiffs submitted FOIA requests on September 9, 2014, in order to

- a. inform the citizens residing in Hopkins and Lower Richland County of Richland County’s actions and representations to the United States Department of Agriculture (“USDA”) regarding a proposed plan to impose a County sewer system on the residents of Hopkins and Lower Richland County (“Lower Richland Sewer Project”); and
- b. inform the citizens of Hopkins and Lower Richland County on whether Richland County Council has in fact approved the “tap fee waivers” that it touts will be available for certain citizens that agree (but only prior to construction beginning) that they will sign up for County sewer service.

2. Since July 2014, the members of Hopkins and Lower Richland Citizens United, Inc. have publically opposed the Lower Richland Sewer Project for numerous reasons, including:

- a. Phase I of Lower Richland Sewer Project will place five (5) sewer pumping stations in the heart of Hopkins and near churches, schools, daycares, and homes, and these pump stations will be unsightly, noxious nuisances to the lower Richland community;
- b. The sewage of approximately 1,370 City of Columbia sewer customers will be redirected into the Lower Richland sewage system;
- c. The tap fees that many Hopkins and Lower Richland residents will be mandated to incur will cost \$4,000.00. This cost is in addition to the cost homeowners will be required to incur for running lines to the tap, converting homes to plumbing that is compatible with the sewer system, and the monthly usage fee.
- d. The purpose of the Lower Richland Sewer Project is to encourage development, and this development will destroy the rural nature of the Plaintiffs' homes over the objection of the Plaintiffs and the more than 1,100 citizens of Hopkins and Lower Richland County that have signed Plaintiffs' petition in opposition to the Lower Richland Sewer Project.

3. Plaintiffs have received belated, incomplete, and non-responsive documents from the County even while the County moves forward with the Lower Richland Sewer Project over the strong objections and outcry by the citizens of Hopkins and Lower Richland County

JURISDICTION AND VENUE

4. Defendant is a political subdivision of the State of South Carolina and is a “public body” as defined in S.C. Code Ann. § 30-4-20(a).

5. Plaintiff Hopkins and Lower Richland Citizens United, Inc. is a domestic non-profit corporation duly formed and existing under the laws of South Carolina with its principal place of business in Richland County, South Carolina. Hopkins and Lower Richland Citizens United, Inc. is the successor to the unincorporated association of citizens in Hopkins and Lower Richland who previously acted together under the name “Hopkins and Lower Richland Citizens United” until their formal incorporation in March 2015, and Hopkins and Lower Richland Citizens United, Inc. has continued to do business as “Hopkins and Lower Richland Citizens United” since its incorporation.

6. Plaintiff Wendy Brawley (“Brawley”) has been a duly appointed spokesperson for Hopkins and Lower Richland Citizens United since July 2014, and she continues to act as its duly appointed spokesperson and registered agent.

7. This court possesses subject matter jurisdiction over this dispute pursuant to Article V, § 11 of the South Carolina Constitution and pursuant to S.C. Code Ann. § 30-4-100.

8. Venue is proper in Richland County, South Carolina pursuant to S.C. Code Ann. § 30-4-100.

FACTS

9. Prior to February 2013, Richland County applied for a loan and grant from the USDA Rural Development office to fund the majority of what is known as “Phase I” of the Lower Richland Sewer Project.

10. Phase I of the Lower Richland Sewer Project includes planning, acquiring easements, and installing the infrastructure to provide Richland County sewer service to the Lower Richland neighborhood, Hopkins Middle School, and Hopkins Elementary School, Franklin Park Subdivision, and approximately 1370 existing City of Columbia sewer customers on Garners Ferry Road. Under Phase I sewage will be transported for treatment at Richland County's Wateree waste water treatment facility in Eastover, South Carolina.

11. In a "draft" letter attached to the official agenda for the February 19, 2013 Richland County Council Meeting, in response to an application by Richland County, the USDA proposed to provide funding for the Lower Richland Sewer Project not to exceed \$9,359,000 of loan funds and \$2,279,800 of grant funds.

12. In July 2014, Hopkins and Lower Richland Citizens United began operating as an unincorporated association that has been formed by hundreds of citizens residing in Hopkins and lower Richland County in order to educate their community regarding the many issues surrounding the Lower Richland Sewer Project.

13. On September 9, 2014, Wendy Brawley, acting on behalf of Hopkins and Lower Richland Citizens United, submitted four (4) separate written South Carolina Freedom of Information Act ("FOIA") requests to Defendant. A copy of these FOIA requests are attached as Exhibit A and are incorporated by reference.

14. Wendy Brawley, acting on behalf of Hopkins and Lower Richland Citizens United, also read these four (4) requests into the record during the Richland County Council meeting that occurred on September 9, 2014. A copy of the minutes of the Richland County

Council meeting dated September 9, 2014 are attached as Exhibit B and are incorporated by reference.

15. Defendant failed to respond to any of these requests within the time required under S.C. Code Ann. §30-4-30.

16. As a result, the Plaintiffs requests dated September 9, 2014 must be considered approved under S.C. Code Ann. §30-4-30(c).

17. On October 1, 2014, Defendant provided an interim response stating that the “information requested will be released.” A copy of this response is attached as Exhibit C and is incorporated by reference.

18. This response acknowledged the Defendant’s date of receipt and establishes the untimely nature of Defendant’s response.

19. On or about October 7, 2014, Defendant provided a belated response to two of the requests that may or may not be complete:

- a. It sent an email confirming that there has been no third reading or approval given for the Lower Richland Sewer Project.
- b. It provided a copy of what the Defendant represents to be the MOU between the City of Columbia and the Defendant regarding the sewer services agreement for the housing developments located off Rabbit Run and other adjacent properties behind Lower Richland High School. Plaintiffs lack information regarding whether this is a complete response.

20. Defendant failed to respond properly to two (2) of the FOIA requests served on September 9, 2014.

21. Specifically, it failed to provide a complete copy of the application and supporting documentation submitted by Defendant to the USDA for grant and loan funding for the Lower Richland Sewer Project. Rather, it provided Plaintiffs with merely a one (1) page “continuation” application, not the original application, and one (1) page document with “Budget Information.” The remaining few pages were merely instructions boilerplate.

22. Specifically, it failed to provide a copy of the minutes from the Richland County Council meeting when funds were approved by Council for waivers of tap on fees for the Lower Richland Sewer Project. A review of the records produced do not address any such approval.

23. On March 17, 2015, more than six (6) months after this request, Richland County officials and council members noted on the record during the Richland County Council Meeting that they were unsure whether Plaintiffs’ FOIA requests had been properly responded to or not and agreed to look into this issue further.

24. At least two (2) of the four (4) belated responses by the Defendant demonstrate, on their face, that the Defendant has still failed to comply with Plaintiffs’ requests as required by S.C. Code Ann. § 30-4-10, et seq.

25. On September 9, 2014, as a result of the concerns raised by Plaintiffs with Richland County Council, the Defendant voted to defer the third reading item related to the initial portion of the Lower Richland Sewer Project: “An Ordinance Amending the Fiscal Year 2014-2015 General Fund Annual Budget to appropriate \$60,000.00 of General Fund Unassigned Balance to be used for Engineering Design and Easement Acquisition for the Lower Richland Sewer Project.” (the “Ordinance”).

26. Richland County Council voted to defer until the following information is obtained: (a) Overall financial impact; (b) When will residents have to start paying the tap fees after the project goes to a bid process; (c) The downsized project scope; (d) community input; and (e) Definition a failing septic system; (f) Council submit additional questions/information to Mr. Metts by September 12th.

27. Defendant adopted these limitations through the unanimous vote of Richland County Council. See Exhibit B.

28. This vote placed, as a condition precedent, the opportunity for community input on the project prior to proceeding to acquiring real property interest from the members of Hopkins and Lower Richland Citizens United.

29. Defendant's failure to respond has deprived Plaintiffs of the information necessary to advise themselves and the public and allow for meaningful community input.

30. Defendant improperly disregarded its own conditions by giving the Ordinance Third Reading approval on February 10, 2015, without complying with any of the conditions precedent established on September 9, 2014.

31. As a result of Defendant's refusal to provide the information sought in the FOIA requests, Plaintiffs are unable to evaluate whether the Defendant is complying with the USDA requirements for the grants and loans.

32. For example, pursuant to 42 U.S.C. 4655, as a condition of receiving the USDA grant and loan, Defendant must assure the USDA that it has complied with the requirements of Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which requires, in 42 U.S.C. 4651, that the Defendant to

obtain an appraisal of the value of the easements Defendant now seeks prior to negotiating with the Plaintiffs' members and the residents of Hopkins and Lower Richland.

33. As a result of Defendant's refusal to provide the information sought in the FOIA requests, Plaintiffs are unable to provide adequate, meaningful community input to the Lower Richland Sewer Project.

34. As a result of Defendant's refusal to provide the information sought in the FOIA requests, Plaintiffs are unable to provide the public with information regarding the truthfulness of statements regarding tap fee waivers that Defendant proposes to include in certain community surveys that it indicated would be sent during its March 17, 2015 County Council meeting.

AS A FIRST CAUSE OF ACTION
(Declaratory Judgment – S.C. Code Ann. 30-4-100)

35. Plaintiff re-alleges each paragraph of this Complaint herein.

36. An actual controversy exists between the parties regarding whether the Defendant has properly and completely responded to the Plaintiff's four (4) FOIA requests dated September 9, 2014.

37. Plaintiff respectfully requests that this court issue a declaration that:

- a. As a result of the Defendant's conduct, including its belated response, Plaintiffs FOIA requests are considered approved;
- b. Defendants have failed to properly and fully reply to Plaintiffs' FOIA requests dated September 9, 2014;
- c. Plaintiffs are entitled to immediately receive full and complete responses;
- d. Plaintiffs are entitled to recover costs and reasonable attorneys' fees associated with compelling the Defendants complete responses in an

amount approved by this court upon a finding that Plaintiffs are entitled to prevail under S.C. Code Ann. 30-4-100(b).

AS A SECOND CAUSE OF ACTION
(Temporary and Permanent Injunction – S.C. Code Ann. 30-4-100)

38. Pursuant to S.C. Code Ann. § 30-4-100(a), a violation of S.C. Code Ann. § 30-4-100 “must be considered to be an irreparable injury for which no adequate remedy at law exists.”

39. If the Court does not issue a temporary restraining order, a preliminary injunction, and ultimately, a permanent injunction, Plaintiffs and the public will continue to be deprived, will continue to be subject to irreparable injury, including being subject to misleading community surveys, being deprived of meaningful community input, and being deprived of the ability to confirm the Defendant’s compliance with USDA loan and grant requirements.

40. As a result of Defendant’s failure to provide complete FOIA responses, Plaintiffs pray for temporary and permanent injunctive relief as follows:

a. Enjoining Defendant from sending surveys to residents that make any representation that Richland County will provide all residents that reside within 200 feet of the proposed Phase I sewer line a full waiver of tap or connection fees;

b. Enjoining Defendant from entering into negotiations with residents of Hopkins and Lower Richland for the acquisition of easements;

c. Enjoining Defendant from providing third reading to the Lower Richland Sewer Project.

41. Plaintiffs are likely to prevail in its claim under S.C. Code Ann. § 30-4-100 because there is no valid dispute that Plaintiffs requests are accepted without qualification

and that Defendant's FOIA responses are incomplete and include non-responsive materials.

42. Injunctive relief is in the public interest.

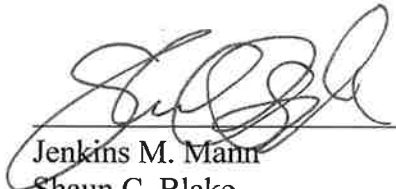
43. Pursuant to S.C. Code Ann. § 30-4-100(b), Plaintiffs are entitled to and requests an award of costs and expenses, including reasonable attorneys' fees, in connection with pursuing this injunctive relief.

DEMAND FOR JURY TRIAL

44. Plaintiffs demand a jury trial its first cause of action.

PRAYER FOR RELIEF

WHEREFORE, having duly complained of each Defendant, Plaintiffs pray the court to enter judgment against Defendant and award the Plaintiffs the injunctive and declaratory relief set forth herein as for such other and further relief, reasonable costs and attorneys' fees, and such other relief as the Court deems just and proper upon the facts.



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Shaun C. Blake

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March 25, 2015

Attorneys for Plaintiffs

EXHIBIT G

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
2015-CP-40-1805

Wendy Brawley,)
Plaintiff,)
vs.)
Richland County, South)
Carolina,)
Defendant.)

TRANSCRIPT OF RECORD

September 5, 2019
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

A P P E A R A N C E S:

JENKINS M. MANN, ESQ.
SHAUN C. BLAKE, ESQ.
Attorneys for the Plaintiff

ANDREW F. LINDEMANN, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

1 THE COURT: All right.

2 MR. BLAKE: I agree.

3 MR. LINDEMANN: Can I split that with you?

4 MR. BLAKE: Yes, sure.

5 THE COURT: And what, 15 days after you
6 receive the transcript? Because you have to read
7 it and then you have got to prepare an order.

8 MR. LINDEMANN: That will be fine.

9 MR. BLAKE: Your Honor, I put this in the
10 pretrial brief, because obviously a request for
11 attorney's fees and costs, can we preserve that as
12 a post-order motion? I don't want to have to pull
13 together all that, because we have to redact a lot
14 of the time that was spent representing the other
15 Defendant or the other Plaintiff in the case. So
16 can we submit our affidavit in support of fees and
17 costs after you rule on who the prevailing party
18 is? Or would you like it in the proposed order?

19 THE COURT: Well --

20 MR. LINDEMANN: Part of the problem with that,
21 Your Honor, from my perspective, even if Your Honor
22 rules in their favor on this particular FOIA
23 request, I mean, a substantial amount -- parts of
24 this case we were the prevailing party, already are
25 the prevailing party, on three out of four FOIA

1 requests, plus the total injunctive relief cause of
2 action. So, you know, ultimately we are going to
3 be -- want to be able to argue to you that, you
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5 issue, they are entitled to no or very limited
6 attorney's fees and costs.

7 THE COURT: All right. So what we'll do is
8 wait, because I have got to review the cases.

9 MR. BLAKE: Right. True.

10 THE COURT: And Mr. Lindemann says there are
11 none in South Carolina other than -- and he cited a
12 Supreme Court case, and we'll do some research. Is
13 it Kissinger?

14 MR. LINDEMANN: Kissinger. Would you like a
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18 review, you can go ahead and send those with your
19 proposed orders.

20 So what we'll do is wait for the ruling. And
21 then once we get the ruling, if I rule in your
22 favor, I'm sure we will have to have another
23 hearing about attorney's fees.

24 MR. BLAKE: Fair enough.

25 THE COURT: All right, thank you.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Sep 11 2020

SC Court of Appeals

Appellate Case No. 2020-001135
Case No. 2015-CP-40-01805

Wendy BrawleyRespondent-Appellant,

v.

Richland County, South Carolina,Appellant-Respondent.

CERTIFICATE OF SERVICE

Pursuant to Section (g)(3) of the Supreme Court's Amended Order Re: Operation of the Appellate Courts During the Coronavirus Emergency (as amended May 29, 2020), the undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Appellant-Respondent Richland County, does hereby certify that service of the **Return in Opposition to Motion to Hold Appeal in Abeyance** in the above-captioned matter was made upon all counsel of record by email only this the 11th day of September 2020:

Andrew F. Lindemann
Lindemann, Davis & Hughes, P.A.
Email: andrew@ldh-law.com

s/ Shaun C. Blake
Shaun C. Blake, Esq. (SC Bar # 76349)
Jenkins M. Mann, Esq. (SC Bar # 74894)
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Counsel for Respondent-Appellant

ROGERS LEWIS

ATTORNEYS AT LAW

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September 11, 2020

RECEIVED
Sep 11 2020
SC Court of Appeals

Via US Mail

The Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Hopkins and Lower Richland Citizens United, Inc., and Wendy Brawley, vs.
Richland County, South Carolina
C/A NO: 2015-CP-40-1805

Dear Ms. Kitchings,

Pursuant to Section (c)(6) of Supreme Court's Amended Order Re: Operation of the Appellate Courts During the Coronavirus Emergency, please find enclosed for filing the Respondent-Appellant's Reply to Return in Opposition to Motion to Hold Appeal in Abeyance in the above referenced matter. In accordance with Section(g)(3) of the same Order, I am herewith serving copies on all counsel of record.

If you have any questions, please advise. Thank you for your assistance in this matter.

Sincerely,

s/Shاون C. Blake

Shaun C. Blake

cc: Andrew F. Lindemann (*w/o Enclosure, Via Email only*)
Lindemann, Davis & Hughes, P.A.
Email: andrew@ldh-law.com