

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

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The Honorable J. Cordell Maddox, Jr., Circuit Court Judge Sep 24 2020

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

SC Court of Appeals

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

v.

Anderson County School District Two Board of Trustees .....Appellants

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REPLY TO APPELLANT'S RETURN TO MOTION TO DISMISS

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Respondents Phillip Ashley, Kevin Craft and Jimmy Ouzts hereby reply to Appellant's Return to Motion to Dismiss for Mootness. This appeal concerns the resignation of William R. "Stu" Shirley who was a member of Appellant Anderson School District Two Board of Trustees who passed away during the pendency of this action on May 4, 2020.

Respondent's moved to dismiss this appeal after Mr. Shirley passed away on the grounds the case or controversy was moot. Appellant raise two exceptions to the doctrine of mootness. First, that the appeal presents "questions of public interest." The Supreme Court addressed "public importance" exception in Sloan v. Greenville County, 361 S.C. 568, 606 S.E.2d 464 (SC 2004) holding that appellate courts may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. The standard for accepting review is "imperative and manifest urgency" not just "public importance." In this case, there is a lack of "imperative and manifest urgency" as the Anderson School District Two has a full board of trustees and is engaging in day to day activities as usual.

Appellant urges review claiming need for future guidance due to two conflicting interpretations of S.C. Code Sec. 8-1-145, because of the Attorney General Opinion and Court Order issued in this case below. The alleged dispute is without merit as the Attorney General Opinion was not based on an accurate statement of facts.

Additionally, Appellant admit in their Return that the factual situation in this case is not “common.” The factual background in the instant case is set forth more fully in the Transcript of Record and Brief previously filed. Therefore, the argument of repetition is specious.

Second, Appellant argues the appeal should not be dismissed because there could be collateral consequences or future events could be affected. Courts are only supposed to address cases or controversies which are ripe for determination. A justiciable controversy is a real controversy which is ripe and appropriate for adjudication not contingent, hypothetical or abstract dispute. Peoples Savings and Loan v. Resources Planning Corp. 358 S.C. 460, 596 S.E.2d 51 (SC 2004). In this case, if a controversy arises in the future Appellant can utilize the courts when there is an actual case ripe for determination.

The following votes I believe are responsive to the Court’s inquiry and based upon a review of the Anderson County School District Two Board meeting minutes as published on the District Two website:

On June 17, 2019 the Board voted to hire Duff and Childs as attorneys for the Board in the case. Phil Ashley, Kevin Craft and Jimmy Ouzts were not present at the time of the vote. It passed 4-0 with Stu Shirley casting the decisive vote and also established a quorum.

On October 14, 2019 the Board voted on a method to evaluate Dr. Richard Rosenberger which may have been in conflict with Judge Maddox's order. The vote was 4 – 3 with Stu Shirley as the deciding vote.

On November 4, 2019 the board hired Ken Childs as District Two counsel, Kevin Craft, Phil Ashley and Jimmy Ouzts were not present. The vote was 4 -0 with Stu Shirley casting the deciding vote and establishing q quorum.

On March 9, 2020 the Board voted to demote Tara Brice and Marilyn Dabney. The vote was 4-3 with Stu Shirley casting the deciding vote.

On April 4, 2020 the Board voted to limit livestreaming of board meetings and limiting Facebook and electronic communications. The vote was 4 – 3 with Stu Shirley casting the deciding vote.

Respondents respectfully request the Appeal in this case be dismissed.

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ATTORNEYS FOR RESPONDENTS

Sept. 24, 2020

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Proof of Service

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I certify that on Sept. 24, 2020, I have served the Respondents' Reply to Appellants' Return to Motion to Dismiss on Appellant Anderson County School District Two Board of Trustees, by e-mailing a copy of same to their respective counsel as set forth below:

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