

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.

APPELLANT’S SUPPLEMENTAL MEMORANDUM ADDRESSING MOOTNESS

Appellant Anderson County School District Two Board of Trustees (the “Board”) hereby submits its Supplemental Memorandum addressing the issue of mootness, as requested by this Court in its October 2, 2020, Order denying Respondents’ Motion to Dismiss this Appeal.

BACKGROUND/PROCEDURAL HISTORY

The full factual and procedural background for this case is contained in Appellant’s Brief, Reply Brief, and Return to Respondent’s Motion to Dismiss the Appeal. In short, this Appeal arises out of a Declaratory Judgment action filed by Respondents, who are three members of the seven-member Anderson County School District Two Board of Trustees, against the Appellant Board on which they sit. The controversy 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 lower court found the resignation was irrevocable when made, erroneously relying on S.C. Code Ann. § 8-1-145, rather than the longstanding common law as stated in *State v. Stickley* 80 S.C. 64, 61 S.E. 211, 213 (1908), which holds that public officials can rescind a resignation at any point prior to the public body acting to accept it. The lower court ordered that Shirley's seat be filled.

The Appellant appealed. Respondents petitioned the lower court to lift the automatic stay pursuant to Rule 241(c), SCACR. Lifting the automatic stay would have allowed Shirley's seat to be filled immediately. The lower court rightly denied the motion, but also ordered that "while the appeal is pending, Board Member Stu Shirley remains a member of the Board and may participate fully on all matters coming before the Board, except matters related to the Superintendent's employment or status with the District." (Exhibit 1).

On May 4, 2020, as the briefing for this Appeal was entering its final stages, Shirley unexpectedly died. The Anderson County Board of Education appointed Marion Nickles to fill Shirley's seat.

On July 29, 2020, Respondents filed a Motion to Dismiss the Appeal, asserting that the Appeal was moot because Shirley's seat had been filled.

On August 20, 2020, Appellant filed a Return to the Motion, arguing that one or more of the exceptions to the mootness doctrine applies such that this court should rule on the merits of the Appeal.

On September 21, 2020, this court requested that Respondents provide a Reply to Appellant's Return, specifically asking Respondents to "address Appellant's argument that two of

exceptions to mootness apply to this case” and also to “specifically address whether any 4-3 votes taken by the Board after May 14, 2019, where Mr. Shirley was the deciding vote.”

On September 24, 2020, Respondents filed their Reply addressing Appellant’s arguments and listing five decisions by the Board approved on a 4-3 vote, in which Shirley effectively cast a deciding vote.

On October 2, 2020, the court denied Respondents’ Motion, but ordered the parties to provide supplemental memoranda regarding the mootness issue within 30 days.¹

ARGUMENT

“A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy.” *Sloan v. Greenville Cty.*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003). Ordinarily, South Carolina appellate courts “will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.” *Id.* However, there are three recognized exceptions to the general rule:

First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading 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. . . . [Third], 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.

Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). Despite the untimely death of Mr. Shirley, and the Anderson County Board’s subsequent action filling this seat, this court may decide the issue in this case—whether Mr. Shirley’s resignation was irrevocable when made—because it

¹ Appellant requested and was granted a 30-day extension to file its Memorandum. At the time of this filing, Respondents have neither filed a supplemental memorandum, nor have they requested an extension to do so.

involves a matter of significant public interest and because the lower court's decision may have collateral consequences for the Appellant Board.

A. This Appeal should not be dismissed as moot because it presents a matter of important public interest.

It has long been established 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.” *Ashmore v. Greater Greenville Sewer Dist.*, 211 S.C. 77, 96, 44 S.E.2d 88, 97 (1947). In determining whether a case has the “requisite degree of public interest” such that it should be decided, this court considers “the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question.” *Sloan*, 356 S.C. at 553–54, 590 S.E.2d at 350 (concluding that the expenditure of public funds pursuant to a competitive bidding statute is of immense public importance).

This case meets all of public interest factors cited in *Sloan*. First, this case clearly presents a question that is public, rather than private in nature, as it involves a question of what law governs when a public official wishes to rescind his resignation from public office.

Secondly, public bodies around the state would benefit from an “authoritative determination” as to what law governs when a public official rescinds his resignation. As discussed more thoroughly in Appellant’s previous briefs to this court, the lower court determined that S.C. Code Ann. § 8-1-145 governed Shirley’s resignation. The Attorney General’s office, presented with the facts of this case, determined that the common law under *Stickley* governed. The Attorney General’s office opined that § 8-1-145 was a specialized statute creating a process for prospective resignation of an elected official who wished to resign from one public office to take a position in another. That was not the situation at issue in this case.

No appellate court has interpreted § 8-1-145; accordingly, there is no “authoritative determination” to guide future public bodies with regard to the effect of this statute, if any, on rescinded resignations. To make matters worse, there are now two conflicting opinions of what law governs a public official’s rescission of his resignation from public office—the Attorney General’s opinion, and the lower court’s Order. Neither are precedential, but both may be persuasive to future litigants. Should this issue arise again in the contested way in which it arose in this case, both sides will be armed with authority supporting their position. Should this hypothetical, future dispute be litigated, it seems inevitable that the issue will make its way to this court again, given the lack of appellate authority on the issue and the conflicting authority that is available.

As to the third factor, the precise likelihood of this situation arising in the future cannot be known, but it is certainly not an anomaly. *Stickley*, which has remarkably similar facts, proves that disputes may arise when a public official attempts to rescind his resignation.

For the above reasons, Appellant Board believes that the public interest requires that this court rule on the merits of this Appeal.

B. This Appeal should not be dismissed as moot because the lower court’s decision may have collateral consequences for the Appellant.

The lower court ruled that Shirley’s resignation was irrevocable and therefore, effective as of May 14, 2019, the date of Mr. Shirley’s resignation email. (ROA p. 2-4). In a subsequent ruling denying Respondents’ Motion to Lift the Automatic Stay pursuant to Rule 241(c), the lower court ordered that while the Appeal is pending, Shirley was not to participate in “matters related to the Superintendent’s employment or status with the District.” (Exhibit 1). The restrictions on Shirley’s participation in Board matters arise solely out of the lower court’s erroneous decision that Shirley had resigned effective May 14, 2019.

Appellant previously expressed concern that if the Appeal were dismissed, Shirley's participation on the Board after May 14, 2019, especially as to any 4-3 vote taken by the Board where Mr. Shirley effectively cast the deciding vote, could be challenged on the ground that Shirley had vacated his seat. This court subsequently requested, and Respondents produced, the following Board decisions where Shirley was the deciding vote:

- 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 a 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 contend that if a future controversy arises from any of these decisions, "Appellant can utilize the courts when there is an actual case ripe for determination." (Respondents' Reply to Appellant's Return, p. 2). Such a statement runs counter to the intent of the collateral consequences mootness exception. If the court issues a decision on the merits of this Appeal, the question of whether Shirley's participation was valid or not would be decided and therefore, determinative of this issue to the extent it were to be raised in future litigation.

The lower court's decision has already had collateral consequences for the District. The March 9, 2020 decision in which the Board voted to "demote" a former District administrator, Tara

Brice, is the subject of a pending lawsuit against the Board and the three members of the Board who, with Stu Shirley, represented the Board majority that Respondents sued.² The lawsuit alleges, among other things, that Shirley's participation in the majority's vote to issue Brice a teacher contract rather than an administrator contract was not valid, citing the lower court's Order denying the lifting of the automatic stay and imposing additional restrictions on Shirley's participation on the Board. Brice's suit seeks a declaratory judgment as to whether Shirley's vote was valid and also asserts his vote constitutes evidence of the defendants' "improper methods" in support of a claim for tortious interference with her contract. Although it is a tenuous legal argument that a decision regarding Brice somehow violates the court's Order that Shirley not participate in "matters related to the Superintendent's employment or status with the District," it is plain that the lower court's erroneous decision has nevertheless created collateral consequences for the Appellant Board.

If this court were to find for Appellant on the merits of the Appeal, there will be no further controversy over Shirley's participation on the Board. Even if this court were to find for Respondents, and find that Shirley resigned effective May 14, 2019, this court could further acknowledge in its opinion that Mr. Shirley remained a *de facto* member of the Board, such that he was entitled to vote and all of his votes were valid. 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

² The case is *Tara Brice v. Anderson County School District No. Two Board of Trustees, Julia Barnes in her individual and official capacity, Brenda Cooley in her individual and official capacity, and Bonnie Knight, in her individual and official capacity*, C/A No.: 8:20-cv-2565-DCC. (Exhibit 2).

thereof, must be held to continue, since no successors have qualified”). In either instance, this court’s ruling is necessary to end any controversy over the legitimacy of Shirley’s participation on the Board after May 14, 2019, and thus, avoid future controversies that may seek to capitalize on this issue.

CONCLUSION

For the above reasons, the Appellant respectfully requests that Respondents’ Motion to Dismiss be denied and that this court reach the merits of this Appeal.

Respectfully submitted,

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Attorneys for Defendant Anderson County
School District Two Board of Trustees

December 1, 2020
Columbia, South Carolina

EXHIBIT “1”

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

Plaintiffs,

v.

Anderson County School District Two Board
of Trustees,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

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

[PROPOSED] ORDER

This matter comes before the Court on Plaintiff's Petition to Lift the Automatic Stay pursuant to Rule 241(c). The Court denies the petition because lifting the automatic stay could moot the case currently pending before the South Carolina Court of Appeals.

The Court has determined that while the Appeal is pending, Board Member Stu Shirley remains a member of the Board and may participate fully on all matters coming before the Board, except matters related to the Superintendent's employment or status with the District.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox, Jr.
South Carolina Tenth Judicial Circuit Court

February __, 2020
Anderson, South Carolina



Anderson Common Pleas

Case Caption: Phillip Ashley , plaintiff, et al VS Anderson County School District
Two Boards Of Trustees

Case Number: 2019CP0401118

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

EXHIBIT “2”

EXHIBIT A
STATE COURT DOCUMENTS

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Tara Brice,

Plaintiff,

v.

Anderson County School District No. Two Board of Trustees; Julia Barnes, in her individual and official capacity; Brenda Cooley, in her individual and official capacity; and Bonnie Knight, in her individual and official capacity,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE TENTH JUDICIAL CIRCUIT

C/A No.: 2020-CP-04-_____

SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber, Burnette Shutt & McDaniel, PA, 912 Lady Street (29201), Second Floor, PO Box 1929 Columbia, South Carolina 29202, within 30 days after service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the aforesaid time, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/Janet E. Rhodes

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

May 22, 2020

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Tara Brice,

Plaintiff,

v.

Anderson County School District No. Two Board of Trustees; Julia Barnes, in her individual and official capacity; Brenda Cooley, in her individual and official capacity; and Bonnie Knight, in her individual and official capacity,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE TENTH JUDICIAL CIRCUIT

C/A No.: 2020-CP-04-_____

VERIFIED COMPLAINT
(Jury Trial Requested)

Plaintiff Tara Brice (“Plaintiff”), complaining of Defendants Anderson County School District No. Two Board of Trustees (“Defendant School Board”), Julia Barnes (“Defendant Barnes”), Brenda Cooley (“Defendant Cooley”), and Bonnie Knight (“Defendant Knight”) (collectively, “Defendants”), would respectfully show as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a citizen and resident of Anderson County, South Carolina, and an employee of Anderson County School District No. 2.

2. Defendant School Board is the legally constituted governing body of the public school district established by the South Carolina General Assembly and designated as Anderson County School District No. 2, within the confines of Anderson County, South Carolina.

3. Defendant Barnes, Defendant Cooley, and Defendant Knight (collectively, “Individual Defendants”) are duly elected trustees of their respective areas of Anderson County School District No. 2 and members of Defendant School Board. Upon information and belief, all Individual Defendants are citizens and residents of Anderson County, South Carolina. All Individual Defendants are sued in their individual capacities and in their official capacities as elected trustees of Defendant School Board.

4. This Court has jurisdiction over the parties, and venue is proper in Anderson County, because Defendant School Board governs here, all Individual Defendants reside here, and the unlawful acts giving rise to Plaintiff's claims occurred here.

FACTS

5. Plaintiff is a credentialed South Carolina educator and nineteen-year employee of Anderson County School District No. 2.

6. Throughout her employment by Anderson County School District No. 2, Plaintiff has maintained the highest rating on all performance evaluations and has never been subject to disciplinary action.

7. At all times relevant hereto, Plaintiff was Assistant Superintendent for Curriculum and Instruction of Anderson County School District No. 2.

8. As Assistant Superintendent for Curriculum and Instruction, Plaintiff is employed under a 240-day administrative contract.

9. At all times relevant hereto, Dr. Richard Rosenberger was employed by Defendant School Board as Superintendent of Anderson County School District No. 2. Dr. Rosenberger's current contract with Defendant School Board extends his employment through June 30, 2021.

10. As Superintendent of Anderson County School District No. 2, Dr. Rosenberger is charged with the administration of the school district, including the assignment of all Anderson County School District No. 2 personnel, pursuant to the following Defendant School Board policies:

- a. "In all aspects, the administration of the district will be delegated to the superintendent who will carry out his/her administrative functions in accord with policies adopted by the board. He/She will be the chief executive officer of the board." (Policy CBC.)
- b. "The board delegates certain of its executive powers to the superintendent to manage the schools within the established policies. ... The

superintendent will do the following . . . Recommend personnel policies for adoption and be responsible for assignment of all personnel.” (Policy BDD.)

- c. “The superintendent is responsible for the assignment of all professional staff.” (Policy GCK.)
- d. “The superintendent is responsible for the assignment of all administrators.” (Policy CFC.)

11. Defendant School Board must defer to the superintendent on all matters of employment and administration, to include approving employment contracts recommended by the superintendent, pursuant to the following Defendant School Board policies:

- a. “A board member should maintain desirable relations with the superintendent of schools and his/her staff by doing the following. . . acting only upon the recommendation of the superintendent in matters of employment or dismissal of school personnel.” (Policy BCA.)
- b. “The board will award administrative contracts on the recommendation of the superintendent.” (Policy GCB.)
- c. “On the recommendation of the superintendent, the board will consider and authorize certified staff positions as it deems necessary for the operation of the district’s educational program and related services.” (Policy GCA.)

12. Pursuant to S.C. Code Ann. Section 59-25-410, school districts must notify certified personnel, in writing, of their employment status for the following school year before May 1 of each year.

13. Certified personnel reemployed pursuant to Section 59-25-410 must notify the board of trustees in writing of his or her acceptance of the following year’s contract by May 11 of each year, pursuant to S.C. Code Ann. Section 59-25-420. Failure to notify the board of acceptance within the specified time limit constitutes a rejection of the contract.

14. At all times relevant hereto, it was the practice of Anderson County School District No. 2, to effect compliance with Section 59-35-410, for the superintendent to notify the district's certified personnel of their reemployment by issuing contracts for the following school year before May 1.

15. In executive session during the March 9, 2020, regular meeting of Defendant School Board, Dr. Rosenberger made his personnel assignment recommendations for the 2020-2021 school year to Defendant School Board.

16. On March 9, 2020, Dr. Rosenberger recommended to Defendant School Board that Plaintiff's administrative contract be renewed and that she be assigned as Assistant Superintendent for Curriculum and Instruction for the 2020-2021 school year.

17. Following executive session of Defendant School Board on March 9, 2020, Defendant Barnes made a motion (in violation of policy) to approve all recommendations made by Dr. Rosenberger, except Dr. Rosenberger's recommendations for Plaintiff and one other employee. Defendant Barnes instead moved to demote Plaintiff and offer her a teacher's contract for the 2020-2021 school year.

18. Defendant Knight seconded the motion, and the motion passed 4-3, with Individual Defendants and trustee William Shirley ("Shirley"), deceased,¹ voting to demote Plaintiff and refusing to renew her contract, over the objections of Dr. Rosenberger and the three board members not named to this action.

19. Dr. Rosenberger offered Plaintiff a 240-day administrative contract as Assistant Superintendent for the 2020-2021 school year, which Plaintiff signed and dated on April 20, 2020.

20. On April 21, 2020, Defendant Cooley forwarded to Plaintiff an email which Defendant Cooley sent to Dr. Rosenberger on April 21, 2020, condemning Dr. Rosenberger's

¹ Shirley died shortly before the filing of this lawsuit, and Plaintiff does not wish to pursue action against the Estate. Plaintiff is informed and believed that the Estate of William Shirley is not a necessary party to this action.

stated intent to renew Plaintiff's administrative contract and threatening that any such contract would be null and void.

21. Thereafter, Defendant School Board sent Plaintiff a 190-day teacher contract for the 2020-2021 school year, which Plaintiff signed under duress on May 8, 2020.

22. Plaintiff submitted signed copies of both her administrative contract and the teacher contract to Defendant School Board on May 8, 2020, the deadline stated on the contracts for notifying Defendant School Board of her acceptance.

23. Upon information and belief, Individual Defendants voted to demote Plaintiff and refused to renew her administrative contract as part of Individual Defendants' personal and collective vendetta against Dr. Rosenberger and in retaliation for Plaintiff's support of Dr. Rosenberger.

24. Upon information and belief, Individual Defendants voted to demote Plaintiff and refused to renew her administrative contract in an attempt to coerce Dr. Rosenberger's resignation from the position of superintendent of Anderson County School District No. 2.

25. Upon information and belief, Defendant School Board's and Individual Defendants' above-described willful and intentional acts violated Defendant School Board's policies, including, but not limited to, those identified herein.

26. Upon further information and belief, Shirley's participation in the March 9, 2020, vote violated this Court's February 26, 2020, Order in the matter of Phillip Ashley et al. v. Anderson County School District Two Board of Trustees, 2019-CP-04-1118, because said vote disregarded and usurped Dr. Rosenberger's status and authority as superintendent, as defined by Defendant School Board's policies, and should be void accordingly.

FOR A FIRST CAUSE OF ACTION
Against Defendant School Board and
Individual Defendants, in their official capacities
(Deprivation of Due Process)

27. The foregoing allegations not inconsistent herewith are incorporated herein as if set forth verbatim.

28. At times relevant hereto, Defendants were acting under color of state law while engaging in the conduct alleged herein.

29. The Fourteenth Amendment of the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deprive any person of life, liberty, or property, without due process of law.”

30. At all times relevant hereto, Plaintiff had a property interest in an administrative contract for the 2020-2021 school year arising out of Defendant School Board's policies, Dr. Rosenberger's recommendations to Defendant School Board, and the administrative contract offered to Plaintiff by Dr. Rosenberger for the 2020-2021 school year, which Plaintiff accepted by signing and returning to Defendant School Board by the May 8, 2020, deadline.

31. Defendant School Board and Individual Defendants arbitrarily and capriciously voted to demote Plaintiff and refused to renew her administrative contract, against the recommendation of Dr. Rosenberger.

32. Defendant School Board and Individual Defendants arbitrarily and capriciously forced Plaintiff to sign a teacher contract for the 2020-2021 school year, while knowing that Dr. Rosenberger had issued Plaintiff an administrative contract for the 2020-2021 school, by threatening Plaintiff's future employment by Anderson County School District No. 2.

33. Defendant School Board and Individual Defendants acted intentionally, maliciously, and for an improper purpose in carrying out the above-described acts.

34. In so doing, Defendant School Board and Individual Defendants unconstitutionally deprived Plaintiff of her property interest in an administrative contract for the 2020-2021 school year.

35. As a direct and proximate result of Defendants' unconstitutional acts, Plaintiff has and will suffer damages, including, but not limited to, lost earnings, lost benefits, lost professional esteem, emotional distress, humiliation, and attorneys' fees and costs.

FOR A SECOND CAUSE OF ACTION

Against Individual Defendants, in their personal capacities
(Tortious Interference with Prospective Contractual Relations)

36. The foregoing allegations not inconsistent herewith are incorporated herein as if set forth verbatim.

37. At all times relevant hereto, Individual Defendants were acting to benefit their respective personal and collective agendas and not in their capacities as elected trustees and members of Defendant School Board.

38. At all times relevant hereto, Plaintiff had a reasonable expectation in an administrative contract for the 2020-2021 school year arising out of Defendant School Board's policies, Dr. Rosenberger's recommendations to Defendant School Board, and the administrative contract offered to Plaintiff by Dr. Rosenberger for the 2020-2021 school year, which Plaintiff accepted by signing and returning to Defendant School Board by the May 8, 2020, deadline.

39. Individual Defendants intentionally interfered with Plaintiff's prospective contract by voting to demote Plaintiff and refusing to renew her administrative contract.

40. Individual Defendants' above-described actions were for an improper purpose, including to retaliate against Plaintiff for supporting Dr. Rosenberger and to attempt to cause Dr. Rosenberger's resignation.

41. Individual Defendants' above-described actions were by improper methods, including recognizing the vote of Shirley, in violation of this Court's February 26, 2020, Order in

the matter of Phillip Ashley et al. v. Anderson County School District Two Board of Trustees, 2019-CP-04-1118.

42. Individual Defendants' unlawful conduct has resulted in and will continue to result in injury and damages to Plaintiff, including, but not limited to, loss of the salary and benefits of an administrative contract for the 2020-2021 school year, lost professional esteem, emotional distress, humiliation, and attorneys' fees and costs.

FOR A THIRD CAUSE OF ACTION

Against Individual Defendants, in their personal capacities
(Civil Conspiracy)

43. The foregoing allegations not inconsistent herewith are incorporated herein as if set forth verbatim.

44. At all times relevant hereto, Individual Defendants were acting to benefit their respective personal and collective agendas and not in their capacities as elected trustees and members of Defendant School Board.

45. Individual Defendants combined and conspired together for the purpose of injuring Plaintiff.

46. Individual Defendants conspired together to cause Plaintiff's administrative contract not to be renewed on false grounds out of self-interest and to advance their vendetta against Dr. Rosenberger.

47. Individual Defendants acted in furtherance of their conspiracy by voting to demote Plaintiff and refusing to renew her administrative contract and by forcing Plaintiff to sign a teacher contract for the 2020-2021, while knowing that Dr. Rosenberger had issued Plaintiff an administrative contract for the 2020-2021 school year.

48. As a direct and proximate result of Individual Defendants' actions, Plaintiff has suffered and will suffer special damages, including, but not limited to, lost earnings, lost benefits, lost professional esteem, emotional distress, humiliation, and attorneys' fees and costs.

FOR A FOURTH CAUSE OF ACTION

Against Individual Defendants, in their personal capacities
(Defamation Per Se)

49. The foregoing allegations not inconsistent herewith are incorporated herein as if set forth verbatim.

50. At all times relevant hereto, Individual Defendants were acting to benefit their respective personal and collective agendas and not in their capacities as elected trustees and members of Defendant School Board.

51. Plaintiff has built a career in public education and specifically in Anderson County School District No. 2.

52. Individual Defendants' act of voting to demote Plaintiff and refusing to renew her administrative contract gave fellow employees and others the belief that Plaintiff had been demoted because of poor performance and/or other professional incompetency, which is false.

53. Individual Defendants' act of voting to demote Plaintiff and refusing to renew her administrative contract has been widely publicized in Plaintiff's community.

54. Individual Defendants' conduct amounts to defamation.

55. Specifically, Individual Defendants' conduct amount to defamation per se because it involves insinuations of Plaintiff's impropriety or inadequacy in performing her profession.

56. As a result of Individual Defendants' conduct, Plaintiff has and will suffer general and special damages, including, but not limited to, damage to her reputation, embarrassment, humiliation, mental suffering, lost earnings, and lost benefits.

FOR A FIFTH CAUSE OF ACTION

Against Defendant School Board
(Declaratory Judgment)

57. The foregoing allegations not inconsistent herewith are incorporated herein as if set forth verbatim.

58. This Court's February 26, 2020, Order in the matter of Phillip Ashley et al. v. Anderson County School District Two Board of Trustees, 2019-CP-04-1118, prohibited Shirley

from participating in any matters before Defendant School Board related to Dr. Rosenberger's employment or status with Anderson County School District No. 2.

59. Upon information and belief, Shirley violated said Order by participating in discussions about and voting on Defendant Barnes' March 9, 2020, motion to demote Plaintiff and not renew her administrative contract, against the recommendations of Dr. Rosenberger, because said motion related to Dr. Rosenberger's status as superintendent, as defined by Defendant School Board policies.

60. Plaintiff seeks a declaratory judgment, in consideration of all applicable law and Defendant School Board's policies, regarding the following: Whether Shirley's vote on the subject March 9, 2020 motion is valid.

WHEREFORE, having fully complained of Defendants, Plaintiff demands a jury trial and prays for the following relief:

- A. A temporary injunction prohibiting Defendants from demoting Plaintiff and requiring Defendants to recognize Plaintiff's signed administrative contract for the 2020-2021 school year during the pendency of this action;
- B. Other equitable relief as the Court deems just and proper;
- C. Actual damages;
- D. Compensatory damages;
- E. Punitive damages;
- F. Pre- and post-judgment interest as allowed by law;
- G. A declaratory judgment regarding the validity of Shirley's March 9, 2020, vote on Dr. Rosenberger's personnel recommendations;
- H. Attorneys' fees and costs; and,
- I. Such other and further relief as this Court deems just and proper.

[Signature to follow.]

Respectfully submitted,

s/Janet E. Rhodes

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

May 22, 2020

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Tara Brice,

C/A No.: 2020-CP-04-_____

Plaintiff,

v.

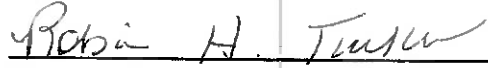
VERIFICATION

Anderson County School District No. Two
Board of Trustees; Julia Barnes, in her
individual and official capacity; Brenda
Cooley, in her individual and official capacity;
and Bonnie Knight, in her individual and
official capacity.

I, Tara Brice ("Plaintiff"), depose and say the following under oath: I am the named Plaintiff in the above-captioned action. I have read the contents of the Complaint. Except for the alleged law, I verify that the alleged facts are true to the best of my knowledge, information, and belief. As to those facts that are not made upon my own personal knowledge, I verify that I reasonably believe the same to be true.


Tara Brice

SWORN to before me this 22nd day of May, 2020.


Notary Public for South Carolina
My Commission Expires: 06/10/2024



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Tara Brice,

Plaintiff,

v.

Anderson County School District No. Two Board of Trustees; Julia Barnes, in her individual and official capacity; Brenda Cooley, in her individual and official capacity; and Bonnie Knight, in her individual and official capacity,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE TENTH JUDICIAL CIRCUIT

C/A No.: 2020-CP-04-01143

NOTICE OF MOTION AND MOTION FOR TEMPORARY INJUNCTION

YOU WILL PLEASE TAKE NOTICE, that on the tenth day after service hereof or as soon thereafter as counsel for Plaintiff Tara Brice (“Plaintiff”) can be heard, Plaintiff will move, pursuant to Rule 65, SCRPC, before this Honorable Court for a Temporary Injunction prohibiting Defendants from demoting Plaintiff and requiring Defendants to recognize Plaintiff’s administrative contract for the 2020-2021 school year. The bases for this Motion are as set forth in Plaintiff’s Verified Complaint and as follows:

1. Plaintiff has no adequate and complete remedy at law;
2. An injunction is necessary to protect Plaintiff’s interests during the pending litigation because Plaintiff’s current administrative contract ends on June 30, 2020, Plaintiff’s contract term for the 2020-2021 school year could begin as early as July 1, 2020, and districts must notify certified personnel of their tentative assignments for the 2020-2021 school year by August 15, 2020; and,
3. Plaintiff will be irreparably harmed if the injunction is not issued because a teacher contract will result in loss of pay, loss of benefits, loss of professional standing, reputational damage, and emotional harm, and bind Plaintiff to a 190-day contract term.

[Signature to follow.]

Respectfully submitted,

s/Janet E. Rhodes

Janet E. Rhodes (SC Bar No. 77214)
Grant Burnette LeFever (SC Bar No. 103807)
BURNETTE SHUTT & MCDANIEL, PA
912 Lady Street, Second Floor (29201)
PO Box 1929
Columbia, South Carolina 29202
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JRhodes@BurnetteShutt.Law

GLEfever@BurnetteShutt.Law

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

May 26, 2020

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Tara Brice,

Plaintiff,

v.

Anderson County School District No. Two Board of Trustees; Julia Barnes, in her individual and official capacity; Brenda Cooley, in her individual and official capacity; and Bonnie Knight, in her individual and official capacity.

IN THE COURT OF COMMON PLEAS

FOR THE TENTH JUDICIAL CIRCUIT

C/A No.: 2020-CP-040-1143

CERTIFICATE OF SERVICE

I, Traci Wolfe, paralegal of Burnette Shutt & McDaniel PA, attorneys for the Plaintiff, hereby certify that on this day, I caused a copy the **Notice of Motion and Motion for Temporary Injunction** to be served on the below-named via electronic mail and by depositing a copy of same in the United States Mail, with proper postage prepaid and addressed as follows:

David L. Morrison, Esq.
Morrison Law Firm, LLC
7453 Irmo Drive, Suite B
Columbia, SC 29212
david@dmorrison-law.com
Attorney for Defendant
Anderson County School District Two
Board of Trustees

William H. Davison, II., Esq.
Davidson & Lindemann, PA
PO Box 8568
Columbia, SC 29202
wddavidson@dml-law.com
Attorney for Defendant Bonnie Knight
in her Individual Capacity

Gene Matthews, Esq.
Richardson Plowden
1900 Barnwell Street
Columbia, SC 29201
GMatthews@RichardsonPlowden.com
Attorney for Defendants
Julia Barnes, in her Individual Capacity
Brenda Cooley in her Individual Capacity



Traci B. Wolfe , PP
BURNETTE SHUTT MCDANIEL, PA

June 24, 2020
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Dec 01 2020

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.

PROOF OF SERVICE

I certify that on December 1, 2020, I served the *Appellant's Supplemental Memorandum Addressing Mootness* on the Respondents, Phillip Ashley, Kevin Craft, and Jimmy Ouzts, by electronically mailing copies of same to their respective counsel of record as follows:

Kurt Tavernier, Esquire
Law Offices of Kurt Tavernier, P.A.
117 West Benson Street
Anderson, South Carolina 29624
scbuck@yahoo.com

Bruce A. Byrholdt, Esquire
Byrholdt & Drawdy
2315 N. Main Street
Anderson, South Carolina 29621
bruce@byrholdtdrawdy.com

s/Kim Chatman
Kim Chatman, Paralegal
DUFF | FREEMAN | LYON, LLC
P.O. Box 1486
Columbia, SC 29202
Telephone: 803.790.0603



DUFF | FREEMAN | LYON

A TTORNEYS AND COUNSELORS AT LAW

ATTORNEYS: David T. Duff *† | William C. Freeman | David N. Lyon | Tiffany L. Butler | Suzanne L. Hawkins

e-mail address:
dlyon@dfi-lawfirm.com

December 1, 2020

VIA ELECTRONIC MAIL ONLY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate St.
PO Box 11629 (29211-1629)
Columbia, SC 29201

RECEIVED
Dec 01 2020
SC Court of Appeals

Re: Phillip Ashley, Kevin Craft, and Jimmy Outzs, 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:

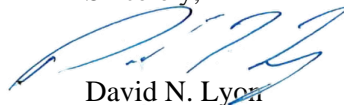
1. Appellant's Supplemental Memorandum Addressing Mootness; and
2. Proof of Service.

I would appreciate you date stamping and returning a copy of each document to our office.

The Respondents' attorneys of records are being served contemporaneously.

Thank you for your time and cooperation.

Sincerely,



David N. Lyon

DNL/kc
Encls

c: Kurt Tavernier, Esquire
Bruce Byrholdt, Esquire
Kenneth L. Childs, Esquire
David T. Duff, Esquire