

VOLUME TWO OF TWO

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Honorable William A. McKinnon, Circuit Court Judge
Case No.: 2017-CP-32-04435

Appellate Case No.: 2020-000770

Jada Garris.....Respondent,

v.

Lexington County School District One..... Appellant.

RECORD ON APPEAL

David T. Duff (SC Bar #1768)
David N. Lyon (SC Bar #100676)
DUFF | FREEMAN | LYON, LLC
P.O. Box 1486
Columbia, SC 29202
(803) 790-0603
dduff@dfi-lawfirm.com
dlyon@dfi-lawfirm.com

ATTORNEYS FOR APPELLANT

Taylor M. Smith, IV (SC Bar #101584)
Andrew S. Radeker (SC Bar #73743)
HARRISON & RADEKER, P.A.
Post Office Box 50143 (29250)
923 Calhoun Street
Columbia, SC 29202
(803) 779-2211
taylor@harrisonfirm.com
drew@harrisonfirm.com

ATTORNEYS FOR RESPONDENT

**VOLUME TWO OF TWO
PAGES 501-638**

RECEIVED
Feb 10 2021
SC Court of Appeals

INDEX

Index	i
-------------	---

ORDERS AND DECISIONS

Decision of Court, May 1, 2020	1
Order Setting Payment Deadline, April 17, 220	6
Order Granting Attorney's Fees & Costs, April 6, 2020	9
Amended Decision of Court, January 28, 2020	18
Decision of the Court, November 22, 2019	27

PLEADINGS

Summons and Complaint (w/exhibits), December 6, 2017	36
Acceptance of Service, March 13, 2018	59
Answer and Affirmative Defenses (w/exhibits), May 14, 2018	60
Amended Summons and Complaint, June 13, 2019	84
Defendant's Answer and Affirmative Defenses to Amended Complaint, June 28, 2019	93
Defendant's Amended Answer and Affirmative Defenses, October 24, 2019	102
Plaintiff's Motion for Attorney's Fees & Costs (w/exhibits), December 2, 2019	111
Defendant's Memorandum in Opposition to Plaintiff's Motion for Attorney's Fees and Cost (w/exhibits), January 22, 2020	143
Affidavit of Jada Garris (w/exhibits), January 23, 2020	196
Additional Affidavit (Radeker) (w/exhibits), February 28, 2020	209
Defendant's Supplemental Memorandum of Law in Opposition of Plaintiff's Petition and Motion for Attorney's Fees and Costs (w/exhibits), March 10, 2020	226
Plaintiff's Memorandum of Law in Support of Motion for Attorney's Fees and Costs, March 17, 2020.....	249

Defendant's Sur-Reply to Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Attorney's Fees and Costs, March 19, 2020	254
Motion to Clarify and Order Deadline, April 16, 2020	257
Defendant's Motion to Alter or Amend A Judgment Pursuant to Rule 59(c) (w/exhibits), April 16, 2020	260
Plaintiff's Memorandum in Opposition to Defendant's Motion to Alter or Amend Order Awarding Attorneys' Fees and Cost, April 17, 2020	270

TRANSCRIPTS

Trial Transcript, October 24, 2019	273
Motions Hearing Transcript, January 27, 2020	546

OTHER MATERIALS/DOCUMENTS

Email Exchange Re: Cancelling March 16 Hearing and Deciding on Written Submissions	608
Defendant's Notice of Appeal, May 12, 2020	619
Certificate of Counsel, January 27, 2021.....	638

1 days earlier and to post it late.

2 But to suggest it was posted days earlier, as a
3 proper interpretation that I read as reasonable and
4 my client thought, at the time, was the case, it
5 misleads the public into thinking that they did
6 fulfill their obligations under the Freedom of
7 Information Act. So that is our concern with the
8 deliberate backdating as we stated --

9 THE COURT: Talk me through that more
10 carefully. Which posting do you allege was
11 deliberately backdated?

12 MR. SMITH: I can go through the exhibits, if
13 you'd like, Your Honor, because I've got --

14 THE COURT: Sure. Just tell me which -- of the
15 three at issue, which is it? The June, July, or
16 March?

17 MR. SMITH: Definitely, Your Honor, we have the
18 problem with the June one. We also have a March
19 one. That's Plaintiff's Exhibit 11, the picture at
20 the top of that one.

21 THE COURT: Okay. But you're saying
22 deliberately backdated based on the changed date
23 from the metadata, correct?

24 MR. SMITH: No, Your Honor. If you go to
25 Plaintiff's Exhibit 11, I'll show you.

1 THE COURT: Okay. Hold on one second.

2 MR. SMITH: And, I apologize, I may not have
3 been good at directing her to tell Your Honor which
4 part we're talking about because it's kind of hard
5 to read this.

6 THE COURT: Okay. I'm there.

7 MR. SMITH: Now, if you go about halfway down,
8 Your Honor, that's where you'll see an entry, a
9 title under the words of Ms. Mary Beth Hill, that
10 says 03/21/ 2017. Do you see that entry?

11 THE COURT: Right.

12 MR. SMITH: So my client was concerned as to
13 this one and to the June one that the second date
14 that you see there -- you see where it says
15 4/16/2017?

16 THE COURT: Right.

17 MR. SMITH: This was not posted on 3/16/2017 --

18 THE COURT: That's where I'm still stuck. The
19 testimony from the Defense was it was posted on that
20 date. So, again, my question is, so your evidence
21 that it wasn't posted is the metadata from
22 the document?

23 MR. SMITH: No, it's two things, actually, Your
24 Honor. It's not just the metadata. All they are
25 going to be able to provide, Your Honor, is they,

1 having done their investigation into this case, was
2 able to determine, using the software that controls
3 their website, that it looks like something was
4 posted on a particular date and time.

5 What you got from my client was she's sitting
6 on the other end where the public is sitting,
7 looking at a website at a particular day and time,
8 and she doesn't see it until a certain time. And
9 when she does see it -- and this is where we get
10 into the metadata, Your Honor -- she downloads that
11 document and she looks at the document properties.
12 And that's what's before you in evidence.

13 THE COURT: Ms. Hill says she posted it on the
14 16th.

15 MR. SMITH: Whatever she's looking at says
16 that. She did not testify that she's sitting in
17 front of a computer and she recalls doing it on that
18 date and time. She's saying that she is the person
19 who controls the website, such that she might be the
20 one doing it, likely, but that she's going back and
21 doing an investigation later into this, Your Honor.
22 It's not a situation --

23 THE COURT: We may have to have testimony -- my
24 notes say she testified she posted that on the 16th.
25 And you're telling me her testimony was she has no

1 recollection of when she posted it, but her -- what
2 do you think she testified to?

3 MR. SMITH: I think she testified that,
4 pursuant to looking back at this, Your Honor, she
5 was able to determine, looking at the system she
6 has, that it went up at a certain time.

7 And I say that, regardless of what the system
8 says, I believe that Your Honor is constrained by
9 the purpose as codified in FOIA to say that if the
10 public is who we're trying to protect here, it would
11 be the other end that's important.

12 So what the public sees on the actual website
13 at a particular time is what is constraining Your
14 Honor about whether or not a website agenda is
15 posted 24 hours ahead of time. And that testimony
16 comes from Ms. Jada Garris.

17 THE COURT: Your argument is the only testimony
18 that could undermine your client's testimony was
19 someone else saying they looked at the website and
20 it was there?

21 MR. SMITH: Yes, Your Honor. I think in that
22 context --

23 THE COURT: Saying I'm the one who posted it on
24 the website, that's not enough?

25 MR. SMITH: If there were testimony before Your

1 Honor that she indicated that she, through
2 Omnimedia, I think Splash Omni is what they called
3 it, she went online and she posted it and then she
4 goes onto the website to make sure it's live, to
5 make sure the public can see it and she was doing
6 that on the date that she indicated she also posted
7 it, or maybe some reasonable date thereafter, but
8 it's also more than 24 hours before the public
9 meeting, then I would agree with Your Honor.

10 But that wasn't the testimony from her
11 regarding the posting that she did -- that the
12 Defendant did in this case. Instead, it was, I went
13 into Splash Omnimedia's portal and clicked what I
14 needed to click to post it, and then it posted.
15 That wasn't, I then went on, made sure the public
16 could see it, because all we have from that end is
17 what Jada Garris could provide today because she's
18 the one going on and looking at what's uploaded.

19 THE COURT: Okay. Keep going.

20 MR. SMITH: Okay. So, Your Honor, we have that
21 as to the meetings for -- the meeting agenda for
22 March, June, and July, those two issues, as you
23 pointed out, the late notice and the late backdate.
24 I believe the evidence suggests that we have carried
25 our burden of showing that.

1 Your Honor, then we move to the November 14th,
2 2017 meeting. In this particular meeting, Your
3 Honor, the testimony that we have is that there was
4 a notice provided in evidence. This was an agenda
5 specifically, Your Honor, that there was going to be
6 an executive session before this meeting. And, on
7 that particular one, it indicated that the meeting
8 was going to convene at 6:00 p.m. for that purpose.

9 Miss Billie Garris goes into the building at
10 5:45. She sits in the auditorium until 6:15. And
11 at 6:00 p.m., there is no executive session;
12 meaning, no vote in the auditorium to convene the
13 meeting and then call it into executive session.

14 She further testifies, Your Honor, which is
15 controverted by Ms. Mary Beth Hill, about the doors.
16 She testifies, even when she was there at 5:45, the
17 doors were shut. She did not say, as contended by
18 counsel, that an executive session was going on.
19 When asked about that, she said she didn't know.
20 That's the point.

21 The public wouldn't know because they were told
22 the meeting was going to be convened and then be a
23 vote to enter executive session. There was no vote
24 in the place they notified the public of where the
25 meeting would be convened; therefore, they had no

1 ability to know whether or not executive session was
2 happening, especially if the doors were closed.

3 Furthermore, they also indicated, and the
4 minutes will back this up, Your Honor, that there
5 was a vote that was had, again, which the public
6 wasn't able to see that indicated they had specific
7 purposes for entering executive session. Just give
8 me a second here and I'll point directly to those
9 minutes.

10 Your Honor, we do not have them, so I
11 apologize. They may not actually be in evidence.
12 What we know is there was an executive session held.
13 And what we have is an indication that there was a
14 vote for executive session. What we don't know,
15 because it didn't happen in public, is what the
16 announced specific purpose was at the time because,
17 Your Honor, if the public isn't present for the
18 vote, there is no announcement of a specific
19 purpose.

20 How would the public know, for instance, if the
21 agenda identified the same things that they voted
22 for to enter executive session? Your Honor, we
23 have --

24 THE COURT: You have the burden of proof as the
25 plaintiff. So do you have any evidence -- again,

1 and this may be pedantic, but do you have any
2 evidence that the specific purpose wasn't announced
3 in the boardroom?

4 MR. SMITH: What I'm saying is a matter of law,
5 Your Honor, is that because there was not a location
6 notifying the public of where it would occur and
7 because my client was present in that location,
8 right, the Board was not present to, A, be there for
9 the notice, that's a notice violation of where they
10 would be; but, B, announce the specific purpose for
11 entering executive session.

12 THE COURT: Okay. Well --

13 MR. SMITH: And because, Your Honor, how
14 would -- my point is, how would the public know, if
15 the doors were already shut, what the public vote
16 was to enter executive session? There's an argument
17 amongst the bar as to whether or not the
18 announcement has to occur in an agenda or can occur
19 right before you enter executive session on the
20 vote.

21 My point is this, Your Honor: If the public
22 isn't there for the vote, it doesn't matter, because
23 how do you know they even followed the agenda in
24 announcing their purpose for entering executive
25 session --

1 THE COURT: Your argument is, if there's a
2 location-notice violation, that automatically means
3 they're in violation of the purpose because the
4 public isn't there to hear it?

5 MR. SMITH: Correct, Your Honor. Because how
6 do we -- I mean, the minutes would also not be
7 specific enough, because I've seen the minutes of
8 all these other meetings -- and, I apologize, I
9 thought we had that in evidence, but maybe we do
10 not -- that the December 6th meeting does not have a
11 reason for entering into executive session listed on
12 it.

13 THE COURT: Still, you have to carry your
14 burden of proof that the notice wasn't given. And
15 the notice can be given in the boardroom, can't it?

16 MR. SMITH: The -- you're saying the notice,
17 Your Honor, would be like the agendas in this case?

18 THE COURT: Right.

19 MR. SMITH: So if the agenda indicated the
20 boardroom --

21 THE COURT: No, no, no. I mean, putting aside
22 where it says, you don't know whether or not the
23 board members said -- gave the reason while they
24 were in the boardroom?

25 MR. SMITH: Correct, Your Honor.

1 THE COURT: Okay. So isn't -- it's -- okay. I
2 mean, I --

3 MR. SMITH: Your Honor, I can had up some
4 authority here that I think goes to the specific
5 purpose. But I think it would eliminate, Your
6 Honor, as to the interpretation of what's necessary
7 with regards to specificity and the place.

8 THE COURT: No, no. I understand that -- well,
9 okay.

10 MR. SMITH: Your Honor, this packet also
11 includes some other authority that I'm going to be
12 addressing shortly on some other matters. But what
13 I would refer Your Honor to, with regards to the
14 specific purpose requirement, is, in the case of
15 Quality Towing -- excuse me, in Donohue. I
16 apologize, Your Honor. The language is from Quality
17 Towing. This is on page 4 of the Donohue opinion.

18 And the Court cites to Quality Towing,
19 indicating that FOIA is clear in its mandate that a
20 specific purpose of the session shall be announced.
21 Therefore, FOIA is not satisfied, merely because
22 citizens have some idea of what the public body
23 might discuss in private. What the Court is
24 addressing in this context is, even if the public
25 has some idea, that's not enough.

1 Now, here, again, Your Honor, my point is not
2 that they had some idea; it was only that the agenda
3 may have indicated that there was going to be a vote
4 to enter executive session and it listed the things
5 that they might end up going into executive session
6 for later. The public, in this case, did not even
7 have any knowledge of what they were going behind
8 closed doors for because they couldn't be present
9 for the vote; therefore, there was no public vote;
10 therefore, we couldn't understand what was actually
11 voted on. That is our argument --

12 THE COURT: Okay.

13 MR. SMITH: So in the context of that fifth
14 cause of action, I believe we have met our burden
15 with regards to showing that, for at least the time
16 that our witness was there, they did not come out
17 for executive session; therefore, it's a violation
18 of FOIA. We'd ask Your Honor to declare that.

19 THE COURT: All right.

20 MR. SMITH: Your Honor, I also want to address
21 the defenses that they have provided. Specifically,
22 Your Honor, I want to get to something that I've
23 seen pop up in a few reported opinions. Your Honor,
24 I'm going to now turn to Multimedia vs. Greenville
25 Airport Commission, which I just handed up.

1 THE COURT: Okay.

2 MR. SMITH: This is this notion, Your Honor,
3 that substantial compliance with the act will
4 satisfy its requirements where a technical violation
5 has no demonstrating effect on a complaining party.
6 Do you notice, Your Honor, in that case, what
7 they've cited to for that proposition? Because that
8 is Arizona's open meetings requirements from 1985.

9 Now, that was an understanding of what Arizona
10 law was at the time. But it's also been traded
11 several times across several opinions in this state
12 and, every time, it's rejected. And here, Your
13 Honor, we're asking you to look the same way because
14 this is not precedent. This is not even persuasive
15 authority that the Court found in this case. It has
16 just been repeated by government lawyers in several
17 reported opinions so far.

18 Your Honor, the most recent one I'll point to,
19 which knocks this down, from our Supreme Court is
20 Brock vs. Town of Mt. Pleasant. On page 4, Your
21 Honor, the Court indicated: Although we conclude
22 the Town committed technical violations of FOIA --
23 and then went on as how they're not sympathetic to
24 the Town's position of how they had to change the
25 agenda. They're saying we modify the previous

1 Court's holding that the Town did violate FOIA.

2 That, Your Honor, is the latest indication
3 which says that this idea that Arizona law somehow
4 can impose a requirement on FOIA that doesn't exist
5 in the statutes at all is something I would ask Your
6 Honor to pay attention to here because I would not
7 want us to get into a situation where, on appeal,
8 we're going to be addressing this all the way up to
9 the Supreme Court so they can finally have the final
10 say on this.

11 This is a situation where this has never been
12 South Carolina law and, I mean, before even the
13 revisions that took place in 2017. The words
14 substantial compliance or technical violation do not
15 appear in FOIA and have never appeared in FOIA. So
16 I'd urge Your Honor to follow binding South Carolina
17 law concerning what must be interpreted.

18 Your Honor, if I may, briefly, I've created a
19 memo to this effect as well.

20 THE COURT: Yes, sir. That would be great.
21 Thank you.

22 MR. SMITH: Your Honor, I briefly also want to
23 point out, going back to Multimedia, the beginning
24 paragraph that I talked about on page 2 indicates
25 that no cause of action under FOIA has been stated

1 where the complaint reveals the prior action was
2 subsequently ratified in a meeting complying with
3 the law.

4 If that was the beginning of the analysis, even
5 in Multimedia, Your Honor, that obviously wouldn't
6 apply to South Carolina as that principle has been
7 expressly revoked under South Carolina law. So we
8 don't even have that anymore, to the extent this
9 even could apply. We argue that, obviously, it does
10 not.

11 Finally, Your Honor, on the law, this was
12 raised, if you recall, earlier in the case in our
13 direct: We believe that Ms. Garris, despite what
14 Your Honor may do with regards to findings of fact
15 and declaratory judgments as to these causes of
16 action you heard today, is likely the prevailing
17 party in this case as to the documents. That would
18 be the other causes of action that --

19 THE COURT: That, I don't want to get into
20 today. That's going to be a motion for attorneys'
21 fees at a later date. So I would prefer we not get
22 into that today.

23 MR. SMITH: Your Honor, if I may just briefly
24 explain why I'm bringing this up. I believe Your
25 Honor would have to decide, at the end of this case,

1 what violations have occurred. And, to that end, I
2 believe Your Honor will be making a determination
3 who the prevailing party is, such that they would or
4 would not be entitled to attorneys' fees later.

5 My point is, Your Honor, if you decide we fail
6 on all of our causes of action before Your Honor
7 today, I'm saying that I believe Your Honor would
8 need to make a determination as to the documents
9 that we testified to that were eventually provided
10 to her, I believe she testified, May of this year.

11 THE COURT: What I'm envisioning happening is,
12 if I rule for you on any of these causes of action
13 or even if I rule against you on all of them, I will
14 get a memo from you asking for attorneys' fees. And
15 if I rule -- you know, whether you win all of them
16 or some of them or none of them today, I'm still
17 going to get a memo -- or motion asking for
18 attorneys' fees, which we'll hear at a later date.

19 MR. SMITH: That's fine. I just want to be
20 sure we have an opportunity to address that at a
21 later date and time.

22 So, Your Honor, for the reasons I mentioned, I
23 respectfully ask Your Honor to rule in Plaintiff's
24 favor today concerning the five causes of action
25 before Your Honor.

1 THE COURT: Okay. Thank you.

2 Yes, sir?

3 MR. DUFF: Thank you, Your Honor. The closing
4 argument you've just heard is based on the most
5 legalistic doctrinaire impractical interpretation
6 and understanding of FOIA I've ever heard.

7 I want to point out a couple things. The most
8 recent alleged violation in this entire case
9 occurred on November 14, 2017, two years ago. And
10 that was the meeting where Billie Garris was a
11 15-year-old at the time, 10th-grader, said that she
12 walked in at 5:45 and the Board was already behind
13 closed doors in executive session prematurely,
14 illegally.

15 Two adults who were in the meeting, the board
16 chair and the communications officer, have testified
17 that, in all the years, in the 22 years, the Board
18 has never gone into executive session and closed the
19 door before 6:00.

20 The five violations that are in the complaint
21 cover the period December of 2016 to November of
22 2017, two years ago. And they have completely
23 failed to prosecute this case. There is not a
24 single more recent alleged violation than November
25 of 2017, even though they amended their complaint in

1 June of this year. They could have added whatever
2 else they wanted to. They didn't. So you're
3 dealing with these five violations that are two
4 years old.

5 As you pointed out, Ms. Garris has the burden
6 of proof. And she has not proved that at either the
7 March 21 or the July 18, 2017 agendas were posted
8 late to the website. We're only talking website.
9 It's posted everywhere else in the district. She
10 hasn't carried her burden of proof. As you've
11 pointed out, you know, the mere fact that Ms. Garris
12 didn't see the posting doesn't mean that it wasn't
13 posted.

14 And Mary Beth Hill has testified, as to the
15 March 21, 2017 meeting, that the agenda was posted,
16 as you pointed out, on March 16th. And as to the
17 July 18, 2017 -- and the metadata backs her up. She
18 testified and the metadata establishes that it was
19 posted on July 11 and was edited on July 17,
20 perhaps, within the 24-hour period --

21 THE COURT: For the July 28th meeting?

22 MR. DUFF: The July 18 meeting of 2017.

23 THE COURT: Okay.

24 MR. DUFF: That the agenda was posted July 11
25 and edited on July 17 in a non-substantive way.

1 So -- and I wanted to -- there's been a lot of
2 reference to the law. I want to refer you to the
3 law as well.

4 In section 30-4-80 of FOIA, it says that the
5 notice must include the dates, times, and places of
6 such meetings. You know, they are so hung up on
7 place. You know, they say that the notices say the
8 auditorium and, therefore, it cannot include the
9 adjoining boardroom with the door open at all times
10 where the public has come in and participated in
11 open sessions that have been conducted on various
12 occasions in the boardroom.

13 It's not as though it was noticed for the
14 auditorium at 100 Tara Springs and, instead, the
15 Board met at Lexington High School. We're not only
16 in the same building; we're basically at the
17 auditorium complex, which is the place. The statute
18 says place. And, yeah, you have to be at the same
19 place, but you don't -- and you couldn't go to
20 Lexington High, but you can be in the auditorium
21 complex. And the notices say that.

22 And if you read on, Your Honor, it says, again
23 in 30-4-80, that the notice must be -- the agenda
24 must be posted on the bulletin board at the office
25 or the meeting place. Once again, place, a general

1 term, and on the website of the body, if any. I
2 mean, some public bodies don't even have a website.
3 So I think the statute contemplates that maybe there
4 will be postings that are only on physical
5 locations --

6 THE COURT: Mr. Duff, if you don't mind, can I
7 take you back a second?

8 MR. DUFF: Yes.

9 THE COURT: I'm very comfortable on the facts
10 on the March 21st and July 18th issues. The June
11 15th one, tell me about your position on that one.

12 MR. DUFF: We concede, Your Honor, that the
13 most difficult issue in this case is the June 15,
14 2017 meeting where the testimony is that there was a
15 timely notice posted that indicated that -- and it
16 was -- you know, to be held at 7:30 in the morning
17 for a single agenda item of going into executive
18 session, hearing what the recommendations were for
19 the hiring of staff, and the Board, after the
20 executive session, going back into the auditorium
21 and voting on the recommendation.

22 And our position is that, under those
23 circumstances, the notice tells the public
24 everything they need to know; that it serves the
25 purpose of an agenda.

1 THE COURT: So, Mr. Duff, you're conceding
2 there's no agenda posted. But your argument is
3 because the sole purpose of the meeting was hiring
4 decisions about new staff and new school year, the
5 notice gave people enough information that an agenda
6 wasn't necessary?

7 MR. DUFF: Precisely.

8 THE COURT: Do y'all concede the notice was
9 appropriate?

10 MR. SMITH: No.

11 THE COURT: Okay. Then talk to me -- well,
12 I'll come back.

13 MR. SMITH: We'll be happy to address that
14 later, Your Honor.

15 THE COURT: Okay.

16 MR. DUFF: And, Your Honor, I'm going to hand
17 up something now. It's an AG opinion from May of
18 2016, which, I think, was issued after this Brock
19 decision that they rely so heavily upon. And if you
20 will notice, on the second page of this AG opinion,
21 towards the bottom -- and this is kind of an
22 interesting case factually because it's not unlike
23 our case.

24 What happened was the Town of Duncan was going
25 to hold a referendum. And they thought that they no

1 longer had a website when, in fact, they did have a
2 website. And the notice and agenda were posted
3 physically in whatever places they were posted, but
4 it was not posted on the website because the body
5 thought that they didn't have one and, therefore,
6 didn't have to post it there. And they proceeded to
7 hold the referendum and the referendum passed, et
8 cetera.

9 If you look at the bottom of the second page,
10 what's stated is that, again, in this Multimedia
11 case, the AG quotes: Substantial compliance with
12 the act will satisfy its requirements for a
13 technical violation has no demonstrated effect on a
14 complaining party, citing Multimedia.

15 And if you look above -- and this gets right to
16 the point they were trying to make earlier regarding
17 the statute. The statute, 30-4-100, which concludes
18 a violation of this chapter must be considered an
19 irreparable injury for purposes of there being no
20 adequate remedy at law.

21 Well, our position is that that's where you
22 have found that an actionable FOIA violation has
23 occurred. If you find that there's an actionable
24 FOIA violation, then, according to the statute, it
25 must be considered to result in irreparable injury

1 for purposes of remedy.

2 But if you go back to the AG opinion, it gives
3 you insight into when do you find an actionable FOIA
4 violation? And the AG says that in determining
5 whether you've had an illegal meeting -- and,
6 basically, they're saying that every one of these
7 meetings was illegal, because if the notice isn't
8 right and the agenda isn't right and you're not in
9 the auditorium, the whole meeting is illegal.

10 You heard Mr. Smith say that it didn't matter
11 what the purpose of going into executive session
12 were because the notice of the agenda wasn't right,
13 it was illegal. Everything is illegal; illegal,
14 illegal, illegal.

15 But what the AG says is what you look at is,
16 was there prejudice in determining, again, do we
17 have an actionable violation? Was there prejudice
18 to anyone? Was the violation only technical? Has
19 the body taken action to rectify the action? Well,
20 this is relevant here because the testimony is that
21 the Board discontinued their policy of convening the
22 meeting and going directly into executive session in
23 the boardroom. Since February of this year, they
24 have done it on the dais.

25 So it's been rectified as one of these factors

1 for determining whether there's an actionable FOIA
2 violation. And then what relief might the Court
3 provide? Well, you know, we have -- the relief
4 here -- there's no rescission of anything to undo.
5 There's no basis for an injunction at this point.
6 What are you going to enjoin? You're enjoined from
7 ever editing your agenda posting on your website to
8 correct a typo or to put some other non-substantive.
9 How do enjoin that? We'd be right back in here next
10 week when Ms. Garris thinks we, in some way, dropped
11 the ball on some editing problem. And the opening
12 of the meeting, et cetera, has been rectified since
13 February of this year.

14 So -- and, again, the purpose of going into
15 executive session, there was no evidence on that at
16 all. Even though it may be somewhere in his
17 pleading, there was absolutely no evidence about we
18 went into executive session for an improper purpose.
19 His argument was, if your notice is faulty or your
20 agenda is faulty, then, automatically, the reasons
21 you went into executive session are improper and
22 illegal. It makes no sense.

23 Basically, Your Honor, with the date of this
24 five hypertechnical, inconsequential violations that
25 had no impact on the public's right to know, what we

1 really have here, I hate to say it, is a tempest and
2 a teapot. It is a trivial effort by Ms. Garris who,
3 obviously, has an agenda of her own here, to try to
4 catch the Board in what she thinks are FOIA
5 violations when this Board and this District has --
6 and it -- has committed in every way.

7 And I represent a lot of school boards and I've
8 seen a lot of boards in action. And this Board does
9 it better than anyone I can think of. There simply
10 is no proof to support a finding of an actionable
11 FOIA violation based on any of the five that are
12 alleged by the plaintiff. Thank you.

13 THE COURT: Let me ask -- my concern is, I've
14 read the cases that you talked about with the
15 technical violation or the -- my concern about that
16 line of cases is the last time any court in South
17 Carolina mentioned that language was more than 20
18 years ago. The latest one I saw was '96. Is that
19 still good law? Is there still a technical
20 violation doctrine under FOIA?

21 MR. DUFF: The Attorney General, as recently as
22 2016 --

23 THE COURT: I know the Attorney General thinks
24 there is.

25 MR. DUFF: I think we are -- we're supposed to

1 give due deference to the AG. And the AG is still
2 interpreting the law, the statute based on the
3 Multimedia case as -- you know, there should be a
4 practical understanding and application of the
5 requirements of FOIA. Theirs is legalistic
6 doctrinaire, no latitude given on anything, and
7 that's the position they've taken throughout, in
8 this case and others. And it -- this Board operates
9 in the sunshine. And these alleged violations are
10 simply not established.

11 THE COURT: Okay.

12 MR. DUFF: Thank you.

13 THE COURT: Mr. Smith, before we get to your
14 closing, I want to see if I can figure out the
15 factual issue about the June 15th meeting. You
16 argue that there was -- not even notice was given;
17 is that correct?

18 MR. SMITH: Of the June -- I'm sorry --

19 THE COURT: The hiring special meeting, are you
20 telling me that you don't even concede that notice
21 of the meeting was given properly?

22 MR. SMITH: No, Your Honor. We have two
23 requirements under 30-4-80; that would be notice
24 must be provided and an agenda.

25 THE COURT: I understand. I thought what you

1 were telling me was you disagree even that notice
2 was given.

3 MR. SMITH: No, Your Honor. I'm saying the
4 agenda was not provided on a timely basis.

5 THE COURT: Okay. So that was my factual
6 question. I thought you told me that you didn't
7 agree that notice was given.

8 MR. SMITH: No, Your Honor. I apologize. The
9 agenda does provide some notice to the public. And
10 I may have inadvertently conflated those two, so I
11 apologize. I'm not asserting that the -- usually --
12 I think the testimony came out from the Defendant
13 concerning notices. They're actually usually posted
14 at the beginning of the year concerning all
15 regularly scheduled meetings.

16 To the extent this was a special meeting, which
17 I understand it was, Your Honor, then there may have
18 been a notice sent out before. That was not our
19 contention because the notice requirement as to
20 special meetings is not codified as to a deadline.
21 So I don't believe that has an affirmative duty on
22 notice to when that happens.

23 Now, of course, if they didn't provide any
24 notice, that might be a problem --

25 THE COURT: Right. The reason I think it's

1 relevant is they're arguing that, in this case,
2 because there was only a single topic of discussion
3 at the meeting, the notice satisfies both
4 obligations.

5 MR. SMITH: No, no. The statute is clear, I
6 believe, Your Honor, in 30-4-80, that you have to
7 provide an agenda for a regularly scheduled or
8 special meeting.

9 THE COURT: Correct. But if the agenda is the
10 single issue of -- it's in the summer, you've got a
11 lot of openings, you've got to hire a bunch of new
12 teachers, there's only one agenda item, and the
13 notice says this is a special board meeting to hire
14 new teachers, they say that's good enough. That's
15 my question: That's good enough for an agenda, too?

16 MR. SMITH: Your Honor, I guess that opens up a
17 question for you in terms of the interpretation of
18 the law regarding that document which is, I guess,
19 before the Court now, is that is this is an agenda?
20 I would say, Your Honor, it is not an agenda in the
21 context of specificity that you see in the agendas
22 that are before Your Honor.

23 THE COURT: I understand.

24 MR. SMITH: Even if there's one item, there was
25 going to be a call to order. There would be an

1 adjournment. There would be how -- what they would
2 do with regards to the rest of the customary
3 functions of how you open a meeting. That's present
4 in the other agenda; it's not present in what's
5 before Your Honor as to that notice, which they may
6 want you to consider as an agenda, which we would
7 argue is not.

8 THE COURT: That's something I have to think
9 about. The fact question I'm trying to pin down is,
10 was notice given of that meeting more than 24 hours
11 in advance of the meeting?

12 MR. SMITH: No. And that's our main issue,
13 Your Honor, is that we contend, in our testimony,
14 that she looked for days, I believe, literally. I
15 said, did you look on the 14th? Did you look on the
16 15th? Did you look on the 16th? Again, remember,
17 the meeting occurs on the 15th --

18 THE COURT: But the testimony was about the
19 agenda, wasn't it?

20 MR. SMITH: Right.

21 THE COURT: Put that aside. My question is,
22 was notice of the meeting given more than 24 hours,
23 is the only question I want --

24 MR. SMITH: I apologize, Your Honor. I got
25 confused about what you were asking. If they're

1 going to go about and produce two documents,
2 regardless of when they do them, with regards to a
3 meeting, one called a notice and one called an
4 agenda, I don't think it's proper for Your Honor to
5 consider the first thing is also an agenda.

6 THE COURT: I understand. But it's not even
7 any point of me thinking about that issue if they
8 didn't provide notice 24 hours in advance of the
9 meeting. So that's my question.

10 MR. SMITH: Correct, Your Honor. And I was not
11 aware of when the notice was provided nor even make
12 that an issue, because we were looking as to whether
13 the agenda was provided because that's what the
14 statute provides you must have.

15 THE COURT: I think we have to have some kind
16 of -- what is the Defendant's position on when
17 notice was provided?

18 MR. DUFF: That it was posted on June 13. It's
19 contained in Defendant's Exhibit 3 on page 7.

20 THE COURT: Posted June 13th, Mr. Duff?

21 MR. DUFF: Yeah.

22 THE COURT: Okay. I remember her testimony was
23 it says the 12th, but it really was the 13th, which
24 was a typo. Now I remember the testimony. Okay.
25 All right.

1 And Plaintiff's testimony is you don't contest
2 that, but your argument is there's no agenda at all
3 and the notice can't serve as both?

4 MR. SMITH: Correct, Your Honor, it cannot
5 serve as both. The statute requires both.

6 THE COURT: Thank y'all for clearing that up.
7 Reply closing?

8 MR. SMITH: Thank you, Your Honor. There was a
9 contention made that we have failed to prosecute
10 this case. I know Your Honor didn't want me to go
11 much into the lengthy settlement negotiations
12 concerning the release of documents, but I did
13 elicit testimony before Your Honor today that the
14 last document was provided this year; meaning, we
15 didn't amend the case until about -- I believe it
16 was four, five, six months ago. It was recently,
17 over the summer.

18 That's when we then proceeded on this track to
19 try this case, Your Honor, because my client, as she
20 testified to, was primarily concerned with the
21 documents. That was what was her main concern.
22 And, Your Honor, this was filed, obviously, in
23 December of '17. We're not quite at two years yet.
24 I don't think most courts would consider this to be
25 failure to prosecute in light of the lengthy

1 settlement negotiations that have occurred and
2 then --

3 THE COURT: I don't think you can make your
4 failure to prosecute argument at trial. You can
5 file a motion to dismiss prior to trial and say the
6 case should be dismissed because the Plaintiffs have
7 failed to prosecute.

8 But, Mr. Duff, unless you have some, I don't
9 think you can at trial --

10 MR. DUFF: I'm not arguing for a dismissal.

11 THE COURT: Okay. That's what I'm talking
12 about.

13 MR. DUFF: I'm just arguing it's an old case.

14 MR. SMITH: Thank you, Your Honor, for
15 clarifying.

16 Also, there was a contention made that there
17 has not been another violation established. Well,
18 Your Honor, in the record of our case through
19 Ms. Jada Garris, she established there was an agenda
20 violation just this year in January while she was a
21 board member as to where that particular meeting
22 opened.

23 She testified that the agenda indicated that it
24 would be a place where the public could attend, yet
25 she indicated that when she did have the meeting

1 opened, it opened in the manner that you heard on
2 the audio, which is we're now ready to go into
3 executive session.

4 There's a problem there, Your Honor, that I
5 want to highlight. First, that is not the convening
6 of any public meeting by words. That is merely
7 announcing we're ready to start a particular portion
8 of a meeting. There was no finding of a core, for
9 instance, Your Honor, which is necessary in the
10 Robert's Rules of Order. There was no indication
11 that enough board members were present for it to be
12 a meeting, much less calling to order, providing an
13 understanding of how they would be proceeding on
14 that day, as to what rules, document rules, that
15 kind of thing.

16 Instead, you heard the audio of how that
17 started, according to Ms. Garris, and it was a vote
18 to enter executive session and that was taken in the
19 boardroom. That, Your Honor, as you know, was one
20 of the other issues we brought up in testimony in
21 our case.

22 So that is why, Your Honor, we are requesting
23 an injunction in regards to them conducting a
24 convening of the meeting in a place other than where
25 they're notifying the public of where that's going

1 to be. So if it's in the auditorium, if that's
2 where they're notifying the public, then that's
3 where they're going to have their vote so the public
4 can be made aware what the specific purpose is of
5 entering executive session. The injunction would
6 say, basically, like that, Your Honor.

7 We're not asking for them to never open the
8 meeting in the boardroom. We're just saying that
9 the agenda and the notice, perhaps, would need to
10 indicate that the boardroom would be the place where
11 the public can go to hear the vote to enter
12 executive session so, that way, they're made aware,
13 pursuant to their requirements under the law, as to
14 what the specific purpose is.

15 That is why we're asking for an injunction,
16 Your Honor, because Ms. Garris has failed, as she
17 testified to several times, to change the culture of
18 this organization. It is evidenced by them,
19 frankly, relying on an attorney, albeit an important
20 one, the Attorney General, to say that the
21 Multimedia decision, which, again, doesn't make any
22 findings as to how Arizona's open meeting laws are
23 persuasive should be the law that controls this
24 case.

25 I believe that Brock vs. Town of Mt. Pleasant,

1 Your Honor, is dispositive of that notion that even
2 if they could try to argue that things were a
3 technical violation, FOIA only has violations.
4 There are no technical violations. There is no such
5 thing of substantial compliance under the act. And
6 I believe that Your Honor is constrained in the
7 sense that the purpose, as codified, indicates that
8 if you were to construe it in a manner that makes it
9 harder for people to learn the activities of their
10 public official and additional cost or delay in the
11 context of where they're meeting, that would likely
12 subvert the purpose why FOIA was drafted in the
13 first place. So, Your Honor, we would strongly
14 encourage you, in that sense, to order the equitable
15 relief on that particular point.

16 Lastly, Your Honor, regarding equitable relief,
17 we will only be requesting an injunction with
18 regards to agendas, not as to necessarily when
19 they're were post, although that was a major
20 problem. What's more concerning to us is the way in
21 which they're displayed on the website; meaning, we
22 showed, by evidence, that they still -- through
23 testimony, that came out through Ms. Hill about how
24 the new software works; that there will be a way in
25 which they choose, still, a date regarding what will

1 be in the title that appears on the news release
2 page.

3 We would ask Your Honor to give an injunction
4 to say that is improper. There is no second date
5 needed there. The public shouldn't be confused as
6 to what date this document was posted or not.
7 They'll see when it's posted. That, frankly, is
8 better than having a second date in the title, like
9 I pointed out to Your Honor in that exhibit, which
10 gives the impression that the document hyperlink was
11 put up on a date for different days earlier than
12 when it actually did, regardless of whether or not
13 that was 24 hours before the meeting or not.

14 That is the injunction we would request, Your
15 Honor, is that doing it in that manner, deliberately
16 putting a date which doesn't correspond with the
17 posting date, in addition to the already notified
18 meeting date, is superfluous and, at least, provides
19 an impression that we testified to -- Ms. Jada
20 Garris testified to how she was confused.

21 THE COURT: I thought the testimony was that
22 the new system automatically dated it as of the date
23 of the posting. It made the little -- it wrote out
24 to the side the date it was posted. Is that not
25 right?

1 MR. SMITH: No. The testimony, as I
2 understood, was that the system she goes into when
3 she looks at it is a system where she clicks. So
4 there's, like, a calendar that pops up, you know, is
5 the way I understood the testimony. And she can
6 click a date, but it's going to have automatically,
7 like, highlighted already, the date of the posting,
8 the day you're at now.

9 What I'm saying is there's less discretion on
10 the person now. They're right about that, but it
11 doesn't remove the discretion from the poster
12 concerning how that second date is added to that
13 hyperlink title.

14 Essentially, Your Honor, what this case is
15 about, in terms of their arguments, is that if the
16 meeting is going to start at 6:00 p.m. for a
17 particular meeting and they're indicating that the
18 executive session starts at 6:00, well, what they're
19 indicating is that the public should be made aware
20 of that.

21 That's not happening here, in terms of what we
22 learned at these meetings, because they're not in
23 the room where they said the meeting is going to
24 take place. Conversely, Your Honor, if the meeting
25 starts at 7:30, if it actually starts at 7:30, they

1 appear to be confused as to when the actual meeting
2 starts as to when the public should be allowed to
3 come in and watch the vote.

4 So if they're telling people that general
5 session, as they call it, is the public portion of
6 the meeting, then they're deliberately misleading
7 the public as to what their rights are concerning
8 understanding the specific purpose for entering
9 executive session by putting the executive session
10 before the meeting and especially doing that in a
11 place that isn't notified on the agenda as to where
12 they will be meeting.

13 THE COURT: Tell me exactly what you want the
14 injunction to be.

15 MR. SMITH: We would request, Your Honor, for
16 the injunction -- which one you want me to take
17 first? The backdating or the --

18 THE COURT: Both. First, I thought you said
19 there was only one thing you wanted an injunction
20 on. It's not. So what you need -- you want an
21 injunction on the date issue and you want another
22 injunction saying they have to say that general
23 sessions starts at 6:00 because that's when they
24 vote to go into executive session?

25 MR. SMITH: No, not that specifically, Your

1 Honor. What I was indicating as to that injunction
2 is that they would need to notify the public of the
3 place where the vote to enter executive session is
4 to occur. So if the agenda, like you saw in
5 evidence today as to several of the meetings in this
6 case, may have indicated that the meeting will
7 convene and then enter executive session, but as to
8 that portion of the agenda, which was not at the top
9 where it said the meeting location is at the
10 auditorium, it was silent, right?

11 So, Your Honor, all we're asking is for an
12 injunction to modify agenda that go out to the
13 public to indicate where the vote will be to enter
14 executive session and to not violate that, to not do
15 it in a different place than where you've notified
16 the public, because, currently, and what we've
17 provided in evidence, the public doesn't know where
18 they're supposed to be to witness a vote for
19 executive session. You heard two different
20 witnesses we provided say I didn't feel comfortable
21 going in that room. That's our point on that
22 injunction.

23 The other one, Your Honor, would be not have
24 the title of the hyperlink concerning agendas in a
25 misleading manner; to have the date which neither

1 corresponds to the date of the meeting or the date
2 it was posted. Meaning, it's totally fine, of
3 course, to have the date of the actual agenda. How
4 would you know which agenda to click? We're not
5 disagreeing with that. It's the second date.

6 THE COURT: I understand.

7 MR. SMITH: That needs to reflect either the
8 date it was posted or not be there at all.

9 THE COURT: The second point of your argument
10 is that, to this day, the agenda notices don't tell
11 people where to go if they want to hear the vote to
12 go into executive session?

13 MR. SMITH: More finely, Your Honor, it's that
14 they may have given the impression that they've
15 taken away the discretion they have in choosing that
16 second date. But they haven't, actually, such that
17 there's still an ongoing concern on my client's
18 behalf that when they do go up -- and they do still
19 go up in the same format --

20 THE COURT: No, no, no. I'm talking about the
21 other issue. Do you want an injunction saying that
22 they have to say where the vote is going to be to go
23 into executive session?

24 MR. SMITH: Right.

25 THE COURT: So you want --

1 MR. SMITH: And to do it there.

2 THE COURT: And, as of today, they're not doing
3 that, is my question.

4 MR. SMITH: Correct. To be explicit in the
5 agenda and to do it at the place. That is what the
6 injunction would be. Right now, Your Honor, I
7 believe, and that's our contention here, is that
8 it's not only not obvious, but there's actual
9 confusion that occurs amongst people who are trying
10 to attend these meetings.

11 THE COURT: Thank you.

12 Mr. Duff?

13 MR. DUFF: Very briefly, Your Honor. The
14 testimony from both sides is that, at least since
15 February of this year, the Board is calling the
16 meeting to order at 6:00 on the dais.

17 THE COURT: Mr. Duff, I understand. But their
18 complaint with that system is they think the public
19 needs to be told that, technically, there's a minute
20 of general session at 6:00. That's what they're
21 saying is confusion; that if a member of the public
22 looked at the agenda and they want to know were
23 the -- the general session actually starts at 6:00
24 because that's when they vote to go into executive
25 session.

1 Is that correct?

2 MR. SMITH: That's correct, Your Honor, and
3 that they actually do it --

4 THE COURT: I think they're happy that it's
5 being done in the dais room. But they're saying,
6 based on the agenda, it's not clear that that's
7 happening.

8 MR. DUFF: Well, I mean, the agenda I'm looking
9 at, which is Defendant's Exhibit 2, I mean, it
10 clearly says call to order 6:00 p.m. executive
11 session. It says, you know, auditorium of the
12 building. I mean --

13 THE COURT: I think they want it to say general
14 session because, technically, the commencement of
15 the meeting and the vote to go into executive
16 session is a general session. I mean, it's 30
17 seconds' worth of general session, but I think
18 that's what they're complaining about.

19 MR. DUFF: I guess.

20 THE COURT: Is that --

21 MR. SMITH: Correct. I mean, we just want it
22 to be clear as to when the meeting starts and when
23 the vote is taken to enter executive session.
24 Whether that's public session, Your Honor, I don't
25 know. I mean, they've always used that. And maybe

1 the Lexington Constituency know that that's the open
2 part of the meeting. In that case, Your Honor, the
3 public session begins, like you said, one minute
4 before executive session.

5 MR. DUFF: I think it's clear to the public
6 that the meeting will be called to order on the dais
7 at 6:00 and the Board will take an immediate motion,
8 then go into executive session. I mean, I don't see
9 how it could be any more clear.

10 THE COURT: All right. Counsel, I -- and
11 you're the plaintiff. If you want one final 30
12 seconds, I'll give it to you.

13 MR. SMITH: Only just the reminder of the law
14 on that, Your Honor, which is that the substantial
15 compliance is not South Carolina. So I would ask
16 Your Honor to read the statutes. I provided a memo
17 concerning the statutes. I believe if you did that,
18 then you would find us to be the prevailing party to
19 prevail on all these causes of action.

20 THE COURT: All right. Counsel, this is not
21 something I'm going to rule on now. I'll draft an
22 order and you'll hear from me as soon as I can.

23 -- END OF TRANSCRIPT OF RECORD --
24
25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 24th of October, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 20, 2019

Bethanie K. CrepponBethanie K. Creppon
Circuit Court Reporter

Ex PP

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Jada Garris, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

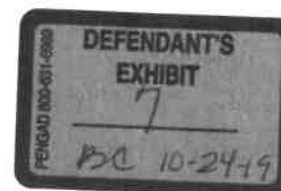
Lexington County School District One,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-32-04435

CONSENT ORDER



This matter comes before me upon a request that (a) the alternative dispute resolution report deadline be extended to 120 days, pursuant to Rule 4(c), SCADR, from the filing of Plaintiff's Amended Complaint, (b) schedule a hearing within ten days of filing of the Amended Complaint, pursuant to S.C. Code Ann. 30-4-100(a), and (c) schedule a status conference with the parties so a scheduling order may be entered regarding the resolution of the above-captioned action. In exchange for Plaintiff's amending its complaint to dismiss several causes of action, Defendant has consented to the filing of the Amended Complaint, has agreed to provide a certain audio recording relevant to a cause of action being dismissed, and has agreed to provide a written statement regarding the availability of some information relevant to as separate cause of action being dismissed.

Accordingly, it is therefore hereby ORDERED as follows:

1. The alternative dispute resolution report deadline is extended to 210 days from filing of the Amended Complaint;
2. This action shall be set pursuant to the procedure outlined in S.C. Code Ann. 30-4-100(a); and
3. The Court will schedule a status conference and thereafter enter a scheduling order for the resolution of this matter.

And IT IS SO ORDERED.

The Honorable Alison Renee Lee
Chief Admin. Judge, Eleventh Cir. Common Pleas

[signatures of counsel next page]

Ex PP

WE SO MOVE AND CONSENT:

/s/ Taylor Smith

Taylor M. Smith IV

S.C. Bar No. 101584

HARRISON, RADEKER & SMITH, P.A.

Post Office Box 50143

Columbia, South Carolina 29250

(803) 779-2211

taylor@harrisonfirm.com (email)

ATTORNEY FOR PLAINTIFF

/s/ David N. Lyon

David N. Lyon

S.C. Bar No. 100676

DUFF & CHILDS, L.L.C.

Post Office Box 1486

Columbia, South Carolina 29202

(803) 790-0603

dlyon@duffchilds.com (email)

ATTORNEY FOR DEFENDANT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON) 2017-CP-32-04435

JADA GARRIS)
)
vs.) TRANSCRIPT OF RECORD
)
LEXINGTON COUNTY SCHOOL)
DISTRICT ONE)
)
JANUARY 27, 2020
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE WILLIAM MCKINNON

APPEARANCES:

ANDREW S. RADEKER, ESQUIRE
COLUMBIA, SOUTH CAROLINA

TAYLOR M. SMITH, IV, ESQUIRE
COLUMBIA, SOUTH CAROLINA

ATTORNEYS FOR THE PLAINTIFF

DAVID DUFF, ESQUIRE
COLUMBIA, SOUTH CAROLINA

DAVID LYON, ESQUIRE
COLUMBIA, SOUTH CAROLINA

ATTORNEYS FOR THE DEFENDANTS

SHIRLEY BROOM
16TH Circuit Court Reporter

ORIGINAL PROVIDED TO DAVID LYONS, ESQUIRE
ALL FEES ARE PURSUANT TO RULE 607(h)(j) SCACR

COPIES PROVIDED UPON REQUEST

I-N-D-E-X

WITNESSES:

(No testimony taken)

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Account statement	60	

1 THE COURT - All right, this is Garris v.
2 Lexington County School District One, 2017-CP-32-04435.

3 Gentlemen?

4 MR. RADEKER - Thank you, Your Honor.

5 THE COURT - Yes, sir.

6 MR. RADEKER - Drew Radeker here for the
7 plaintiff. With me here is Taylor Smith and Jada Garris.
8 I'll let these gentlemen introduce themselves.

9 MR. DUFF - Good afternoon, Your Honor, David Duff
10 and David Lyon for the Defendant, Lexington County School
11 District One.

12 THE COURT - Nice to see you again, counsel.

13 MR. RADEKER - And we were talking about the, what
14 we think is probably, and you are free to disagree with us
15 and tell us to do it in a different order, but what we
16 think is probably the logical order in which to present
17 these is probably the motions to reconsider first, because
18 there's motions to reconsider that each seek
19 reconsideration of different aspects of Your Honor's Order,
20 ---

21 THE COURT - All right.

22 MR. RADEKER - --- and then our motion for
23 attorney's fees to file with that is probably the way I
24 think it ought to go.

25 THE COURT - Okay.

1 MR. DUFF - And we would agree with that, Your
2 Honor, and just to -- in regard to the motions to
3 reconsider, just perhaps to make it easier for all of us to
4 orient ourselves, this is just a summary of the ---

5 THE COURT - Okay.

6 MR. DUFF - --- Court's ruling ---

7 (WHEREUPON, DOCUMENT HANDED UP TO THE COURT)

8 THE COURT - Thank you.

9 MR. DUFF - --- after trial back in October.

10 MR. RADEKER - And, Your Honor, to start off I
11 hand around a copy of a few cases, and I'll hand this to
12 opposing counsel.

13 THE COURT - Okay.

14 MR. RADEKER - But our motion to reconsider is
15 basically -- there's four grounds speaking to different
16 areas. The cases that I just handed up speak to Your
17 Honor's determination that the December 6th, 2016 meeting
18 you found wasn't a -- that you were going to find wasn't a
19 FOIA violation under the technical violation or substantial
20 compliance doctrine. You said technically it says does
21 violate FOIA, but I find it's insubstantial. I think these
22 cases speak to what I would say is clear from the law
23 having looked at them is the progression of case law about
24 that in this state, and that if that ever was the law in
25 South Carolina, that it's not the law now. Going through

1 the -- first is the Multimedia versus Greenville Airport
2 Commission case. In that particular case, it dealt with
3 the ratification statutes under FOIA. They're not in
4 effect anymore; they've been repealed, but at the time of
5 the events subject to the case, they were in effect, and
6 they said you can't take action during executive session,
7 but if you do and it's subsequently ratified later, then it
8 -- basically everything is fine. That cures the problem.
9 And that's the case where this comes from. Really what
10 goes more to the heart of the issue than the substantial
11 compliance sentence is the one that proceeds it, and it
12 says that no cause of action under FOIA's been stated where
13 the complaint reveals the prior action was subsequently
14 ratified at a meeting complying with the law. The next
15 sentence is the one that's been the sticky wicket which the
16 defendants have argued a lot in this case, and that's the
17 one that says moreover substantial compliance with the act
18 will satisfy its requirements where a technical violation
19 has no demonstrated effect on a complaining party. And
20 those words comes straight out of that City of Flagstaff
21 versus Bleeker case that's an Arizona case where it comes
22 from, but they're really not even necessary to the outcome
23 of the Court of Appeals decision in the Multimedia case, so
24 they just dicta in any event and they also -- they describe
25 Arizona law, which is not the same as South Carolina law.

1 In Piedmont Public Service District vs. Cowart, which is
2 another Court of Appeals decision later in 1995, it
3 continued to follow this technical violation/substantial
4 compliance doctrine but had noted something important, and
5 it said that the ratification statutes had been repealed,
6 so they had been repealed by the time 1995 rolled around.
7 it says when they were appealed; it's in 1987. And get to
8 (sic) two Supreme Court cases that are of much more recent
9 vintage, Donahue vs. City of North Augusta from 2015 and
10 Brock vs. Town of Mt. Pleasant. In Donahue vs. City of
11 North Augusta, they reject the argument quoting from
12 Quality Towing, Inc. that no violation of FOIA should be
13 found when only a technical violation is going to occur,
14 citing that very same language. They also say the
15 violation in that case was more than a mere technical
16 violation. Now, what was the violation in that case? It
17 was an executive session meeting violation, uh, kind of
18 like the ones that we have at issue in this case. Turning
19 to Brock vs. Town of Mt. Pleasant, Brock makes abundantly
20 clear that the Supreme Court doesn't agree with these
21 earlier Court of Appeals cases, it's not going to apply the
22 substantial compliance doctrine, not going to say that the
23 technical violation isn't a FOIA violation. In Brock vs.
24 Town of Mt. Pleasant, the Court said, we conclude the town
25 committed technical violations of FOIA. That's how the

1 Supreme Court describes it, but instead of saying that
2 means there was no FOIA violation in the case, they say --
3 in fact the Court of Appeals shouldn't have held that a
4 merely technical violation wasn't a violation of FOIA, and
5 they remanded for proceedings that included giving relief
6 for the merely technical violation of FOIA. Now, we don't
7 think that putting out notice of a meeting that says that
8 it's going to be held in one place when it's, in fact, held
9 in another place even is a merely technical violation of
10 FOIA, but if Your Honor disagrees, then ---

11 THE COURT - Yeah, but we're talking about the
12 room next door with the door open where the voices were
13 audible. You don't think that's a technical violation?

14 MR. RADEKER - I was going to say that I don't,
15 because I think, you know, if it says it's going to be in
16 room A, it's got to be in room A, but if you disagree with
17 me and you say it's just a technical violation, Mr.
18 Radeker, and you remain unconvinced on my argument on that
19 other one, Brock makes clear that the technical violations
20 get addressed as FOIA violations; that's what they are.
21 We've got a bad habit in the English language of saying
22 that something doesn't matter by calling it a technical
23 violation when all it really means is it's actually a
24 violation.

1 THE COURT - Then why did the Court recite that
2 language in Donahue?

3 MR. RADEKER - So -- um, in Donahue they were
4 saying that like, we believe that this violation that
5 occurred in Donahue wasn't a merely technical violation and
6 it's a substantial violation and they can't escape the ---

7 THE COURT - Right, but that's not the same thing
8 as saying there's no such thing as a technical violation
9 and you -- if that was the case, that's how they would've
10 disposed of the case. Right?

11 MR. RADEKER - That's true, but that's what -- but
12 that's what Brock comes along and says. Um ---

13 THE COURT - Isn't Donahue subsequent to Brock?

14 MR. RADEKER - So Donahue creates Brock by about a
15 year, so Brock is the latest word on that. Donahue's a
16 2015, and Brock's a 2016.

17 THE COURT - What's the cite for Brock?

18 MR. RADEKER - Hold on. Brock is 415 South
19 Carolina 625 decided ---

20 THE COURT - Hold, wait a second.

21 MR. RADEKER - --- April 13th, 2016.

22 THE COURT - 415 SC what?

23 MR. RADEKER - 415 South Carolina 625. Sorry to
24 be fast on that. Donahue, Your Honor, that was decided
25 June 17th of 2015 and the cite is 412 South Carolina 526.

1 So we'd note that the latest word on the technical
2 violation/substantial compliance defense to an action
3 claiming ---

4 THE COURT - Point me to the language in Brock
5 that you're reading from.

6 MR. RADEKER - Certainly, Your Honor. It's near
7 the end. It's in section C in the South Carolina Reporter.
8 It's at the very -- it starts at the very end of page 631
9 going on to the next page.

10 (WHEREUPON, BRIEF PAUSE)

11 THE COURT - So tell me one more time where ---

12 MR. RADEKER - Certainly, Your Honor. The
13 operative language from those two paragraphs that are SC
14 and four, which is just the conclusion section ---

15 THE COURT - Right.

16 MR. RADEKER - --- is at the beginning of the
17 first paragraph they say, although we conclude the town
18 committed technical violations of FOIA, and then they go on
19 to say, they're not unsympathetic to the town's position.
20 That's in the first sentence of that. Then later in
21 section four, which is really the conclusion, they say, we
22 modify the Court of Appeals opinion by holding that the
23 town did violate FOIA by taking unnoticed action in special
24 meetings following executive sessions.

1 THE COURT - Right, but so you're -- where does it
2 overrule the substantial compliance doctrine? I mean
3 that's my ---

4 MR. RADEKER - Because if, um -- if a -- said a
5 mere technical violation where the substantial compliance
6 wasn't the law -- that's not -- that that's not a FOIA
7 violation, that would be -- it would've been impossible for
8 the Supreme Court to reach this conclusion ---

9 THE COURT - But they don't address substantial
10 compliance in Brock.

11 MR. RADEKER - So ---

12 THE COURT - All -- they call it a technical
13 violation, but they don't say -- if you were -- if they'd
14 called it a technical violation and the town had
15 substantial compliance, then that would clearly be
16 overruling Multimedia, but I don't think they say that, do
17 they?

18 MR. RADEKER - So -- um ---

19 THE COURT - Is -- doesn't it -- two prongs?
20 You've got -- it's got to be a technical violation and
21 you've got to have substantial compliance?

22 MR. RADEKER - Well, really -- in the earlier
23 cases just say substantial compliance.

24 THE COURT - Right, so that -- there -- isn't that
25 another argument that that's not what's going -- I mean

1 it's -- I mean you're arguing with -- the sub silentio from
2 back from law school that they overrule these other cases
3 without mentioning them, I mean without -- I mean that's a
4 tough argument.

5 MR. RADEKER - I guess, Your Honor -- here --
6 here's how I'd look at it, is this -- is say, if this
7 Multimedia case from the Court of Appeals, if that sentence
8 which is just dicta in an any -- but if that sentence was
9 the law ---

10 THE COURT - But cite -- it's dicta cited simply
11 by the Supreme Court in Donahue.

12 MR. RADEKER - So -- um -- I mean that's true.
13 They're -- well, they're actually like quoting from Quality
14 Towing in the -- the Donahue and ---

15 THE COURT - But they don't say we don't agree
16 this or the Court of Appeals is wrong, they -- they quoted.

17 MR. RADEKER - So -- um -- that's correct. That -
18 - you're right, they don't say. And in Brock what they say
19 is, we find this is a technical violation and indeed we're
20 very sympathetic to the town's position indicating we don't
21 think it was substantial, and then they go say,
22 nonetheless, remand and give these people some relief under
23 FOIA for this disagreeing with the Court of Appeals. And
24 so we just note that as we read the law, it's inconsistent

1 for Brock to say what it says and for the substantial
2 compliance doctrine to meet the law, so ---

3 THE COURT - Even though substantial compliance is
4 not mentioned in Brock.

5 MR. RADEKER - It -- Your Honor, that's correct.
6 I mean the case says what it says, and it doesn't say what
7 it doesn't say. I would just say, basically, the -- like -
8 - if this is true the sub thing (sic) can't be true. Say -
9 --

10 THE COURT - I mean I'm just a trial Judge. I've
11 got to try to reconcile these two opinions and the way --
12 the only way I can see to reconcile them is it's a two-
13 pronged test and you have -- in order for it to be excused,
14 it's got to be a technical violation and there's got to be
15 substantial compliance. As you say, some of the cases just
16 talk about substantial compliance. I mean the Donahue case
17 is not mentioned in the Brock case. The word substantial
18 compliance don't appear, so I -- I am struggling to -- I
19 mean I -- I mean I understand your argument.

20 MR. RADEKER - Thank you.

21 THE COURT - Yes, sir.

22 MR. RADEKER - So moving on ---

23 MR. DUFF - Your Honor, may I address that at this
24 point? I think it -- to keep the argument together ---

1 THE COURT - Sure. If you want to edge on that
2 point, that's fine.

3 MR. DUFF - Yeah. Now, you know, we're talking
4 about the December 6th, 2016 board meeting, which the --
5 the record would indicate was a special-called meeting to
6 swear in the new board members. It opened up in the large
7 part of the auditorium wing. The evidence indicates that
8 the board chair said, we're going to swear in the new
9 members; we're going to have a little reception. I think
10 it might've been out in the entranceway, and then we're
11 going to have a new board training session in the -- the
12 executive board, a conference room. And it -- I mean it's
13 clear in the record that the board chair said, we're going
14 to move to the executive boardroom, the door's going to be
15 open, anybody that wants to come in can come and in and
16 this -- Ms. Gilly testified that she came in later and the
17 board and others, the person doing the training were
18 already in the boardroom.

19 THE COURT - And the testimony I remember was that
20 the door was open and she could hear them doing the roll --
21 kind of roll playing exercises that they were ---

22 MR. DUFF - Exactly, exactly.

23 THE COURT - --- doing in the training room.

24 MR. DUFF - But what's important, Your Honor, if
25 you look at the bottom of page 6 of your Order, I don't --

1 I don't think you need to reconcile these cases that Mr.
2 Radeker has cited, because if you look at the very bottom
3 of page 6, you say, the Court finds that if moving the
4 meeting room is even a FOIA violation, so your ruling was
5 not based on -- on a technical violation or a substantial
6 compliance. You -- you really found that there was no
7 violation, and then you go on to say that even if there
8 were one, it's technical and substantial compliance what
9 you say at the top of the next page, but it's clear from
10 the Order, and it's certainly clear from the evidence that
11 there was no violation, and that's really what your Order
12 says and the -- if it were I would find it to be technical
13 anyway, so I think you can -- you can rest and rely upon
14 the thrust of your ruling, which was that there was no
15 violation, and what you say beyond that is really not worth
16 arguing about.

17 THE COURT - Well, that -- that -- and I
18 appreciate you bringing that to my attention and that's
19 right, so I think that -- and I -- because I need to
20 clarify my Order and make it clear, because I assume this
21 matter is going to be heard by the Court of Appeals as
22 well, but that is -- that is what I intended to say, that
23 clearly that I don't think it's a violation at all, but if
24 -- if I am wrong it's at most a technical violation,
25 because I mean, you know, the Court's view is, it's a large

1 room; the testimony was the board very clearly told the
2 public, we're swearing in these new members, there's going
3 to be a little party to celebrate them, we're going to move
4 next door through the open door into the next room over,
5 everyone can hear what was going on, and the fact that the
6 witness came later to the meeting and missed the
7 announcement that they were moving next door to literally
8 an adjoining room through an open door, I just don't think
9 that's a violation, but it -- to -- if it is, I mean as a
10 secondary, you know, as a fallback position, my view -- if
11 the Court of Appeals disagrees with me then my rule -- then
12 I would also rule that it was at most a technical violation
13 for that. So I'll -- do you think I need to be more clear,
14 that I'm actually finding both of those things that it's
15 not ---

16 MR. RADEKER - Your Honor, I think that in the
17 event that there are further proceedings, that'd probably
18 be helpful for both parties.

19 THE COURT - Okay, I'll -- I'll make that -- make
20 it very clear that I'm holding both -- that in the Court's
21 view it's not a violation, even a technical violation, but
22 if it is -- if someone else -- you know, if the folks in
23 Columbia disagree with me that the holding -- my holding is
24 also that if it's a violation, it's a technical one.

1 MR. RADEKER - And thank you; I understand what
2 you're saying. Just to make the record clear before I move
3 on to the next point, I don't need to beat this point on
4 this one, this horse to death anymore, um, is in Brock, the
5 Court of Appeals, it was utilizing the -- like substantial
6 compliance principle. That's what led to their holding
7 that the Supreme Court reversed, um, in that case.

8 Moving on, Your Honor, we would ask that the
9 Court make a finding that with respect to every meeting
10 that was at issue in this case, that the district violate
11 FOIA, and the reason why is simple is because -- or at
12 least with respect to every regular meeting -- um, is their
13 meeting notices and agenda for regular meetings, they --
14 they would say on such and such date -- and this is clear
15 from -- all of them in the record say this -- at 7:30 PM
16 Lexington County School District One Board of Trustees will
17 hold -- it will hold its regular monthly meeting in the
18 auditorium of Building One of Central Services and gives
19 the address that they have. Now, really only two possible
20 things that happen with regard to this, is that every time
21 they did this their agenda is wrong, because the meeting
22 really started at 6:00 at which point they would
23 immediately take a motion to go into executive session.
24 And you can't have executive session occur outside of a
25 public meeting. The Donahue case does speak to that, too.

1 THE COURT - I agree.

2 MR. RADEKER - On the other way to interpret it is
3 that their notices about when meetings start are right, but
4 they actually started the meeting before the notice says
5 that meeting can start, in which case they're also
6 violating FOIA for that reason, too.

7 THE COURT - You're talking about the fact that
8 the executive sessions were held prior to the announced
9 time of the public meeting, and the Court's holding is
10 clear, in my opinion, that you have to -- you must publicly
11 announce you're going into executive session before that
12 could can happen, that was done.

13 MR. RADEKER - That's correct. So with regard to
14 all of these regular meetings that were at issue in this
15 case, there was a FOIA violation of every time just on that
16 simple point. To the extent necessary, I think it's
17 probably within the scope of the pleadings that were at
18 issue, we'd move for a 15(B) amendment. I can't see how
19 there'd be any prejudice, because I don't see how the
20 evidence would've been any different as to how anything ---

21 THE COURT - Okay, but my question is, can you
22 make that motion post-trial?

23 MR. RADEKER - Yes. The rule actually,
24 specifically, provides that it can be made after judgment,
25 and the cases bear that out.

1 THE COURT - Okay.

2 MR. RADEKER - And -- so, in any event, we'd just
3 ask that you do that. I saw Mr. Duff rising, and I don't
4 want to get in his way if we're just going to go like issue
5 by issue on that.

6 THE COURT - I would prefer to go issue by issue.

7 MR. RADEKER - Okay.

8 THE COURT - That's easier for me.

9 MR. RADEKER - All right, thank you.

10 THE COURT - So, Mr. Duff?

11 MR. DUFF - Okay, Your Honor, once again, you
12 know, this reflects this strained overly technical
13 interpretation of F-O-I-A that the plaintiff, plaintiff's
14 counsel, makes throughout this entire litigation. If you -
15 - the exact verbiage of the notice -- and by the way the
16 notice goes out on a timely basis. It's posted on all the
17 doors of all -- the facility, etcetera, etcetera, goes to
18 the media, but the -- the -- and they quoted in -- in their
19 memo in response, on blank day at 7:30 PM, Lexington County
20 School District One will hold its regular monthly meeting
21 in the auditorium building at 100 Tara Springs Road in
22 Lexington, South Carolina. At 6:00 PM the Board of
23 Trustees meets in executive session. Any -- any common
24 sense reading of that indicates that the meeting will open
25 up at 6:00 PM for executive session, and that the public --

1 the public's part of the meeting will occur at 7:30 PM.
2 Now, we can argue again about whether opening up the
3 executive session in the executive boardroom is consistent
4 with the notice location, but I don't think you can argue
5 that the board is misleading the public in suggesting that
6 the meeting doesn't even start until 7:30, when, in fact,
7 the notice clearly says the board will begin the meeting by
8 going into executive session at 6:00 PM. We all know that
9 the board convenes for a meal at 5:30; that's clear from
10 the testimony. The door is open. In fact, if you look at
11 this -- this whole -- what we call the auditorium wing, as
12 you recall from the video, you come in the entrance;
13 there's the large room where the dios (sic) is; the door to
14 the hallway to the right is open; the door coming into the
15 kitchenette is open throughout; the door from the
16 kitchenette to the boardroom is open, and the door between
17 the boardroom and the larger main part of the auditorium is
18 always open until 6:00 PM when in the -- in the past
19 anyway, the board did take its motion to go into executive
20 session while in the boardroom with the door open and made
21 the motion to go into executive -- you can't -- to argue
22 now -- and -- you -- none of -- none of this argument is
23 either in their amended complaint or their original
24 complaint, and it certainly wasn't -- wasn't presented that
25 way at trial. So it -- it's -- and we would've -- we

1 would've presented evidence in a somewhat different manner
2 to cover this point. So it can't be -- this is one of
3 these -- I think they're arguing we'd like to conform the
4 pleadings to the evidence. Well, there really wasn't any
5 evidence about this point, but even if there were, I don't
6 see how any normal, logical commonplace reading of the
7 notice would suggest that the board is misleading the
8 public and trying to suggest that nothing is going on
9 before 7:30, because that's clearly not what the notice
10 says.

11 MR. RADEKER - Your Honor, if -- if I might speak
12 to that to a few points?

13 THE COURT - You may.

14 MR. RADEKER - So -- okay, I would say, first of
15 all, you know, that's no small thing to tell the public the
16 meeting starts at 7:30 when the executive session has to be
17 entered into once the public meeting starts, but they,
18 actually, do the executive session not in public in a
19 boardroom starting at 6:00. I'd say that's the big thing.
20 And on the Rule 15(B) issue, if you find it's outside the
21 scope of our pleadings, one of the primary questions under
22 that rule is was the evidence about that objected to at
23 trial, and there most certainly was evidence about that at
24 trial. In pages 182 through 184 of the transcript starting
25 on page 182 at line round about line 22 going onto page 184

1 that's where I'm cross examining Mary Beth Hill about this
2 very point, and no objection was made, and so we'd note
3 that to the extent it's not raised within our original
4 pleadings, a Rule 15(B) amendment would be proper. Also, I
5 would note this, is to the extent they're saying, oh, it's
6 too late, is we consented to them amending their answer on
7 the day of trial, and so I would say that the same
8 principle cuts both ways. So if you think it's not within
9 the scope of the original pleadings, we'd ask that, you
10 know, we do a post-judgment Rule 15(B) amendment as the
11 rules allow so that Your Honor can address that point.

12 THE COURT - Okay, I -- so I've never looked at
13 this issue before, so you're telling me that Rule 15(B)
14 clearly permits the post -- post-trial, post-verdict
15 amendment of pleadings to reflect?

16 MR. RADEKER - Yes, I believe ---

17 THE COURT - And how would that work in a jury
18 trial? I mean that -- I mean if the jury's already
19 rendered it's verdict, how -- I mean I -- this is a
20 somewhat unusual posture because it's a bench trial, but I
21 just -- in the typical trial, how would it work?

22 MR. RADEKER - So -- um, yes, it says -- it says
23 such amendment of pleadings as may be necessary to cause
24 them to conform to the evidence and to raise these issues
25 may be made upon motion of any party at any time even after

1 judgment. In a jury trial -- actually, this wasn't a jury
2 case, so I don't have this specific case to draw on for
3 context, but kind of thinking on my feet as to how that
4 might happen in a jury trial -- I've never had it come up
5 either -- would be one might make such a motion if there is
6 a -- say, a jury verdict for the plaintiff, the defendant
7 argues perhaps successfully convincing the Judge that for
8 some technical reason that none of the pled causes of
9 action support that, but there is a cause of action that
10 supports the plaintiff's verdict, so -- and which was
11 proven at trial -- that would seem to be precisely the kind
12 of situation that that -- that this rule contemplates in a
13 jury trial context. But again, I'm having to think on my
14 feet. I know we didn't try this as a jury case. It's
15 probably going to happen a little more often in a non-jury
16 case.

17 Your Honor, we bring up something in our motion
18 to reconsider that the defendant also brings up from a
19 different perspective. Your Honor made a finding that
20 there was a July 18th posting of an agenda and that that
21 was in compliance with FOIA. The meeting in question was
22 on July 18th, and so the defendants have said we think that
23 you probably meant a July 11th posting of that agenda.

24 THE COURT - Well, my -- what I meant to say was
25 that the meeting notice satisfied the statutory requirement

1 for the agenda, because it was a one -- one agenda special
2 meeting for the hiring of the new employees -- right? -- I
3 mean that was -- yeah, so that was my intent, was that -- I
4 don't remember the exact date that the notice was posted.
5 Was it July 11th?

6 MR. SMITH - So I -- as I recall, Your Honor, from
7 the evidence of the trial, but I'd have to go back and look
8 at the way you phrased that in the -- it was a little bit -
9 - honestly difficult to understand.

10 COURT REPORTER - I'm sorry. I'm having trouble
11 hearing you.

12 THE COURT - Would you double-check that you're
13 microphone's on there? Just make sure it is.

14 MR. SMITH - Can you hear me now?

15 COURT REPORTER - Yeah.

16 THE COURT - Much better yeah. Okay. You may
17 want to aim it up a little bit towards your mouth so you're
18 not to hunch over. Yeah.

19 MR. SMITH - Your Honor, I was just saying it was
20 mainly the construction I think of the Order that created
21 some confusion between both of the parties.

22 THE COURT - Okay.

23 MR. SMITH - I think you did confine and conform
24 with the evidence in saying it was posted July 11th, but

1 I'd honestly have to go back and look at the trial to be
2 sure.

3 THE COURT - My intent, because we were talking
4 about the special meeting for the hiring of the new
5 employees. Right? The intent of the Court was to rule
6 that, although there was no agenda posted in this
7 particular case because the meeting notice specified the
8 purpose of the meeting and that was the only agenda item
9 that I felt that that satisfied the requirement of having
10 an agenda posted.

11 MR. SMITH - Okay. Thank you. I think I
12 understand on that point.

13 MR. DUFF - Your Honor, again responding point by
14 point, first of all there are two -- two agenda related
15 alleged violations -- well, actually, three -- but two deal
16 with the postings of agendas. They were the March 16 and
17 the July 18, 2017 meetings, and in both -- with respect to
18 both of those agendas, you credited the testimony of Mary
19 Beth Hill.

20 THE COURT - That's right, yeah.

21 MR. DUFF - The -- who said that -- testified that
22 the agendas were timely posted and that there may have been
23 a reposting to correct a typo or to change formatting -- I
24 think in one case to add names of board members who were
25 attending, something like that. And so you -- I mean

1 relying on and crediting that testimony you found, and you
2 found correctly, that the agendas were timely posted. Now,
3 the third meeting that is agenda related, the one that you
4 just referred to, is -- is the June ---

5 THE COURT - June 15th. I just looked --

6 MR. DUFF - --- June 15 ---

7 THE COURT - I looked back at my Order. Yeah,
8 that's ---

9 MR. DUFF - --- where you found that since it was
10 a special-called meeting early in the morning to fill a
11 couple of va -- I think administrator vacancies -- that --
12 that the notice of the meeting provided sufficient
13 information to the public and, in effect, served the
14 purpose of an agenda. And -- and I would point out, Your
15 Honor, that as I read their motion to reconsider, they're
16 not even challenging that ruling. The June -- the ruling
17 you made on the June 15, 2017 meeting is not challenged in
18 their -- in their motion to reconsider.

19 THE COURT - Okay. So what are you challenging?

20 MR. RADEKER - That's correct. Yeah, we're not
21 challenging that on the June 15th meeting.

22 THE COURT - Okay.

23 MR. RADEKER - We're talking about the finding
24 with respect to the July 18th ---

1 THE COURT - Okay, well, -- I'll read -- what I
2 have in my Order is, the Court credit Ms. Hill's -- credits
3 Ms. Hill's testimony that the agenda for the March 21st,
4 2017 meeting was posted on March the 16th, and the July
5 18th, 2017 agenda was posted on July 11th. Is that what --
6 what ---

7 MR. RADEKER - I think it's like in a -- in the
8 following sentence or so or down there that's where the
9 confusion arises.

10 THE COURT - Okay. I'm sorry ---

11 MR. RADEKER - So it may just merit some
12 clarification ---

13 THE COURT - Okay, so when I say the March 16th
14 and July 18th postings, what I meant -- what I meant to say
15 is the posting for those meetings, ---

16 MR. RADEKER - Okay.

17 THE COURT - --- not the documents that were
18 posted on those dates, because there weren't any documents
19 posted on those dates.

20 MR. RADEKER - And recognizing that, we said we'd
21 like some clarification on that, but ---

22 THE COURT - Okay, I'll make that ---

23 MR. RADEKER - --- if you meaning -- what you
24 might have meant the -- you know, is that that would
25 indicate that there was definitely a violation, but if you

1 were meaning what you also could've meant, then that would
2 be completely consistent ---

3 THE COURT - You know, I -- yes, well, I meant --
4 when I say -- the sentence that says the March 16th and
5 July 18th postings, what I'm meaning to refer to there is
6 actually the postings for the meetings which occurred on
7 March 16th and July 18th and which were respectfully made
8 on March -- wait a minute -- yes, it should say July 11th.
9 Yeah, so that what just -- yeah, I'm sorry, that was very
10 confusing. Now I understand. I'm sorry. Sometimes I'm a
11 little slow.

12 MR. RADEKER - Thank you, Your Honor.

13 THE COURT - Yeah, so the sentence that says, the
14 March 16th and July 18th postings should read the March 16
15 and July 11th postings.

16 MR. RADEKER - Thank you.

17 MR. DUFF - Your Honor, you make that clear on
18 page 5 of your Order where you say that the posting was on
19 July 11th.

20 THE COURT - Well, that's -- I don't mind
21 clarifying the Order I mean if that's -- okay, but the
22 issue that concerns me so far is the argument about the
23 postings of the agendas all be -- is there any case law in
24 using Rule 15(B) and I -- it just -- I've never researched
25 this issue before or it never came up in my practice, but

1 it just doesn't seem proper to me that you can -- after a
2 trial's over, you can present a -- basically -- a different
3 argument for why you should've won, and I don't -- that
4 just -- is that really what the law -- I mean is there a
5 case you can point me to that, you know, ---

6 MR. RADEKER - There are. I can't remember names
7 off the top of my head except for I think maybe Paugney vs.
8 CSX Transportation addresses this and Stanley vs.
9 Kirkpatrick, but I am purely going from memory. I think
10 those were both 15(B) amendment cases, and they discuss
11 what the standards are. One of the -- one of -- and I want
12 to say it's Irish names because they're -- it's O-something
13 vs. O-something. It's the case that says -- along with
14 some other cases. One of the things that a Court looks at
15 in that regard is was the evidence objected to at the time
16 and somebody say, hey, that's irrelevant, that's outside
17 the scope of this trial. That didn't happen with respect
18 to this evidence. You know, really like the evidence that
19 proves that point, it all comes from the -- I guess is what
20 I would say -- is that's would (sic) be my argument against
21 any prejudice argument that they make is it's their
22 documents they created; it's their witnesses' testimony
23 that all tends to prove the truth of that.

1 THE COURT - But it's a different theory of the
2 case. I just -- now, I'm pulling up -- give me just one
3 second. I'm pulling up the rule right now. It just --

4 (WHEREUPON, BRIEF PAUSE)

5 THE COURT - When issues not raised by the
6 pleadings are tried by the consent of the parties, they
7 shall be treated as if they had been raised in the
8 pleadings. I don't think that applies, because I don't it
9 was a -- it was separately tried.

10 MR. RADEKER - And I guess I would say, as the
11 cases go on to address, obviously where there's an express
12 consent it applies but often it's implicit consent, and
13 usually that's determined by my looking at whether the
14 evidence was objected to at the time. And this is actually
15 a fairly recent case. The name starts with an M. And
16 there they said because no motion was made to conform the
17 pleadings to the evidence that the Court couldn't treat it
18 like it was.

19 THE COURT - Okay, show me ---

20 MR. RADEKER - I'm trying to find something ---

21 THE COURT - Is it Myat v. Tuomey, Tuomey Regional
22 Medical Center?

23 (WHEREUPON, BRIEF PAUSE)

24 THE COURT - I mean -- yeah, I'll give you a
25 second to see if you can find the case, because I ---

1 MR. DUFF - Your Honor, if I could address this
2 again, I mean as you pointed out, this is a whole new
3 theory of recovery that would go to all five causes of
4 action, and pointing to the transcript where the 6:00 PM
5 start time for executive session was addressed and
6 testified to by one or more witnesses, that 6:00 PM start
7 time does to other -- other alleged violations in the case.
8 For example, the plaintiff's daughter coming to the
9 November -- I think it was one of the November meetings --
10 it was the November 14 meeting where she says she arrived
11 at 5:45 and the door was already closed to the executive
12 boardroom, and Mary Beth Hill testified we never have ever
13 shut that door before 6:00 o'clock, so the fact that they
14 could point to testimony related to a 6:00 o'clock start
15 time does not mean that this new theory of recovery was
16 part of the case. We never expressively or impliedly
17 agreed that that was a new theory of liability that would
18 go to all five causes of action. That was -- no way did we
19 believe that that was one of the conventions of the case.

20 MR. RADEKER - I did find a couple annotations ---

21 THE COURT - Okay, yeah, please.

22 MR. RADEKER - --- with some case cites that would
23 appear to speak to this, and one of them is Sea Pines
24 Plantation Company vs. Wells. That's a 1987 Supreme Court
25 case.

1 THE COURT - What's the cite?

2 MR. RADEKER - 294 SC 266 363 Southeast 2nd, 891.

3 And in that case kind of quoting from this annotation,
4 which I am assuming correctly sums up the case, is that any
5 variance between pleadings and proof offered to sustain
6 them would not be deemed material if the adverse party were
7 not surprised or misled to prejudice in maintaining defense
8 on the merits. The other one is Soil and Material
9 Engineers, Inc. vs. Folly Associates. That's a Court of
10 Appeals case, also happens to be from 1987. The cite is
11 293 SC 498 361 Southeast 2nd 779. You know, that case
12 noted that the Trial Court abused its discretion in denying
13 amendment of the pleadings to conform to the proof where
14 the Trial Judge made no finding of prejudice and party
15 opposing the amendment made no showing of any. Under Rule
16 15(B) amendments to conform to the proof should be
17 liberally allowed when no prejudice to the opposing party
18 will result there from. And here I can't see what the
19 prejudice would possibly be.

20 THE COURT - But the case is over. I mean that's
21 -- I mean the prejudice -- the case is concluded.

22 MR. RADEKER - How could the evidence have been
23 any different I guess is all I've got to say, because all
24 of the evidence that proves it comes from the defendant.

1 THE COURT - I mean the -- I mean there -- I mean
2 -- I don't want to start guessing as to what evidence could
3 or could not have been presented, but I mean that was not
4 an issue that was litigated in the case. I mean it was --
5 in passing, I mean the evidence that you put in does state
6 the start time. There's no -- I mean that's -- that's in
7 the record, but that was not -- that wasn't a litigated
8 issue, what time the meeting -- I mean I -- I've skimmed --
9 I've not read -- I've skimmed the Sea Pines case and the
10 Sea Pines case is definitely about a motion to amend made
11 during the trial. I mean I just -- well, tell me -- give
12 me the -- I'm going to read the other one, too. What was
13 the other citation?

14 MR. RADEKER - Soil and Material Engineers, Inc.
15 vs. Folly Associates, and that's 293 SC 498 ---

16 THE COURT - 293 SC 498.

17 MR. RADEKER - Let me know if you need the
18 Southeastern cite, Your Honor.

19 THE COURT - I'm on West Law, so that should do
20 it, but I appreciate it. Okay.

21 MR. DUFF - And, Your Honor, if I may, I'd point
22 out that 18 months after the original complaint was filed,
23 they amended their complaint in June of 2019 and did not
24 add this cause of action.

25 THE COURT - I mean I just ---

1 MR. RADEKER - And on the day of trial the
2 defendant ---

3 THE COURT - Okay, counsel, ---

4 MR. RADEKER - --- amended its answer ---

5 THE COURT - Counsel, I got it. Okay. Again,
6 I've looked at the Folly -- the Soil and Material Engineers
7 case, and again, that was a motion made during trial to
8 amend the pleadings. I -- if y'all want to look when you
9 get home and, you know, send me any further authority you
10 find I'll be happy to read it, but my ruling right now is,
11 I do not think a new theory of the case can be presented in
12 a post-verdict motion. I just -- I think that by its very
13 nature prejudices the opposing party. I mean the case is
14 concluded; the evidence is closed. I mean if it wasn't for
15 the fact that it was a bench trial, we wouldn't even be
16 here, because there's no way I can call the jury back or --
17 I mean that's -- but because it's -- I mean the bench trial
18 means it's technically feasible I could revisit my
19 decision, but I don't -- I don't think it's appropriate in
20 these -- for that reason.

21 MR. RADEKER - Thank you, Your Honor.

22 THE COURT - Is that -- does that take care of all
23 the issues?

24 MR. RADEKER - There is one more point with regard
25 to the motion to reconsider. Frankly, given that it

1 involves some weighing of evidence, I doubt you're going to
2 change your mind on it, but ---

3 THE COURT - Okay.

4 MR. RADEKER - --- I'll make it just so it's on
5 the record --- and that's with regard to the July 18th
6 meeting and the March 2017 meeting. Those are the ones
7 where Ms. Garris testified she went and checked the website
8 and the uh, you know, agenda were not up. We would note
9 that Ms. Hill's testimony was just, I followed the process
10 and put in motion, not that it was up and there for
11 everybody to see, so we note that the only direct evidence
12 on that was Ms. Garris' testimony that I went and looked to
13 see if it was up and it wasn't.

14 THE COURT - Well, but I -- you can view it the
15 other way, too. I mean the statute -- I think the word in
16 the statute that it has to be posted, and her testimony was
17 she posted it via the computer and if Ms. -- if the
18 plaintiff's -- the computer didn't see it or there was some
19 technical error on her part, if it -- and it was posted by
20 the school board, I think that satisfies the -- satisfies
21 the statute, so -- I mean I -- I agree there's an argument
22 there, but I had to make a decision. I had conflicting
23 testimony from two different people, and I had to choose
24 one.

1 MR. RADEKER - I understand. We looked up post in
2 Black's Law Dictionary, because there wasn't really in
3 guidance in the FOIA about that, and it defines it -- I
4 mean actually gives a few definitions to it which plainly
5 are just not what we're talking about but it's to publicize
6 or announce by affixing a notice in a public place is the
7 definition that they give.

8 THE COURT - I mean I guess it -- and what it
9 boiled down to me was the school board says they put it on
10 the internet; your client says it wasn't on the internet;
11 both witnesses seemed credible to me; I don't think anyone
12 -- but you guys have the burden of proof on that issue and
13 given that you -- there was equally credible testimony on
14 both sides, um, I -- that's why I find against you.

15 MR. RADEKER - Thank you, Your Honor. That's it
16 on our motion to reconsider, ---

17 THE COURT - Okay.

18 MR. RADEKER - --- so I think you were going to
19 hear the defendant's now if that pleases you.

20 THE COURT - Yes, sir.

21 MR. DUFF - Your Honor, just very briefly in
22 regard to the fifth cause of action as to which the Court
23 ruled in favor of the plaintiff and against the defendant,
24 that happened to be the November 14th, 2017 meeting where
25 as I recall, the plaintiff's daughter testified that while

1 the plaintiff stayed in her car and sent her daughter in,
2 her 15 year old daughter, to sit in the main part of the
3 auditorium wing -- and that's Billie Garris, the daughter,
4 -- Billie testified that at 5:45 she saw the door close to
5 the board -- executive boardroom and she remained there
6 until 6:15 and nobody ever came out, and the door was
7 closed. Our evidence was from both Mary Beth Hill and the
8 board chair, that never ever in the 19 year history of Mary
9 Beth Hill being the public relations person and Ms. Smith
10 being the board chair or board member, had they ever closed
11 the boardroom, the door between the boardroom and the
12 auditorium before 6:00 o'clock when they went in to
13 executive session. And the other aspect of the Court's
14 ruling against the district is testimony that would suggest
15 that the boardroom was not considered part of the
16 auditorium wing, but ---

17 THE COURT - Well, that was what your own witness
18 testified didn't she, that the auditorium ---

19 MR. DUFF - Well, she -- at one point she did,
20 Your Honor, but at another point she said -- and if I could
21 refer you to page 180 of the transcript and then also on
22 page 185 -- Mary Beth Hill testifies that the left wing of
23 building 1 -- I mean her -- let me just say this, Your
24 Honor -- I mean the notice always said, at the district's
25 main office at 100 Tara Springs Road, Lexington. We're not

1 talking about a situation where the board actually changed
2 the locations of Lexington High School. We are all in the
3 auditorium wing, one part or another of that wing; the
4 door's wide open connecting the big room, the conference
5 room, the kitchenette, the entranceway, all open. So I
6 think to conclude that Billie Garris saw the door close at
7 5:45 is -- it just not -- it's not correct. It just cannot
8 be correct based on the evidence. Two other adult
9 witnesses said very unequivocally never ever happened that
10 way.

11 THE COURT - I don't recall them having a specific
12 memory about that meeting though. I mean Ms. Garris'
13 testimony was very clear, I attended the meeting, the doors
14 were -- and again, another of the Court's ruling is the
15 Donahue case says it very clearly in the Court's reading
16 that you have to say at the public meeting, we are going
17 into executive session, these are the things we're going to
18 discuss in executive session, and I -- the testimony
19 doesn't, in my opinion, does not support that that occurred
20 at that meeting.

21 MR. DUFF - I understand.

22 THE COURT - But I mean if -- if I'm wrong -- I
23 mean that's why you're here. I mean if I'm -- I mean
24 that's ---

1 MR. DUFF - Well, I've made the only arguments I
2 can think to make. I think it all -- it all turns on
3 whether or not when the board chair convenes the meeting at
4 6:00 o'clock in the boardroom -- which a practice that's
5 been discontinued which you recognize and you didn't issue
6 any injunctive relief on that, -- but the -- your ruling
7 turns on whether or not -- and I concede this point --
8 whether or not the board chair convening the meeting at
9 6:00 o'clock and taking the motion immediately to go into
10 executive session is considered a lawful location for the
11 meeting to be convened, which gets back to again the notice
12 of meeting, etcetera, and I understand that there is basis
13 in the evidence for the Court to rule as it did. I think
14 there is, perhaps, the greater weight of evidence would be
15 -- would be different.

16 THE COURT - And again, the other issue in the
17 Court's mind -- I didn't get into this in the Order, but
18 it's just -- it's one thing -- and when we had the meeting
19 with the election meeting where you start in the main room
20 where the public's present and you say we're going to move
21 next door for our training, if you want to hang around,
22 that's great, but a small boardroom, which clearly cannot
23 fit members of the public, starting the meeting in there
24 and saying we're going to go under executive session, I
25 don't think that meets the requirements of the statute, at

1 least under Donahue where with regard to executive session
2 I think the message from the Supreme Court is you have to
3 take executive session very seriously, and they're not
4 going to tolerate any violations as regard to going into
5 executive session, but I appreciate that.

6 MR. DUFF - Understand.

7 THE COURT - So I will make the edits to the Order
8 to make -- to make it clear, but as it stands now, barring
9 any authority, I'm going to deny the motions to reconsider
10 on both sides.

11 MR. RADEKER - Thank you, Your Honor.

12 THE COURT - Yeah.

13 MR. RADEKER - Your Honor, I guess that would
14 bring us to our motion for attorney's fees and cost.

15 THE COURT - Okay.

16 MR. RADEKER - We succeeded in this case. We got
17 a ruling from the Court saying that the defendant violated
18 the Freedom of Information Act. Under 30-4-100(B) we are a
19 prevailing party. I've look at a whole lot of the stuff on
20 that prevailing party point that the defendants have
21 submitted. I'm not trying to belittle them or anything. I
22 just don't see what it has to do with the issue. You know,
23 we sued somebody saying we want a declaration because you
24 violated FOIA; we got that. We won. We're the prevailing
25 party. It's just like if I tried a jury case and I sued

1 somebody on five causes of action, if four of them got
2 thrown out, that the jury returns a verdict for me on one,
3 I've won the case. And, so, we're the prevailing party on
4 this. As of the date that the motion was made, our client
5 had incurred forty thousand five hundred and ten dollars
6 and four cents in this case, and we've got Mr. Smith here;
7 he could testify if the Court wants to hear anything
8 further from him or if the ---

9 THE COURT - Let me hear from the defense what the
10 basis of their objection is then we may to hear from you
11 Mr. -- let me -- what -- I mean I understand you're unhappy
12 with my ruling on your motion to reconsider, but assuming
13 that stays and they -- the plaintiffs are -- have a victory
14 on one cause of action, what is your objection to their
15 fees?

16 MR. LYONS - Your Honor, first of all, we're not
17 sure we have enough information or the Court has enough
18 information to adjudge the fees here. There were no
19 timesheets submitted, and past cases that we've worked on
20 time sheets are submitted at least to the Court in a under
21 acted (sic) form and then timesheets to us, the other party
22 at least in a redacted form. Customary legal fees -- I
23 mean all we have is essentially their statement as to what
24 they charged their plaintiffs. I know Mr. Duff has
25 previously vouched for other attorneys, including I think

1 Jay Bender, for what the customary range for a FOIA case
2 are. The same sort of with professional standing. We
3 don't have anything except what they have told us about,
4 what kind of work they do and how many years they've been
5 practicing. So I think the Court should give that
6 consideration. You know, their fees are also based on I
7 think -- and not having timesheets I would know, but I
8 think their total fees are based on the fact that it
9 includes litigation prior to the amended complaint here,
10 which goes back to before December 2017 I believe when this
11 case was first filed. We didn't get it until March of
12 2018, and then there were subsequent, as I've detailed the
13 procedural history in my memo, you know, there were lots of
14 delays in this case, and, ultimately, Your Honor, around I
15 think June of 2018, they amended their complaint, dropped
16 seven, voluntarily dismissed seven -- I'm sorry '19 I guess
17 -- so a year later -- voluntary dismissed seven other
18 causes of action. So that's the -- got to be a
19 consideration, Your Honor, in how you weigh the fees, and I
20 think looking at the fee statements here, I think would
21 help that, but I'd also like to put forth the position here
22 -- did you have a question, Your Honor?

23 THE COURT - No, I'm just thinking as you -- go
24 ahead.

1 MR. LYONS - Okay. I'd also like to put forth
2 this proposition, which is that, you know, this is a matter
3 in your total discretion and the statute says you may award
4 attorney's fees, but it doesn't say you have to -- to the
5 prevailing party, and your decision's not going to be
6 overturned absent abuse of that discretion, but, Your
7 Honor, Ms. Garris is a board member here on the board.
8 Now, she didn't -- she didn't start out that way. She's --
9 in December of 2017 when she first filed this lawsuit she
10 was not a board member, but in June or for May of 2018 when
11 she amended this complaint, she was a board member, and as
12 a board member, Ms. Garris is a steward of the district's
13 funds, and receiving attorney fees related to this case we
14 believe is -- is not protecting the public's funds, and I
15 will admit I don't have a case that says a board member
16 can't recover attorney's fees on a FOIA action. Clearly,
17 board members can, but I've cited to you some general
18 statements of law that a public official should act in the
19 benefit of the public, and that there's a conflicting
20 interest when the board member's interest and the public's
21 interest that are ---

22 THE COURT - Okay, but none of these funds will
23 flow to her. Correct?

24 MR. LYONS - I don't know. They ---

1 THE COURT - I mean if they're attorney's fees
2 they couldn't possibly flow -- unless their to reimburse
3 her for money she's already expended.

4 MR. LYONS - Well, and perhaps that's -- that's
5 certainly part of this, Your Honor, because we -- y'all
6 have the timesheets, and by the way, they have charged her
7 in this case. It's a contingent -- I mean it's not a
8 contingent fee case; it's a fees case; it's an hourly case.

9 THE COURT - Okay, well, let me -- big picture.
10 Whether or not you or I or anyone in the room thinks that
11 these sort -- that someone ought to be able to sue the
12 school board and argue over where the meeting -- where the
13 meeting site is, that is the law of the state. The Supreme
14 Court said it's extremely important with executive
15 sessions, we're going to -- that that's a violation of a
16 statute. If I don't award attorney's fees, how do people
17 vindicate that right? I mean if I don't -- now I -- I
18 don't think it's feasible that we're going to ask private
19 plaintiffs if they believe their local government is
20 violating FOIA if they have to front -- they have to pay
21 for the suit them self. I don't ---

22 MR. LYONS - Well, and -- again, Your Honor, I'm
23 asking you to consider that Ms. Garris is a public -- is a
24 steward of those funds and -- you also need to consider
25 here that the benefit to the public of this suit. She's --

1 she's recovered on one aspect of her complaint. It was a
2 meeting violation in November of 2017. That's a year prior
3 actual suit. You know, it was disputed. We sort of
4 dispute the facts as to whether there was a violation at
5 all, but that's Your Honor's filing, so -- Your Honor's
6 finding, so we respect that, but there was no injunction
7 issued. It was a mistake. I think the -- if it occurred
8 the way Billie Garris said it did, it -- it was a mistake,
9 and I believe the record supports that. I think Ms. Mary
10 Beth Hill and Cynthia Smith said, we never leave that door
11 closed before going into executive session. That's --
12 that's testimony that's I think unrebutted except for this
13 one instance if you -- if that's the finding. So I think -
14 - you know, if you are going to consider attorney's fees
15 here, you also need to consider -- need to consider that
16 the -- there's -- she's barely a prevailing party. Right?
17 She prevailed on one aspect of this, and it certainly
18 doesn't justify the district having to shell out forty
19 thousand dollars to pay for all of this litigation, which,
20 again, in our view goes back to December, some odd -- I
21 don't know what they're charging here for the time from the
22 amended complaint onward, but I would think that your --
23 your Order, your finding here would be limited, should be
24 limited to what occurred after the amendment of the
25 complaint, because, again, they've got claims that they

1 dismissed here, and, you know, we've included some
2 additional information, Your Honor, in this -- in this
3 motion, which you may or may not want to consider, but the
4 plaintiff continues to sort of take credit for a bunch of
5 changes that occurred in the district, which is not true.
6 The plaintiff has I think misrepresented what happened in
7 your courtroom in her most recent affidavit of Friday where
8 she continues to claim that the district's FOIA violations
9 have been ongoing for years. And so that's something that
10 I think the Court should consider. I did include a
11 citation to a Facebook live video which I couldn't file but
12 I'm happy to present if that's something you want to
13 consider, Your Honor. You don't have to certainly. It's
14 somewhat outside of your consideration. We sort of
15 understand that.

16 THE COURT - Well, let me -- I am concerned though
17 I don't -- I don't have a timesheet. I mean that's
18 standard ---

19 MR. RADEKER - I have some.

20 THE COURT - Okay.

21 MR. RADEKER - And I'd be happy to hand them
22 around ---

23 THE COURT - Okay, go ahead.

24 MR. RADEKER - And if -- if they want -- I know --
25 I mean I'm handing them a bunch of paper at this hearing.

1 You run the Court, Your Honor, but if -- I certainly don't
2 have any problem if they want to look at them and, you
3 know, tell us about any issues they've got with what's in
4 them at some later time, I don't -- you know, that's fine
5 with me. As we should probably make one of these a Court's
6 Exhibit.

7 THE COURT - Let's do that, make it a Court's
8 Exhibit Number 1.

9 MR. LYONS - And, Your Honor, we obviously like
10 some time to review those.

11 THE COURT - Okay. I'm going to give you that.
12 I'm going to -- I'm trying to craft a solution that does
13 not require another hearing where you parties have to
14 travel, so why don't we do this, why don't -- counsel, why
15 don't you get on the stand and you can testify and be cross
16 examined about your rates and your experience and anything
17 like that and then what I -- questions from the defense and
18 then hopefully they can -- any particular entries or
19 whatever, they can raise those issues by writing and we
20 will not have to come back for another hearing. Is that
21 agreeable?

22 MR. DUFF - Your Honor, it ---

23 THE COURT - If you want to have a second hearing,
24 I'll give it to you. I mean if you want ---

1 MR. DUFF - Well, I mean -- Your Honor, this --
2 this should've been part of their filing on December 2.

3 THE COURT - I agree.

4 MR. DUFF - Okay, so here we are in the middle of
5 the hearing getting timesheets, then we're supposed to
6 review. You know, if -- if they say, uh, a letter to --
7 letter to client on status three hours, I mean we're going
8 to challenge three hours on a letter to client which
9 should've been 15 minutes. So what -- we can't possibly go
10 through this. They're -- they're -- as has been typical in
11 this case, they try this case piecemeal and whenever they
12 decide they want to do something, they do it, but it's not
13 complete, and this -- this is enough for you to deny their
14 motion altogether, but we can't possibly deal with their
15 timesheets. It should've been submitted on December 2 with
16 their motion, along with affidavits about what is their
17 customary rate from other lawyers. Their motion is
18 incomplete, and we can't respond to it right now.

19 MR. RADEKER - May I speak to the completeness?

20 MR. DUFF - We can try ---

21 THE COURT - Hold on. One at a time, counsel.

22 MR. RADEKER - I'm sorry, I thought it was about -
23 --

24 THE COURT - One at a time.

1 MR. DUFF - You know, we can -- we can make a
2 written response to this and then see if a hearing is
3 needed.

4 THE COURT - Given what -- I mean the points
5 raised here for -- I'm not going to reject their attorney's
6 fees petition on the basis they didn't submit the time til
7 today, but the points you raised are good ones, and I think
8 it would be better if I gave -- provided a hearing once you
9 -- I'll be happy to hear from you on the completeness.

10 MR. RADEKER - Thank you, Your Honor. Our motion
11 is complete. This is -- these timesheets they're extra
12 detail, and that's why I brought them in case they said
13 that they wanted them or complained about not having them.
14 You know, as to -- there is no requirement that some lawyer
15 other than the lawyers involved in the case speak to what,
16 you know, rates and fees are customary. I've never seen
17 any case or anything to the effect of that. As to what our
18 experience is and indeed as to all six of the factors the
19 Court is to consider, our affidavits speak to them at some
20 length, I think with about a paragraph a piece, as well as
21 other paragraphs that proceed them that just kind of speak
22 to all of those issues to the extent those paragraphs are
23 relevant. Just one thing I want to make sure we've got
24 into the record here, and ---

25 THE COURT - Okay.

1 MR. RADEKER - --- and that's with respect to the
2 documents issue. A back-up position -- and again I'm just
3 making it for the record -- if Your Honor's not changing
4 the motion to reconsider, then we've prevailed for that
5 reason, but we're also a prevailing party on the documents
6 issue, because we got the documents that we requested to
7 the extent they exist, but we say ---

8 THE COURT - After you filed the FOIA case.

9 MR. RADEKER - --- everything we have ---

10 THE COURT - Right, right.

11 MR. RADEKER - --- after we filed suit, we got
12 them. And they attempt to distinguish the Sloan cases on
13 several basis I would say, you know, any two cases are
14 going to be different in their facts, but they're
15 distinctions that don't really have a material difference.

16 THE COURT - No, I don't have any trouble calling
17 the prevailing party in this case, or at least partially
18 prevailing party. Yes, sir?

19 MR. RADEKER - Thank you.

20 MR. LYONS - Just to speak on the aspect of the
21 documents that were provided after -- after the case was
22 served on us, there's a dispute about that. There's a
23 significant dispute. There are seven cause of action --
24 causes of action that were dismissed. I believe
25 essentially five of them were FOIA requests. Those FOIA

1 requests causes of action essentially said, here's the FOIA
2 request that the plaintiff requested documents, and the
3 district did not comply. Either they didn't give over the
4 records or they didn't give over the complete records. So
5 the district maintains, however, that it did comply with
6 those FOIA requests in the first instance. So as to each
7 of those causes of action, I would think that the district
8 can -- would need to show Your Honor, show the Court the
9 documents -- the requests that it received, how it
10 responded to those requests and defend, if necessary, its
11 responses to those requests. And so I -- I fully believe
12 that would, in fact, require another hearing. And we
13 believe ---

14 THE COURT - Okay, but I -- that's -- given that
15 I'm ruling against your motion to reconsider and I -- and I
16 found in their favor in one of their causes of action,
17 isn't that not necessary?

18 MR. LYON - It could be, Your Honor, but -- but
19 the question is, if you're going to find that they're a
20 prevailing party, you then have a discretion to determine
21 whether, and if so, how much to award in attorney's fees.
22 I would hope that Your Honor would not award forty thousand
23 dollars for one finding of a violation a year and a half
24 ago. I would think it would be some lesser portion of that
25 considering the benefit obtained by the plaintiff, and if

1 the plaintiff comes with 12 causes of action initially, or
2 just five, and she prevails on one cause of action, I would
3 think the attorney's fees should reflect the extent to
4 which she prevailed, and that's that burden factor number
5 five -- or -- I think it's number five -- benefit of the
6 result obtained. And, in fact, the benefits of the result
7 obtained are minimal. It's one-fifth or if you take it all
8 the way back to the initial complaint, it's one-twelfth.
9 So I would want the Court to consider that. So the
10 prevailing party, yes, if you deny our motion to
11 reconsider, then they're a prevailing party but only as to
12 one cause of action.

13 THE COURT - But I -- I don't think we do that
14 kind of fractional analysis, do we? I mean we say if you -
15 - if you've got ten causes of action and you prevail on
16 two, that's two out of ten, so you get one-fifth of the
17 attorney's fees? I mean I don't -- I don't think we -- do
18 we do that kind of analysis?

19 MR. LYONS - I don't know that it has to be a
20 fractional analysis, Your Honor, but the burden factors
21 talk about the benefits or the results -- the benefits
22 obtained, the results obtained. And so in that case I
23 don't think you can award the full amount. I -- that would
24 be -- it seems to me that would be excessive for sure.

1 THE COURT - Well, let me raise one -- that brings
2 me to the last issue I wanted to hear from y'all. I mean I
3 -- in a normal sort of case where someone's been harmed,
4 there's a tort or something, you know, you say, well, what
5 was the benefit obtained versus the attorney's fees. If
6 they spent -- if you spend five hundred thousand dollars
7 and the jury gives you a fifty dollar verdict, then there's
8 a serious problem there, but in this case, the wrong is
9 purely statutory. The legislature says local governments,
10 you have to do X, and if you don't do it, citizens can sue
11 and they can recover attorney's fees. I -- how do I -- it
12 seems to me I can't parse that recovery in the same way I
13 can parse a tort recovery. My -- you know, again, I --
14 we're going to have another hearing in this case -- I'll be
15 happy to -- but it -- my initial reaction is, I have --
16 I've got to give everything to them. I can't -- I mean I
17 can't -- I mean it's not for me to say, well, what's the
18 benefit to society in having this remedy fixed, the
19 legislature says you've got to do it this way, if you don't
20 do it, they get attorney's fees and I -- it's not like a
21 tort or a contract case where I can look at what the
22 recovery was, dollar amount. I mean I -- the legisla -- I
23 mean at least that's the way I'm viewing it. I -- I'm
24 struggling to see how I could do -- I could not award them

1 their full attorney's fees if they're reasonable and if
2 they meet the other factors.

3 MR. LYONS - So -- so -- Your Honor, I think,
4 again, I'm going to go back to the burden factors and the
5 reasonable -- I'm sorry -- the beneficial results obtained.
6 And so (a) I do think you can determine the public benefit
7 of this. So, for example, we worked on a case -- it's
8 called Horton vs. Jasper, Jasper v. Horton. In that case a
9 board member -- and I -- he says not to get into it -- but
10 anyway, a -- you can -- we'll submit something in writing,
11 but I just want to say, I do think the public benefit is
12 something you can consider because there's not a whole lot.
13 This is not -- documents did not flow from this one
14 finding. The other thing is, I do think also that burden
15 factor is -- allows you to consider the benefits --
16 beneficial results obtained if a plaintiff, a FOIA
17 plaintiff, could have one FOIA violation, one valid FOIA
18 violation in their complaint, but they can allege 12 or 15
19 and then they can go to trial and litigate on 12 or 15 but
20 one is only meritorious, then that -- that gives
21 plaintiff's counsel a lot of incentive to allege, you know,
22 certain violations, which may or may not be violations, or
23 mere meritor -- meritless violations, gives an incentive to
24 -- to do that and to just add in a bunch of causes of
25 action, which ultimately aren't going to be proved in that

1 case, and actually that's sort of what occurred in this
2 case from our perspective, because -- and I'll point you to
3 attachment A, which is a letter I wrote to plaintiff's
4 counsel soon after the lawsuit was served on the district,
5 to say, listen, causes of action -- I don't remember what
6 it was for -- we -- we answered that FOIA request in the
7 first instance. We didn't hear back from the plaintiff as
8 to whether or not -- as to whether or not that was, um, --
9 that FOIA request was valid or she felt it was incomplete,
10 so -- so our position is that we answered those FOIA
11 requests, the document requests, in the first instance, and
12 I think the record what I've given you reflects that. So I
13 -- I absolutely think you need to consider -- you should
14 consider the benefit obtained, and that will in this case
15 the public benefit, the benefit of this violation that you
16 found, the benefit of the declaration without an injunction
17 and also that you consider it in a fractional way or some -
18 - some way to represent the fact that Ms. Garris prevailed
19 on only a part of her FOIA action.

20 THE COURT - All right, counsel, I'm going to look
21 at the calendar here. As you know, unfortunately, I'm on
22 the road a lot.

23 (WHEREUPON, DISCUSSION IS HELD BETWEEN THE COURT
24 AND THE LAW CLERK WHICH IS NOT REPORTED)

1 THE COURT - I have -- as my law clerk has just
2 reminded me, I have no civil terms in York until May the
3 25th. No -- hold on, hold on, no, hold on, we have April
4 13th. So I know that's a long time. So that -- that is
5 the easiest we could slot you in on a motion hearing the
6 week of April 13th. Other than that, um, I have common --
7 well, that's too soon. We've got -- I'm in Lancaster for
8 two GS terms in February. We've got a general sessions
9 term here the end of February, common pleas term in
10 Lancaster at the beginning of March. Could y'all wait
11 until April 13th for the York common pleas term to argue
12 attorney's fees or is that going to be a hardship on either
13 side?

14 MR. RADEKER - That's acceptable to us, Your
15 Honor.

16 MR. LYONS - We could. We could do it before
17 then. Just -- you know, I don't want to jam anybody up on
18 ---

19 THE COURT - Well, I mean I -- we can figure a way
20 to hear it if it's going to be -- I mean forty thousand
21 dollars is a lot of money and so I don't -- if it's going
22 to be a hardship for you. I mean that's -- I mean that --
23 you'd be waiting -- I mean that's a significant time to
24 wait for a hearing, so if you want it heard earlier, I'll
25 hear it earlier.

1 MR. RADEKER - We could like to have it heard
2 earlier, but ---

3 THE COURT - Okay.

4 MR. RADEKER - --- only if it can be conveniently
5 done ---

6 THE COURT - Okay.

7 MR. RADEKER - -- for Your Honor. You were -- you
8 were talking about toward the end of February and beginning
9 of March I believe.

10 THE COURT - Okay. I have a -- how about -- let's
11 see -- we have -- March the 16th I have a common pleas term
12 in the Sixth Circuit. That would be Lancaster, Chester,
13 Fairfield. That's all closer for y'all than York. Is that
14 -- is that reasonable?

15 MR. RADEKER - I can do the 16th. I couldn't do
16 the 17th to 18th. I could do the 19th. I could do the
17 20th.

18 THE COURT - Okay. So would the 16th, 19th or
19 20th work for defense counsel of March?

20 MR. LYONS - The 16th works for me. What's the
21 other dates? I'm sorry.

22 THE COURT - The Thursday or Friday, the 19th to
23 the 20th.

24 MR. LYONS - The 20th definitely does not work.

1 THE COURT - If Monday works -- Monday works for
2 plaintiff's counsel? Mr. Duff?

3 MR. DUFF - Yes, Your Honor.

4 THE COURT - Let's do it -- okay, ---

5 (WHEREUPON, DISCUSSION IS HELD BETWEEN THE COURT
6 AND THE LAW CLERK WHICH IS NOT REPORTED)

7 THE COURT - At this point the dockets may not
8 even be available for those -- for that yet, but it would
9 be either Chester, Fairfield or Lancaster. Is that
10 agreeable?

11 MR. RADEKER - From us. It's closer than here,
12 Your Honor.

13 THE COURT - All right. Well, then in that case
14 we'll set the final hearings. What I'm going to rule today
15 is, I'm going to rule the motion to reconsider denied in
16 all respects except for the points where you pointed out
17 correctly that my Order was vague, I'm going to make those
18 corrections and file an Amended Order but it will not
19 change the merits on any of the causes of action, and so
20 I'll go ahead and file that, and then we'll set the
21 attorney's fee hearing for March the 16th in the Sixth
22 Circuit, and y'all can submit any time between now and then
23 anything else you'd like me to consider before the hearing.

24 MR. RADEKER - Thank you, Your Honor.

25 MR. LYONS - Thank you, Your Honor.

1 THE COURT - All right. Thank you, counsel.

2 Counsel, do y'all want a detailed Order
3 explaining my rationale for the motion to reconsider or can
4 I file a Form 4 saying it's denied for the reasons set
5 forth in the ---

6 MR. DUFF - That's fine. A Form 4 is fine.

7 MR. RADEKER - I think a Form 4 is fine.

8 MR. LYONS - Unless you're going to correct those
9 typos.

10 THE COURT - And what I will say in the Form 4 is,
11 the motion to reconsider is denied with the exception of
12 the Order is clarified and the Amended Order is attached,
13 something to that effect.

14 MR. LYONS - That's fine, Your Honor.

15 MR. RADEKER - I think that does it for everybody
16 as far as issue of preservation if either one of us wants
17 to take it any further.

18 THE COURT - Okay. Well, counsel, I really
19 appreciate it. I'll see you on March 16th and I'll let you
20 know -- you know, or if we forget, you know, check in with
21 us. Once the roster's are released, we'll -- wherever we
22 are on the 16th, we'll hear the case.

23 MR. LYONS - Thank you.

24 MR. RADEKER - Thank you, Your Honor.

25 THE COURT - Thank you, counsel.

1 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
2 NUMBER 1)

3 (END OF TRANSCRIPT)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

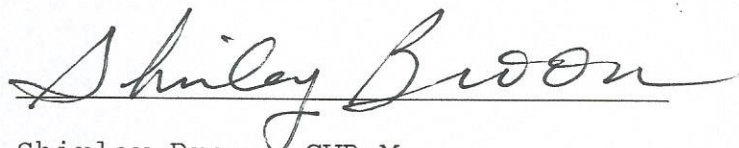
24

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 60 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Jada Garriss vs. Lexington County School District One, as taken by me in The Court of Common Pleas for the Eleventh Judicial Circuit on January 27, 2020, and provided by me this the 16th day of June, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

From: McKinnon, William A. <wmckinnonj@sccourts.org>
Sent: Sunday, March 15, 2020 4:24 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Dave Duff <dduff@dfi-lawfirm.com>; McKinnon, William A. Law Clerk (Dakota Knehans) <wmckinnonlc@sccourts.org>; David Lyon <dlyon@dfi-lawfirm.com>; Taylor Smith <Taylor@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Law clerk <lawclerk@harrisonfirm.com>; Kim Chatman <kchatman@dfi-lawfirm.com>
Subject: Re: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

You are both welcome. I'll keep an eye out for your emails.

William A. McKinnon
Resident Circuit Judge
Sixteenth Judicial Circuit
Moss Justice Center
1675 1-H York Highway

York, SC 29745
p 803.628.3047
f 803.628.3055

On Mar 15, 2020, at 4:22 PM, Drew Radeker <Drew@harrisonfirm.com> wrote:

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking

any links or opening attachments. ***

Yes, thank you. I'm not trying to expose anyone to Coronavirus, but, on the plaintiff's side, we would like to get this attorneys' fees motion concluded soon.

Drew Radeker

Sent from my iPhone - please excuse any typos

On Mar 15, 2020, at 4:20 PM, Dave Duff <dduff@dfi-lawfirm.com> wrote:

Thank you Judge.

David T. Duff
Duff Freeman Lyon
P.O. Box 1486
Columbia, SC 29202
Ph. (803) 790-0603
Pers. Cell (803) 240-8295
Firm Website [https://urldefense.com/v3/_http://www.dfi-lawfirm.com_!!JHVHxrUang!FXxB_8U50GNfS9PTu_CoPkVMgWHOspHwBjdrBUEMXF8GvC-uX2VhO74JwOb4KAU3yU\\$](https://urldefense.com/v3/_http://www.dfi-lawfirm.com_!!JHVHxrUang!FXxB_8U50GNfS9PTu_CoPkVMgWHOspHwBjdrBUEMXF8GvC-uX2VhO74JwOb4KAU3yU$)

The information contained in this message may be privileged and/or confidential and protected from disclosure. If the reader of this message is not the intended recipient or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately and delete all copies of the material.

-----Original Message-----

From: McKinnon, William A. <wmckinnonj@sccourts.org>
Sent: Sunday, March 15, 2020 4:18 PM
To: Dave Duff <dduff@dfi-lawfirm.com>
Cc: Drew Radeker <Drew@harrisonfirm.com>; McKinnon, William A. Law Clerk (Dakota Knehans) <wmckinnonlc@sccourts.org>; David Lyon <dlyon@dfi-lawfirm.com>; Taylor Smith <Taylor@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Law clerk <lawclerk@harrisonfirm.com>; Kim Chatman <kchatman@dfi-lawfirm.com>
Subject: Re: Jada Garriss v. Lexington School District One (Case No. 2017-CP-32-04435)

Ok. I'll continue the hearing and give both sides until Wednesday to let me know how they would like to proceed.

William A. McKinnon
Resident Circuit Judge
Sixteenth Judicial Circuit
Moss Justice Center
1675 1-H York Highway
York, SC 29745
p 803.628.3047
f 803.628.3055

On Mar 15, 2020, at 4:15 PM, Dave Duff <dduff@dfi-lawfirm.com> wrote:

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

We'd like a day or so to decide that a hearing isn't really needed.

David T. Duff
Certified Specialist in Employment
& Labor Law
Duff Freeman Lyon
P.O. Box 1486
Columbia, SC 29202
Ph. (803) 790-0603
Pers. Cell (803) 240-8295
Firm Website [https://urldefense.com/v3/_http://www.dfl-lawfirm.com_!!JHVHxrUang!COG7jKAL924sLidOrMbFbo6X9EnjvXI9gtdad4Kt8t1ULzQa7qVfuTEAHxiivtUNv6U\\$](https://urldefense.com/v3/_http://www.dfl-lawfirm.com_!!JHVHxrUang!COG7jKAL924sLidOrMbFbo6X9EnjvXI9gtdad4Kt8t1ULzQa7qVfuTEAHxiivtUNv6U$)

The information contained in this message may be privileged and/or confidential and protected from disclosure. If the reader of this message is not the intended recipient or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately and delete all copies of the material.

-----Original Message-----

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Sunday, March 15, 2020 4:11 PM
To: Dave Duff <dduff@dfi-lawfirm.com>
Cc: McKinnon, William A. <wmckinnonj@sccourts.org>; McKinnon, William A. Law Clerk (Dakota Knehans) <wmckinnonlc@sccourts.org>; David Lyon <dlyon@dfi-lawfirm.com>; Taylor Smith <Taylor@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Law clerk <lawclerk@harrisonfirm.com>; Kim Chatman <kchatman@dfi-lawfirm.com>
Subject: Re: Jada Garriss v. Lexington School District One (Case No. 2017-CP-32-04435)

Well, it looks like we're in agreement that the motion can be decided on written submissions. The defendant has already submitted memoranda, and the plaintiff will get ours in by Tuesday, if that's all right with the court.

Judge McKinnon, is that acceptable?

Thank you.

Drew Radeker

Sent from my iPhone - please excuse any typos

On Mar 15, 2020, at 4:00 PM, Dave Duff <dduff@dfi-lawfirm.com> wrote:

I propose we postpone tomorrow's hearing in light of the community spread in Lancaster and have counsel get back to the Court in the next few days about re-scheduling the hearing or having the matter decided on briefs.

David T. Duff
Duff Freeman Lyon
P.O. Box 1486
Columbia, SC 29202
Ph. (803) 790-0603
Pers. Cell (803) 240-8295
Firm Website [https://urldefense.com/v3/_http://www.dfl-lawfirm.com_!!JHVHxrUang!COG7jKAL924sLidOrMbFbo6X9EnjvXI9gtdad4Kt8t1ULzQa7qVfuTEAHxiivtUNv6U\\$](https://urldefense.com/v3/_http://www.dfl-lawfirm.com_!!JHVHxrUang!COG7jKAL924sLidOrMbFbo6X9EnjvXI9gtdad4Kt8t1ULzQa7qVfuTEAHxiivtUNv6U$)

The information contained in this message may be privileged and/or confidential and protected from disclosure. If the reader of this message is not the intended recipient or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately and delete all copies of the material.

-----Original Message-----

From: McKinnon, William A. <wmckinnonj@sccourts.org>

Sent: Sunday, March 15, 2020 3:51 PM

To: Drew Radeker <Drew@harrisonfirm.com>

Cc: Dave Duff <dduff@dfi-lawfirm.com>; McKinnon, William A. Law Clerk (Dakota Knehans) <wmckinnonlc@sccourts.org>; David Lyon <dlyon@dfi-lawfirm.com>; Taylor Smith <Taylor@harrisonfirm.com>;

Rhonda Schaub <Rhonda@harrisonfirm.com>; Law clerk <lawclerk@harrisonfirm.com>

Subject: Re: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

We can continue it, or decide on written submissions. What would y'all prefer?

William A. McKinnon
Resident Circuit Judge
Sixteenth Judicial Circuit
Moss Justice Center
1675 1-H York Highway
York, SC 29745
p 803.628.3047
f 803.628.3055

On Mar 15, 2020, at 3:49 PM, Drew Radeker <Drew@harrisonfirm.com> wrote:

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

All:

As much as I want to get this hearing done, I also don't want to put anyone in a situation they're not comfortable being in from a health perspective. I would be fine with the court canceling the hearing tomorrow and letting the attorneys' fees motion be decided on written submissions, provided that the plaintiff has an opportunity to submit a memorandum and address matters raised in the defendant's memoranda, which I was planning to address at the hearing tomorrow. We could submit such a memorandum by Tuesday at the latest. That's obviously just an idea of mine, and we'll all of course wait to see what Judge McKinnon says.

Thank you. Judge McKinnon, if you would let us know your position on this, we would be most appreciative.

Drew Radeker

Sent from my iPhone - please excuse any typos

On Mar 15, 2020, at 2:50 PM, Dave Duff <dduff@dfi-lawfirm.com> wrote:

We understand there is a community spread of the virus in Lancaster. We would prefer to postpone the hearing.

David T. Duff
Duff Freeman Lyon
P.O. Box 1486
Columbia, SC 29202
Ph. (803) 790-0603
Pers. Cell (803) 240-8295
Firm Website <https://urldefense.com/v3/!JHVHxrUang!AF->

The information contained in this message may be privileged and/or confidential and protected from disclosure. If the reader of this message is not the intended recipient or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately and delete all copies of the material.

-----Original Message-----

From: Drew Radeker <Drew@harrisonfirm.com>

Sent: Sunday, March 15, 2020 2:48 PM

To: McKinnon, William A. Law Clerk (Dakota Knehans) <wmckinnonlc@sccourts.org>

Cc: William A. McKinnon <wmckinnonj@sccourts.org>; David Lyon <dlyon@dfi-lawfirm.com>; Dave Duff <dduff@dfi-lawfirm.com>; Taylor Smith <Taylor@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Law clerk <lawclerk@harrisonfirm.com>

Subject: Re: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

All, I am just checking in to make sure we are still having this hearing tomorrow morning. Unless I hear otherwise, I will assume so.

Thank you.

Drew Radeker

Sent from my iPhone - please excuse any typos

On Mar 6, 2020, at 8:55 AM, McKinnon, William A. Law Clerk (Dakota Knehans) <wmckinnonlc@sccourts.org> wrote:

Good Morning Counsel,

In speaking to the Clerk of Court in Lancaster, who I've copied here, we can hear this motion second in the morning, if that suits the parties. We plan to begin court at 9:30 am.

Please let me know if that time doesn't work, and we can push the motion to the afternoon.

Thank you,

Dakota Knehans, Esq.

Law Clerk to the Honorable William A. McKinnon, 16th Judicial Circuit, South Carolina
(803) 361-1995

Sent from my iPhone so please excuse any typos or misspellings.

On Feb 25, 2020, at 2:04 PM, David Lyon <dlyon@dfi-lawfirm.com> wrote:

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Yes, for Defendant. Do you know what time?

Thanks,

David

David N. Lyon

Duff Freeman Lyon

P.O. Box 1486

Columbia, SC 29202

Ph. (803) 790-0603

Fax (803) 790-0605

Firm Website

[https://urldefense.com/v3/_http://www.dfl-lawfirm.com_!!JHVHxrUang!](https://urldefense.com/v3/_http://www.dfl-lawfirm.com_!!JHVHxrUang!G5GJNXITl4kRSj8Z7a8xjTn1nr4I-sy0_pP3EQ2kNzFZ6s2o987TlKexAe01Wa83Bw$)
G5GJNXITl4kRSj8Z7a8xjTn1nr4I-sy0_pP3EQ2kNzFZ6s2o987TlKexAe01Wa83Bw\$

The information contained in this message may be privileged and/or confidential and protected from disclosure. If the reader of this message is not the intended recipient or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately and delete all copies of the material.

-----Original Message-----

From: Drew Radeker <Drew@harrisonfirm.com>

Sent: Tuesday, February 25, 2020 1:32 PM

To: McKinnon, William A. Law Clerk (Dakota Knehans) <wmckinnonlc@sccourts.org>

Cc: Taylor Smith <Taylor@harrisonfirm.com>; McKinnon, William A.

<wmckinnonj@sccourts.org>; Dave Duff <dduff@dfl-lawfirm.com>; McKinnon, William A. Secretary (Kimberly Kiefer) <wmckinnonsc@sccourts.org>; David Lyon <dlyon@dfl-lawfirm.com>

Subject: Re: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

Yes for the plaintiff. Thank you.

Drew Radeker

Sent from my iPhone - please excuse any typos

On Feb 25, 2020, at 1:31 PM, McKinnon, William A. Law Clerk (Dakota Knehans) <wmckinnonlc@sccourts.org> wrote:

All,

In checking our calendar I realized I forgot to let everyone know where we would be on March 16th for the Motion for Attorneys fees. Can everyone come to Lancaster for this Motion?

Thank you,

Dakota Knehans, Esq.

Law Clerk to the Honorable William A. McKinnon, 16th Judicial Circuit, South Carolina
(803) 361-1995

Sent from my iPhone so please excuse any typos or misspellings.

On Jan 29, 2020, at 2:09 PM, Taylor Smith <Taylor@harrisonfirm.com> wrote:

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *** Judge McKinnon,

I'm sorry for any confusion that was created by my lack of precision in describing the Order I was addressing. My earlier email referred only to the latest filed Amended Decision of the Court in this matter, which was clocked in at 9:43 a.m. yesterday morning.

The Plaintiff concurs with Defendant's suggestion to change the "November 7, 2017" mention in the second paragraph of section three on page 7 to "November 14, 2017" to properly reflect the board meeting date at issue.

Thank you.

Taylor M. Smith IV

<image001.png>

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (803) 779-2211 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Thank you.

From: McKinnon, William A. <wmckinnonj@sccourts.org>
Sent: Wednesday, January 29, 2020 1:06 PM
To: Drew Radeker <Drew@harrisonfirm.com>; David Lyon <dlyon@dfi-lawfirm.com>; Taylor Smith <Taylor@harrisonfirm.com>; McKinnon, William A. Law Clerk (Dakota Knehans) <wmckinnonlc@sccourts.org>
Cc: Dave Duff <dduff@dfi-lawfirm.com>; McKinnon, William A. Secretary (Kimberly Deese) <wmckinnonsc@sccourts.org>
Subject: RE: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

Not a problem. If there are issues with the corrected order, please let me know and I will consider them.

From: Drew Radeker
<Drew@harrisonfirm.com<<mailto:Drew@harrisonfirm.com>>>
Sent: Wednesday, January 29, 2020 12:51 PM
To: David Lyon <dlyon@dfi-lawfirm.com<<mailto:dlyon@dfi-lawfirm.com>>>;
Taylor Smith
<Taylor@harrisonfirm.com<<mailto:Taylor@harrisonfirm.com>>>; McKinnon, William A. Law Clerk (Dakota Knehans) <wmckinnonlc@sccourts.org<<mailto:wmckinnonlc@sccourts.org>>>
Cc: McKinnon, William A.
<wmckinnonj@sccourts.org<<mailto:wmckinnonj@sccourts.org>>>; Dave Duff <dduff@dfi-lawfirm.com<<mailto:dduff@dfi-lawfirm.com>>>; McKinnon, William A. Secretary (Kimberly Deese) <wmckinnonsc@sccourts.org<<mailto:wmckinnonsc@sccourts.org>>>
Subject: RE: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *** Judge McKinnon:

I will let Mr. Smith speak to this more fully, but I think this objection may have arisen out of confusion between the amended order and the amended order filed with corrections.

Thank you.

Drew Radeker

<image001.png>

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (803) 779-2211 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Thank you.

From: David Lyon <dlyon@dfi-lawfirm.com<<mailto:dlyon@dfi-lawfirm.com>>>
Sent: Wednesday, January 29, 2020 12:11 PM

To: Taylor Smith
<Taylor@harrisonfirm.com<<mailto:Taylor@harrisonfirm.com>>>; McKinnon, William A. Law Clerk (Dakota Knehans)
<wmckinnonlc@sccourts.org<<mailto:wmckinnonlc@sccourts.org>>>
Cc: McKinnon, William A.
<wmckinnonj@sccourts.org<<mailto:wmckinnonj@sccourts.org>>>; Dave Duff <dduff@dfllawfirm.com<<mailto:dduff@dfllawfirm.com>>>; McKinnon, William A. Secretary (Kimberly Deese)
<wmckinnonsc@sccourts.org<<mailto:wmckinnonsc@sccourts.org>>>; Drew Radeker
<Drew@harrisonfirm.com<<mailto:Drew@harrisonfirm.com>>>
Subject: RE: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

Ms. Knehans,
It is abundantly clear that the final sentence of the first full paragraph in section III p. 7 was intended to refer to Billy Garris, not Ms. Gilly.
This paragraph regards the November 14, 2017 meeting as reflected in the heading "The Board violated FOIA on November 14, 2017 ..."
Ms. Gilly DID NOT testify about the November 14, 2017 meeting at all; she testified about the December 6, 2016 meeting, where, as correctly stated in the Court's order at the second paragraph on page 3, "Ms. Gilly stated that on the evening of December 6, 2016, the board room door was open and that she heard people discussing. . .from within the room."
I do not see how Plaintiff's counsel can object to this change, which I see the court has already made.
David

David N. Lyon
Duff Freeman Lyon
P.O. Box 1486
Columbia, SC 29202
Ph. (803) 790-0603
Fax (803) 790-0605
Firm Website
[https://urldefense.com/v3/__http://www.dfl-lawfirm.com_!!JHVHxrUang!G5GJNXITl4kRSj8Z7a8xjTn1nr4L-sy0_pP3EQ2kNzFZ6s2o987TIKejxAe01Wa83Bw\\$>https://urldefense.com/v3/__http://www.dfl-lawfirm.com_!!JHVHxrUang!GzSIUgO1pClDvEBKS8xLBvk1-qxbxFRSdJ4HUM4JsJV6ufyyaa2TP7N-k5Pgc84ZYas\\$>](https://urldefense.com/v3/__http://www.dfl-lawfirm.com_!!JHVHxrUang!G5GJNXITl4kRSj8Z7a8xjTn1nr4L-sy0_pP3EQ2kNzFZ6s2o987TIKejxAe01Wa83Bw$>https://urldefense.com/v3/__http://www.dfl-lawfirm.com_!!JHVHxrUang!GzSIUgO1pClDvEBKS8xLBvk1-qxbxFRSdJ4HUM4JsJV6ufyyaa2TP7N-k5Pgc84ZYas$>)

<image002.jpg>

The information contained in this message may be privileged and/or confidential and protected from disclosure. If the reader of this message is not the intended recipient or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately and delete all copies of the material.

From: Taylor Smith
<Taylor@harrisonfirm.com<<mailto:Taylor@harrisonfirm.com>>>
Sent: Wednesday, January 29, 2020 11:40 AM
To: McKinnon, William A. Law Clerk (Dakota Knehans)
<wmckinnonlc@sccourts.org<<mailto:wmckinnonlc@sccourts.org>>>
Cc: McKinnon, William A.
<wmckinnonj@sccourts.org<<mailto:wmckinnonj@sccourts.org>>>; David Lyon <dlyon@dfllawfirm.com<<mailto:dlyon@dfllawfirm.com>>>; Dave Duff <dduff@dfllawfirm.com<<mailto:dduff@dfllawfirm.com>>>; McKinnon, William A. Secretary (Kimberly Deese)
<wmckinnonsc@sccourts.org<<mailto:wmckinnonsc@sccourts.org>>>; Drew Radeker
<Drew@harrisonfirm.com<<mailto:Drew@harrisonfirm.com>>>
Subject: RE: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

Ms. Knehans,

Good morning.

Plaintiff does indeed appreciate Judge McKinnon's willingness to add Monday's hearing to his schedule this week and also file the amended order quickly. The Plaintiff concurs with Defendant's suggestion to change the "November 7, 2017" mention to "November 14, 2017" to properly reflect hearing date at issue. We do not consent though to the suggested change proposed by Defendant regarding the last sentence of the first paragraph of Section III, but we do agree with Defendant that the evidence adduced at trial was that Ms. Gilly attended the December 6, 2016 board meeting. The referenced passage of Section III actually says "[a]dditionally, Ms. Garris testified that the door to the board room was closed and that she could not hear the discussions of the individuals within the room." (emphasis added) We believe the quoted language is properly included in the amended order and would object to its change. Of course, if you or Judge McKinnon have any questions or concerns about these changes and would like to address them at the next hearing in this matter or in some other venue, please let us know. Thank you.

Taylor M. Smith IV

<image001.png>

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (803) 779-2211 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.) Thank you.

From: David Lyon <dlyon@dfi-lawfirm.com<<mailto:dlyon@dfi-lawfirm.com>>>
Sent: Tuesday, January 28, 2020 9:14 AM
To: McKinnon, William A. Law Clerk (Dakota Knehans)
<wmckinnonlc@sccourts.org<<mailto:wmckinnonlc@sccourts.org>>>; Drew Radeker
<Drew@harrisonfirm.com<<mailto:Drew@harrisonfirm.com>>>
Cc: McKinnon, William A.
<wmckinnonj@sccourts.org<<mailto:wmckinnonj@sccourts.org>>>; Dave Duff <dduff@dfi-lawfirm.com<<mailto:dduff@dfi-lawfirm.com>>>; Taylor Smith
<Taylor@harrisonfirm.com<<mailto:Taylor@harrisonfirm.com>>>; McKinnon, William A. Secretary (Kimberly Deese)
<wmckinnonsc@sccourts.org<<mailto:wmckinnonsc@sccourts.org>>>
Subject: RE: Jada Garris v. Lexington School District One (Case No. 2017-CP-32-04435)

Ms. Knehans,

I'm sure I speak for both parties in expressing appreciation for Judge McKinnon squeezing us into his GS docket yesterday and also for getting the amended order filed quickly.

I have reviewed the Amended Order. In Section III, the heading properly references the November 14, 2017 Board meeting, but the subsequent paragraphs reference November 7, 2017 (which was the date the agenda was posted). Also, under Section III, reference is made in the last sentence that "Ms. Gilly testified that the door to the board room was closed . . ." As the preceding sentences and other testimony demonstrate, we believe the court meant to refer to Billy Garris rather than Ms. Gilly.

Ms. Gilly attended the meeting on December 6, 2016 (see p. 3 of the Order). We mentioned this in a footnote to our memo, but failed to raise it during yesterday's presentation.

I have no doubt that Plaintiff's counsel would agree with making these corrections for the purpose of having a clear record.

Let me know if I can provide any additional information.

David

David N. Lyon
Duff Freeman Lyon
P.O. Box 1486
Columbia, SC 29202
Ph. (803) 790-0603

Fax (803) 790-0605

Firm Website

[https://urldefense.com/v3/__http://www.dfl-lawfirm.com_!!JHVHxrUang!G5GJNXITl4kRSj8Z7a8xjTn1nr4L-sy0_pP3EQ2kNzFZ6s2o987TlKejxAe01Wa83Bw\\$<https://urldefense.com/v3/__http://www.dfl-lawfirm.com_!!JHVHxrUang!GzSIUgO1pClDvEBKS8xLBvk1-qxbxFRSdJ4HUM4JsJV6ufyyaa2TP7N-k5Pgc84ZYas\\$>](https://urldefense.com/v3/__http://www.dfl-lawfirm.com_!!JHVHxrUang!G5GJNXITl4kRSj8Z7a8xjTn1nr4L-sy0_pP3EQ2kNzFZ6s2o987TlKejxAe01Wa83Bw$<https://urldefense.com/v3/__http://www.dfl-lawfirm.com_!!JHVHxrUang!GzSIUgO1pClDvEBKS8xLBvk1-qxbxFRSdJ4HUM4JsJV6ufyyaa2TP7N-k5Pgc84ZYas$>)

The information contained in this message may be privileged and/or confidential and protected from disclosure. If the reader of this message is not the intended recipient or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately and delete all copies of the material.

-----Original Message-----

From: McKinnon, William A. Law Clerk (Dakota Knehans)

<wmckinnonlc@sccourts.org<<mailto:wmckinnonlc@sccourts.org>>>

Sent: Sunday, January 26, 2020 5:39 PM

To: Drew Radeker <Drew@harrisonfirm.com<<mailto:Drew@harrisonfirm.com>>>

Cc: McKinnon, William A.

<wmckinnonj@sccourts.org<<mailto:wmckinnonj@sccourts.org>>>; Dave Duff <dduff@df-

lawfirm.com<<mailto:dduff@df-lawfirm.com>>>; David Lyon <dlyon@df-lawfirm.com<[mailto:dlyon@df-](mailto:dlyon@df-lawfirm.com)

[lawfirm.com](mailto:dlyon@df-lawfirm.com)>>; Taylor Smith <Taylor@harrisonfirm.com<<mailto:Taylor@harrisonfirm.com>>>; McKinnon, William

A. Secretary (Kimberly Deese) <wmckinnonsc@sccourts.org<<mailto:wmckinnonsc@sccourts.org>>>

Subject: Re: Jada Garris v. Lexington School District One (Case No.

2017-CP-32-04435)

My apologies Mr. Lyons, for some reason the email came up under Mr. Radeker's email address when I opened it. My mistake!

Thanks again,

Dakota Knehans, Esq.

Law Clerk to the Honorable William A. McKinnon, 16th Judicial Circuit, South Carolina

(803) 361-1995

Sent from my iPhone so please excuse any typos or misspellings.

On Jan 26, 2020, at 5:36 PM, McKinnon, William A. Law Clerk (Dakota Knehans)

<wmckinnonlc@sccourts.org<<mailto:wmckinnonlc@sccourts.org>>> wrote:

Mr. Radeker,

I hope you are enjoying your weekend. The Motions will be heard tomorrow at Moss if everyone is still available. It's likely not listed on a roster because we are technically in a general sessions term. Please let me know if you need anything else at all in the meantime.

Looking forward to seeing you tomorrow,

Dakota Knehans, Esq.

Law Clerk to the Honorable William A. McKinnon, 16th Judicial Circuit, South Carolina

(803) 361-1995

Sent from my iPhone so please excuse any typos or misspellings.

On Oct 23, 2019, at 4:56 PM, Drew Radeker <Drew@harrisonfirm.com<<mailto:Drew@harrisonfirm.com>>> wrote:

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *** Judge McKinnon:

I noticed that Taylor sent the email below to your secretary's address, but, since you will be in Lexington rather than York tomorrow, I provide that email's attachments to you and your law clerk directly with this email.

Thank you. We look forward to seeing you tomorrow morning.

Drew Radeker

<image001.png>

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (803) 779-2211 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)
Thank you.

From: Taylor Smith
<Taylor@harrisonfirm.com<<mailto:Taylor@harrisonfirm.com>>>
Sent: Wednesday, October 23, 2019 4:49 PM
To: wmckinnonsc@sccourts.org<<mailto:wmckinnonsc@sccourts.org>>
Cc: Dave Duff <dduff@dfi-lawfirm.com<<mailto:dduff@dfi-lawfirm.com>>>;
David Lyon <dlyon@dfi-lawfirm.com<<mailto:dlyon@dfi-lawfirm.com>>>; Drew Radeker
<Drew@harrisonfirm.com<<mailto:Drew@harrisonfirm.com>>>
Subject: Jada Garris v. Lexington School District One (Case No.
2017-CP-32-04435)

Judge McKinnon,

The above-captioned matter is set to be heard by Your Honor tomorrow.
Attached to this email please find a letter addressing Plaintiff's designations of Defendant's Deposition, held pursuant to Rule 30(b)(6), SCRPC, that the Plaintiff intends to offer in her case in chief at trial. Also attached you will find a copy of Defendant's full transcript. I intend to provide copies of these identified excerpts to all parties tomorrow.
Thank you.

Taylor M. Smith IV

<image001.png>

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (803) 779-2211 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)
Thank you.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Smokeball Reference: 2f12912e-175b-42c2-aff5-928680ef1a41/16396423-53a5-4d13-a583-f9b090a9f4ff.



# 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:  
[dduff@dfi-lawfirm.com](mailto:dduff@dfi-lawfirm.com)

May 12, 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

**Re: Jada Garriss vs. Lexington County School District One**  
**Civil Action No.: 2017-CP-32-04435**

Dear Ms. Kitchings:

Enclosed herewith for filing is an original Notice of Appeal, and one (1) copy of same, which I would appreciate you date stamping and returning a copy to our office.

Also enclosed is the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent and the Lexington County Clerk of Court.

Pursuant to a voice mail message received from Becky in your office, we will be mailing our check, which we understand is currently \$250.00, to defray the costs of the statutory filing fees.

Thank you for time and assistance in this matter.

Sincerely,

David T. Duff

DTD/kc  
Encls

c: Taylor M. Smith, IV, Esquire  
Andrew S. Radeker, Esquire  
David N. Lyon, Esquire

**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Honorable William A. McKinnon, Circuit Court Judge

Case No.: 2017-CP-32-04435

Jada Garriss, individually, and  
on behalf of all others  
similarly situated,,

Respondent,

v.

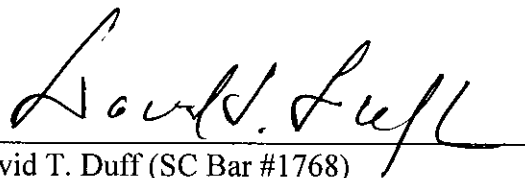
Lexington County School  
District One,

Appellant.

**NOTICE OF APPEAL**

Lexington County School District One, appeals the May 1, 2020 Order of the Honorable William A. McKinnon, denying Appellant's Motion for Reconsideration of Judge McKinnon's Order dated April 6, 2020. Appellant received written notice of entry of Judge McKinnon's Order Denying its Motion for Reconsideration on May 1, 2020. The Order and decision on the Motion for Reconsideration are attached as Exhibit A.

May 12, 2020



David T. Duff (SC Bar #1768)

David N. Lyon (SC Bar #100676)

DUFF, FREEMAN, LYON

P.O. Box 1486

Columbia, South Carolina 29202

Telephone: 803-790-0603

Email: [dduff@dfi-lawfirm.com](mailto:dduff@dfi-lawfirm.com)

Email: [dlyon@dfi-lawfirm.com](mailto:dlyon@dfi-lawfirm.com)

Attorneys for Appellant

Other Counsel of Record:

Taylor M. Smith, IV, Esquire (SC Bar #101584)  
Andrew S. Radeker, Esquire (SC Bar #73743)  
HARRISON & RADEKER, P.A.  
Post Office Box 50143 (29250)  
923 Calhoun Street  
Columbia, SC 29201  
Telephone: (803) 779-2211  
Email: [taylor@harrisonfirm.com](mailto:taylor@harrisonfirm.com)  
Email: [drew@harrisonfirm.com](mailto:drew@harrisonfirm.com)

Attorneys for Respondent

# EXHIBIT “A”

|                                |   |                                              |
|--------------------------------|---|----------------------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS                 |
|                                | ) | ELEVENTH JUDICIAL CIRCUIT                    |
| COUNTY OF LEXINGTON            | ) |                                              |
|                                | ) |                                              |
| Jada Garris,                   | ) | Case No.: 2017-CP-32-04435                   |
|                                | ) |                                              |
| Plaintiff,                     | ) |                                              |
| v.                             | ) |                                              |
|                                | ) | <b><u>ORDER GRANTING ATTORNEYS' FEES</u></b> |
| Lexington School District One, | ) | <b><u>AND COSTS</u></b>                      |
|                                | ) |                                              |
| Defendant.                     | ) |                                              |
|                                | ) |                                              |

This matter came before the Court on a Motion for Costs and Fees after a bench trial on five separate alleged violations of the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, et seq., known as FOIA. The Court finds in favor of the PLAINTIFF.

### **Introduction**

Plaintiff Jada Garris, a former Lexington School District One bus driver and current member of the Defendant Lexington School District One School Board (“the Board”), alleged at trial that the Defendant Board committed five violations of the Freedom of Information Act, SC. Code Ann. §§ 30-4-10, et seq. (“FOIA.”) After a bench trial, the Court found for the Plaintiff on one of the five alleged violations of FOIA, but found for the Defendant on all other counts.

### **Factual Basis:**

Plaintiff first filed suit in December 2017, asserting 12 violations of the FOIA. Prior to trial, but not before Plaintiff sought counsel and incurred costs, Defendant produced the documents Plaintiff had been seeking. Plaintiff subsequently, and voluntarily, dismissed the seven public records violations on June 13, 2019. Plaintiff proceeded to trial on the five other alleged violations of FOIA, and prevailed on one count. In bringing this suit against the

Defendant, Plaintiff alleges that she spent \$48,995.80 (\$47,427.54 in attorneys' fees and \$1,568.26 in costs). This is supported by affidavits of her counsel, Andrew Radeker and Taylor Smith. Plaintiff further provided time cards detailing the time spent by each attorney on the matter, and listing their hourly rate which was \$350 and \$300 an hour respectively<sup>1</sup>. Lastly, Plaintiff provided affidavits of two other attorneys, Mr. Jay Bender and Mr. Robert Butcher. In these affidavits Mr. Bender and Mr. Butcher detail their experience with cases similar to the one brought by Plaintiff, and submit to the Court that the rates and total amount of fees submitted by Plaintiff's attorneys are reasonable.

In opposition, Defendant offers affidavits from Ms. Kathy Schillaci and Mr. Jonathan Milling, to demonstrate the rates these attorneys have charged for FOIA cases. These affidavits Defendant argues that because these attorneys, who have been practicing for longer than Plaintiff's attorneys, charged less than Mr. Radeker or Mr. Smith, Plaintiff's fees are not reasonable. As such, Defendant argues that the Court should reduce the fees and costs awarded to Plaintiff to these rates, if any are awarded. Additionally, Defendant argues that, because Plaintiff prevailed on only one claim, the court should further reduce any costs and fees awarded to reflect that Plaintiff prevailed on 1/5 of the allegations at trial.

#### **Discussion of Law:**

The Freedom of Information Act, or FOIA, requires that public bodies, such as the Lexington County School District One School Board, give the public written notice of their meetings in order to foster open governments<sup>2</sup>. Additionally, records of a public body must be made available for public inspection, unless those documents fall within the parameters of S.C.

---

<sup>1</sup> The Court does note, however, that Plaintiff's Attorney Mr. Smith was originally billing at a rate of \$250 an hour, but that his rate was raised to \$300 an hour in November of 2017.

<sup>2</sup> S.C. Code Ann. § 30-4-80(A).

Code Ann. § 30-4-40.<sup>3</sup> When a party seeking relief under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.* (“FOIA”), prevails, “the may be awarded reasonable attorney’s fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney’s fees or an appropriate portion of those attorney’s fees.”<sup>4</sup> S.C. Code Ann. § 30-4-10 does not define “prevailing party”, but the Supreme Court of South Carolina has previously stated that a prevailing party is “one who successfully prosecutes an action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered.”<sup>5</sup> Additionally, a party is not required to prevail on every allegation to be found a prevailing party.<sup>6</sup> While one who prevails at trial certainly qualifies as a “prevailing party”, when a public body only produces the requested information after suit is brought under FOIA, the plaintiff who sought the requested information is still the prevailing party.<sup>7</sup>

The six factors South Carolina courts traditionally consider in determining the amount of attorney’s fees to be awarded are (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for

---

<sup>3</sup> S.C. Code Ann. §30-4-30.

<sup>4</sup> S.C. Code Ann. § 30-4-100(b).

<sup>5</sup> *Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 156, 711 S.E.2d 895, 897 (2011) (quoting *Heath v. County of Aiken*, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990) (alteration in original)).

<sup>6</sup> *Heath v. Cty. of Aiken*, 302 S.C. 178, 182, 394 S.E.2d 709, 711 (1990).

<sup>7</sup> *Sloan*, 409 S.C. 551, 762 S.E.2d 687, 689 (2014); *Sloan v. Friends of the Hunley, Inc.*, 393 S.C. 152, 711 S.E.2d 895, 897-98 (2011).

similar legal services; and (6) the beneficial results obtained<sup>8</sup>. The court must make specific findings as to each factor, but no one factor in and of itself is controlling.<sup>9</sup>

### **Analysis:**

Under both the provisions of FOIA cited above, and relevant case law, Plaintiff was the prevailing party as she not only recovered documents from the Defendant prior to trial but prevailed on an allegation at trial. As such, Plaintiff is entitled to recover reasonable attorney's fees, as detailed in S.C. Code Ann. § 30-4-10. Though Defendant argues that, as a current member of the school board, Plaintiff cannot recover attorney's fees from Defendant. However, Defendant offers no case law to support this contention. Additionally, Plaintiff only recently became a member of the school board, and the lawsuit was started years prior to her ascension. In light of this fact, and the Plaintiff's status as the prevailing party, she is entitled to recover her fees.

Plaintiff has asserted that she has spent \$48,995.80 in pursuing claims against the Defendant. Plaintiff's attorneys submitted time cards to the Court to demonstrate the 132.34 hours spent on the case, their respective hourly rates, and the costs associated with the litigations. To support these figures Plaintiff submitted affidavits of two other attorneys within the same field, Mr. Bender and Mr. Butcher.

#### **1. The Nature, Extent, and Difficulty of the Legal Services Rendered.**

Plaintiff's attorneys began representing Plaintiff in June of 2017. Since that date Plaintiff's attorneys have spent a considerable amount of time, over 130 hours, preparing for and

---

<sup>8</sup>See *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296 (1989); *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997); *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004)

<sup>9</sup> *Horton v. Jasper Cty. Sch. Dist.*, 423 S.C. 325, 330, 815 S.E.2d 442, 445 (2018).

litigating this case. Plaintiff's attorneys settled some claims through negotiations with Defendants and proceeded to a week-long bench trial in October 2019. Defendant does not contest Plaintiff's assertions as to the nature, extent, or difficulty of the services rendered in this case. The Court finds that the nature, extent, and difficulty of the legal services rendered warrant an award of attorney's fees to Plaintiff.

2. The Time and Labor Necessarily Devoted to The Case.

As was discussed above, Plaintiff's attorneys spent numerous hours both preparing for and litigating this case. Defendant does not contest the amount of time Plaintiff's attorneys spent preparing, nor do they contest the amount of labor that preparation included. As such, the Court finds that Plaintiff presented sufficient evidence as to this factor to support an award of attorney's fees.

3. The Professional Standing of Counsel.

Plaintiff's attorneys, Mr. Radeker and Mr. Smith, have a combined 21 years of experience in civil litigation, including civil rights and constitutional rights cases, including pursuing FOIA cases. Plaintiff offered the affidavits of both Mr. Bender and Mr. Butcher to further demonstrate their professional standing amongst their peers. Both Mr. Bender and Mr. Butcher assert Plaintiff's attorneys are well regarded in their field and have the requisite amount of experience to handle a case such as this one. The Defendant does not dispute Plaintiff's attorneys' professional standing; as such, the Court finds that Plaintiffs have offered sufficient evidence as to this factor.

4. The Contingency of Compensation.

Plaintiff's attorneys undertook to represent Plaintiff on an hourly basis. Plaintiff is a former bus driver and a current school board member. Plaintiff's attorneys assert that they may have difficulty gaining full compensation, due to Plaintiff's financial situation, without an award of attorney's fees from the Court. The Defendant does not dispute the manner in which Plaintiff's attorneys chose to be compensated for their representation. As such, the Court finds that sufficient evidence exists to support this factor.

5. The Fee Customarily Charged in the Locality for Similar Legal Services.

Though Defendant does not dispute the manner in which Plaintiff's attorneys have chosen to be compensated, Defendant does dispute the rate charged by each attorney. As discussed above, Plaintiff submitted the affidavits of Mr. Bender and Mr. Bucher to support their contention that their hourly rate is similar to those customarily charged in the area for similar services. Defendants offered affidavits of two other attorneys, Ms. Schillaci and Mr. Milling to demonstrate the rates that these two attorneys charge, \$300 an hour and \$250 an hour, to represent clients in a FOIA case. Defendants contend that Plaintiff's rate should be reduced by 15% due to the discrepancies between the rates chosen by these attorneys and those chosen by Plaintiffs. However, Defendants did not offer affidavits directly disputing the amount charged by Plaintiff's attorneys, nor any case law to support their request to lower the rate chosen by Plaintiff's attorneys. Additionally, the affidavits of Ms. Schillaci and Mr. Milling were pulled from other cases as representations of rates in the community, but contain little detail as to the scope of their representation of the clients at issue in those affidavits, and contain no opinions by either attorney as to whether the rates chosen by Plaintiff's attorneys were reasonable. The Court finds that sufficient evidence exists to support Plaintiff's contention that the rates chosen by her

attorneys are similar to those charged in the area. As such, sufficient evidence exists to support this factor.

6. The Beneficial Results Obtained

Plaintiff contends that because she secured the release of several documents prior to trial, and because the Court found for her on one of five allegations presented at trial, Plaintiff's attorneys obtained a beneficial result. In looking at the time sheets submitted by Plaintiff's attorneys, no differentiation was made between each allegation when either attorney was logging the amount of time spent working on the case. As such it is difficult to parse out the amount of time and money each allegation represented in the total amount.

Defendants argue that no beneficial results were obtained, as Defendant no longer utilizes the procedure the Court found violated FOIA. Defendant contends that Plaintiff's attorney's fees should be reduced to 1/5 of the amount requested, or 1/12 to reflect the original 12 allegations, in order to reflect the only allegation Plaintiff prevailed on at trial. Neither method of calculation offered by the Defendant takes into account Plaintiff's status as the prevailing party concerning the documents Defendant turned over prior to trial. The Court agrees that the beneficial results obtained are minimal, and this factor cuts against the Plaintiff's request for fees and costs.

Though Defendant prevails on the last factor, the factors in *Burton* and *Speed* must be considered as a whole; no one factor is outcome determinative.<sup>10</sup> Plaintiff presented ample evidence to find in their favor on factors one through five, and in light of that, the Court finds that awarding Plaintiff her full costs and fees would represent a reasonable award.

---

<sup>10</sup> *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997); *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004); *Horton v. Jasper Cty. Sch. Dist.*, 423 S.C. 325, 330, 815 S.E.2d 442, 445 (2018).

**Conclusion:**

For the reasons set forth above, the Court finds The Court finds in favor of PLAINTIFF GARRIS AND AWARDS ALL COSTS AND FEES REQUESTED AND INCURRED \$48,995.80 (\$47,427.54 in attorneys' fees and \$1,568.26 in costs).

IT IS SO ORDERED.

THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

\_\_\_\_\_  
THE HONORABLE WILLIAM A. MCKINNON



Lexington Common Pleas

**Case Caption:** Jada Garris VS Lexington County School District One

**Case Number:** 2017CP3204435

**Type:** Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2020-04-06 11:34:17 page 9 of 9

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
Jada Garriss, )  
 )  
Plaintiff, )  
v. )  
 )  
Lexington School District One, )  
 )  
Defendant. )  
\_\_\_\_\_ )

**IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT**

Case No.: 2017-CP-32-04435

**DECISION OF THE COURT**

This matter came before the Court on Defendant's Motion for Reconsideration after a bench trial on five separate alleged violations of the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, et seq., known as FOIA. The Court DENIES Defendant's motion.

**Introduction**

Plaintiff Jada Garriss, a former Lexington School District One bus driver and current member of the Defendant Lexington School District One School Board ("the Board"), alleged at trial that the Defendant Board committed five violations of the Freedom of Information Act, SC. Code Ann. §§ 30-4-10, et seq. ("FOIA.") After a bench trial, the Court found for Plaintiff on one of the five alleged violations of FOIA, but found for Defendant on all other counts. The Court then awarded Plaintiff attorneys fees and costs of \$48,995.80 under S.C. Code Ann. § 30-4-10. Defendants then filed this Motion to Reconsider the fee award.

**Factual Basis:**

Defendants challenge the Court's award on three basis: 1) that there was no evidence in the record that Plaintiff voluntarily dismissed several of her allegations because she received documents requested under FOIA during the pendency of the lawsuit; 2) that Plaintiff is not the

prevailing party in the underlying matter and 3) that because Defendant prevailed on one factor of the *Burton* test, Plaintiff should not have been awarded her full costs and fees. The Court disagrees.

**Analysis:**

- I. There was un rebutted testimony at trial that Plaintiff dismissed several of her allegations against Defendant only after Defendant turned over documents requested by the Plaintiff under FOIA.

There was un rebutted testimony at trial that Plaintiff received several documents from the Defendant during the pendency of this litigation. Though Defendants now argue that they substantially complied with all FOIA requests prior to trial, and only turned over one responsive document during the pendency of the trial. However, that was not reflected in the trial evidence. In fact, Plaintiff Garris testified she did not receive the last of the requested documents until June 2019, approximately 18 months after this action was filed. The Court therefore denies Defendant's Motion on this ground.

- II. Plaintiff is the prevailing party in this matter, and as such is statutorily entitled to recover her attorney's fees and costs.

Under both the provisions of FOIA and relevant case law also cited in the previous Order, Plaintiff was and is the prevailing party. There was un rebutted trial testimony that several allegations were dismissed prior to trial only after documents were produced during litigation. Additionally, Plaintiff prevailed on another allegation at trial, proving that the Defendant violated FOIA. Defendant argues that because Plaintiff only prevailed on one allegation out of five, Defendant is in fact the prevailing party. The Court disagrees. Each side prevailed in part. Although S.C. Code Ann. § 30-4-100 does state "If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees" (emphasis added), the Court has discretion to either award the full amount or a

partial amount in this situation. In the Court's view, awarding some fraction of the attorney's fees would greatly reduce the incentive for filing FOIA claims. The Court also notes this matter went all the way to a trial, and the Plaintiff did prevail in part at trial. The Court therefore exercises its discretion and awards the full amount of fees. The Court denies Defendant's Motion on this ground.

III. The evidence provided by the Plaintiff as to the *Burton* factors justifies awarding Plaintiff her full costs and fees.

Defendant argues that Plaintiff's degree of success in the main action was minimal, in their opinion, and as such so the award of attorney's cost and fees should be reduced. Though Defendant is correct that Plaintiff only prevailed on one allegation of a violation of FOIA, the degree of a party's success must be measured as a whole. Here, even after being forced to turn over documents during the pendency of this litigation, the Defendant never conceded that they violated FOIA, forcing the Plaintiff to proceed to trial. Plaintiff then successfully proved at trial that Defendant violated FOIA. Reading *Burton* in the way argued by Defendant would mean the only way a prevailing party would receive the full amount of reasonable fees expended would be to prevail on every cause of action. This is not the law. A determination of the appropriate award of attorney's fees and costs is within the discretion of the Court, and in this case the Court has determined that Plaintiff is legally entitled to recover the full amount of \$48,995.80.

Additionally, Defendant argued that the Court misunderstood their position as to whether they wished to challenge the amount of time Plaintiff's attorneys spent on the underlying case, as well as the amount each of Plaintiff's attorneys charged as an hourly fee. However, Defendant offered no affidavits of other attorneys directly challenging the fee each attorney charged as unreasonable or challenging the amount of time each spent on the underlying matter. In fact, the only evidence that the Defendant offered to challenge Plaintiff's assertions were affidavits from

attorneys on cases entirely separate from the underlying matter. In considering Plaintiff's counsel's assertions and Defendant's affidavits, the Court determined that both the fees charged by Plaintiff's counsel, and the amount of time billed, were reasonable. The Court does not see any basis to disturb that ruling today.

Finally, S.C. Code Ann. § 30-4-100 explicitly permits full attorney's fees to be awarded to a party who prevails only in part. The Court has chosen to do so in this case to prevent discouraging future FOIA plaintiffs.

Defendant's motion is denied on this ground.

**Conclusion:**

For the reasons set forth above, the Court DENIES Defendant's Motion to Reconsider on all grounds. The amount owed shall be paid to Plaintiff within fourteen (14) days of this order.

IT IS SO ORDERED.

THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

---

THE HONORABLE WILLIAM A. MCKINNON



Lexington Common Pleas

**Case Caption:** Jada Garris VS Lexington County School District One

**Case Number:** 2017CP3204435

**Type:** Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2020-04-30 17:36:21 page 5 of 5

**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

Honorable William A. McKinnon, Circuit Court Judge

Case No.: 2017-CP-32-04435

Jada Garris, individually, and  
on behalf of all others  
similarly situated,,

Respondent,

v.

Lexington County School  
District One,

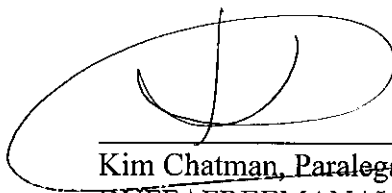
Appellant.

**PROOF OF SERVICE**

I certify that on May 12, 2020, I served the Respondent and the Lexington County Clerk of Court with copies of the Notice of Appeal, via electronic mail, U.S. Mail and e-filing, a copy of same addressed as follows:

Taylor M. Smith, Iv, Esquire  
Andrew S. Radeker, Esquire  
Harrison & Radeker, P.A.  
Post Office Box 50143 (29250)  
923 Calhoun Street  
Columbia, SC 29201  
[Taylor@Harrisonfirm.com](mailto:Taylor@Harrisonfirm.com)  
[Drew@Harrisonfirm.com](mailto:Drew@Harrisonfirm.com)

The Honorable Lisa Comer  
Lexington County Clerk of Court  
205 East Main Street  
Lexington, SC 29072  
(via e-filing only)



Kim Chatman, Paralegal  
DUFF | FREEMAN | LYON, LLC  
P.O. Box 1486  
Columbia, SC 29202  
Telephone: 803-790-0603

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

**RECEIVED**  
**Feb 10 2021**  
**SC Court of Appeals**

s/David N. Lyon

David T. Duff (SC Bar #1768)

David N. Lyon (SC Bar #100676)

DUFF | FREEMAN | LYON, LLC

P.O. Box 1486

Columbia, SC 29202

(803) 790-0603

[dduff@dfi-lawfirm.com](mailto:dduff@dfi-lawfirm.com)

[dlyon@dfi-lawfirm.com](mailto:dlyon@dfi-lawfirm.com)

January 27, 2021  
Columbia, South Carolina