

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL
COUNTY OF RICHLAND	)	CIRCUIT
	)	
WENDY BRAWLEY,	)	C/A No. 2015-CP-40-1805
PLAINTIFF,	)	
	)	
v.	)	AMENDED ORDER AWARDING PLAINTIFF
	)	ATTORNEY'S FEES AND COSTS
	)	
RICHLAND COUNTY, SOUTH	)	
CAROLINA,	)	
DEFENDANT.	)	

RECEIVED**Feb 18 2021****SC Court of Appeals**

This matter comes before Judge DeAndrea Gist Benjamin to issue an order determining a fair and reasonable amount of attorney's fees and costs to Plaintiff, Wendy Brawley. The Court issues the following order awarding Plaintiff attorney's fees and costs in the amount of \$80,845.71.

PROCEDURAL HISTORY

Plaintiff's award of attorney's fees and costs stems from Plaintiff's four (4) FOIA request to the Defendant at the meeting of the Richland County Council held on September 9, 2014. On March 25, 2015, Plaintiff filed a Complaint seeking declaratory and injunctive relief. By Form Order filed August 14, 2015, Judge Clifton Newman dismissed Plaintiff's claim for injunctive relief. Subsequently, Defendant filed a motion for summary judgement as to Plaintiff's remaining claim for a declaratory judgement. By Order filed October 24, 2016, Judge Newman granted in part and denied in part Defendant's motion for summary judgement resolving three (3) of the four (4) FOIA request. A bench trial was held on September 5, 2019, regarding the

remaining claim for declaratory relief. By Order filed February 13, 2020, this Court found in favor of Plaintiff and specifically awarded reasonable attorney's fees and costs.¹

FINDINGS OF FACT

After careful consideration of the testimony and evidence presented at trial as well as the legal arguments of counsel during trial, hearings, and in various motions, the Court makes the following findings of fact.

I. THIS COURT HAS JURISDICTION OVER THE AWARD OF ATTORNEY'S FEES AND COSTS

This Court overrules Defendant's objection asserting the Court no longer has subject matter jurisdiction to consider the Plaintiff's attorney's fees affidavit filed on July 27, 2020, or to make any award of attorney's fees and costs. First, Defendant argues that the February 13, 2020 Order of this Court required Plaintiff to submit a motion to support the amount of fees and costs incurred. Under South Carolina law, "the only prerequisite to an award of attorney's fees and cost is that the party seeking relief must prevail, in whole or in part." *Cockrell by Cockrell v. Trustees of Dist. 20 Constituent School Dist.*, 299 S.C. 155, 382 S.E.2d 923 (S.C. 1989). Thus, since Plaintiff prevailed in part on her request for declaratory relief, it is within this Courts discretion to award attorney's fees and costs to Plaintiff. Furthermore, there is no prejudice to Defendant as a result of Plaintiff filing an affidavit of attorney's fees rather than a motion. Plaintiff requested attorney's fees in its complaint and reasserted this request at trial.

¹ The Defendant has asked the court to consider *Ballard v. Newberry County*, No. 2017-002429, 2021 WL 116345 (S.C. App. January 13, 2021), decided by the Court of Appeals January 13, 2020. In its decision, the Court of Appeals held that a public body does not violate FOIA when it fails to produce documents it did not retain. This Court finds this case to be distinguishable. In *Ballard*, the documents requested no longer existed and could not be reproduced. Here, the County failed to provide responsive documentation both in its possession and/or previously in its possession which could have been obtained.

Defendant also asserts that by law Plaintiff had ten (10) days, or until February 24, 2020, to file for attorney's fees pursuant to Rule 54(d), SCRCF. However, on February 24, 2020, Defendant filed a Notice of Motion and Motion to Alter or Amend Order seeking to alter the February 13, 2020 Order of this Court. This vested the Court with continuing jurisdiction over the case until a final order on the merits was issued and attorney's fees and costs, if any, were determined. "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." *Culbertson v. Clemens*, 322 S.C. 20, 23 471 S.E.2d 163, 164. By Order filed July 16, 2020, this Court issued an amended and final order on the merits. Within ten (10) days, on July 27, 2020, Plaintiff filed an affidavit of attorney's fees and costs. Defendant emphasizes that the South Carolina Supreme Court has held that "[g]enerally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 633 S.E.2d 722, 730 (2006) (emphasis added). To support its argument that this Court no longer has jurisdiction over this FOIA related attorney's fees and costs matter, the Defendant cites to case law construing the South Carolina Frivolous Proceedings Sanctions Act. In response, the Court emphasizes "the award of fees and costs to the prevailing person or entity in a suit brought pursuant to section 30-4-100(a) is entrusted to the discretion of the trial court." *Sloan v. S.C. Dep't of Revenue*, 409 S.C. 551, 556, 762 S.E.2d 687, 690 (2014) (J. Pleicones, concurring in part and dissenting in part) (citing S.C. Code Ann. §30-4-100(b)(2007)). This Court may exercise its discretion in regard to an award of fees and costs.

Finally, Defendant contends that Plaintiff did not submit its billing records while the record was open and did so only at the request of Judge Benjamin. This Court finds that the evidentiary record remained open when Plaintiff's affidavit was filed July 27, 2020, and that the

Court asking the Plaintiff provide supplemental information for evidentiary purposes is not *sua sponte* action by the Court. Furthermore, the billing records were provided by Plaintiff only to supplement the affidavit previously filed on July 27, 2020.

II. PLAINTIFF'S BILLING RECORDS WERE AUTHENTICATED

Defendant alleges that Plaintiff submitted billing records (**Exhibit A**) without the proper authentication. This Court finds that an attorney's sworn testimony as to the validity of the records is sufficient for authentication purposes. The most direct way of authenticating billing records is the taking of testimony from a witness who has knowledge that the records are what they are claimed to be. An affidavit or additional testimony to authenticate the records is not required.

III. PLAINTIFF MAY RECOVER ATTORNEY'S FEES AND COSTS FOR WORK DONE BY SUPERVISED OFFICE STAFF

Without legal authority, Defendant asserts that S.C. Code Ann. §30-4-100(b) does not provide for the recovery of fees charged for paralegals or staff. Plaintiff contends that "reasonable attorney's fees" includes fees charged for work done by supervised office staff including paralegals. As such, Plaintiff has submitted billing records including fees recoverable for work done by supervised paralegals. Defendant has provided no support for the excluding fees charged for supervised staff. This Court finds that a trial judge has discretion to consider and include in its award of attorney's fees the services expended by paralegals if it is reasonable to do so.

IV. DISMISSED PLAINTIFF HOPKINS AND LOWER RICHLAND CITIZENS UNITED, INC. ("HLRCU") AND PLAINTIFF WENDY BRAWLEY ARE THE SAME

Defendant alleges that Plaintiff's counsel expended some of the attorney's fees and cost in question representing a prior co-Plaintiff Hopkins and Lower Richland Citizens United, Inc.

(“HLRCU”). A review of the record reflects that HLRCU is Ms. Brawley’s 501(c)(3).² Additionally, HLRCU was not formed at the time of the time entries in question and thus Plaintiff could not have been representing the non-existent entity. Upon review of Plaintiff’s counsel billing records and itemized costs this Court finds that the fees and costs requested result from work done primarily on behalf of Plaintiff Wendy Brawley.

V. THE COURT IN ITS DISCRETION MAY PORPORTION THE AWARD OF ATTORNEYS FEES AND COST

The Court has taken into consideration the that Judge Newman granted Defendant’s Motion to Dismiss and Motion for Summary Judgement on three of the four FOIA claims at issue. Nonetheless, this Court does not find that the fact Plaintiff did not prevail on the entirety of her injunctive relief claim calls for a significant reduction in the award of attorney’s fees and costs. “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.**” Section §30-4-100 (emphasis added).

STANDARD OF REVIEW

The Supreme Court of South Carolina has set forth the factors to be considered in awarding attorney’ fees. These factors include nature, extent, and difficulty of the legal services rendered; the time and labor necessarily devoted to the case; the professional standing of counsel; the contingency of compensation; the customary fees charged in the locality for similar services; and the beneficial result obtained. *Dedes v. Stickland*, 414 S.E.2d 134 (S.C. 1992). This Court finds that Plaintiff’s counsel is entitled to attorney’s fees pursuant to the Dedes factors. Plaintiff’s counsel secured the production of documents by Richland County on behalf of Wendy

² Judge Newman dismissed Plaintiff Hopkins and Lower Richland Citizens United, Inc. by Order filed October 24, 2016 because the 501(c)(3) had not been formed.

Brawley after several hearings with Judge Clifton Newman; a bench trial and hearings with Judge Benjamin; extensive discovery; and multiple pre- and post-trial motions and arguments. This matter was handled on a contingency basis by Shaun Blake and Jenkins Mann of Rogers, Lewis, Jackson, Mann & Quinn, LLC, who have practiced in the area of civil litigation since 2006. This Court finds that the Plaintiff's hourly rates for partners, associates, and paralegals are reasonable and represent the customary legal fees for the type of work performed in this case. The complaint in this matter was filed on March 25, 2015, and approximately three hundred five (305) billable hours³ were devoted to this case. Upon review of these factors, this Court finds that the attorney's fees and costs requested are fair and reasonable in light of the nature of the legal services rendered.

CONCLUSION

Pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §30-4-10, *et seq.*, Plaintiff is entitled to reasonable attorney's fees incurred herein. The Court held multiple hearings and considered the oral arguments of counsel. In addition, the Court reviewed the filings by counsel. Plaintiff submitted billing records indicating attorney's fees and costs in the amount of \$91,591.96 have accrued since March 3, 2015. The Court finds that it is not required to make evidentiary findings as to each billing entry; however, after careful review, the Court has deducted attorney's fees and expenses relating to Plaintiff's injunctive relief claim, Defendant's Motion to Dismiss, and appellate matters. Furthermore, the Court finds a fifty-percent (50%) reduction in attorney's fees and costs incurred prior to August 10, 2015 to be fair and reasonable to account for time allocated to the representation of dismissed co-Plaintiff

³ Plaintiff's billing records do not include all hours devoted to the case.

HLRCU. Upon consideration, this Court finds that an award of attorney's fees in the amount of \$77,980.75 and costs in the amount of \$2,864.96 are fair and reasonable.

IT IS SO ORDERED THAT

Plaintiff is awarded, and Defendant shall pay to Plaintiff, \$77,980.75 in attorney's fees and \$2,864.96 in costs, for a total of \$80,845.71.

AND IT IS SO ORDERED.

The Honorable DeAndrea Gist Benjamin
Presiding Circuit Court Judge
Fifth Judicial Circuit

Columbia, South Carolina
January 15, 2021



Richland Common Pleas

Case Caption: Hopkins And Lower Richland Citizens United Inc , plaintiff, et al vs
Richland County
Case Number: 2015CP4001805
Type: Order/Attorney Fees

So Ordered

s/DeAndrea Gist Benjamin, #2161