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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2020-001522

Town of Hilton Head Island, South Carolina, John J. McCann and
Stephen G. RileyIntervenors/Plaintiffs

v.

Beaufort County, South Carolina.....Respondent

v.

James BeckertAppellant

**RESPONDENT BEAUFORT COUNTY MOTION TO DISMISS APPEAL AND
INCORPORATED MEMORANDUM IN SUPPORT**

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John W. Fletcher, Esq.
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Counsel for Respondent Beaufort County

INTRODUCTION

Respondent Beaufort County is a political subdivision of the State of South Carolina and is authorized to bring suit. Appellant James Beckert ("County Auditor") is the elected County Auditor for Beaufort County.

This appeal involves the County Auditor's ministerial duty to levy tax millage sufficient for the payment of principal and/or interest on certain indebtedness and for the creation of a sinking fund to service the indebtedness. *See generally* S.C. Code §§ 4-15-150, 4-19-140 and 59-71-150. Rather than perform his ministerial function of levying the amount that County Council determined was sufficient to service the Rural and Critical Lands debt (4.8 mils), the County Auditor improperly imposed a higher millage rate (5.8 mils), which he chose. This rate would generate much more money than necessary to service the debt.

Beaufort County commenced this action seeking a writ of mandamus and other relief to compel the County Auditor to levy an appropriate millage in accordance with Beaufort County Council's legislative determination. In its October 19, 2020 First Amended Complaint in Mandamus, Beaufort County asserted claims against Appellant County Auditor sounding in: (a) mandamus (Count I); and (b) declaratory judgment (Count II). On November 2, 2020, Beaufort County filed its Supplemental and Amended Motion for Temporary Injunction and Writ of Mandamus and for Expedited Hearing. (*See* Ex. B). Beaufort County sought urgent interim injunctive relief because the property tax bills were due to go out and could not be prepared until the millage rate is determined. ~~A delay in issuing the tax bills would have resulted in critical~~ cash shortages for Beaufort County and other taxing entities.

On November 20, 2020, the trial court entered an Order Granting Temporary Injunction as to the Rural and Critical Lands Debt Service Millage Rate ("Temporary Injunction"). In the Temporary Injunction, Judge Carmen T. Mullen ordered as follows:

It is hereby ORDERED, ADJUDGED and DECREED pursuant to S.C.R. Civ. P. 65 that Defendant County Auditor James Beckert shall, on or before the close of business on November 25, 2020: (a) fulfill his ministerial duty and levy taxes on properties at 4.8 mils for Rural & Critical (Purchase of Real Property Program)

debt service for the 2020-2021 tax year, as set forth in Beaufort County Budget Ordinance #2020/22; (b) prepare an amended tax roll duplicate reflecting the same; (c) deliver the amended tax roll duplicate to the Beaufort County Treasurer. Defendant County Auditor is hereby ENJOINED from levying taxes on properties at 5.8 mils, or any number of mils other than 4.8 mils, for Rural & Critical debt service (Purchase of Real Property Program) for the 2020-2021 tax year. In light of the importance of this to the funding for the operations of Beaufort County, the Court requests that Defendant County Auditor do his best to comply with this Order as promptly as reasonably possible but in no event later than the close of business on November 25, 2020.

(See Ex. C, at 7). Importantly, the Temporary Injunction did not fully resolve the issues raised in Beaufort County's First Amended Complaint in Mandamus. To the contrary, it merely allowed Beaufort County to avoid irreparable harm during the pendency of this action. As a result, the trial court has not ruled on the substantive merits of Beaufort County's claim.

The County Auditor filed the instant immediate appeal from Judge Mullen's Temporary Injunction. For the reasons that follow, this Court should dismiss this appeal because it is now moot. The appropriate time for appellate review will be upon the trial court's final disposition of this matter.

MOTION/ARGUMENTS

The County recognizes that "[a]n order granting a temporary injunction is directly appealable." See *Atwood Agency v. Black*, 374 S.C. 68, 70 n.1, 646 S.E.2d 882, 883 n.1 (2007); accord S.C. Code § 14-3-330(4) (authorizing immediate appeal from, *inter alia*, "[a]n interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction"). "However, '[t]he rule that an appellate court limits its review to the issues necessary to a proper disposition of the appeal, and will not consider immaterial or moot questions, applies when reviewing decrees and orders relating to injunctions.'" *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 597 (2001) (*quoting* 42 am.Jur.2d Injunctions § 335 (2000)).

With regard to moot appeals from temporary injunction orders, the South Carolina Supreme Court has stated:

An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. *Jackson v. State*, 331

S.C. 486, 489 S.E.2d 915 (1997). Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable. *See* Jean Hoefler Toal, Shahin Vafai & Robert A. Muckenfuss, *Appellate Practice in South Carolina* 122 (1999). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

See Curtis, 345 S.C. at 567-68, 549 at 596; *accord Floyd v. Horry Cty. Sch. Dist.*, 351 S.C. 233, 234, 569 S.E.2d 343, 344 (2002) ("Where a temporary injunction has expired, as here, the issue is moot."). "The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation." *See Sloan v. Greenville Cty.*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003).

Judge Mullen's Temporary Injunction is plainly moot. That order requires that the County Auditor engage in certain activities on or before November 25, 2020, a date that has long passed. In fact, the County Auditor sufficiently complied with the Temporary Injunction to permit Beaufort County to send out its tax bills. Nothing remains to be done under the Temporary Injunction, which was expressly limited in time. There is nothing that this Court can do to undo the Temporary Injunction.

The appropriate time for the County Auditor to appeal will be from a final judgment disposing of this matter upon an appropriate record. Judge Mullen's Temporary Injunction was merely a form of interim relief sought to prevent Beaufort County from being irreparably harmed during the pendency of this case. It does not dispose of all of the issues raised in Beaufort County's Complaint. For example, Respondent Beaufort County's First Amended Complaint in Mandamus requests declaratory relief concerning debt service tax millage:

57. Plaintiff is also entitled to a declaratory judgment that Defendant must levy taxes on properties at 4.8 mills for Rural & Critical debt service as reflected in the County's Budget Ordinance and must deliver an amended tax roll to the Treasurer as required by state statute in the next 21 days.

58. Plaintiff is further entitled to a declaratory judgment to the effect that Defendant does not have discretion to unilaterally levy millages for debt service at any level he chooses; rather, he is obligated to only levy sufficient millage to provide for debt service.

(See Ex. A ¶¶ 57-58). The parties did not have a full opportunity to conduct discovery and develop a complete factual record for Judge Mullen to decide all of Beaufort County's claims; those claims remain pending in the trial court. In fact, the parties are now engaging in active discovery in the trial court (including taking depositions) to establish a proper record for the trial court to rule on the merits of Beaufort County's claims against the County Auditor. If the Court determines this appeal, it will risk interfering with the remaining claims and prematurely deciding this case on an incomplete record.

CONCLUSION

For the reasons set forth above, this Court should grant Respondent Beaufort County's Motion to Dismiss this appeal.

CERTIFICATION OF COUNSEL

The undersigned states that he attempted to seek the consent of Appellant County Auditor to the relief requested herein. Upon consultation with his client, counsel for Appellant County Auditor respectfully declined to consent to such relief.

March 1, 2021

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Beaufort County, South Carolina.....Respondent

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James BeckertAppellant

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal and Incorporated Memorandum in Support of Respondent Beaufort County on the above-referenced Appellant and on other parties by email and by depositing a copy of it in the United States Mail, postage prepaid, on March , 2021, addressed to counsel at the following addresses:

James A. Brown, Jr., Esq.
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Julia Childers

From: Julia Childers
Sent: Monday, March 1, 2021 3:24 PM
To: Court Of Appeals Filings
Cc: Jim Brown Law; curtis@coltraneandwilkins.com; John Fletcher
Subject: Town of Hilton Head vs. Beaufort County vs. James Beckert; Appellate Case No. 2020-001522
Attachments: Respondent - Mtn to Dismiss Appeal (3.1.21) (01068158xA18B7).pdf; Respondent - Mtn to Dismiss Appeal Proof of Service (3.1.21) (01068159xA18B7).pdf; BWPH Check 23880 COA \$50.00.pdf

As provided in the South Carolina Supreme Court's Order Re: Operation of Appellate Courts During the Coronavirus Emergency (as Amended May 29, 2020), attached hereto for filing please find **Respondent Beaufort County's Motion to Dismiss Appeal and Incorporation Memorandum and Proof of Service** of the same. A hard copy of the Motion and the \$50.00 filing fee is being mailed to the court for filing.

Please let us know if there are any issues opening the attachments. Thank you for your assistance in this regard.

Sincerely,

JULIA G. CHILDERS

LEGAL ASSISTANT TO DAVID S. COX, JEFF M. BOGDAN AND JOHN W. FLETCHER



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SC Court of Appeals

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The Honorable Jenny Abbott Kitchings

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