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**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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**APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas**

**Honorable Jennifer McCoy, Circuit Court Judge**

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**Appellate Case No. 2018-001784**

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Charleston County School District Board of Trustees,  
Dr. Gerrita Postlewait, in Her Capacity as Superintendent of Charleston  
County School District, Kim Jackson, in Her Capacity as Principal of  
Mt. Pleasant Academy ..... Appellants

v.

Travis J. McCory and Alicia S. McCory ..... Respondents.

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**APPELLANTS' MEMORANDUM REGARDING MOOTNESS**

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## **I. BACKGROUND**

At the direction of the Court dated March 23, 2021, the Appellants respectfully submit this memorandum addressing whether this matter is moot. The question of mootness arises because the substantive relief sought by Respondents was the admission of their daughter to Mt. Pleasant Academy pursuant to S.C. Code of Laws § 59-63-30(c). (Complaint, Record on Appeal, p. 10.) After commencing their declaratory judgment action, the Respondents' daughter was admitted to Mt. Pleasant Academy off of the waitlist under the Appellant, Charleston County School District's ("District"), voluntary student transfer policy. Consequently, the substantive relief Respondents' were seeking was obtained, but not under § 59-63-30(c). (Exhibit A, hereto (Suggestion of Mootness filed September 5, 2018); Exhibit B, hereto (correspondence from Thomas K. Barlow to the circuit court dated September 5, 2018).)

The Respondents' daughter was admitted to Mt. Pleasant Academy from the waitlist on or before September 4, 2018. (Exhibit C, hereto (correspondence from Attorney Cooper to the Court dated September 4, 2018).) At that time, the Respondents were apparently considering whether their daughter's admission from the waitlist addressed the relief they were seeking through their declaratory judgment action and resolved their claim. (Exhibit C.) Ultimately and by September 5, 2018, the Respondents determined the waitlist admission did not fully resolve their claim. (Exhibit D, hereto (correspondence between Attorney Barlow and Attorney Cooper, dated September 5, 2018).) Respondents specifically rejected any consent to Appellant's Suggestion of Mootness filed with the circuit court. (Exhibit D.) Then, in opposition to Appellants' Suggestion of Mootness, Respondents notified the circuit court on September 6, 2018, that they wanted the court to enter a written final order ruling in their favor on

their declaratory judgment claim. (Exhibit E, hereto (correspondence from Attorney Cooper to the circuit court, dated September 6, 2018).) Thereafter, on September 7, 2018, the circuit court entered a final written order in the matter granting declaratory judgment and finding the case not to be moot. (Declaratory Judgment Order dated September 7, 2018, Record on Appeal, pp. 1-2).

In their complaint, Respondents seek both a judicial declaration that (1) the District's student admissions policy is in conflict with §§ 59-63-30(c) and 59-63-32(C), and (2) the court direct the Appellants to admit their daughter to Mt. Pleasant Academy. (Complaint, Record on Appeal, p. 10.) Accordingly, the issue of the mootness of this matter turns on whether the requested judicial declaration concerning the District's admissions policy constitutes practical relief, in light of the Respondents' daughter's admission to Mt. Pleasant Academy and notwithstanding the Respondents' stated desire to continue the action.

## **II. LEGAL ANALYSIS**

As recently noted by this Court “[a] case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.” *Wayne's Automotive Center, Inc. v. South Carolina Department of Public Safety*, 431 S.C. 465, 475-76, 848 S.E.2d 56, 62 (Ct. App. 2020) quoting *Sloan v. Greenville County*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). Here, under the current facts, it would appear that any judgment rendered by this Court would not have any practical effect concerning Respondents' daughter's admission or attendance at Mt. Pleasant Academy, since their daughter would continue to be eligible to attend Mt. Pleasant Academy regardless of whether the District's admission policy is consistent with § 59-63-30(c). In other words, the District's admission of Respondents' daughter to Mt. Pleasant Academy

pursuant to the District's voluntary student transfer policy now makes it impossible for the Court to grant effectual relief. *Id.*

However, even after their daughter's admission to Mt. Pleasant Academy, in early September 2018, the Respondents essentially asserted that a declaration of whether District policy comports with state law was part and parcel of the effectual relief they were seeking. The circuit court further granted this declaratory relief. The Court of Appeals discussed this type of factual scenario in *Sloan v. Greenville County*. In *Sloan v. Greenville County*, this Court found a declaratory judgment action to be moot when the only remaining contested issue was whether the county's procurement policy complied with state law. In the absence of a practical remedy or an actual controversy capable of specific relief, a theoretical dispute over whether a policy complies with state law is generally insufficient to continue to invoke the court's jurisdiction to adjudicate a matter. *Sloan v. Greenville County*, 380 S.C. at 535, 670 S.E.2d at 667.

Furthermore, the Respondents do not contend that any exception to the mootness doctrine applies to the facts of this case. *See Id.* Likewise, the Respondents have not asserted any issue of public importance or that the issue in this case is capable of repetition but generally will evade review. *See, e.g., Byrd v. Irmo High School*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). The application of the mootness doctrine, however, is not automatic. When a court cannot give effective relief, a case on appeal might not be moot if a decision may affect future events or have collateral consequences for the parties. *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001).

The question of whether the District's student admission policy comports with §§ 59-63-30(c) and 59-63-32(C), of course, is of importance to the District, and any

final declaratory judgment regarding this question will have collateral consequences for the District, even if it doesn't for the Respondents. To address these collateral consequences, this Court could continue to adjudicate this appeal. Otherwise, the Appellants respectfully ask that, if the Court finds the case to be moot, in order to avoid such collateral consequences the Court include in its dismissal order that "the Trial Court's Order is vacated." *See Sloan v. Greenville County*, 380 S.C. at 538, 670 S.E.2d at 668.

### III. CONCLUSION

For the foregoing reasons, the Appellants respectfully ask this Court to either continue to exercise jurisdiction over this appeal, or alternatively, vacate the trial court's order and dismiss the case as moot.

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**PROOF OF SERVICE**

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I certify that I have served Appellants' Memorandum Regarding Mootness by e-mail, on April 9, 2021, to Randolph W. Cooper, Esq., Cooper Law Firm, LLC, 109 River Landing, Suite 100-B, Charleston, SC 29492 at his listed email address of [randy@rcooperlaw.org](mailto:randy@rcooperlaw.org).

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