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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No: 2018-001262

Dorchester County Taxpayers Association, individually and on behalf of all others similarly situated, Weatherstone Property Owners Association, individually and on behalf of all others similarly situated, George Resnick, William A. Harbeson, James Stephen Greene, Jr., Homer P. Gonzalez, Gerald E. Ziegler and South Carolina Public Interest Foundation, ... Appellants,

v.

Dorchester County, Dorchester County Council, David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council, Town of Summerville, Summerville Town Council, William E. McIntosh, III, in his official capacity, Dorchester County Sheriff, Luther C. Knight, in his official capacity, Dorchester School District Two, Dorchester School District Two Board of Trustees, Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in the official capacities, Dorchester School District Four, Dorchester School District Four Board of Trustees, Dorchester County Career and Technology Center, and Dorchester County Career and Technology Center Board of Trustees,.....Respondents.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioners certify that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on December 2, 2021.

QUESTIONS PRESENTED

1. Did the Court of Appeals, in dismissing the challenge to the practice of Dorchester County, the Town of Summerville, and Dorchester School Districts 2 and 4 in using tax revenue derived from owner-occupied dwellings for school operating expenses in violation of S.C. Code Ann. Sec. 12-37-220 because the statute did not provide for a right of action for taxpayers, err by ignoring a century or more of authorized public interest challenges by the citizens of this state to illegal practices of state and local government in the use of public funds as illustrated by *Sloan v. School District of Greenville County,* 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000) and multiple cases like it?

2. Did the Court of Appeals, in dismissing the action against Dorchester School District Four and its Board ("DD4"), err when DD4 was a party with an interest that would be affected by the action and therefore was a proper party in this declaratory judgment action?

STATEMENT OF THE CASE

The plaintiffs are individual residents and taxpayers of Dorchester County or Berkeley County, a neighborhood association, and two nonprofit public advocacy organizations dedicated to transparent and efficient government in compliance with the laws and constitution of this state (R. p. 105, line 11- p. 110, line 4).

School Resource Officers ("SROs") are sworn law enforcement officers assigned

to one or more school districts in the state with their primary duty being to provide safety and security of students, staff, and property within the school system. (R. p. 113, line 11- p.114, line 19). Their use in the schools is for school operating purposes within the definition of S.C. Code Ann. § 12-39-220(b)(47)(a), (c) ("Act 388") as they provide for security and order within the schools and school districts themselves, a task that would otherwise be filled by principals, teachers, coaches or other employees of the school district, and often develop safety policies and procedures as "an advisor and teacher" (R. p. 114, lines 4-19 and p. 134, lines 17-28).

The South Carolina General Assembly passed Act 388 to provide that "one hundred percent of the fair market value of owner-occupied residential property… is exempt from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt." In other words, Act 388 exempts owner-occupied residential property from all property taxes used for "school operating purposes" with the exception of the service of bond indebtedness (R. p. 114, line 27-p. 115, line 24).

In 2015, the General Assembly, through the South Carolina Oversight Committee, funded an "independent review of the efficiency" of Dorchester School District 2 ("DD2") by Tidwell and Associates. In May 2015, Tidwell issued its report, divided into tiers of recommendation, with Tier 1 being those of "Greatest Impact: the district should implement these recommendations immediately to take maximum advantage of their opportunities." One of those Tier 1 recommendations was for DD2 to directly employ its own district security officers or contract with a private security

company to provide security in DD2 schools, rather than using deputies from the County Sheriff's office. The Tidwell report found that such a change would save DD2 $1,755,600 over 5 years (R. p. 118, line 3-21).

DD2 attempted to implement this change but met with significant opposition from the Dorchester County Sheriff, the other elected leaders of Dorchester County, and the Town of Summerville (R. p. 119, lines 1-12). In the end, the County, Town, and Sheriff got their way and DD2, Dorchester District Four ("DD4") and the Dorchester County Career and Technology Center ("DCCTC") all entered into contracts providing that Dorchester County and the Town of Summerville would pay the salaries and other expenses of SROs in the school district, using County and Town taxes collected on primary residences (R. p. 123, line 6- p. 128, line 12).

As a result, the County through the Sheriff's office provides SROs to the three school districts for an approximate amount of $60,000 per officer per year for salaries, plus other expenses. Under these contracts, the school district is required to use taxes it has collected on 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Sheriff. In addition, Dorchester County is required to use taxes it has collected on all property owners, including owner-occupied homes, to subsidize the salaries and other DD2 school operating expenses for SROs working at schools within each school district (R. p. 123, line 6- p. 128, line 12). All funds paid by the County or the Town to any of the school districts for SROs have been paid with property taxes raised, among others, on owner-occupied homes in the County and/or the Town in violation of Act 388 (R. p. 128, lines

3-7). The Plaintiffs who reside in Berkeley County are being taxed by the Town to provide SROs for DD2 and DD4 schools when no resident of Berkeley County attends any DD2 or DD4 school (R. p. 133, lines 1-10).

On May 2, 2016, the plaintiffs, now Appellants, filed this action for a declaratory judgment and injunctive relief and amended its original complaint on May 6, 2018 (R. p. 145). After responses by the defendants, the plaintiffs filed their Second Amended Complaint on December 12, 2016 (R. p. 102). In response, the parties representing the County and Town government defendants filed a motion to dismiss the Second Amended Complaint. (R. pp. 496-502, 503-536, 537-569) The parties representing the Dorchester District 4 school district and school board filed a separate motion to dismiss, and the remaining defendants filed responsive pleadings but did not move to dismiss (R. p. 474).

A hearing on the two pending motions to dismiss was held on December 12, 2017. After briefing and argument the Circuit Court issued two orders on March 15, 2018 dismissing the case in its entirety as to the County, Town and District 4 defendants (R. pp. 3, 12). On March 29, 2018, Appellants timely served and filed a motion to alter, amend or reconsider those orders (R. pp. 413-421; 422-436). On June 13, 2018, Appellants received written notice of entry of the June 11, 2018 order denying their motion to alter or amend the March 15, 2018 orders (R. pp. 1-2).

On July 3, 2018, the appellants filed a notice of appeal of the two orders dated March 15, 2018, and the order of June 11, 2018, with the Circuit Court and the Court of Appeals.

On September 1, 2021, the Court of Appeals rendered a per curiam opinion affirming the result below on different grounds than those relied on by the trial court. After a timely motion for rehearing filed by the Appellants, the Court of Appeals issued an order on December 2, 2021, denying that motion.

ARGUMENTS

1. **This action challenging the use of public funds by Dorchester County, the Town of Summerville, and Dorchester School Districts 2 and 4 in funding School Resource Officers was similar to many others litigated in the courts of this state where it was not necessary for the statute that served as the basis of the challenge to authorize a private cause of action.**

Actions by citizens challenging the illegal use of public funds by state and local governments have a long and storied history in this state dating back at least to the case of *Mauldin vs. City Council of Greenville,* 33 S.C. 1, 11 S.E. 434 (1890) and exemplified by the many cases brought by Mr. Edward Sloan and the organization he founded, the South Carolina Public Interest Foundation,[1] including the case of *Sloan v. School District of Greenville County*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000). As this Court wrote and as cited in Appellant's Brief in this appeal: "In this case, the public interest involved is the prevention of the unlawful expenditure of money raised by taxation. Public policy demands a system of checks and balances whereby taxpayers can hold public officials accountable for their acts . . .. Taxpayers must have some mechanism of enforcing the law." *Sloan*, 537 S.E.2d at 303.

Though the standing of the Appellants to bring this action was never challenged

1 The South Carolina Public Interest Foundation is a plaintiff in this action.

and the issue of standing (or lack of it) was not briefed or argued, the Court of Appeals, by dismissing the Appellant's claim on a "different but related basis," that Section 12-37-220 "does not confer a right on a taxpayer to question a school district's budgetary decisions or otherwise direct how the money collected is spent," missed the point. The Appellants are not seeking relief in their own right for the effect of these illegal expenditures on them. Rather, they are, as citizens of this state, challenging the illegality of the use of these funds by the County, the Town, and the School Districts just as has been done on so many occasions in the past.

Following are just a few examples of the decisions of the appellate courts of this state recognizing the public importance of and the right of citizens to challenge the illegal expenditure of public funds by state and local government:

- *Sloan v. Dep't of Transp.*, 365 S.C. 299, 304, 618 S.E.2d 876, 878-79 (2005) (challenging the alleged violation of statutory bidding violations by DOT);
- *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004) (challenging that the governor's holding of a commission in the Air Force Reserve as inconsistent with the eligibility requirements to serve as Governor);
- *Baird v. Charleston Cnty.*, 333 S.C. 519, 511 S.E.2d 69 (1999) (whether the county illegally issued hospital bonds beyond the county's authority);
- *S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 119, 804 S.E.2d 854, 859 (2017) (whether DOT could use public funds to inspect bridges in private neighborhoods);
- *Sloan v. School Dist. of Greenville Cnty.*, 342 S.C. 515, 523, 537 S.E.2d 299, 301

(Ct. App. 2000) (whether "the public interest involved is the prevention of the unlawful expenditure of money raised by taxation."); and

- *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013) (whether the South Carolina Transportation Infrastructure Bank is constitutional and whether its enabling statute which governs the composition of the Bank's Board of Directors violates both the dual office holding and the separation of powers prohibitions of the South Carolina Constitution).

This case is no less a challenge to the public action in misusing public funds by local government and should not be subject to dismissal because the statute upon which the challenge is based does not provide a private cause of action for citizens to enforce it when local government violates it. To insist on that in this instance is contrary to more than 100 years of jurisprudence in this state, including the cases cited above, and deprives the citizens of this state a fundamental tool in safeguarding their rights and the rule of law.

The Appellants respectfully request that this Court reverse the opinion of the Court of Appeals and trial court and uphold the right of the Appellants to challenge the illegal action of local government as alleged in the Complaint.

2. **The Appellants' claim involving DD4 was based on the school district's involvement in the funding of the School Resource Officers in its district, so DD4 was a proper party under this declaratory judgment action.**

As alleged in the complaint and as argued before the Circuit Court and in its briefing before this Court, DD4 is a party because it is involved in the funding of

School Resource Officers in its district with revenue derived from taxing owner occupied residences, so it is a proper party under a declaratory judgment action. The Declaratory Judgment Act commands that when declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and empowers courts to declare rights, status, and other legal relations whether or not further relief is or could be claimed. S.C. Code Ann. §§15-53-20, 80 (2005); *Farmer v. CAGC Ins. Co.*, 424 S.C. 579, 581, 819 S.E.2d 142, 143 (Ct. App. 2018). DD4 would certainly be affected by a judgment in this case that changes the way in which School Resource Officers in its district are funded. This ground for its inclusion in this case was alleged in the complaint and has been argued consistently.

Appellants did not abandon its claim that DD4's not being a taxing authority is irrelevant to the complaint by not citing a supporting case when its status as proper party is provided in the Declaratory Judgment Act. Appellants did dispute the trial court's finding that DD4 was not spending disputed funds to pay its SROs.

Moreover, Appellants' statement that DD4's claim that it is not a taxing entity cannot logically support its dismissal from this lawsuit that claims that DD4 spent money inconsistently with the statute. DD4 receives money even if Dorchester County collects it, and what is being challenged is how DD4 spends that money.

In addition, Appellants did dispute the trial court's finding that DD4 was not spending disputed funds to pay its SROs when it said in its brief "The Dorchester District 4 defendants are proper defendants to this declaratory judgment action

because they participated in the practice of paying School Resources Officers with owner-occupied residential property taxes in violation of state statute." That statement by Appellants directly contradicts the Circuit Court's finding that DD4 was not spending disputed funds to pay its SROs. The Circuit Court made its ruling on the pleadings, prior to discovery being conducted, and based on a document submitted by DD4 that was not authenticated or identified by a witness under oath, the meaning of which is unclear. Appellants should be permitted to engage in discovery to prove its claims.

The Appellants respectfully request that this Court reverse the Court of Appeal's affirmance of the trial court's dismissal of DD4.

CONCLUSION

For the reasons stated, petitioners ask the Court to grant the petition for a writ of certiorari.

Respectfully Submitted,

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