

RECEIVED

Feb 03 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge
Trial Court Case No. 2020CP4001996

Appellate Case No. 2021-001012

State of South Carolina ex rel Alan Wilson, Attorney General Respondent,

v.

City of Columbia Appellant,

MOTION FOR LEAVE TO AMEND INITIAL BRIEF

Respondent State ex rel Wilson moves to amend its brief because Appellant's Designations on Reply adds key documents that Appellant had not designated when the State filed its brief.

The changes that the State seeks to make are the following:

1. On page 1 of the State's Brief, remove footnote 1 and the reference to that footnote at the end of the Statement of the Case. The footnote states the following:

The City has not designated for the Record its response to the Complaint. The City's Designation of Matter fails to include key parts of the record below, including: the Complaint, the City's response to the Complaint, the State's Motion for Judgment on the Pleadings, the City's Motion to Alter or Amend (except as an attachment to the City's Notice of Appeal), and the Order of the circuit denying the City's Motion to Alter. The City did not designate for the record either the Motion to Alter or Amend or the Order denying it. The City did designate the Notice of Appeal to which the Motion is attached but not the Order. The Order is on C-Track, and as of the date of the filing of this Initial Brief, the City has moved to amend its notice to attach the Order.

Although the City should have designated the above documents with its opening brief, it has now

done so. Therefore, footnote could create confusion and is no longer necessary.

2. Delete the second and third sentences in the first full paragraph on page 7 of the State's brief including footnote 3 [appears as note one below] and revise the fifth sentence. The first five sentences of that paragraph now read [citations omitted]:

The City contends that the Federal Gun Free School Zones Act permits the ordinance. The City does not designate documents in the Record showing that it properly raised that issue below.¹ The circuit court did not address the issue in its Order regarding that Motion. When the City does not show that it raised that argument below and the circuit court did not address the issue, this question may not be raised now on appeal . . . Although the City's Motion to Alter or Amend only references the argument in a conclusory manner, its doing so is untimely because the City's designations do not show that it raised the issue earlier. . . .

With the above edits, the paragraph would then read as follows [citations to be included]:

The City contends that the Federal Gun Free School Zones Act permits the ordinance. When the City does not show that it raised that argument below and the circuit court did not address the issue, this question may not be raised now on appeal . . . Although the City's Motion to Alter or Amend only references the argument in a conclusory manner, its doing so is untimely because the City did not raise the issue earlier. . . .

The purpose of these edits is to promote clarity and to remove references to the designations to avoid confusion due to the City's filing supplemental designations since the State filed its initial brief. These edits would not change the substance of the State's arguments or generate a need for the City to revise its reply brief. Instead, the State submits that the above edits will avoid confusion due to the City's later designating documents that it should have designated when it filed its initial opening brief.

The State also respectfully requests that the Court toll the time for the State to submit its Final Brief until 10 days after it issues a ruling regarding this Motion and that the current deadline for filing the Final Brief be held in abeyance while the Court considers this motion.

³ The State does not represent what Appellant's undesignated documents show as to whether the City raised this issue below. The burden is on the City to support its position, and the City has not done so.

CONCLUSION

The State respectfully requests that this Court grant this Motion including tolling the time for filing its Final Brief.

Respectfully submitted,

/s J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

DAVID S. JONES
Assistant Attorney General
S.C. Bar No. 101266

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211)
(803) 734-3680; (803)734-3677 (Fax)
esmith@scag.gov

February 3, 2022

Counsel for the State ex rel Wilson, Attorney General

RECEIVED

Feb 03 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge
Trial Court Case No. 2020CP4001996

Appellate Case No. 2021-001012

State of South Carolina ex rel Alan Wilson, Attorney General Respondent,

v.

City of Columbia Appellant,

CERTIFICATE OF SERVICE

I hereby certify that I have served the State ex rel Wilson's Motion for Leave to Amend Initial Brief by emailing it to counsel for the Appellant at the email address below this February 3, 2022(Copy of email attached):

Roneeka Allyce Bailey, Esquire
City of Columbia
Roneeka.Bailey@columbiasc.gov

s/ J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General
esmith@scag.gov

Counsel for the State ex rel Wilson

Emory Smith

From: Emory Smith
Sent: Thursday, February 3, 2022 3:08 PM
To: 'Bailey, Roneeka A (Allyce)'
Cc: David Jones; 'Pleasant, Geraldine S'
Subject: RE: State of South Carolina Ex Rel Alan Wilson Attorney General v. City of Columbia - Circuit Court No.: 2020-CP-40-01996 - Appellate Court No.: 2021-001012
Attachments: Motion for Leave to Amend Initial Brief (02890826xD2C78).PDF

Good afternoon:

My email of a few minutes ago contained the wrong reference. Attached is the State ex rel Wilson's Motion for Leave to Amend Initial Brief which is hereby served upon you.

Emory

J. Emory Smith, Jr.
Deputy Solicitor General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
803-734-3642 Direct