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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2020-001135
Case No. 2015-CP-40-01805

Wendy BrawleyRespondent-Appellant,

v.

Richland County, South Carolina,Appellant-Respondent.

**INITIAL CROSS-APPELLANT'S BRIEF OF
RESPONDENT-APPELLANT WENDY BRAWLEY**

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STATEMENT OF ISSUE ON CROSS-APPEAL

DID JUDGE BENJAMIN ERR IN GRANTING RICHLAND COUNTY'S MOTION TO ALTER OR AMEND HER FINAL ORDER DATED FEBRUARY 13, 2020, DUE TO A MISUNDERSTANDING OF THE EFFECT OF JUDGE NEWMAN'S PRIOR DISMISSAL OF MRS. BRAWLEY'S REQUEST FOR INJUNCTIVE RELIEF?

STATEMENT OF THE CASE

Respondent-Appellant Wendy Brawley (“Mrs. Brawley”) filed suit on March 25, 2015, seeking declaratory judgment and injunctive relief under then-current S.C. Code Ann. § 30-4-100 against Appellant-Respondent Richland County, South Carolina (“Richland County”) due to its failure to comply with the South Carolina Freedom of Information Act (“FOIA”). (Complaint, R. __.) Specifically, Mrs. Brawley sought the following declarations:

- a. As a result of the Richland County’s conduct, including its belated response, Mrs. Brawley’s FOIA requests are considered approved;
- b. Richland County has failed to properly and fully reply to Mrs. Brawley’s FOIA requests dated September 9, 2014;
- c. Mrs. Brawley is entitled to immediately receive full and complete responses;
- d. Mrs. Brawley is entitled to recover costs and reasonable attorneys’ fees associated with compelling the Defendants complete responses in an amount approved by this court upon a finding that Plaintiffs are entitled to prevail under S.C. Code Ann. 30-4-100(b).

(the “Declaratory Relief”) (Complaint ¶ 37, R. __.)

Additionally, Mrs. Brawley sought an injunction that would prohibit Richland County from: sending surveys to residents that make any representation that Richland County will provide all residents that reside within 200 feet of the proposed Phase I sewer line a full waiver of tap or connection fees; entering into negotiations with residents of Hopkins and Lower Richland for the acquisition of easements; or providing a third public reading to the Lower Richland Sewer Project being debated in Richland County at that time. (the “Injunctive Relief”) (Complaint ¶ 40, R. __.)

On August 11, 2015, the Hon. Clifton Newman signed a Form 4 dismissing Mrs. Brawley’s request for Injunctive Relief. (Aug. 11, 2015 Form 4, R. __.) On August 27, 2015, Mrs. Brawley filed a Motion to Compel responses to her requests for production seeking access to Richland County’s records that were the subject of her FOIA requests. (Aug. 27, 2015 Motion to Compel

and Exhibit, R. __.)

Richland County prepared and provided Judge Newman an explanatory Order Granting Dismissal of Plaintiff's Claim for Injunctive Relief to sign at a subsequent hearing on its motion for summary judgment on August 23, 2016. (Aug. 23, 2016 Order, R. __.) In signing this order, Judge Newman explained that the dismissal of Mrs. Brawley's Second Cause of Action for Injunctive Relief was due to it raising non-justiciable political questions beyond the subject matter jurisdiction of the trial court and the scope of remedies under S.C. Code Ann. § 30-4-100(a).

The matter was ultimately tried before the Hon. DeAndrea Gist Benjamin on September 5, 2019. (Sept. 5, 2019 Transcript, R. __.) Judge Benjamin signed and filed a Final Order on the Merits on February 13, 2020, finding for Mrs. Brawley, concluding Richland County had violated FOIA, and awarding Mrs. Brawley the production of public records under FOIA constituting the supporting documentation that Richland County submitted to the United States Department of Agriculture (USDA) Rural Development for grant and loan funding for the Lower Richland Sewer Project (the "Loan Records"). (Feb. 13, 2020 Final Order, R. __.) On February 24, 2020, Richland County filed a Motion to Amend this Final Order. (Feb. 24, 2020 Motion to Alter, R. __.)

After consideration of Richland County's Motion to Amend, Judge Benjamin issued an amended Order on July 16, 2020. Therein, Judge Benjamin modified her Final Order regarding Mrs. Brawley's entitlement to receive the Loan Records under FOIA, which is the subject of this cross-appeal. In her July 16, 2020 Order, Judge Benjamin maintained Mrs. Brawley's entitlement to recover reasonable attorneys' fees and costs under FOIA. (July 16, 2020, Order, R. __.) Therefore, on July 27, 2020, Mrs. Brawley filed an Affidavit of Attorneys' Fees and Costs. (Affidavit of Attorneys' Fees and Costs, R. __.)

On August 11, 2020, Richland County filed a Memorandum Opposing Award of

Attorneys' Fees and Costs. (Aug. 11, 2020, Memo, R. __.) Then, on August 17, 2020, prior to the Circuit Court issuing an order regarding the amount of attorney's fees to be awarded to Mrs. Brawley, Richland County filed this appeal. Upon receipt and in response, Mrs. Brawley filed her notice of cross-appeal, and she pursued an opposed Motion to Hold Appeal in Abeyance in this Court so that Judge Benjamin would have an opportunity to set the amount of Mrs. Brawley's attorneys' fees and costs awarded in the post-trial orders. This Court granted Mrs. Brawley's Motion to Hold Appeal in Abeyance over Richland County's objection on October 2, 2020.

On October 19, 2020, Mrs. Brawley submitted a memorandum in reply to Richland County's August 11, 2020, opposition to Mrs. Brawley's affidavit of attorney's fees and costs. (Oct. 19, 2020 Memorandum and Exhibits, R. __.) On November 9, 2020, Judge Benjamin conducted her first hearing on the amount of attorneys' fees and costs to award Mrs. Brawley. (Transcript, R. __.) During this hearing, Judge Benjamin asked to review Mrs. Brawley's counsel's detailed billing records. Following her timely receipt of these records, Richland County filed its Objections to Plaintiff's Billing Records on November 23, 2020. (Nov. 23, 2020 Objection, R. __.)

After consideration, Judge Benjamin issued an Order Awarding Plaintiff Attorneys' Fees and Costs on November 30, 2020, and she made Mrs. Brawley's counsel's billing records an Exhibit to that Order. (Nov. 30, 2020 Order Awarding Fees and Costs, R. __.)

Richland County filed another Motion to Alter or Amend on December 10, 2020. Therefore, on January 8, 2021, Judge Benjamin held another hearing on Richland County's Motion to Alter and Amend and on the amount to Mrs. Brawley in award of attorneys' fees and costs. (Jan. 8, 2021 Transcript, R. __.) Judge Benjamin issued her Amended Order Awarding Plaintiff Attorneys' Fees and Costs on January 19, 2021. (Jan. 19, 2021 Amended Order, R. __.)

On February 18, 2021, Mrs. Brawley filed an amended notice of her cross-appeal of the July 16, 2020 Order and the January 19, 2021 Order.

STANDARD OF REVIEW

The legal effect of a prior court order granting a motion to dismiss is a question of law. As to questions of law, this court's standard of review is de novo. Citizens for Quality Rural Living, Inc. v. Greenville Cty. Plan. Comm'n, 426 S.C. 97, 102, 825 S.E.2d 721, 724 (Ct.App.2019) (further citations omitted).

ARGUMENT

A. Richland County caused Judge Benjamin to err in altering her Final Order dated February 13, 2020, as Judge Newman never dismissed Mrs. Brawley's request for the supporting loan documentation to be produced under FOIA.

In his Order signed August 23, 2016, Judge Newman stated that, while South Carolina courts grant injunctive relief in certain instances under FOIA, doing so in this instance would be improper. (Aug. 23, 2016, p. 4, R. __.) His stated reasoning was two-fold: the Injunctive Relief Mrs. Brawley sought was beyond FOIA because it sought to “temporarily or permanently enjoin a government entity from moving forward with lawful legislative or executive action” and raised “what are quintessentially non-justiciable political questions over which this Court lacks subject matter jurisdiction.” (Aug. 23, 2016, p. 5, R. __.)

Following trial, Judge Benjamin issued her “Final Order on the Merits” on February 13, 2020. Therein, Judge Benjamin correctly summarized the evidence at trial and recognized that Mrs. Brawley had demonstrated the Loan Records she requested under FOIA contained “numerous submittals and documents,” that Richland County “generally kept copies of important documents,” that the supporting loan documentation was “likely within Richland County’s files,” and that these “very same documents were present in [Richland County’s] file when Mrs. Brawley was allowed

to search it during the course of discovery in the lawsuit in February 2016.” (Feb. 13, 2020 Order, p. 11, R. __.; Sept. 5, 2019 Transcript, R. __.) Correctly concluding that Richland County had failed to undertake a reasonable investigation in response to Mrs. Brawley’s FOIA request, Judge Benjamin ordered that Richland County “conduct a reasonable examination of its records for any heretofore unidentified, responsive documents and produce those to Mrs. Brawley within **15 days** of the date of this order.” (Feb. 13, 2020 Final Order, p. 12, R. __) (emphasis in original).

In its Motion to Amend dated February 24, 2020, Richland County urged Judge Benjamin that she had erred by granting Mrs. Brawley “injunctive relief” - even though her February 13, 2020 Order did not grant any of the Injunctive Relief sought by Mrs. Brawley. (Feb. 24, 2020 Motion to Alter, ¶ 1, R. __.) Richland County misled Judge Benjamin by directing her to Judge Newman’s Form 4 signed August 11, 2015, without directing her to the detailed, explanatory order that Richland County drafted and had Judge Newman sign at a subsequent hearing on August 23, 2016. Judge Newman’s Order leaves no question that his dismissal ruling only applied to Mrs. Brawley’s Second Cause of Action and request for Injunctive Relief, i.e. that Richland County not be permitted to conduct misleading public surveys, negotiations, and public readings. Judge Newman’s Form 4 signed August 11, 2015, and his explanatory Order signed August 23, 2016, never touched upon Mrs. Brawley’s request for the production of the Loan Records under FOIA.

Based solely to Richland County’s misleading argument in its Motion to Amend dated February 24, 2020, Judge Benjamin erroneously altered her Final Order and stated as follows:

However, Judge Newman determined that only a declaratory judgment proceeded to trial before this court. As such, this Court will remove the injunctive relief requiring Richland County to provide the documents to the Plaintiff.

(July 16, 2020 Order, p. 2, R. __.) There is simply no legal reading of Judge Newman’s Order Granting Dismissal of Plaintiff’s Claim for Injunctive Relief whereupon a court could conclude

that Judge Newman had dismissed Mrs. Brawley's request for a declaration that she was still entitled to the production of the Loan Records that Judge Benjamin initially awarded following trial and in her Final Order dated February 13, 2020. Respectfully, Mrs. Brawley contends Judge Benjamin was led to err in her Order dated July 16, 2020, and this error was carried through to her final Amended Order Awarding Plaintiff Attorney's Fees and Costs dated January 19, 2021.

CONCLUSION

Because of the error regarding the effective of Judge Newman's dismissal, and based upon the same reasoning stated in Judge Benjamin's February 13, 2020 Order, this Court should reverse Judge Benjamin's grant of Richland County's Motion to Alter or Amend dated February 24, 2020 and instruct the trial court to reinstate Judge Benjamin's February 13, 2020 declaration to Richland County to search for and produce the Loan Records to Mrs. Brawley upon remittitur.

Respectfully submitted,

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