

SUPREME COURT OF VIRGINIA

Bragg v. Bd. of Supervisors of Rappahannock Cnty.

295 Va. 416 (2018) · No. Record No. 171022 · Decided May 17, 2018

SUMMARY

The Supreme Court of Virginia considered whether a petition seeking enforcement of the Virginia Freedom of Information Act was properly supported by an affidavit showing good cause under Code § 2.2-3713(A). The Court held that the petitioner's affidavit, together with a board member's acknowledgment incorporated into the petition, satisfied the statutory requirement. It reversed the circuit court's dismissal and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Chief Justice Donald W. Lemons; All the Justices
JURISDICTION	Virginia
DECIDED	May 17, 2018
DOCKET	Record No. 171022
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the dismissal of a petition seeking enforcement of the Virginia Freedom of Information Act.
STANDARD OF REVIEW	When no evidence is taken on a motion to dismiss, the factual allegations are reviewed as on demurrer, accepting all material facts expressly or impliedly alleged and fairly inferable from the pleading and its exhibits. The dismissal decision and issues of statutory interpretation are reviewed de novo.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Virginia.
PARTIES	Marian M. Bragg v. Board of Supervisors of Rappahannock County, Individual members of the Board

TOPICS

[motions to dismiss](#)[pleadings](#)[statutory interpretation](#)[appellate procedure](#)[civil procedure](#)

PRACTICE AREAS

civil procedure

municipal law

freedom of information

QUESTIONS PRESENTED

1. Whether Bragg's petition was supported by an affidavit showing good cause as required by Code § 2.2-3713(A).
2. Whether the court was required to consider the Frazier Acknowledgment as part of the pleading and accept its admissions as true on a motion to dismiss.
3. Whether the circuit court erred by dismissing the petition based on alleged defects in the affidavit and the asserted conflict between Frazier's acknowledgment and his prior certifications.

HOLDINGS

1. Bragg's affidavit satisfied Code § 8.01-280 and, by extension, Code § 2.2-3713(A), because she swore that the petition's allegations were true or, when made on information, that she believed them to be true.
2. The Frazier Acknowledgment was part of the pleading because it was an accompanying exhibit mentioned in the petition, and its admissions had to be accepted as true for purposes of the motion to dismiss.
3. Dismissal was improper because the petition, supported by Bragg's affidavit and corroborated by the Frazier Acknowledgment, complied with Code § 2.2-3713(A).

KEY QUOTATIONS

“Taken together, we conclude that Bragg’s petition, which incorporated the Frazier Acknowledgment, was supported by an affidavit showing good cause.” (at 7)

“The petition therefore satisfied the requirements of Code § 2.2-3713(A), and the circuit court erred to the extent it held otherwise.” (at 7)

FACTUAL BACKGROUND

Marian M. Bragg alleged that the Rappahannock County Board of Supervisors violated the Virginia Freedom of Information Act during five closed meetings by discussing nonexempt public business concerning replacement of the county attorney. Bragg supported the petition with her sworn affidavit and a notarized acknowledgment from Board member Ronald L. Frazier stating that the Board had discussed nonexempt matters and improperly certified that the meetings complied with FOIA. The circuit court deemed the supporting materials insufficient and dismissed the petition.

PROCEDURAL HISTORY

Bragg filed an amended FOIA enforcement petition alleging that the Board improperly discussed public business during five closed meetings. The circuit court dismissed the petition, concluding that neither Bragg's affidavit nor a Board member's acknowledgment satisfied Code § 2.2-3713(A)'s requirement of an affidavit showing good

cause. The circuit court denied reconsideration and entered a final dismissal, which Bragg appealed to the Supreme Court of Virginia.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion.

CASES CITED

- Virginia Marine Res. Comm'n v. Clark, 281 Va. 679, 686-87, 709 S.E.2d 150, 154-55 (2011)
- Harris v. Kreutzer, 271 Va. 188, 195-96, 624 S.E.2d 24, 28 (2006)
- Flippo v. F & L Land Co., 241 Va. 15, 17, 400 S.E.2d 156, 156 (1991)
- Graves v. Commonwealth, 294 Va. 196, 199, 805 S.E.2d 226, 227 (2017)
- Cumbee v. Myers, 232 Va. 371, 373-74, 350 S.E.2d 633, 634 (1986)
- Shareholder Representative Servs. v. Airbus Americas, Inc., 292 Va. 682, 689, 791 S.E.2d 724, 727 (2016)
- City of Chesapeake v. Dominion SecurityPlus Self Storage, 291 Va. 327, 336, 785 S.E.2d 403, 407 (2016)