

**NORTH CAROLINA COURT OF APPEALS
APPEAL INFORMATION STATEMENT**

City of Asheville

v.

State of North Carolina

From: Wake (County/Agency)

Trial Docket No: 13 CVS 6691

COA Docket No: 14-1255

Trial Judge: The Honorable Howard E. Manning, Jr.

Party(ies) filing appeal:

State of North Carolina

1. Date judgment was entered: June 9, 2014

2. Date of Notice of Appeal: July 8, 2014

3. a) Is this a final judgment as to all claims and all parties? ☒ Yes ☐ No

b) If no, state the basis on which the judgment/order is immediately appealable.

4. a) Check the appropriate line(s) best describing the nature of the case:

- | | | |
|--|--|---|
| <input type="checkbox"/> Alimony | <input type="checkbox"/> Driver's license revocation | <input type="checkbox"/> Professional malpractice |
| <input type="checkbox"/> Attorneys' fees | <input type="checkbox"/> Education law | <input type="checkbox"/> Real property rights |
| <input type="checkbox"/> Child custody/support | <input type="checkbox"/> Employment and Labor | <input type="checkbox"/> Sanctions |
| <input type="checkbox"/> Construction law | <input type="checkbox"/> Environmental law | <input type="checkbox"/> Slip and fall |
| <input type="checkbox"/> Contempt | <input type="checkbox"/> Equitable distribution | <input type="checkbox"/> Taxation |
| <input type="checkbox"/> Contract law | <input type="checkbox"/> Health care | <input type="checkbox"/> Termination of parental rights |
| <input type="checkbox"/> Corporate law | <input type="checkbox"/> Insurance, auto | <input type="checkbox"/> Tort Claims Act |
| <input type="checkbox"/> Criminal law, DWI | <input type="checkbox"/> Insurance, other | <input type="checkbox"/> Unemployment compensation |
| <input type="checkbox"/> Criminal law, habitual felon | <input type="checkbox"/> Intentional torts | <input type="checkbox"/> Unfair and deceptive practices |
| <input type="checkbox"/> Criminal law, probation revocation | <input type="checkbox"/> Juvenile, delinquent | <input type="checkbox"/> Utilities |
| <input type="checkbox"/> Criminal law, other | <input type="checkbox"/> Juvenile, other | <input type="checkbox"/> Wills, trusts, estates |
| Specify: _____ | <input type="checkbox"/> Landlord/tenant | <input type="checkbox"/> Wrongful death |
| <input type="checkbox"/> Debtor/creditor rights | <input type="checkbox"/> Workers' compensation | <input type="checkbox"/> Zoning/annexation |
| <input type="checkbox"/> Negligence | <input type="checkbox"/> Wrongful discharge | |
| <input type="checkbox"/> Paternity | | |
| <input type="checkbox"/> Products liability | | |
| <input checked="" type="checkbox"/> Other (specify): <u>Constitutional Claim</u> | | |

b) Check the appropriate line(s) to show the ruling being appealed:

- | | | |
|---|---|---|
| <input type="checkbox"/> Administrative ruling | <input type="checkbox"/> Injunction | <input type="checkbox"/> Judgment notwithstanding the verdict |
| <input type="checkbox"/> Declaratory judgment | <input type="checkbox"/> Judgment (<i>bench trial</i>) | |
| <input type="checkbox"/> Directed verdict | <input type="checkbox"/> Judgment (<i>guilty plea</i>) | <input type="checkbox"/> Judgment (<i>probation revocation</i>) |
| <input type="checkbox"/> Dismissal | <input type="checkbox"/> Judgment (<i>jury verdict</i>) | <input checked="" type="checkbox"/> Summary judgment |
| <input type="checkbox"/> Other (specify): _____ | | |

5. State issues to be raised on the appeal (*attach one additional page, if necessary*):

See attached.

6. a) Has any prior appeal in this case been filed in either appellate court? ____ Yes ☒ No
If "Yes", provide appellate court docket number(s): _____
- b) Are any other appeals in this case pending before either state appellate court? ____ Yes ☒ No
If "Yes", provide appellate court docket number(s): _____
- c) To your knowledge are there any other appeals raising substantially related issues pending before either appellate court? ____ Yes ☒ No
If "Yes", provide case name(s) and docket number(s), if known, and explain the manner in which the appeals are related: _____

7. a) Are there essential questions raised by this appeal that cannot be adequately presented by the written briefs alone and therefore require oral arguments? ____ Yes ☒ No
- b) Do you request oral arguments on this appeal? ____ Yes ☒ No

8. Has this appeal, or the matters with which the appeal is concerned, been settled or rendered moot? ____ Yes ☒ No
If "Yes", please explain:

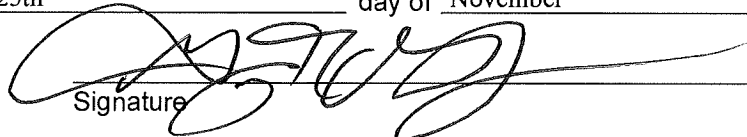
If "No", the undersigned hereby certifies that he/she will promptly notify the Court of Appeals if the appeal is hereafter settled or rendered moot. GRG (please initial).

9. Is there any reason why this appeal should be expedited? ____ Yes ☒ No
If "Yes", please explain:

10. Has the execution or enforcement of the order, judgment or other determination from which the appeal has been taken been stayed pending disposition of the appeal? ____ Yes ☒ No

The undersigned attorney for the appellant(s), or the Pro Se appellant, hereby certifies that the information provided herein is true to the best of his/her own knowledge.

Signed this the 25th day of November 20 14.


Signature

(Type name(s), address and telephone number under signature.)

Gary R. Govert, NC Department of Justice
P.O. Box 629, Raleigh, NC 27603
(919) 716-6900

(Attach certificate of service.)

Instructions

- These instructions govern the preparation and filing of the APPEAL INFORMATION STATEMENT adopted by the North Carolina Court of Appeals and required by Rule 41 of the North Carolina Rules of Appellate Procedure.
- An APPEAL INFORMATION STATEMENT shall be completed and filed by the appellant(s) for each record on appeal filed with the Court of Appeals.
- The Clerk of the Court of Appeals shall provide a copy of the APPEAL INFORMATION STATEMENT form to counsel or parties of record once the record on appeal has been docketed with the Court of Appeals.
- Responses to inquiries on the APPEAL INFORMATION STATEMENT shall be typed, unless the form indicates otherwise.
- In all appeals filed with the Court of Appeals, the appealing party or parties shall file the completed APPEAL INFORMATION STATEMENT with the Clerk of the North Carolina Court of Appeals, P.O. Box 2779, Raleigh, NC 27602-2779, at or before the time the appellant's brief is filed, with service upon all other parties.
- The APPEAL INFORMATION STATEMENT is not a brief and should not contain argument or motions. The issues should be expressed thoroughly but without unnecessary detail. Counsel or pro se parties should make every effort to include in the APPEAL INFORMATION STATEMENT all of the issues that will be presented to the court.
- The Court of Appeals may impose sanctions on counsel or pro se parties who fail to complete and file this form.

PROPOSED ISSUES ON APPEAL

Pursuant to Rule 10 of the North Carolina Rules of Appellate Procedure, defendant-appellant intends to present the following issues on appeal:

1. Did the trial court err by failing to dismiss plaintiff City of Asheville's verified amended complaint on the grounds that plaintiff lacks standing and capacity to sue defendant State of North Carolina in connection with the matters alleged in plaintiff's complaint?
2. Did the trial court err in finding and concluding that there is no genuine issue as to any material fact preventing the court from entering judgment, as a matter of law, on plaintiff's first, second, third and sixth (alternative) claims for relief?
3. Did the trial court err in concluding that N.C. Sess. Laws 2013-50, as amended by N.C. Sess. Laws 2013-88 (collectively, "the Water Act"), is a local act relating to health and sanitation in violation of Art. II, § 24(1)(a) of the North Carolina Constitution?
4. Did the trial court err in concluding that the Water Act is a local act relating to non-navigable streams in violation of Art. II, § 24(1)(e) of the North Carolina Constitution?
5. Did the trial court err in concluding that the Water Act is "void, of no force and effect" under Art. II, § 24(3) of the North Carolina Constitution?
6. Did the trial court err in concluding that plaintiff, in its ownership and operation of the Asheville Water System, acts in a proprietary capacity and as such is entitled to the protections of Art. I, §§ 19 and 35 of the North Carolina Constitution?
7. Did the trial court err in concluding that the Water Act is contrary to the law of the land in violation of Art. I, § 19 of the North Carolina Constitution?
8. Did the trial court err in concluding that the Water Act is not a valid exercise of the State's power to take or condemn property for a public use?
9. Did the trial court err in concluding that the Water Act is an unlawful taking of the Asheville Water System

in violation of Art. I, §§ 19 and 35 of the North Carolina Constitution?

10. Did the trial court err in concluding that, in the event the Water Act is a valid exercise of the State's power to take the Asheville Water System, plaintiff is entitled to be paid just compensation pursuant to Art. I, §§ 19 and 35 of the North Carolina Constitution?
11. Did the trial court err in granting plaintiff's motion for partial summary judgment as to its first, second, third and sixth (alternate) claims for relief?
12. Did the trial court err in denying defendant State of North Carolina's motion to dismiss plaintiff's verified amended complaint?
13. Did the trial court err in denying defendant State of North Carolina's motion for summary judgment?
14. Did the trial court err by enjoining the State from implementing or attempting to implement the Water Act?

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Appeal Information Statement has been served this day by depositing a copy thereof in the United States mail, first class, postage prepaid, addressed to:

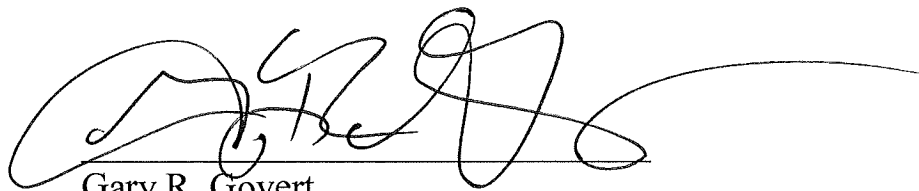
Robert W. Oast, Jr.
P.O. Box 7148
Asheville, North Carolina 28802

Daniel G. Clodfelter
Parker Poe Adams & Bernstein LLP
401 South Tryon Street, Suite 3000
Charlotte, North Carolina 28202

T. Randolph Perkins
Jonathan M. Watkins
Jason G. Idilbi
Moore & Van Allen PLLC
100 North Tryon Street, 47th Floor
Charlotte, North Carolina 28202

Robert B. Long, Jr.
Ronald K. Payne
Long, Parker, Warren, Anderson & Payne, P.A.
14 South Pack Square, Suite 600
Asheville, North Carolina 28802

This the 25th day of November, 2014

A handwritten signature in black ink, appearing to read 'G. Govert', with a long horizontal flourish extending to the right.

Gary R. Govert
Assistant Solicitor General