

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case Number: 2022-000017

Joseph N. Grate,

Appellant,

v.

Christopher Douglas Brown,

Respondent.

FINAL BRIEF OF APPELLANT

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Other Counsel of Record:
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SC Court of Appeals

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(B) Issues presented for review.

- 1. Should not the Judge have recused himself, per the Motion for him to so do, “in the interest of justice”?**
- 2. Did the Judge permit a response to the Dismissal Motion?**
- 3. Does the Transcript indicate any opportunity presented to Appellant to respond to the Dismissal Motion, and if so, what response was presented?**
- 4. If the Transcript does not address the matter of a response to the Dismissal Motion, what does such omission mean?**
- 5. Should not the Court Reporter be required to indicate whether any deviation from the facts of the Proceeding is totally of her doings or if she had assistance from the Judge or anyone else?**
- 6. Is such activity acceptable of a Court Reporter?**
- 7. Are not the allegations here-in of manipulation of the Transcript, which will be born out when the recording of the proceeding is reviewed, a true representation of the**

Appellant's proposition that there is no Justice to be had, for him, in Judge Culberson's Court?

8. Should not the Judge have denied the Dismissal Motion, per the issue of the Motion to Dismiss?

9. Should the Judge not have considered Appellant's presentation of the Administrative Procedural Act, as provided for at Rule 74, as his defense for the timing issue? (R. p. 35 - 38)

10. Should not the Judge have allowed for any corrective matter, with regard filings, that did not pose a disadvantage to the opposing Party, per the Administrative Procedural Act? (R. p. 35 - 38)

**11. Is it appropriate for the Judge to disregard the provisions of Rule 74, and the applicability of the Administrative Procedural Act with regard timing, per Rule 74?
(R. p. 35 - 38)**

12. Should not the Judge have recused himself, if for no other reason, than that he has been put on notice that he will never be seen as qualified to sit in judgment on any matter concerning Appellant here-in?

(C) Statement of the Case.

1. The action was filed in Georgetown County Magistrate Court, March 9, 2021.(R. p 4 -7.)
2. The case was heard, June 16, 2021, in Georgetown County Magistrate Court; presided over by Judge James K. McKenzie. (R. p.2)

3. The case was decided by a Jury, with a Verdict for Appellate, here-in.
4. The amount involved on appeal is: \$ 7500.00
5. A Judgement was granted, June 21, 2021; (R. p. 2).
6. The Judgment was received by Appellant June 28, 2021 (R. p. 2).
7. The Notice of Appeal was filed July 21, 2021 (R. p. 10 , 11).
8. The Case was appealed to the Circuit Court for the 15th Judicial District, in Georgetown County and was decided upon by Judge Culbertson, December 9, 2021. (R. p. 3)
9. Appellant had filed a motion on November 1, 2021, for Recusal of Judge Benjamin H. Culbertson, “in the interest of Justice”. (R. p. 14)
10. The Recusal Motion was denied, December 9, 2021 (R. p. 3)
11. The Defendant’s Attorney had filed a Motion to Dismiss, re: timing of filing. . (R. p.8,9)
12. Appellant challenged the Dismissal Motion, citing the Administrative Procedural Act.
(R. p. 35 - 38)
13. Judge Culbertson granted the Dismissal Motion, December 9, 2021. (R. p. 3)
14. The Judgment was received by Appellant, December 13, 2021. (R. p. 3)
15. The Notice of Appeal was served, January 3, 2022. (R. p. 15, 16)
16. Received Transcript, February 9, 2022.

(D) Standard of Review.

The De Novo Standard of Review is requested to be applied to the issues presented.

Those issues are:

- Recusal, vis-à-vis the Code of Judicial Conduct Canon 3 Rule 501, SCACR;
- The Administrative Procedural Act per South Carolina Rules of Civil Procedure: Rule 74, SCRCR. (R. p. 35 - 38)

(E-1) Argument.

With regard the dismissal of the case,

The Judgment appealed from, was received by Appellant June 28, 2021.

The Notice of Appeal to the Circuit Court was filed July 21, 2021. The

Appeal to the Circuit Court was filed within the time limit for filing, in accordance with South Carolina Rules of Civil Procedure: SCRCR Rule 74, and The Administrative Procedural Act.

The Transcript, curiously, does not indicate that the Court allowed for Appellant to address the Dismissal Motion. If the Judge did not permit Appellant's input to that Motion, what does that say about the proceeding, about the Judge?

If an opportunity was permitted to address it, why does the Transcript not so indicate? The recording of the proceeding will answer all of these questions, except: why does the Transcript not represent the facts of the proceeding. Is it because the Court Reporter is Foul; the Judge is Foul; ...?

(E-2) Argument.

With regard the Motion for Recusal,

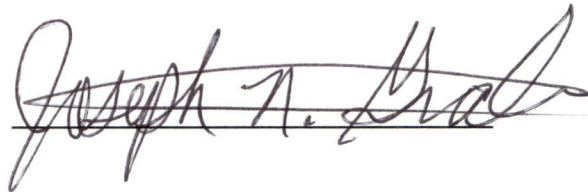
The Motion was proper, given the circumstances and it should have been sustained / honored, "in the interest of Justice" and in accordance with, the Code of Judicial Conduct Canon 3 Rule 501, SCACR. Such circumstances that made it necessary for Appellant to previously make the request

for this Judge's Recusal, is a matter currently before this Court. That situation, in and of itself, should be viewed as sufficient grounds for his Recusal in this Case.

(F) Conclusion.

This Appeal is submitted under the assumption that the much touted (Rule of Law) is predicated upon the decisions of the State Legislature, as are laid out in the Court Rules, as opposed to (the Law) according to Judge Culbertson. Additionally, the altered Transcript presented is a total mockery of the process it is meant to support. Therefore, it is expected that the court will rule in favor of the Appellant, or at least, provide answers to whichever of the presented questions, per the Court's capability. Such, precisely, is the requested relief.

June 15, 2022

A handwritten signature in black ink, appearing to read "Joseph N. Grate", written over a horizontal line.

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