THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-In-Equity
Case No. 2002-CP-40-0229

Appellate Case No. 2012-212341

Karl A. Doskocil and John M. Doskocil, of whom Karl A. Doskocil is Plaintiff-Appellant,

Appellant,

v.

Patricia Gail D. Culp, Trustee of Karl V. Doskocil Trust U/A/D December 14, 1995,

Respondent.

INITIAL REPLY BRIEF OF APPELLANT

Karl A. Doskocil
3009 W. San Nicholas
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(813) 326-4258
Appellant, Pro se

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Appellant's Introductory Comments In Reply To Respondent's Initial Brief

The Respondent in this case has a 12-year history of refusal to cooperate with Plaintiff-Beneficiaries (includes the Appellant, here) of the Trust that is the focus of the instant case. Her abuse of authority as Trustee of the irrevocable Trust named in the captioned matter, and other past and present conduct as fiduciary, has made the litigation necessary.

From the start, Appellant's (a named Beneficiary of the Trust which Ms. Culp administers) ongoing efforts to seek reporting and full disclosure of relevant facts during the associated litigation have been met with resistance throughout the entire process.

Through unresponsiveness to Appellant/Beneficiaries' demands for information relating to her administration of this Trust, Respondent has placed an unreasonable burden on the Appellant to dig out facts and accounting evidence for presentation in litigation of the instant matter (and a companion matter wherein she formerly served in a fiduciary role). Appellant has endured multiple instances in which assets, financial records, or other important evidence were denied and/or withheld from production by the Respondent until Appellant was able to provide positive proof of their existence. **This conduct has resulted in protracted litigation of nearly twelve years, additional expense to the Trust, with corresponding deprivation, anguish, and other injuries and expense born by the Appellant personally.**

{Segall v. Shore 236 S.E.2d 320 – SC Supreme Court, involved similar circumstances}

The record of this case reveals that the Respondent has blatantly and repeatedly treated the mandates of the lower Court, her fiduciary responsibilities and the statutory rights of the Appellant and other beneficiaries of the Trust with apparent contempt.

The lower Court has exhibited reluctance to remedy this circumstance despite requests from the Appellant, a Plaintiff in the case. In its untimely dismissal of the instant case, soon after the Appellant became a pro se litigant, and without warning or explanation, I believe that Court neglected the need for careful exercise of discretion. Appellant asserts that to further countenance, and thereby reward, the Respondent's conduct as briefly outlined above would be to tolerate a travesty on the judicial system. The Trust remains open, with its assets unaccounted for by the Trustee, and the named beneficiaries have been deprived of their respective shares for nearly 12 years as a result. The Appellant respectfully requests the favorable consideration of his appeal.

South Carolina Trust Code (Title 62 Article 7, especially Section 813 – Duty to Inform and Report) recognizes that a Trustee's failure to comply with her duties may make it impossible for (Appellant) to fully and efficiently protect his interests and those of the Trust. That said, no undue delay has been alleged by the lower Court.

In his initial brief, Respondent's Attorney, Mr. Rikard, has repeatedly mischaracterized and misrepresented the facts, timeline, and circumstances pertaining to the instant case. Of more specific relevance to this appeal of the untimely and unjustified dismissal of the case is the fact that Respondent's initial brief repeatedly conflicts with facts on the record.

Further, Respondent Counsel's excessive references to the duration of the case, without acknowledging his client's causative role in primarily contributing to that circumstance through her repeated disregard (violations) of multiple Court Orders and her denial of Plaintiff-Beneficiaries' numerous formal demands for information with which to protect their interests in the Trust via this litigation, can reasonably be seen as an intention to distract by changing the subject.

Respondent's repeated references to the fact that Appellant has been represented by three law firms during the course of this case are both objectionable and irrelevant to this appeal. One lead attorney took a job out-of-state. Another dropped out after brief appearance, stating his preference for paperwork versus litigation at that time. The Respondent has so dramatically protracted resolution of these matters that Counsel turnover during the extended period of time should be no surprise. In his insinuations, Attorney Rikard fails to acknowledge that his client has been represented by no less than three attorneys from at least two firms. Mr. Rikard himself was initially separately retained as associate litigation Counsel under a separate Engagement Letter.

Therefore, this brief will focus on my appeal of what I perceive as an inappropriate dismissal of a very well-founded case that has been protracted by the bad behavior of the Respondent, not the Appellant. I believe there has been a clear abuse of discretion, including adequate review of the facts in this matter.

APPELLANT'S REPLY TO ARGUMENTS BY RESPONDENT

In her brief, Respondent repeatedly tries to assert that Appellant violated a Court Order. That assertion is entirely false and no violation has ever been mentioned by the Judge in this case. However, the record is full of references to the multiple Courts' Orders and S.C. statutes ignored and otherwise violated by the Respondent. It is this lack of cooperation by the Respondent [Defendant Trustee, Ms. Culp] which has protracted the entire proceedings.

Ms. Culp, has refused to comply with the Appellant's ongoing demands for Trust accounting/reports and other specific information regarding Trust assets and her administration as Trustee of the still-active Trust. The lower Court has been aware of this, and of the fact that Respondent has violated the lower Court's own Orders (at least three, as of the February 16, 2012 dismissal). Appellant's ongoing efforts to move this case forward, even via less-than-favorable settlement attempts (each breached by the Respondent) have been side-stepped by a Respondent who has learned there are no consequences for such behavior.

(Please see Plaintiff's Motion for Reconsideration, p.1-15; and Tr. 04-13-2012 Hearing)
(Please see also Plaintiff's Brief For Motion Hearing, and Affidavit In Support of Motion For Reconsideration 04-13-2012)

I. Regarding Dismissal of the Action For Failure to Prosecute:

Respondent states: "The Court found that there had been ten years of litigation ~~and that Karl Doskocil had failed to comply with an Order of the Court to secure new~~

~~counsel or provide a report to the Court~~." This statement is FALSE in reference to findings by the Court (~~Strikethrough~~ portion of sentence).

The entire dismissal verbiage, as inserted into a previously submitted Order that made no mention of dismissal, appears in the Order **exactly as follows**:

"Finally, the Plaintiffs have failed to prosecute this matter to a conclusion on the merits. There has been almost ten years of litigation including a settlement agreement that the parties argued to be set aside. Pursuant to Rule 41, SCRCP, this case is dismissed without prejudice for lack of prosecution."

There was NO indication by the Court that Plaintiff Karl Doskocil had failed to comply with any Order of the Court, nor had there been any Order requiring me to secure new Counsel. The Court graciously allotted time for that effort prior to further scheduling, but did NOT mandate this. If new Counsel was retained, the new attorney was to enter a notice of appearance by February 1, 2012. Despite diligent efforts, I could not engage new representation due to a subsequent layoff from work in December 2011. Further, the transcript shows that the Court specifically DECLINED to impose any penalty if I could not secure new Counsel by February 1st. (Tr. 10-20-11 Motion Hearing: Page 29, Lines 1-11). It was clearly understood that I would have to proceed pro se in that event. (Tr. 10-20-11 Motion Hearing: Page 24, Lines 21-25).

The sua sponte dismissal Order made no reference to any findings of fact or conclusions to support appropriate discretion in this surprise action by the Court. I have repeatedly asked the Court for its help in understanding the justification for this harsh action. I asked this question in submittals to the Court subsequent to the February 16,

2012 Order, several times during (and after) the Hearing on my Motion For Reconsideration (April 13, 2012) and lastly, in my letter dated April 20, 2012, before the final Order was signed. (04-20-2012 Plaintiff's Letter to Honorable Joseph Strickland: Page 2, paragraph "b") ...Excerpted here:

"As to the Proposed Order's reference to "applicable law of the State of South Carolina..." as a basis for denial of my Motion For Reconsideration, and for dismissal of the case itself: I simply wish to reassert my belief that both the denial and the dismissal operate contrary to the very laws which the Proposed Order specifies as being applicable to the circumstances of this case.
I humbly urge Your Honor's review of this matter before you sign the proposed Order.
...I have received no explanation as to how I have not been diligent in efforts to prosecute the case against the Defendant; nor regarding the Court's tolerance of the Defendant Trustee Patricia Culp's contumacious conduct and refusal to cooperate throughout despite your Orders and my repeated requests to both Defendant and to the Court."

(Respondent's Counsel, Mr. Rikard drafted the Order referenced above)

Respondent's citation of the "Kiriakides..." case on page 6 (3rd paragraph) actually supports a primary basis of my (Appellant's) appeal.

"An abuse of discretion occurs when the conclusions of the trial Court are either controlled by an error of law or are based on unsupported factual conclusions."

Kiriakides v. Sch. Dist. Of Greenville County, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009).

The Court made no findings of fact and did not write an explanatory opinion in its Order of dismissal. **When asked during the April 13, 2012 Hearing on Plaintiff's Motion For Reconsideration, the Court was not able to provide any substantive justification for dismissal in its response. This evidences a clear abuse of discretion by**

the Court. (Tr. 04-13-2012 Hearing for Reconsideration: Page 40, Lines 1-25) (Please see also Tr. 04-13-2012 Hearing for Reconsideration: Pages 3-7 [all lines]; Page 8, Lines 1-8; Page 11, Lines 12-25; Pages 12-14 [all lines])

Respondent falsely alleges that "multiple warnings" were received by Appellant at the hearing conducted on October 20, 2011. She can offer no record of any such warnings. Further, while Respondent's Counsel did mention (while addressing the Judge) simply that: "if you've relieved Mr. Brackett, I don't want it to prejudice us in moving forward with any discovery motions we need to file"; Attorney Rikard did NOT make reference to any "burden that multiple delays had caused Respondent" as he alleges in his brief. Counsel Rikard went on to state: "Mr. Doskocil's a very skilled advocate for himself. He's been intimately involved in litigation ..., and he could easily proceed pro se as far as I know" (if no replacement Counsel was obtained). (Tr. 10-20-2011 Hearing: Page 24, Lines 18-25).

Mr. Rikard's client is the primary cause of major delays in resolving this case, and her dilatory behavior has taken many forms. In particular: **South Carolina's Trust Code recognizes that a Trustee's failure to comply with her duty under Section 813 may make it impossible for the beneficiaries (including Appellant, in this case) to protect their interests (through litigation); and that it may also mask more serious violations by the Trustee** (Respondent here). (SC Code of Laws, Title 62, Article 7, Section 813).

Counsel Rikard asked **whether** there would be any kind of penalty if Appellant could not obtain replacement Counsel (The rest of the assertion on this topic within Respondent's brief is pure embellishment.)

Judge Strickland specifically DECLINED to declare or warn of any potential penalty.

...Stated precisely as per the record: (Tr. 10-20-2011 Hearing: Pg. 29, Lines 5-8)

"MR. RIKARD: And if he doesn't have new counsel is there any kind of penalty or?
THE COURT: Well, let's cross that bridge when we come to it."

As to Respondent's subsequent comments (middle of page 6):

As addressed earlier in this brief, there has been no indication by the lower Court that Appellant Karl Doskocil had violated any Order of the Court; nor had there been any Order requiring me to obtain new Counsel, although time was graciously allotted for the effort prior to further scheduling in the Circuit Court. If new Counsel was retained, the new attorney was to enter a notice of appearance by February 1st. It was clearly understood that Appellant would have to proceed pro se if alternate Counsel was not found by that deadline. Counsel Rikard mentioned that possibility himself. (Tr. 10-20-11 Motion Hearing: Page 24, Lines 21-25)

The "**Timeline**" and associated remarks crafted by the Respondent in her Initial Brief are so false and misleading as to make adequate response impossible in the space allowed for in this Appellant's Reply Brief. From a layman's perspective, they are so deceptive as to be ethically unsound and inappropriate. Appellant humbly asks for

careful review of the record by the Appeals Court as it pertains to the referenced timeline, and an opportunity for separate response and/or presentation by Appellant.

Appellant has not engaged in neglect or willful delay, and to my knowledge no violation of any Order has even been alleged by the Court.

...For all of the reasons already specified, the lower Court's dismissal of the case for lack of prosecution demonstrates an abuse of proper discretion.

Excerpted from Plaintiff-Appellant's Motion To Reconsider:

What the Court is, in effect, doing by its February 16, 2012 Order is imposing a sanction on the Plaintiffs; and unjustly so, as I believe will become clear upon review of the facts. Here are excerpted examples of relevant opinions on the subject of dismissal for failure to prosecute:

The SC Court of Appeals: McComas v. Ross (in Law/Analysis) –
"In those cases where our (S.C.) supreme court has affirmed dismissal of actions based on a failure to prosecute, the dismissals were imposed to maintain the orderly disposition of cases in the face of repeated warnings to the offending party or multiple opportunities to proceed with trial, and only then upon a finding of unreasonable neglect."

Fourth Circuit Court of Appeals has also addressed this issue:
"The court, in McCargo v. Hedrick, 545 F.2d 393, 396 (4th Cir. 1976) held that dismissal is a harsh sanction, which "should be resorted to only in extreme cases." Dismissal is generally permitted only in the face of a clear record of delay or contumacious conduct by the plaintiff. Id. The discretion should be exercised discretely and only after due consideration of the availability of sanctions less severe than dismissal. Id.; Bush v. U.S. Postal Serv., 496 F.2d 42,44 (4th Cir. 1974).
The Fourth Circuit has said that the trial court must consider four factors before dismissing a case for failure to prosecute: (1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal." Hillig v. Comm'r of Internal Revenue, 916 F.2d 171, 174 (4th Cir. 1990). See also Herbert v. Saffell, 877 F.2d 267, 270 (4th Cir. 1989); McCargo, 545 F.2d at 396; Chandler Leasing Corp. v. Lopez, 669 F.2d 919, 920 (4th Cir. 1982).

II. Regarding Respondent's Claim That The Court Properly Dismissed Due To Withdrawal By Another Party:

As things stood after the April and October Motion hearings of 2011, the Appellant, along with all other parties, was left to await scheduling in the Circuit Court for jury trial as had been discussed and repeatedly confirmed by Judge Strickland subsequent to his ruling on April 27, 2011 to restore the case to the trial docket.

An August 12, 2011 notice from the Probate Court verified Judge Strickland's update regarding the pending file assignment to the Chief Administrative Judge for scheduling of jury trial. (Please see Letter 8-12-2011 from Lori Elrod.) The August 2011 update from Lori Elrod after her communication with Judge Strickland, gave credible support to the belief that, as previously ruled, the case was in process of being restored to the trial docket and the file was currently pending reassignment for jury trial in the Circuit Court after receipt of Orders to be prepared by Mr. Brackett. I was told these were submitted in November, which accommodated the imperative mentioned by the August notice referenced above.

By my understanding, reconfirmed again during the October 20, 2011 Motion Hearing (which Judge Strickland had presumably agreed to hear in an administrative function), we were waiting for reassignment of the case file by Judge Strickland and for scheduling of a hearing on a date yet to be determined during 2012, whether or not I was able to secure replacement Counsel by February. From that perspective, **case activity was deemed to be on hold pending the assignment to another Court.**

I had no notification, whatsoever, regarding a letter to Judge Strickland from John Doskocil, withdrawing his demand for jury trial. I believe it must have been sent only to the Court, because it certainly was not circulated to me and I was unaware of it until recently. Respondent's brief mentions a "court email of 8-15-2011"; but I never received any such email, its content is still unknown to me, and no one has ever mentioned it to me.

In this Argument, it seems that Respondent's Counsel is trying to argue that John Doskocil's change of mind in some way obviates Judge Strickland's ruling to restore the case for trial. **The question the Judge asked during the April 27, 2011 Motion Hearing was NOT "whether" anyone wanted a trial, it was what kind of trial ("jury" or "non-jury" before Strickland or some other Judge).** John Doskocil immediately specified "JURY trial" and stuck to that, as was his right, and no one objected. There was no reason for any other party to comment or state their preference one way or the other after that, because the Judge ruled accordingly and that was all that needed to be said. Silence was affirmation of the demand John expressed before anyone else had chance to speak. I do not believe any party waived any rights to trial. Thereafter, without some kind of notice by the Court to the contrary, **all parties in this case had every reason to believe five things:**

1) That the case was being restored to the trial docket for jury trial.
   (Respondent's own brief, within the timeline on page "7", specifies "Hearing conducted restoring case to trial")

2) That the status update provided to the Probate Court by Judge Strickland, and the Probate Court's resulting status notice to all parties, was credible, word-for-word, as provided in the August 12, 2011 communication.

3) That Judge Strickland's **multiple acknowledgements, during the October 20, 2011 Motion hearing**, regarding remand of the case to another Court, were reliable. Respondent's Counsel confirmed the accuracy.

(Tr. 10-20-2011 Hearing: Page 9, Lines 11-19).

MR. DOSKOCIL: ...And, as per your order verbally in the last hearing we had in this courtroom, you were remanding ... if that's the correct word, remanded that to another court based on John Doskocil's demand for a jury trial. So it's to be placed back, as Mr. Brackett's draft order states, it was to be placed back on the docket for hearing by another court.
THE COURT: Okay. Does that sound right?
MR. RIKARD: That is technically correct.

4) That the Court would necessarily have: (a.) notified all parties if there was ANY change in the plan for jury trial as specified by the Judge's oral Order in April 2011, and/or (b.) polled the parties as to the need to newly express preferences for type of trial (and by what Judge if non-jury, as first asked).

5) That the reassignment process would, at least preliminarily be underway by mid-2011, and (as was subsequently clarified in August) would move fully forward upon receipt of the Orders submitted in November.

(My understanding was that the Judge had specifically allotted time as opportunity to seek replacement Counsel before trial scheduling, in the event the Chief Administrative Judge was able to expedite the process.

THE COURT: And if you'll prepare an order….
…We'll remand it to the jury roster. And maybe the chief administrative judge can expedite it or something like that.
(Tr. 04-27-11 Motion Hearing: Page 19, Lines 8-10).

Appellant was not even aware of John Doskocil's withdrawal of his demand for jury trial until passage of significant time after-the-fact (at least eight months after, I believe, in October), and never consented to any such change. I was never informed of any need to file my own motion for jury trial, and please recall that the jury trial ruling was still intact as of October 20, 2011 (see transcript excerpt within "#3" on previous page). I believe Respondent is incorrect, and "reaching" in her argument.

Further, the lower Court has never asserted this as having any bearing on its Order for dismissal of the case. The first time I knew of any argument that I had somehow waived the right to a jury trial, after the presiding Judge had had already ruled there would be one (April 2011, confirmed in August 2011 and again during a hearing on October 20, 2011), was when I read the Respondent's Initial brief, this month.

The Court's dismissal of this action was an abuse of its discretion.

III. Regarding The Fact That The Dismissal Was A Product of Ex Parte Communications: (Respondent asserts otherwise)

Respondent Attorney Rikard again misconstrues and takes liberties with the facts in his brief. I have not alleged any "nefarious conduct" or intent by Mr. Brackett "meant to harm Appellant (me)". **I believe that Mr. Brackett was only following the sudden and unexpected instructions* from Judge Strickland on the morning of February 16, 2012.** (* In conversation, Mr. Brackett later referred to the occurrence in this manner.) Indeed, I understand that, pursuant to the Judge's oral Order at Motion Hearing on October 20, 2011, Mr. Brackett's "last act" (responsibilities or obligations) as my Counsel ended as of the moment he submitted the two Orders (pertain to April 27, 2011 and October 20, 2011 Motion Hearings), which he did submit in November. This is reflected in the transcript. (Tr. 10-20-2011 Hearing: Page 23, Lines 21-25; Page 31, Lines 11-12)

Respondent's subsequent comment (end of same paragraph, same page) is completely false. Appellant **did not** "engage in further delays", nor any "...violations of the Court's Order...". No Order was violated, and review of the record will once again demonstrate Respondent Attorney Rikard's astonishing lack of candor in making this assertion. I always believed that an officer of the Court was prohibited from making false statements; but he has done so repeatedly.

Here is what I do allege:

I maintain there was clear error in the form of Ex Parte Communications that took place on February 16, 2012 as relates directly to the sudden dismissal of my case. On that date, the Order previously submitted in October 2011 was suddenly modified,

without warning or explanation, to insert a mere three sentences that dismissed the entire case. The discussions regarding this modification, signature of the revised Order (now including dismissal), and the Filing of that Order, all apparently took place on the same day: February 16, 2012.

There were only three participants in these activities:

1) Honorable Judge Strickland, Master-In-Equity

2) Robert Rikard (Attorney for Defendant-Respondent)

3) Michael Brackett (Plaintiff-Appellant's FORMER Counsel)

All three of these Officers of the Court should have recognized that neither me (Karl Doskocil - Appellant), nor my interests as Plaintiff in the subject case, were represented in any of these discussions involving the sudden surprise dismissal of my very well-founded case. **Clearly, these Ex Parte communications represent error by the Court and participants.** I was unaware of even a hint of possible dismissal until after I received a copy of the already-FILED Order, several days after-the-fact.

Recall that the October 20, 2011 Hearing transcript documents Judge Strickland's oral decree that Michael Brackett's "last act" as my attorney was to be the submission of the two Orders referenced near the conclusion of that Motion Hearing. Mr. Brackett performed this last duty in November 2011, following that Hearing. I received no further communications from Mr. Brackett after that date, until AFTER the theretofore unknown dismissal Order had already been FILED. The dismissal verbiage was newly nested within a revision to an Order originally submitted in November.

Again, it is my understanding that Mr. Brackett was no longer my Counsel as of mid-November, when he submitted the two Orders referred to during the October 20, 2011 hearing, as his "last act" pursuant to Judge Strickland's oral decree. **It is clear that, following this act, in November, he no longer represented nor was expected to represent my interests.** Both of us had good reason to believe that the submitted Orders were in process of being signed and that the Judge had already made initial notifications regarding assignment of the case to the Chief Administrative Judge for scheduling of trial in another Court, as Judge Strickland had ruled on April 27, 2011; and which he subsequently confirmed in communication as update to the Probate Court during August 2011 (see 8/12/2011 Notice of Update from Lori Elrod – Probate Ct.), and as was referenced again during the October 20, 2011 Hearing on Mr. Brackett's Motion.

...If anyone were to suggest that Mr. Brackett was still "technically" my attorney until the Order was signed on February 16, 2012 (newly revised that same day), or that therefore I was technically still represented during the discussions earlier on February 16th (the same day) regarding the surprise dismissal, I would be astonished. My comment would be that just the idea that any Judge could, with one stroke of his pen, simultaneously create a pro se litigant **AND** dismiss his case, without any prior warning or stated justification, seems manifestly unjust. ...My interests were clearly not represented at the time, and I was not included in the discourse that took place.

Given the content of Mr. Brackett's email, sent at 12:21 PM on Thursday, February 16, 2012, conveying an attached "revised Order per (the Judge's) instructions;

it is clear that Judge Strickland must have initiated the discussion sometime earlier that day. I remained unaware of ANY of the communications (telephone, email, or other).

The email communication appears to have taken place (start-to-finish) between 12:21p.m. and 2:57p.m., when the newly revised Order was clocked-in and stamped as "FILED". ...**Even if there had been effort to contact me for prior notice or comment, it is unlikely that I could have responded during that period of less than 3 hours (156 minutes total) on February 16, 2012. No one other than Respondent's Counsel Rikard had "the opportunity to review and comment on the proposed order before it (was) signed" as is contemplated by Rule 5(b)(3), SCRCP.**

I did not actually even see the email until several days later, and there had been no phone message to inform me about the Dismissal. When I did discover the email, I initially assumed simply that the Judge had just gotten around to signing written confirmation of what he had already granted by oral decree on October 20, 2011.

(The text of the above-referenced Email communications is pasted on the following page of this reply brief.)

Doskocil et al. v. Culp et al 2001-CP-40-229

2 messages

Mike Brackett <MBrackett@mkb-law.com> **Thu, Feb 16, 2012 at 12:21 PM**
To: "stricklandj@rcgov.us" <stricklandj@rcgov.us>
Cc: <kdoskocil@gmail.com>, "rgr@rplegalgroup.com" <rgr@rplegalgroup.com>

Judge Strickland,

Attached is the revised Order per your instructions.

Mike Brackett

B. Michael "Mike" Brackett
Moses Koon & Brackett, PC

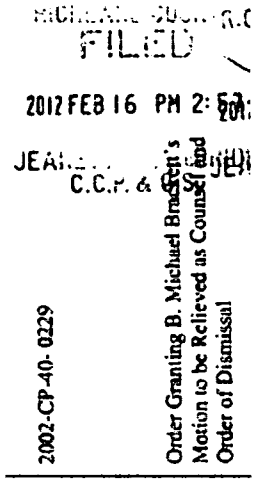
Order rev. 2.16.12 granting motion.pdf
21K

Robert Rikard <rgr@rplegalgroup.com> **Thu, Feb 16, 2012 at 12:34 PM**
To: Mike Brackett <MBrackett@mkb-law.com>, "stricklandj@rcgov.us" <stricklandj@rcgov.us>
Cc: <kdoskocil@gmail.com>

The only suggested change that I would have is as follows:

"There has been almost ten years of litigation including a settlement that the parties argued to be set aside. Ms. Culp objected to this motion."

RGR
Robert G. Rikard
Rikard & Protopapas LLC



BACKGROUND REGARDING THE ORDERS SUBMITTED BETWEEN OCTOBER 2011 and FEBRUARY 16, 2012:

Following the October 20, 2011 Motion hearing regarding Mike Brackett's relief as Counsel, he submitted two Proposed Orders to Judge Strickland pursuant to instructions at conclusion of the hearing, and Mr. Brackett's agreement to do so as his "last act":

1) Order Granting Rule 59 Motion (per April 27, 2011 hearing)
2) Order Granting Motion to be Relieved as Counsel (per October 20, 2011 hearing)

On February 16, 2012, at 12:21pm, Brackett sent an email to Judge Strickland conveying an attached "revised Order per (his) instructions." That revised Order was a condensed version of only the Order relating to Mr. Brackett's relief as Counsel, already orally granted during the October 20, 2011 Motion Hearing. This newly revised (2/16/12) Order completely omitted reference to my oral motion during that hearing, which was a repeat of my previous pleas to compel the Defendant (Patricia Culp) to provide a Trust accounting and other information in compliance with prior Orders of the Court and (numerous) requests of Trust beneficiaries. In response to my request, Judge Strickland had instructed Mr. Brackett to make reference to it in the resulting Order, and to include an admonishment to the Defendant Trustee regarding the need to comply. Robert Rikard's agreement to this on behalf of Respondent, and his stated commitment that the Report/Accounting and the other specific information would be provided, was also completely missing from the February 16th revision.

This revised Order; which we can see was sent on February 16th (pasted above), in compliance with Judge Strickland's apparent instructions, included three sentences inserted to indicate dismissal of the case pursuant to Rule 41, SCRCP, for lack of

prosecution. Mr. Brackett has subsequently acknowledged to me that this dismissal was an unanticipated surprise.

The time stamp indicates that Brackett sent the email conveying the revised Order and surprise dismissal language, as a PDF attachment, at **12:21 PM on February 16th**. Robert Rikard replied with his suggested change at **12:34 PM** on the same date. By **2:57 PM**, Judge Strickland had already received the email, printed and signed the revised Order, and it was officially FILED by the Richland County Clerk of Court. (FILE stamped: "**2012FEB 16 PM 2:57**")

It is very troubling that I knew nothing about any of this until AFTER the Order was FILED (Dismissal). Brackett "cc'd" me on the email he sent to the Judge at 12:21pm, on February 16th, without any prior communication or notification as to what was going on; however, I did not even receive that email until at least several days later. Even then, the subject line and Brackett's one-sentence message to the Judge gave me no clue that the case had been dismissed suddenly and without any warning. It seems that no part of what transpired occurred openly.

The dismissal was clearly the product of Ex Parte communications that occurred on February 16, 2012. Respondent's assertion that this fact is unsupported lacks candor (again), and he should know better, having been a participant in the subject communications, and as an Officer Of the Court. I have asked for copies &/or details of any other associated communications, without response from any source. The Richland County Clerk of Courts did report that they have nothing on this in their file.

The Appellant did not engage in willful delays or any violation of the Court's Orders; and, to my knowledge, the Court has never even suggested this type of behavior on my part. Respondent's assertion in this section is false. Further, my arguments are supported by fact. The protracted nature of this case is nearly all attributable to the Respondent's lack of cooperation.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that the South Carolina Court of Appeals reverse the decision of the lower Court (dismissal), as well as its subsequent decision denying Appellant's motion for reconsideration, and restore the instant case for trial in the Circuit Court. Jury trial would be consistent with the Master-In-Equity's ruling at Hearing on April 27, 2011, which is the path we were on and which has been reaffirmed multiple times since that date. Should the Court find fit to grant my appeal, I would be open to discussion as to non-jury trial in the Circuit Court to expedite resolution; however, given the circumstances, I feel that trial would appropriately be held in a different Court within the Circuit.

Respectfully submitted,

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Appellant, Pro Se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
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Joseph M. Strickland, Master-In-Equity
Case No. 2002-CP-40-0229

Appellate Case No. 2012-212341

Karl A. Doskocil and John M. Doskocil, of whom Karl A. Doskocil is Plaintiff-Appellant,

Appellant,

v.

Patricia Gail D. Culp, Trustee of Karl V. Doskocil Trust U/A/D December 14, 1995,

Respondent.

APPELLANT'S SUPPLEMENTAL DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

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1. Plaintiff's Trial Brief for scheduled hearing: 10-21-2008
2. Transcript 10-21-2008
3. Transcript 04-27-2011
4. Letter from Probate Court re: Strickland's Case Update/Assignment 08-12-2011
5. Transcript 10-20-2011
6. Transmittal Letter 11-10-2011 – Two Orders
7. Email Conveying Order (02-16-2012)
8. Order Granting Counsel's Motion, and Order of Dismissal 02-16-2012
9. Motion For Reconsideration (Hearing date 04-13-2012)
10. Brief For Motion Hearing, & Affidavit In Support (Hearing date 04-13-2012)
11. Transcript 04-13-2012
12. Proposed Order
13. Letter to Strickland 04-20-2012
14. Final Order

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Appellant, Pro se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-In-Equity
Case No. 2002-CP-40-0229

Appellate Case No. 2012-212341

Karl A. Doskocil and John M. Doskocil, of whom Karl A. Doskocil is Plaintiff-Appellant,

Appellant,

v.

Patricia Gail D. Culp, Trustee of Karl V. Doskocil Trust U/A/D December 14, 1995,

Respondent.

CERTIFICATION

I certify that the Appellant's supplemental Designation of Matter to be Included on Appeal contains no matter which is irrelevant to the appeal.

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Appellant, Pro se

May 16, 2013

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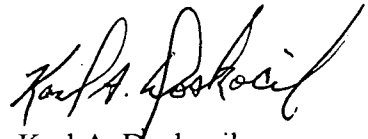
PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant and supplemental Designation of Matter to be Included on Appeal on Patricia Gail D. Culp, via her Attorney, Robert G. Rikard, 1329 Blanding Street, Columbia, South Carolina 29201 by depositing a copy of each in the United States Mail, postage prepaid, on May 16, 2013.



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