

**RECEIVED**

**Nov 02 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Judge

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Case No. 2015-CP-04-00667  
Appellate Case No. 2020-000070

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Ex Parte: Donald L. Smith,  
In Re: Greg Battersby,

Appellant,  
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &  
Draisen, P. A.,

Respondents.

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**APPELLANT’S REPLY TO RESPONDENTS’ RESPONSE TO PETITION FOR  
REHEARING AND SUGGESTION FOR REHEARING EN BANC**

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Pursuant to SCACR Rule 22 (a) and SCACR Rule 240(i), Appellant Donald L. Smith, respectfully replies to the Respondents’ response to his Petition for a Rehearing of the opinion issued by this Court, No. 2022-UP-331, filed September 4, 2022. Appellant respectfully submits the Court overlooked or misapprehended his arguments and evidence. (Kennedy v. S.C. Retirement System, 349 S.C. 531, 564 S.E.2d 322 (2001). Rehearing is warranted when the Court has overlooked or misapprehended an argument.). In support of this Petition for Rehearing, the attention of this Honorable Court is directed to material points of fact and law that were seemingly overlooked in the Appeal. In addition, the Court is asked to review the manner in

which the Respondents served their response.

## **SUMMARY OF RESPONSE**

### **1. RESPONDENTS WILLFULLY AND WANTONLY SERVED THE APPELLANT AT AN ADDRESS THEY KNEW WAS FALSE.**

The Respondents in this matter filed a response to Appellant's Petition for Rehearing and Suggestion for Rehearing En Banc on September 4, 2022. The response was mailed to an address known by Respondents to be faulty. Respondent Krause acquired the building which had been the undersigned's office for the previous ten (10) years. Notice of the acquisition occurred on March 21<sup>st</sup> of this year. (Exhibit 1-Email). It was understood at that time August 31<sup>st</sup>, or the end of the lease, would be my last day at that address.

Counsel for Respondent (his former partner) learned from me personally I was moving from my office. On July 20, 2022, we both had motions in front of the Honorable R. Scott Sprouse, in Common Pleas. (Exhibit 2-Docket). After I told J. Victor McDade, Esquire, I had moved my office to SC 24, opposing counsel stated he had contemplated the value of opening an office on 28 Bypass where he owns land. Based on this discussion, and the fact his former partner/client had ended my tenancy at 122 N. Main St., it is preposterous he (they) would believe I remained at that address despite correspondence to the contrary in excess of thirty (30) days prior to the event. As of October 31<sup>st</sup>, Respondent Krause's property continued to have my forwarding address note I left for clients/potential clients in the front window. The new address is 2722 W. Whitner St., Anderson SC 29626.

### **2. RESPONDENTS REFUSE TO SEE THE FACTS.**

Opposing counsel dwells on his contention my explanation of the facts is without facts; and is baseless conjecture, despite the jury verdict of \$100,000.00 against his client. His client had testified two (2) years earlier that he had manufactured the number of visits to Dr. Battersby's office. Twenty

(20) visits give her far more credibility than the (4) visits which was the truth. Moorhead responded to his client's explanation it was he who had decided to bolster her credibility with a little white lie by 1) not denouncing her statement; 2) not firing her as a client; and 3) not amending the LLR he had completed. It would appear he didn't want to compound the "misstatement of fact". He played out the fabricated exposure case through the trial so nothing more could be said. He accepted the jury's verdict and moved on as fast as he could.

Moorhead's client testified she did not have a computer. She did not have the internet. She said she met with him prior to her visit from the detectives assigned to her "indecent exposure" case. After seeing him, she was full of new information. As to the incident, she told the detectives 1) Battersby put his junk on her back; 2) Battersby answered the door of his clinic/home in nothing but a towel; 3) Battersby was a pediatric chiropractor; and 4) Battersby had issues related to his chiropractic license in Ohio and Arizona, previously. She did not have the ability to know about the case in which a jury order Battersby to pay a woman \$2.4 million for sexual harassment which spawned an appellate case involving Battersby suing State Farm for providing an attorney to defend him who did not defend such cases. Moorhead could find it on Westlaw or Lexus (on the internet his client did not have).

While the Respondents say the Anderson jury verdict does not prove anything; they are wrong. It proves beyond a reasonable doubt the undersigned did not file anything that could be considered frivolous. This court and the lower court have simply ignored the facts relating to how much Moorhead affected his client's explanation to the detectives and her boundless knowledge of Dr. Battersby, when she admittedly did not have the internet. It is very simple. I used facts to logically deduce Moorhead's involvement in the defamatory "conduct". I was aware of the leper I would become with my contentions. However, I couldn't sit by and allow people to maliciously damage my client for their monetary gain.

Moorhead's client admitted to having spoken to him prior to meeting with the detectives. "I had talked to Mr. – I can't think of his name. Moore – Moorhead, Mr. Moorhead. He had told me to talk with her and I just –" (RA, p. 327; 15.18). This ties into what Neal said to the process server, Michael Moske, upon getting served with the original complaint. "I'm not the only one. There are other guys." (RA, p. 207).

The South Carolina Frivolous Civil Proceedings Sanctions Act found in Section 15-36-10 of the South Carolina Code of Laws speaks directly regarding what must exist for sanctions to be issued. The very first thing which needs to be addressed is the term frivolous. According to Black's Law Dictionary, frivolous means an answer or plea which "is clearly insufficient on its face, and does not controvert the materials points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass". If anyone embarrassed, it was Moorhead, his client and her friend, embarrassing Dr. Battersby with a fabricated story. However, I was sanctioned for suing a lawyer.

### **CONCLUSION**

Based upon the foregoing, Appellant requests this Honorable Court to provide for rehearing or an en banc review of the lower court's imposition of the monetary sanction against herein Appellant. All that was offered in this paper were facts-no speculation, no surmise, not conjecture...

**s/Donald L. Smith**

Donald L. Smith (Bar No. 6699)

122 N. Main Street

Anderson, SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

*Pro Se*

Anderson, South Carolina  
November 2, 2022.

# 122 N Main Street

Inbox

S

**Steven Krause** <[steve@krauselaw.org](mailto:steve@krauselaw.org)>

Mon, Mar  
21, 11:51  
AM

to me, Dana

Don,

The purchase of the above property has been completed. Please make your rent payable to Legal Sushi, LLC and mail it to 126 N Main Street Anderson SC, 29621.

As a reminder the construction will begin with the abatement process soon. In that regard the contractor asked me if you would be interested in moving to a building he has on Main Street. It is across from Magnetic South. If so let me know and I will be more than happy to provide you with his contact information. Steve

STEVEN M. KRAUSE  
ATTORNEY

*LAW OFFICES OF STEVEN M. KRAUSE, P.A.*  
207 E. CALHOUN STREET  
ANDERSON, SOUTH CAROLINA 29621

TEL (864) 225-4000  
FAX (864) 964-0788  
EMAIL [Steve@krauselaw.org](mailto:Steve@krauselaw.org)



**Don Smith** <[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)>

Mon, Mar  
21, 12:20  
PM

to Kirsten, Steven, Dana

Steven:

Congratulations on your purchase. We will make the immediate change in billing information. If you would kindly provide the address of which you speak, I will give it a drive by. Thank you for your notice.

Sincerely,  
Don Smith

Anderson County Tenth Judicial Circuit - Roster Details  
7.20.2022 Motions R. Scott Sprouse

Court Agency		Common Pleas		Judge		Sprouse		Roster Id		404
Roster Type		Motions		Roster Begin Date		07/20/2022		Roster End Date		07/20/2022
Number of motions = 12										
#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney
1	07/20/2022	9:30 AM		Motion/Approve Death Settlement	David Burgess-PLT	07/11/2022	2021CP0400004 David Burgess , plaintiff, et al VS James Edwin Yon , defendant, et al	Wrongful Death 360	Donald Loren Smith (864) 642-9284	Shelby Catherine Herbkersman (803) 960-4776 Patrick L. Still III (864) 331-8940
2	07/20/2022	9:30 AM	0:15	Motion/Compel	Poly-Med Inc-PLT	06/13/2022	2021CP0401349 Poly-Med Inc , plaintiff, et al VS Research Park Lic	Contract/Other 199	William A. Coates (864) 349-2603	Steven Edward Buckingham (864) 735-0832
3	07/20/2022	9:30 AM	0:30	Motion/Status Conference and Continuance	Moats Construction, Inc.-PLT	05/10/2022	2020CP0401202 Moats Construction, Inc. VS Cecil R Dyar	Breach of Cont 140	Wendell L. Hawkins (864) 848-9370 David Lee Paavola (803) 771-8000	James W. Logan J (864) 226-1910
4	07/20/2022	9:30 AM	0:15	Motion/Alter and/or Amend	Ivan Tyrell Jenkins-DEF	12/03/2021	2021CP0401259 Stanley Morgan Duttlinger VS Ivan Tyrell Jenkins , defendant, et al	Real Prop/Other 499	Jason James Andrihetti (864) 370-8222	Ivan Tyrell Jenkins Matthew Kinard Johnson (864) 324397 Donna Mccray Vinson Mccray
5	07/20/2022	9:30 AM	0:30	Motion/Strike	Madewell Concrete Llc-DEF	05/26/2022	2022CP0400509 Susan O'Connell , plaintiff, et al VS Madewell Concrete Llc , defendant, et al	Breach of Cont 140	Raford W Bussey Jr. (706) 831-3809 M. Stokely Holder (864) 335-8808	Adam Crittenden Bach (864) 236-5013 Robert Hudson Smith (864) 236-5013
6	07/20/2022	9:30 AM	0:15	Motion/Enforce Settlement	Jamie Holland-PLT	06/02/2022	2021CP0401090 Jamie Holland , plaintiff, et al VS Sk Builders, Inc. , defendant, et al	Breach of Cont 140	M. Stokely Holder (864) 335-8808	Gregory Alan Morton (864) 675-6010
7	07/20/2022	9:30 AM	0:15	Motion/Strike	Varian Qamir Anderson-DEF	06/02/2022	2021CP0401217 Clarendon Homeowners Association, Inc. VS Varian Qamir Anderson	Motor Veh Accid 320	Jay Franklin Wright (864) 252-4406	Langdon Cheves I (864) 908-3813
8	07/20/2022	2:00 PM		Motion/Approve Minor Settlement	Tonya Blanding-PLT	07/18/2022	2022CP0401539 Tonya Blanding VS Zytavious Webb	Minor Settlement 730	Tonya Blanding	Chad McQueen Graham (864) 593507
9	07/20/2022	2:00 PM		Motion/Approve Minor Settlement	Lena Clark-PLT	05/16/2022	2022CP0400321 Lena Clark VS Laquasha Frasier	Minor Settlement 730	Allison Margaret Mabbs (864) 239-2094	
10	07/20/2022	2:00 PM	0:30	Motion/Default Judgment	Colie Scott, Attorney-In-Fact-PLT	05/12/2022	2021CP0401993 Colie Scott, Attorney-In-Fact , plaintiff, et al VS Doris R. Boseman	Real Prop/Other 499	Garryl Lynard Deas (803) 775-7004	Doris R. Bosemar
11	07/20/2022	2:00 PM	0:15	Motion/Costs	Anderson Area Cancer Center Oncology Hematology Clinic, Pa-DEF	06/09/2022	2017CP0402284 Pramod Reddy Ganta VS Anderson Area Cancer Center Oncology Hematology	Contract/Other 199	Angela Nichole Lane (843) 951-9911	Daniel L. Draisen (864) 888-8887

Anderson County Tenth Judicial Circuit - Roster Details  
7.20.2022 Motions R. Scott Sprouse

<b>Court Agency</b>	Common Pleas	<b>Judge</b>	Sprouse	<b>Roster Id</b>	404
<b>Roster Type</b>	Motions	<b>Roster Begin Date</b>	07/20/2022	<b>Roster End Date</b>	07/20/2022

Number of motions = 12

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
							Clinic, Pa , defendant, et al				
12	07/20/2022	2:00 PM	0:15	Motion/Dismiss	Guyon Hill Homeowners Association-DEF	06/10/2022	2022CP0401062 Leon Nauta , plaintiff, et al VS Deborah Bridges , defendant, et al	Person Inj/Other 399	Donald Loren Smith (864) 642-9284	Brett Harris Bayne (803) 227-2281 Sarah Ganss Drawdy (864) 261-3977	

**RECEIVED**

**Nov 02 2022**

**SC Court of Appeals**

**FORM 7  
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Judge

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Case No. 2015-CP-04-00667  
Appellate Case No. 2020-000070

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Ex Parte: Donald L. Smith,  
In Re: Greg Battersby,

Appellant,  
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &  
Draisen, P. A.,

Respondents.

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**PROOF OF SERVICE**

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Pursuant to Supreme Court of South Carolina's Amended Order 2020-05-29-02, I certify that I have served a copy of Appellant's Reply to Respondent's Response to Petition for Rehearing, Motion to File Out of Time, Form 8, and Form 7-Proof of Service of same, upon The Honorable Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals, through the AIS, and the Respondents, by and through their respective counsel of record, via electronic mail in the addresses as follows:

Ms. Jenny Abbott-Kitchings

[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

Attorney for Respondents

Mr. Steven M. Krause, Esquire

[steve@krauselaw.org](mailto:steve@krauselaw.org)

Mr. Daniel I. Draisen, Esquire

[daniel@injuredSC.com](mailto:daniel@injuredSC.com)

Mr. Kirkman Moorhead, Esquire

[kirk@mllawyers.com](mailto:kirk@mllawyers.com)

The above-mentioned documents have been served on November 2, 2022.

*s/Donald L. Smith*

Donald L. Smith (Bar No.: 6699)

Attorney for Appellant

2722 W. Whitner Street

Anderson, SC 29626

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[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina

November 2, 2022.

**FORM 8**  
**COVER LETTER TO THE CLERK OF COURT FOR THE**  
**COURT OF APPEALS FOR APPELLANT'S RESPONSE TO RESPONDENTS'**  
**REPLY TO PETITION FOR REHEARING**

November 2, 2022

The Honorable Jenny Abbott Kitchings  
Clerk of Court South Carolina Court of Appeals  
1220 Senate Street,  
Columbia SC 29201

**RECEIVED**  
**Nov 02 2022**  
**SC Court of Appeals**

**RE: Donald L. Smith v. J. Kirkman Moorhead, Krause, Moorhead & Draisen, P.A.**  
**(In relation to Gregg Battersby v. J. Kirkman Moorhead, et al.**  
**C.A. No. 2015-CP-04-00667)**

Dear Honorable Kitchings:

Please find enclosed the following documents for filing:

1. Appellant's Reply to Respondent's Response to Petition for Rehearing;
2. Motion to File out of Time;
3. Form 8; and,
4. Form 7.

Sincerely,

*s/Donald L. Smith*  
Donald L. Smith, (Bar#6699)  
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Anderson SC 29626  
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Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)  
Attorney for Appellant

Cc: Mr. Steven M. Krause, Esquire  
Mr. Daniel L. Draisen, Esquire  
Mr. Kirkman Moorhead, Esquire