

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Nov 30 2022

S.C. SUPREME COURT

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Unpublished Opinion No. 2022-UP-331
(Rehearing Denied November 14, 2022)
Ct. of Appeals Appellate Case No. 2020-000070

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

Respondents

v.

Ex Parte: Donald L. Smith (In re: Battersby v. Kirkman),

Petitioner.

APPENDIX FOR WRIT OF CERTIORARI

Respectfully submitted by:

s/Donald L. Smith
Donald L. Smith, (SC Bar#6699)
2722 West Whitner Street
Anderson SC 29626
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
November 29, 2022

INDEX

Order denying Appellant’s Petition for Rehearing.....	1
Appellant’s Reply to Respondents’ Response to Petition For Rehearing And Suggestion for Rehearing En Banc.....	6
Reply to Petition For Rehearing and Suggestion for Rehearing En Banc.....	16
Petition for Rehearing and Suggestion for Rehearing En Banc.....	20
Opinion Ex Parte Donald L. Smith (In re: Battersby v. Kirkman) Appellate Case No. 2020-000070).....	28
Appellant’s Reply to Respondents’ Second Motion to Dismiss.....	33
Reply to Respondents’ Letter RE: Record on Appeal.....	40
Motion to Dismiss Appeal.....	43
Appellant’s Response to Respondents’ Letter to the Court of Appeals.....	56
Reply to Respondents’ Letter to the Clerk of Court.....	64
Letter from Court of Appeals.....	101
Final Reply Brief of Appellant.....	104
Respondents’ Designation of Matter to be Included in Record on Appeal.....	112
Revised Order.....	114
Order.....	116
Appellant’s Designation of Matter to be Included in the Record on Appeal.....	118
Motion to Dismiss Appeal.....	121
Reply Brief of Appellant.....	155
Order.....	169
Appellant’s Original Designation of Matter to be Included in the Record On Appeal.....	171
Order.....	177



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 14, 2022

Donald Loren Smith, Esquire
2722 W, Whitner St.
Anderson SC 29626

Re: Ex Parte: Donald L. Smith (In re: Battersby v. Kirkman)
Appellate Case No. 2020-000070

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. See Rule 219, SCACR.

Very truly yours,

A handwritten signature in blue ink, reading "Jenny A. Kitchings".

CLERK

cc: Steven M. Krause, Esquire
Daniel L. Draisen, Esquire
The Honorable R. Lawton McIntosh

The South Carolina Court of Appeals

Ex Parte: Donald L. Smith, Appellant,

In Re: Gregg Battersby, Plaintiff,

v.

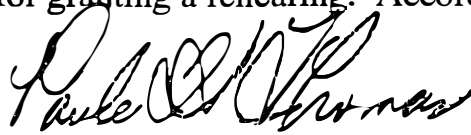
J. Kirkman Moorehead, Krause, Moorehead & Draisen,
P.A., Allstate Insurance Company, and Allstate
Northbrook Indemnity Company, Defendants,

of which J. Kirkman Moorehead and Krause, Moorehead
& Draisen, P.A., are the Respondents.

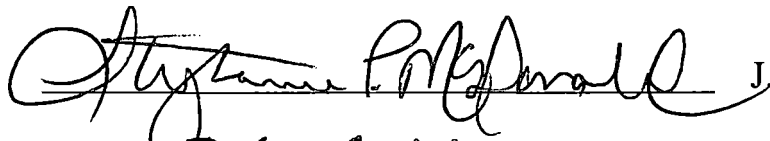
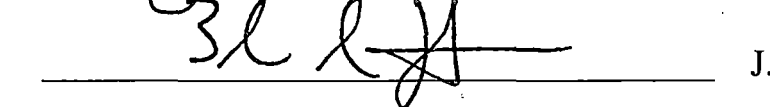
Appellate Case No. 2020-000070

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.

J.

Columbia, South Carolina

cc:

Donald Loren Smith, Esquire

Steven M. Krause, Esquire

Daniel L. Draisen, Esquire

The Honorable R. Lawton McIntosh

FILED
Nov 14 2022

The South Carolina Court of Appeals

Ex Parte: Donald L. Smith, Appellant,

In Re: Gregg Battersby, Plaintiff,

v.

J. Kirkman Moorehead, Krause, Moorehead & Draisen,
P.A., Allstate Insurance Company, and Allstate
Northbrook Indemnity Company, Defendants,

of which J. Kirkman Moorehead, Krause, Moorehead &
Draisen, P.A., are the Respondents.

Appellate Case No. 2020-000070

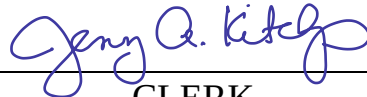
The Honorable R. Lawton McIntosh
Anderson County
Trial Court Case No. 2015CP0400667

ORDER

Appellant moves the Court for an order to allow late filing of the reply to the return for the petition for rehearing. No return to the motion was filed. Accordingly, the motion is hereby Granted. The reply is accepted as filed.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

cc:

Donald Loren Smith, Esquire

Steven M. Krause, Esquire

Daniel L. Draisen, Esquire

The Honorable R. Lawton McIntosh

FILED
Nov 14 2022

RECEIVED

Nov 02 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

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

Respondents.

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

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 21st of this year. (Exhibit 1-Email). It was understood at that time August 31st, 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 31st, 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>

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



Don Smith <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 Llc	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 Jr (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 Andrighetti (864) 370-8222	Ivan Tyrell Jenkins Matthew Kinard Johnson (864) 324-4397 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. Boseman	
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

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	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	

**FORM 7
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

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

Respondents.

PROOF OF SERVICE

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

Attorney for Respondents

Mr. Steven M. Krause, Esquire

steve@krauselaw.org

Mr. Daniel I. Draisen, Esquire

daniel@injuredSC.com

Mr. Kirkman Moorhead, Esquire

kirk@mllawyers.com

RECEIVED
Nov 02 2022
SC Court of Appeals

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

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

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)
2722 W. Whitner Street
Anderson SC 29626
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

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

RECEIVED
Sep 06 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2015-CP-02-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,.....Appellant,

In Re: Greg Battersby,.....Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead
& Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity Company,.....Defendants

of whom:

J. Kirkman Moorhead and Krause, Moorhead
& Draisen, P.A. are,.....Respondents.

**REPLY TO PETITION FOR REHEARING AND SUGGESTION FOR
REHEARING EN BANC**

COME NOW the Respondents in the above-captioned matter and reply to Appellant's
Petition for Rehearing and Suggestion for Rehearing *En Banc* as follows:

Respondents incorporate, as if fully set forth herein, all of the allegations and arguments
made in their Motion to Dismiss Appeal and Final Brief of Respondents previously filed in this
matter.

I. The Court has not overlooked or misapprehended the facts or the law applicable to this matter.

In his Petition for Rehearing, with regard to the facts pertinent to the case, Appellant merely rehashes the same factual assertions and arguments that have been made throughout this appeal. The additional (or new) assertions made by Appellants appear to be allegations of judicial misconduct lodged against the trial court. Appellant seems to say that not only did the Defendant and Respondents conspire against Appellant's client and Appellant, but that the trial court was an active participant in the conspiracy, a co-conspirator, and that everyone was out to get them. Respondents, frankly, do not quite know how to respond to such unsupported allegations other than to state that they are preposterous.

The fact that Appellant's client went forward with a trial against Respondents' client and ultimately obtained a verdict against her does not in any way support Appellant's assertions that Respondents "conspired" with the client by filing her lawsuit. That is, such fact does not in any way prove that the filing of the lawsuit by Respondents on behalf of their client was "the joining of two or more persons with the express purpose and intent to cause another harm." Were this to be the law in South Carolina, every lawyer representing a client would, by accepting representation of the client and filing a lawsuit, potentially be a party to a "conspiracy" if ultimately the client's case is not successful. The law is clear that an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client; *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 01, 602 (1995). There are no facts or evidence that show Respondents did so in the instant case.

In determining whether sanctions are appropriate in the instant case, the Court reviews the decision to award sanctions, as well as the terms of those sanctions, under and abuse of discretion standard; *Atl. Coast Builders*, 394 S.C. at 104, 713 S.E.2d at 654. The trial court's factual findings, as determined by this Court, are supported by the record. As a result, the trial court did not abuse its discretion by imposing sanctions against Appellant.

The Court has not overlooked or misapprehended the facts or law applicable to this matter. As such, Appellant's Petition for Rehearing should be denied.

Respectfully submitted,

s/Daniel L. Draisen

DANIEL L. DRAISEN (SC Bar# 13536)

THE INJURY LAW FIRM, PC

2006 North Main Street

Anderson, South Carolina 29621

(864) 888-8887

(864) 401-8233 facsimile

daniel@injuredSC.com

and

s/Steven M. Krause (w/permission)

STEVEN M. KRAUSE (SC Bar# 3571)

LAW OFFICES OF STEVEN M. KRAUSE, P.A.

207 E. Calhoun Street

Anderson, South Carolina 29621

(864) 225-4000

steve@krauselaw.org

ATTORNEYS FOR THE RESPONDENTS

September 4, 2022
Anderson, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Sep 06 2022

SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2015-CP-02-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,.....Appellant,

In Re: Greg Battersby,.....Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead
& Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity Company,.....Defendants

of which:

J. Kirkman Moorhead and Krause, Moorhead
& Draisen, P.A. are,.....Respondents.

PROOF OF SERVICE

I hereby certify that I have served the Reply to Petition for Rehearing and Suggestion for Hearing En Banc on Donald L. Smith, Esq., Appellant (and attorney for the Appellant), by depositing a copy of same in the United States Mail, postage prepaid, on September 4, 2022 addressed to Donald L. Smith, Esq., 122 North Main Street, Anderson, South Carolina, 29621.

s/Daniel L. Draisen

DANIEL L. DRAISEN (SC Bar# 13536)

2006 North Main Street

Anderson, South Carolina 29621

(864) 888-8887

daniel@injuredSC.com

ATTORNEY FOR THE RESPONDENTS

RECEIVED

Aug 23 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

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

Respondents.

**PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC**

Pursuant to SCACR Rule 22 (a) and SCACR Rule 240(i), Appellant Donald L. Smith, respectfully petitions this Court for a Rehearing of Opinion No. 2022-UP-331, filed August 10, 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.

SUMMARY OF ARGUMENT

This Honorable Court affirmed the trial court's levy of sanctions against the undersigned. In doing so, the abuse of discretion that is the sanction of \$12,000.00 continues unfettered.

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". The following is what the trial court allegedly based the order of sanctions

(a) filing a frivolous pleading, motion, or document if:

- (i) the person has **not read the frivolous pleading**, motion, or document;
- (ii) **a reasonable attorney** in the same circumstances **would believe** that under the facts, **his claim** or defense **was clearly not warranted** under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
- (iii) **a reasonable attorney** presented with the same circumstances would **believe that** the procurement, **initiation**, continuation, or defense of a **civil cause was intended merely to harass** or injure the other party; or
- (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, **interposed for merely delay**, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

The undersigned will now list the *facts* which formed the basis of the original Complaint, the Amended Complaint and the Second Amended Complaint. There were four (4) actions filed on behalf of the Plaintiff which all related to the parties and the facts and circumstances supporting the justification of the pleadings. It should be noted the attorneys who were sued in the pleadings for which sanctions were assessed were not sued in the original complaint. The attorneys were sued after discovery began with depositions.

The original was filed against the two women who had brought charges against the Plaintiff for indecent exposure. I began my representation of him as a result of the charges. I was the second defense attorney he had employed. Ironically, the first one was hesitant about the civil action(s) Plaintiff wanted to institute following the dismissal/not guilty verdict for the charges that had been brought. Upon taking the case, any recorded interviews which had been taken were demanded. The result of the request was a recorded interview Jan Morton had given to the detectives investigating her case.

She had gone to the Sheriff's Office to make a police report ten (10) days before. During the interview with the two detectives, Morton admitted to having spoken to her attorney. "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).

When Ms. Morton was deposed her testimony was vastly different from the facts gleaned from the incident report. She alleged Plaintiff had called incessantly after the incident to seek her return to treatment. Morton's phone records failed to illustrate any calls from Plaintiff to Morton. She also contradicted her allegations from her interview to her deposition by saying he had put his "junk" on her back at the office. In the incident report, she had gone out of her way to nullify any thought he had sexually, or attempted to sexually, assaulted her.

In Ms. Morton's interview, she spouted off a great deal of knowledge regarding Dr. Battersby. She told them his practice specialized in pediatric care. She told them his license had been suspended. She told them he had issues in Arizona. She told them she had a file on Dr. Battersby. (RA, p. 324.336; 6.23).

In her deposition, she was asked whether her attorney had provided her with the research. She stated, “He didn’t provide me with anything. I just saw it.” (RA, p. 335, 1.2). The defense attached exhibits to its Answer and Counterclaim. The first was to be cited as *State v. Battersby*, 2008-Ohio-836. (RA, p. 372.373). In that case, Plaintiff was alleged to have exposed himself in his home to a potential maid. That occurred in June of 2006. (*Id.*) The undersigned also attached another case from Ohio. In this 1994 case relating to sexual harassment, a jury awarded the plaintiff \$2.45 million dollars against Plaintiff. (RA, p. 406.447).

When she was pressed on whether Moorhead had provided her with research, she unflinchingly said, “I have never done research on Dr. Battersby.” (RA, p. 336; 11.13). When asked again whether the materials she allegedly read at Moorhead’s office, were in fact research, she struggled to say, “I didn’t do that. I didn’t – I don’t –” (RA, p. 336; 20). If she didn’t do the research, and she read it in Moorhead’s office, he is the only one who could have done the research.

In Morton’s deposition, it was brought out that she had only been to his four times when he allegedly exposed himself. However, during her deposition when being examined regarding her LLR complaint against the Plaintiff, she stated her counsel had completed the document and had stated she had visited twenty (20) times. Her counsel, Moorhead, took her out of the deposition and returned a short time later. At no time, did he disassociate himself with Morton; he did not put on the record she was wrong for stating he had put 20 visits; he did not get in touch with the LLR to amend the complaint; etc. He took ownership of the faulty complaint and did not want anything to do with changing it.

Following the Court issuing orders resulting in six losses for my client and me (and my son who was going to enter law school in the fall), the undersigned was summoned to the grand

jury room to see the judge. Upon arrival, I was frisked by Al Pierce, an Anderson County sheriff, who was a bailiff at the courthouse. I had gone through the metal detector upon my entrance of the courthouse. Following my frisking, the judge asked me if I knew why I lost. To my negative response, I was told, “because you sued attorneys”. Following my client parting ways with me, he tried the case against the woman for the chiropractic bill and defamation. A jury awarded him \$112,000.00. The Anderson County people spoke and recognized the conspiracy.

The judge found that no one could see the conspiracy and my action was frivolous. Once again, the defense rested on the fact you can’t sue an attorney for doing his job. However, the first attorney failed to pay the chiropractic bill. The second attorney used false facts to bolster on “sanctioned” for their conduct. The undersigned was assessed \$12,000.00 in fees for the firm of second attorney. He got paid to create facts with which to hurt my client’s life.

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...

Anderson, South Carolina
August 23, 2022.

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

RECEIVED

Aug 23 2022

SC Court of Appeals

**FORM 7
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

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

Respondents.

PROOF OF SERVICE

Pursuant to Supreme Court of South Carolina's Amended Order 2020-05-29-02, I certify that I have served a copy of the Certificate of Technical Difficulties, Adobe Error, Petition for Rehearing of Appellant, 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

Attorney for Respondents

Mr. Steven M. Krause, Esquire

steve@krauselaw.org

Mr. Daniel I. Draisen, Esquire

daniel@injuredSC.com

Mr. Kirkman Moorhead, Esquire

kirk@mllawyers.com

The above-mentioned documents have been served on August 23, 2022.

s/Donald L. Smith

Donald L. Smith (Bar No.: 6699)

Attorney for Appellant

122 N. Main Street

Anderson, SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Anderson, South Carolina

August 23, 2022.

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

August 23, 2022

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

**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. Petition for Rehearing;
2. Certificate of Technical Difficulties
3. "Adobe Error"
4. Form 8; and,
5. Form 7.

RECEIVED
Aug 23 2022
SC Court of Appeals

Sincerely,

s/Donald L. Smith
Donald L. Smith, (Bar#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

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



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 10, 2022

Donald Loren Smith, Esquire
122 N. Main St.
Anderson SC 29621

Mr. Steven M. Krause, Esquire
Law Offices Of Steven M. Krause, P.A.
207 E. Calhoun St.
Anderson SC 29621

Mr. Daniel L. Draisen, Esquire
2006 N. Main Street
Anderson SC 29621

Re: Ex Parte: Donald L. Smith (In re: Battersby v. Kirkman)
Appellate Case No. 2020-000070

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen

CLERK

cc: The Honorable R. Lawton McIntosh

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Ex Parte: Donald L. Smith, Appellant,

In Re: Gregg Battersby, Plaintiff,

v.

J. Kirkman Moorehead, Krause, Moorehead & Draisen,
P.A., Allstate Insurance Company, and Allstate
Northbrook Indemnity Company, Defendants,

of which J. Kirkman Moorehead and Krause, Moorehead
& Draisen, P.A., are the Respondents.

Appellate Case No. 2020-000070

Appeal From Anderson County
R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2022-UP-331
Submitted July 27, 2022 – Filed August 10, 2022

AFFIRMED

Donald L. Smith, of Attorney Office of Donald Smith, of
Anderson, pro se.

Steven M. Krause, of Law Offices of Steven M. Krause,
PA, and Daniel L. Draisen, of The Injury Law Firm, PC,
both of Anderson, for Respondents.

PER CURIAM: Donald L. Smith appeals a 2016 circuit court's order granting sanctions against him and a 2019 circuit court's order granting J. Kirkman Moorehead, and Krause, Moorehead & Draisen, P.A.'s (collectively, Moorehead's) motion to enter monetary sanctions in the judgment rolls.¹ On appeal, he argues (1) the trial court abused its discretion in imposing sanctions against him and (2) the sanction imposed was contrary to the goal of Rule 11, SCRPC. We affirm.

Because the 2016 circuit court's factual findings are supported by the record, we hold the 2016 circuit court did not abuse its discretion by imposing sanctions against Smith. *See Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 104, 713 S.E.2d 650, 653 (Ct. App. 2011) ("The determination of whether attorney's fees should be awarded under Rule 11 or under the [Frivolous Civil Proceedings] Act is treated as one in equity."); *In re Beard*, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct. App. 2004) ("In an action in equity tried by a judge alone, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence."); *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008) ("However, the abuse of discretion standard plays a role in the appellate review of a sanctions award."); *id.* ("[W]here the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions, as well as the terms of those sanctions, under an abuse of discretion standard."); *Atl. Coast Builders*, 394 S.C. at 104, 713 S.E.2d at 654 ("Under the abuse of discretion standard, the imposition of sanctions will not be disturbed on appeal unless the decision is controlled by an error of law or is based on unsupported factual conclusions."); *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996) ("Under [Rule 11(a), SCRPC], a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments."); *id.* ("The sanction may include an order to pay the reasonable costs and attorney's fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad

¹ By order dated June 16, 2021, this court found Smith's time to appeal the 2016 order was tolled and began to run from the 2019 circuit court's order denying reconsideration; thus, we address both orders on appeal.

faith."); *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986) (explaining that generally, "an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client"); *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995) (finding "that an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client").²

Because we find the 2016 circuit court did not abuse its discretion by imposing sanctions against Smith, we hold the entry of monetary sanctions on the civil judgment roll was administrative in nature, and the 2019 circuit court did not err by entering the sanctions.

AFFIRMED.³

THOMAS, MCDONALD, and HEWITT, JJ., concur.

² To the extent Smith argues the motion was (1) procedurally defective, (2) the circuit court applied the incorrect standard in imposing sanctions, (3) Moorehead failed to allege or prove improper motive, and (4) sanctions were imposed contrary to the purported end of Rule 11, we find these issues unpreserved because they were not raised to and ruled upon by the circuit court. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED
Sep 27 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., All State Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

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

Respondents.

**APPELLANT'S REPLY TO RESPONDENTS'
SECOND MOTION TO DISMISS**

Appellant respectfully requests his Honorable Court to review his position on his Motion to Hold Appeal in Abeyance, filed on May 24, 2021, and his Reply to Respondents' Letter to the Court of Appeals, dated September 8, 2021.

Respondents first attempted to dismiss this Appeal on April 23, 2021, alleging three grounds. On June 16, 2021, this Honorable Court issued an Order granting in part Respondents' Motion to Dismiss Appeal of the Circuit Court's Order, dated July 10, 2015, and October 8, 2015, but denying the same as to the appeal from the 2016 and 2019 Orders. (Exhibit 1- Court of

Appeal's Order, dated June 16, 2021). Respondents neither objected nor moved for reconsideration of said Order. Respondents waited until the final briefing to pursue the issue which this Honorable Court is presumed to have considered and ruled in the negative.

Appellant believed the Honorable Court could have honored Appellant's earlier request to hold the Appeal in Abeyance, but deemed that in the interest of judicial economy, it would address the issue of premature filing and nullity of the sanctions order.

Appellant reiterates his position that in as much as Form 4, dated April 21, 2016, and, Order, dated December 16, 2019, cannot be considered "full and complete order or judgment", then they could not have been the basis of a notice of appeal. Thus, this Appeal is premature.

Furthermore, Appellant submits the Circuit Court's Sanctions Order was null and void having lost its jurisdiction over the subject matter of the case and the person of the Appellant when it rendered the same. As a necessary, any judgment and all subsequent proceedings thereof, are considered void. State ex. rel. Turner v. Briggs, 971 P.2d 581 (Wash. App. Div. 1999).

Appellant respectfully requests this Honorable Court consider all the circumstances attendant in this case and rule in the interest of justice.

CONCLUSION

Accordingly, Appellant prays this Honorable Court allow the appeal to proceed and decide on the merits of the case, and/or in the alternative, allow Appellant to exercise his right to file his Motion to Vacate the Circuit Court's rulings.

Anderson, South Carolina
September 24, 2021

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

Sep 27 2021

SC Court of Appeals

SUMMARY OF DESIGNATION OF MATTER FOR BATTERSBY V. MOORHEAD CASE

Appellant's Original Battersby v. Moorhead DOM:	Respondent's DOM	Appellant's Amended DOM on Battersby v. Moorhead	Found in Record on Appeal
22. Summons and Complaint, March 20, 2015	✓	x	
23. First Amended Summons and Complaint, March 31, 2015	✓	x	
24. Respondents' Motion to Dismiss, March 31, 2015	✓	2. Respondents' Motion to Dismiss, March 31, 2015	47-48
25. Second Amended Complaint, March 31, 2015	✓	1. Appellant's Second Amended Complaint, March 31, 2015	36-46
26. Letter re Second Amended Complaint, April 6, 2015	✓	3. Letter re Second Amended Complaint, April 6, 2015	49-50
27. Notice of Presentation, April 23, 2015	✓	x	
28. All State Insurance Motion to Dismiss, April 30, 2015	✓	4. All State Insurance Motion to Dismiss, April 30, 2015	51-53
29. Memorandum in Support of All State Motion to Dismiss, June 4, 2015	✓	5. Memorandum in Support of All State Motion to Dismiss, June 4, 2015	54-64
30. Appellant's Memorandum in Opposition to All State Insurance Motion to Dismiss June 2, 2015	✓	6. Appellant's Memorandum in Opposition to All State Insurance Motion to Dismiss, June 4, 2015	65-75
31. Respondents' Memorandum in Support of Motion to Dismiss, June 4, 2015	✓	7. Memorandum in Support of Respondents' Motion to Dismiss, June 4, 2015	76-85

SUMMARY OF DESIGNATION OF MATTER FOR BATTERSBY V. MOORHEAD CASE

32. Appellant's Memorandum in Opposition of Respondents' Motion to Dismiss, June 4, 2015	✓	8. Appellant's Memorandum in Opposition of Respondents' Motion to Dismiss, June 4, 2015	86-99
33. Order Granting All State Insurance Summary Judgment, June 12, 2015	✓	9. Formal Order Granting All State Insurance Summary Judgment, June 12, 2015	33-35
34. All State Insurance Motion for Sanctions, June 25, 2015	✓	10. All State Insurance Motion for Sanctions, June 25, 2015	100-105
35. Affidavit of Johnston Cox, June 29, 2015	✓	11. Affidavit of Johnston Cox, June 29, 2015	106-109
31. Appellant's Motion to Withdraw All Pleading, June 30, 2015	✓	12. Appellant's Motion to Withdraw All Pleading, June 30, 2015	110-111
32. Response to All State Insurance Motion for Sanctions, June 30, 2015	✓	13. Appellant's Response to All State Insurance Motion for Sanctions, June 30, 2015	112-118
33. Motion to be Relieved as Counsel, July 1, 2015	✓	14. Appellant's Motion to be Relieved as Counsel, July 1, 2015	119-120
34. Form 4 Motion to Withdraw All Pleading, July 10, 2015	✓	15. Form 4 Motion to Withdraw All Pleading, July 10, 2015 (signed by Judge on July 8, 2015)	22-24
35. Order Granting Moorhead Motion to Dismiss, July 10, 2015	2. Order Granting J. Kirkman Moorhead and Krause, Moorhead & Draisen, P.A.'s Motion to Dismiss, dated July 8, 2015	16. Order Granting Moorhead Motion to Dismiss, July 10, 2015 (signed by Judge on July 8, 2015)	25-32 (cover page specifies July 8, 2015)
36. Respondents' Motion for Sanctions, July 24, 2015	✓	17. Respondents' Motion for Sanctions, July 24, 2015	121-129

SUMMARY OF DESIGNATION OF MATTER FOR BATTERSBY V. MOORHEAD CASE

37. Order Denying All State Insurance Motion for Sanctions, August 20, 2015	✓	18. Order Denying All State Insurance Motion for Sanctions, August 20, 2015	19-21
38. Memorandum in Opposition to Respondents' Motion for Sanctions, September 23, 2015	✓	19. Appellant's Memorandum in Opposition to Respondents' Motion for Sanctions, September 23, 2015	130-136
		20. Appellant's Letter to the Court, Re: Additional Fees asked on Motion for Sanctions, October 7, 2015	137-138
39. Respondents' Memorandum in Support of Motion for Sanctions, October 8, 2015	✓	21. Respondents' Memorandum in Support of Motion for Sanctions, October 8, 2015	139-145
		22. Gregg Battersby's Memorandum in Opposition to Motion for Sanctions, October 8, 2015	146-152
40. Order on Motion to be Relieved as Counsel, October 8, 2015	✓	23. Form 4, Order on Motion to be Relieved as Counsel, October 8, 2015	16-18
41. Notice of Lack of Jurisdiction, January 27, 2016	✓	24. Appellant's Notice of Lack of Jurisdiction over Motion for Sanction, January 27, 2016	153-155
42. Memorandum in Support of Court's Jurisdiction, January 29, 2016	✓	25. Memorandum in Support of Court's Proper Exercise of Jurisdiction over Respondents' Motion for Sanctions with Verification, January 29, 2016	156-159
43. Verification, January 29, 2016	✓		160-169

SUMMARY OF DESIGNATION OF MATTER FOR BATTERSBY V. MOORHEAD CASE

44. Order Granting Respondents' Motion for Sanctions, February 4, 2016	3. Order Granting J. Kirkman Moorhead and Krause, Moorhead & Draisen, P.A.'s Motion for Sanctions, dated February 3, 2015	26. Order Granting Respondents' Motion for Sanctions, February 4, 2016 (signed by Judge February 3, 2016)	8-15 (cover page specifies February 3, 2015)
45. Motion for Reconsideration, February 18, 2016	✓	27. Appellant's Motion for Reconsideration, February 18, 2016	170-173
46. Form 4 Denying Motion for Reconsideration, February 22, 2016	4. Form 4 Order Denying Motion to Reconsider, dated April 21, 2016	28. Form 4 Denying Motion for Reconsideration, April 22, 2016	5-7 (cover page specifies April 21, 2016)
47. Motion to Enter Monetary Sanction in the Judgment Roll , October 15, 2019	✓	29. Respondents' Motion to Enter Monetary Sanction in the Judgment Roll, October 15, 2019	174-176
48. Order, December 16, 2019	✓	31. Order Granting Respondents' Motion to Enter Monetary Sanction in the Judgment Roll, December 16, 2019	1-4
49. Notice of Appeal, January 13, 2020	✓	32. Notice of Appeal, January 13, 2020	182-186
50. Transcript of Deposition of Jan Morton	✓	* # 14 in Battersby v. Neal, et al. 14. Transcript of Deposition of Jan Morton, pp. 6-11, 13-14, 18-25, 29-31, 36-37, 42, 44-51, 53-59, 71-72	292-337
51. Transcription of Deposition of Neal	✓	* 15 in Battersby v. Neal, et al 15. Transcription of Deposition of Neal, pp. 12-14, 30-31, 35-37, 41-43, 51, 57	277-291

SUMMARY OF DESIGNATION OF MATTER FOR BATTERSBY V. MOORHEAD CASE

52. Transcript of Hearing on Motion for Reconsideration	✓	*#12 in Battersby v. Neal This is a Transcript of Hearing for the Motion for Summary Judgment (erroneously designated as Transcript of Motion for Reconsideration in Appellant's Original Designation of Matter, & designated as Transcript of Record in the Amended Designation of Matter.	338-351
53. Transcript of Motion to Enter Monetary Sanctions to the Judgment Roll, December 5, 2019	✓	30. Transcript of Motion to Enter Monetary Sanctions to the Judgment Roll, December 5, 2019	177-181
54. Memorandum Opinion and Order by Arizona State Board of Chiropractic Examiners, October 17, 2008	✓	*in Batte This document is part of Neal's Exhibit for her Answer and Counterclaim, and can be found in the Exhibit portion of the Record on Appeal	367-370
55. Opinion on State of Ohio v. Battersby	✓	* #16 in Battersby v. Neal 16. Opinion on State of Ohio v. Battersby	371-385

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

RECEIVED

Sep 27 2021

SC Court of Appeals

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

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., All State Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

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

Respondents.

**REPLY TO RESPONDENTS' LETTER
RE: RECORD ON APPEAL**

1. On March 29, 2021, Appellant filed his Designation of Matter (hereinafter referred as "Original DOM") on the above-mentioned case, together with Appellant's Initial Brief.

2. On July 12, 2021, Appellant moved for leave to file an Amended Designation of Matter to be include in the Record on Appeal (hereinafter referred as "Amended DOM") to reflect the documents relevant to the remaining Orders and issues relating to the imposition of sanctions.

3. In the said Amended DOM, Appellant corrected the items erroneously numbered in the Original DOM. (Appellant's Original DOM, items #31 to #55).

4. Items # 50-52 of the Original DOM were transposed to the heading *Battersby v. Neal* as Items #12,14 & 15 of Amended DOM. These documents were composed of transcripts of hearings which transpired in that case, and not in the *Battersby v. Morehead*. They can be found in the Record on Appeal on pages 292-337, 277-291, 338-351 respectively.

5. Item #53 of the Original DOM is designated as #30 in the Amended DOM and can be found in the Record on Appeal pages 177-181.

6. Item # 54 of the Original DOM is transposed as Item #13 of the Amended DOM under the *Battersby v. Neal* heading. This document, entitled Memorandum Opinion and Order by Arizona State Board of Chiropractic Examiners, October 17, 2008, is part of Carrie Neal's Exhibits for her Answer to Complaint and Counterclaim. They can be found in the Record on Appeal on pages 367-370.

7. Item # 55 of the Original DOM is transposed as Item #16 under the *Battersby v. Neal* heading. This document is part of Carrie Neal's Exhibits for her Answer to Complaint and Counterclaim. It can be found in the Record on Appeal on pages 371-385.

8. With regards to items #2-4 of Respondents' DOM, Appellant has designated the items as # 16, 26 and 28 in Appellant's Amended DOM with the corrected dates. These items can be found in the Record on Appeal on pages 25-32, 8-15, and 5-7 respectively.

9. Respondents did not file an Opposition nor an Objection to the Amended Designation of Matter, as such the Amended DOM superseded the Original.

10. On September 16, 2021, Respondents submitted a Letter to this Court, alleging the Record on Appeal was incomplete and inaccurate.

11. Since Respondents did not identify the item(s) and/or document(s) allegedly missing, Appellant furnishes them a copy of the Table of the Summary of Designation of Matters, as Exhibit A for their review.

CONCLUSION

Accordingly, Appellant submits this Reply to Respondents' Letter, dated September 16, 2021, for information and reference of this Court and the Counsel for Respondents.

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
September 24, 2021.

Sep 16 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2015-CP-02-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,.....Appellant,

In Re: Greg Battersby,.....Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead
& Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity Company,.....Defendants

of whom:

J. Kirkman Moorhead and Krause, Moorhead
& Draisen, P.A. are,.....Respondents.

MOTION TO DISMISS APPEAL

Daniel L. Draisen, Esq.
The Injury Law Firm, P.C.
2006 North Main Street
Anderson, South Carolina 29621
(864) 888-8887
daniel@injuredSC.com

Steven M. Krause, Esq.
Law Offices of Steven M. Krause, P.A.
207 E. Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
steve@krauselaw.org
Attorneys for Respondents

TABLE OF AUTHORITIES

	<u>Page No.</u>
SC Appellate Court Rules	
SCACR, Rule 203	01
SCACR, Rule 260	01
SCACR, Rule 262	01

COME NOW the Respondents in the above-captioned matter and respectfully move the Court for an Order Dismissing the appeal in this matter on the following grounds:

I. Appellant failed to properly perfect his Appeal.

Appellant failed to properly perfect his appeal in this matter. Pursuant to South Carolina Appellate Court Rule 203(a):

(a) Notice. A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 262.

Further, pursuant to Appellate Court Rule 203(d), Notice of Appeal:

(1) Appeals from the Circuit Court, Family Court and Probate Court.

(A) Where to File. **The notice of appeal shall be filed with the clerk of the lower court** and with the Clerk of the Supreme Court in the following cases:

...In all other cases, the notice of appeal shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals.

(B) When and What to File. **The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served.** (emphasis added)

(2) **Effect of Failure to Timely File.** If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260.

Pursuant to Appellate Court Rule 260:

(a) Involuntary Dismissal and Reinstatement. *Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.* A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded). (emphasis added)

Appellant did not (and has not to date) file the Notice of Appeal with the clerk of the lower court, the Anderson County Clerk of Court, as required by SCACR, Rule 203.

Attached hereto is the Affidavit of Richard A. Shirley, Anderson County Clerk of Court, attesting that the clerk of the lower court was not served with the Notice of Appeal along with the SC Judicial Department Case History E-Filing Log which shows that the last document filed with the Anderson County Clerk of Court in this matter was the Order of December 16, 2019 (see Affidavit and SC Judicial Department E-Filing Log attached hereto and incorporated by reference thereto).

Appellant was first notified of the deficiency with his filing on or about April 23, 2021 when Respondents filed their first Motion to Dismiss in this matter. Despite having been notified of same in April, Appellant has yet, as of this date, to serve the Notice of Appeal on the Clerk of Court for Anderson County.

Having failed to properly file and serve the Notice of Appeal in accordance with the South Carolina Appellate Court Rules, Appellant's filing is procedurally defective, the appeal was not properly perfected, the Appellate Court lacks jurisdiction, the time within which to properly perfect an appeal has run, and the appeal should be dismissed.

Respectfully submitted,

s/Daniel L. Draisen

DANIEL L. DRAISEN (SC Bar# 13536)

THE INJURY LAW FIRM, PC

2006 North Main Street

Anderson, South Carolina 29621

(864) 888-8887

(864) 401-8233 facsimile

daniel@injuredSC.com

and

s/Steven M. Krause (w/permission)

STEVEN M. KRAUSE (SC Bar# 3571)

LAW OFFICES OF STEVEN M. KRAUSE, P.A.

207 E. Calhoun Street

Anderson, South Carolina 29621

(864) 225-4000

steve@krauselaw.org

ATTORNEYS FOR THE RESPONDENTS

September 16, 2021

Anderson, South Carolina

EXHIBITS

**AFFIDAVIT OF RICHARD A. SHIRLEY,
ANDERSON COUNTY CLERK OF COURT**

With regard to Anderson County Case No. 2015-CP-04-00667, Greg Battersby vs. J. Kirkman Moorhead, Krause, Moorhead & Draisen, P.A., Allstate Insurance Company, and Allstate Northbrook Indemnity Company, I do not have any independent recollection of ever being served with a Notice of Appeal in the matter. I have made a diligent search of the documents, records and files maintained in my office, as well as the electronic filing database, and I do not find that that I was ever served with a Notice of Appeal or that any Notice of Appeal was filed with my office in either paper or electronic format regarding the referenced case or the Order of the Circuit Court dated December 16, 2019. I only recently became aware that Donald L. Smith, Esq. had filed an appeal in the matter when Mr. Draisen contacted my office to ask if I had ever been served with a Notice of Appeal.


RICHARD A. SHIRLEY,
 Clerk of Court for Anderson County

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 16th day of September, 2021.

Catherine L. Thomason
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 5/6/2031

**Case Number** 2015CP0400667**Case Subtype** Use 370 or 380**Filed Date** 03-20-2015**Status** Dismissed[Show/Hide Participants](#)**Plaintiff**

Gregg Battersby

Defendant

J Kirkman Moorhead et al

Assigned Judge

Clerk Of Court C P, G S, And Family Court

File Type

Jury

Name	Description	Type	File Date
Donald Loren Smith	Judgment/Judgment	Judgment	12-16-2019 04:16:38 PM
Timothy Alan Nowacki	Judgment/Judgment	Judgment	12-16-2019 04:16:38 PM
Donald Loren Smith	Judgment/Judgment	Judgment	12-16-2019 04:16:06 PM
Steven M. Krause	Judgment/Judgment	Judgment	12-16-2019 04:16:06 PM
J Kirkman Moorhead	NEF(12-16-2019 04:15:42 PM) Order/Other	Filing	12-16-2019 04:15:49 PM
J Kirkman Moorhead	Order/Other	Order	12-16-2019 04:15:42 PM
J Kirkman Moorhead	NEF(12-10-2019 11:28:11 AM) Order/Order Cover Sheet \$25....	Filing	12-10-2019 11:40:20 AM
J Kirkman Moorhead	Order/Order Cover Sheet \$25.00	Filing	12-10-2019 11:28:11 AM
J Kirkman Moorhead	NEF(12-06-2019 01:06:21 PM) Order/Form 4	Filing	12-06-2019 01:06:31 PM
J Kirkman Moorhead	Order/Form 4	Order	12-06-2019 01:06:21 PM
J Kirkman Moorhead	NEF(12-04-2019 02:04:29 PM) Affidavit/Affidavit of	Filing	12-04-2019 02:21:31 PM
J Kirkman Moorhead	Affidavit/Affidavit of	Filing	12-04-2019 02:04:29 PM
Gregg Battersby	Notice/Notice of Hearing	Filing	11-01-2019 03:58:59 PM
Donald Loren Smith	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Alfred Johnston Cox	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Steven M. Krause	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Timothy Alan Nowacki	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Gregg Battersby	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
J Kirkman Moorhead	NEF(10-15-2019 04:19:31 PM) Motion/Other	Filing	10-15-2019 04:24:43 PM
J Kirkman Moorhead	Motion/Other	Motion	10-15-2019 04:19:31 PM
Gregg Battersby	Order/Form 4 Decision by Court	Order	04-22-2016 11:16:53 AM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	02-22-2016 11:21:42 AM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	02-22-2016 11:20:41 AM
Alfred Johnston Cox	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Steven M. Krause	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Timothy Alan Nowacki	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Gregg Battersby	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Gregg Battersby	Motion/Reconsider	Motion	02-18-2016 04:10:49 PM
Gregg Battersby	Filing Motion and Order Information Form and Coversheet	Filing	02-18-2016 04:10:00 PM
J Kirkman Moorhead	Order/Order	Order	02-04-2016 11:36:05 AM
Krause Moorhead & Draisen PA	Order/Order	Order	02-04-2016 11:36:05 AM
Krause Moorhead & Draisen PA	Verification/Verified	Filing	01-29-2016 10:28:02 AM
J Kirkman Moorhead	Memo/Memo in Support of Court's Proper Exercise of	Filing	01-29-2016 10:26:06 AM
Krause Moorhead & Draisen PA	Memo/Memo in Support of Court's Proper Exercise of	Filing	01-29-2016 10:26:06 AM
Gregg Battersby	Notice/Lack of Jurisdiction over Defs' Motion for Sanctions	Filing	01-27-2016 09:41:12 AM
Gregg Battersby	ADR/Alternative Dispute Resolution (Workflow)	Action	10-16-2015 11:10:03 AM
Gregg Battersby	Order/Form 4	Order	10-08-2015 03:02:55 PM
J Kirkman Moorhead	Memo/Memorandum in Support	Filing	10-08-2015 03:01:52 PM
Krause Moorhead & Draisen PA	Memo/Memorandum in Support	Filing	10-08-2015 03:01:52 PM
Gregg Battersby	Memo/Memorandum in Opposition	Filing	10-08-2015 02:13:00 PM
Gregg Battersby	Memo/Memorandum in Opposition	Filing	10-08-2015 02:13:00 PM
Gregg Battersby	Letter/Letter	Filing	10-07-2015 02:12:04 PM
Gregg Battersby	Memo/Memorandum in Opposition To Request For Sanctions	Filing	09-23-2015 04:36:00 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
Steven M. Krause	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
Timothy Alan Nowacki	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM

Steven M. Krause	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
Steven M. Krause	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
Timothy Alan Nowacki	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
Timothy Alan Nowacki	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
J Kirkman Moorhead	Order for Substitution Of Counsel	Order	08-27-2015	04:20:13 PM
J Kirkman Moorhead	Filing of Motion Coversheet	Filing	08-25-2015	04:24:00 PM
J Kirkman Moorhead	Motion Filing Fee Motion and Order Substitution Of Counsel	Filing	08-25-2015	09:31:00 AM
Allstate Insurance Company	Order/Order	Order	08-20-2015	09:13:09 AM
Allstate Northbrook Indemnity Company	Order/Order	Order	08-20-2015	09:13:09 AM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:41 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:41 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:41 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:36 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:36 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:36 PM
J Kirkman Moorhead	Motion/Sanctions	Motion	07-24-2015	03:03:51 PM
J Kirkman Moorhead	Motion/Sanctions	Motion	07-24-2015	03:03:51 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
J Kirkman Moorhead	Order/Order	Order	07-10-2015	02:19:18 PM
Krause Moorhead & Draisen PA	Order/Order	Order	07-10-2015	02:19:18 PM
Gregg Battersby	Order/Form 4	Order	07-10-2015	02:16:46 PM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:57:18 PM
Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:57:18 PM
Allstate Insurance Company	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:57:18 PM
Allstate Northbrook Indemnity Company	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:57:18 PM
Gregg Battersby	Service/Affidavit Of Service	Filing	07-02-2015	01:56:28 PM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:46:15 PM
Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:46:15 PM
Allstate Insurance Company	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:46:15 PM
Allstate Northbrook Indemnity Company	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:46:15 PM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:44:21 PM
Case Party Inactive	Service/Certificate Of Service	Filing	07-01-2015	02:56:38 PM
Alfred Johnston Cox	Service/Certificate Of Service	Filing	07-01-2015	02:56:38 PM
Gregg Battersby	Service/Certificate Of Service	Filing	07-01-2015	02:52:58 PM
Gregg Battersby	Motion/Motion to Be Relieved as Counsel	Motion	07-01-2015	02:44:29 PM
Gregg Battersby	Motion/Motion to Be Relieved as Counsel	Motion	07-01-2015	02:44:29 PM
Gregg Battersby	Filing/Filing Response to Defendant's Motion for Sanctions	Filing	06-30-2015	02:45:54 PM
Gregg Battersby	Motion/Motion For Motion to Withdraw Pleading	Motion	06-30-2015	02:45:07 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	06-29-2015	09:55:29 AM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	06-29-2015	09:55:29 AM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	06-29-2015	09:55:29 AM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	06-29-2015	09:19:52 AM
Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	06-29-2015	09:19:52 AM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	06-29-2015	09:18:53 AM
Allstate Northbrook Indemnity Company	Affidavit/Affidavit of A. Johnston Cox	Filing	06-29-2015	09:14:13 AM
Allstate Northbrook Indemnity Company	Motion/Sanctions	Motion	06-25-2015	02:56:00 PM
Allstate Northbrook Indemnity Company	Motion/Sanctions	Motion	06-25-2015	02:56:00 PM
Gregg Battersby	Service/Certificate Of Service	Filing	06-25-2015	02:55:00 PM
J Kirkman Moorhead	Service/Certificate Of Service	Filing	06-25-2015	02:55:00 PM
Krause Moorhead & Draisen PA	Service/Certificate Of Service	Filing	06-25-2015	02:55:00 PM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	06-22-2015	03:25:39 PM
Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	06-22-2015	03:25:39 PM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	06-22-2015	03:24:07 PM
J Kirkman Moorhead	Order/Order	Order	06-12-2015	03:55:12 PM
Gregg Battersby	Order/Form 4 Decision by Court	Order	06-05-2015	01:33:20 PM
Gregg Battersby	Memo in Opposition to Moorhead and KMD's Motion to Dismiss	Filing	06-04-2015	01:32:07 PM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	06-04-2015	01:30:45 PM
J Kirkman Moorhead	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:30:08 PM

Krause Moorhead & Draisen PA	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:30:08 PM
Allstate Insurance Company	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:29:22 PM
Allstate Northbrook Indemnity Company	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:29:22 PM
Gregg Battersby	Memo/Memo in Opposition to Def. Allstate Ins. Co.'s Motion	Filing	06-04-2015	01:24:17 PM
J Kirkman Moorhead	Letter/Letter with attachments re: hearing 6-4-15	Filing	06-02-2015	10:07:47 AM
J Kirkman Moorhead	Letter/Letter with attachments re: hearing 6-4-15	Filing	06-02-2015	10:07:47 AM
Gregg Battersby	Service/Certificate Of Hand Delivery	Filing	06-02-2015	10:05:28 AM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Allstate Insurance Company	Motion/Dismiss	Motion	04-30-2015	01:12:00 PM
Allstate Northbrook Indemnity Company	Filing Motion To Dismiss	Filing	04-30-2015	01:12:00 PM
Gregg Battersby	Service/Certificate Of Service	Filing	04-30-2015	01:11:00 PM
J Kirkman Moorhead	Notice/Notice of Presentation	Filing	04-23-2015	03:54:06 PM
Gregg Battersby	Letter Re: Motion to Dismiss for Second Amended Complaint	Filing	04-06-2015	04:15:10 PM
Gregg Battersby	Second Amended Complaint	Filing	03-31-2015	01:23:43 PM
Gregg Battersby	Second Amended Summons	Filing	03-31-2015	01:19:55 PM
Gregg Battersby	Service/Certificate Of Service	Filing	03-31-2015	09:49:04 AM
J Kirkman Moorhead	Motion/Dismiss	Motion	03-31-2015	09:34:01 AM
Gregg Battersby	Amended/Amended Summons And Complaint	Filing	03-31-2015	09:32:02 AM
Gregg Battersby	Summons & Complaint	Filing	03-20-2015	10:58:00 AM

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2015-CP-02-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,.....Appellant,

In Re: Greg Battersby,.....Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead
& Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity Company,.....Defendants

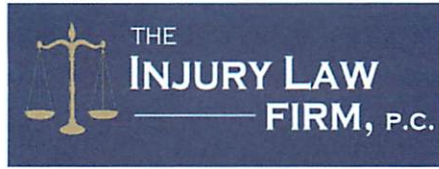
of whom:

J. Kirkman Moorhead and Krause, Moorhead
& Draisen, P.A. are,.....Respondents.

PROOF OF SERVICE

I hereby certify that I have served Respondents' Motion to Dismiss Appeal (second) on Donald L. Smith, Esq., Appellant (and attorney for the Appellant), by depositing a copy of same in the United States Mail, postage prepaid, on September 16, 2021 addressed to Donald L. Smith, Esq., 122 North Main Street, Anderson, South Carolina, 29621.

s/Daniel L. Draisen
DANIEL L. DRAISEN (SC Bar# 13536)
2006 North Main Street
Anderson, South Carolina 29621
(864) 888-8887
daniel@injuredSC.com
ATTORNEY FOR THE RESPONDENTS



RECEIVED

Sep 16 2021

SC Court of Appeals

2006 N. MAIN STREET
ANDERSON, SOUTH CAROLINA 29621
(864) 888-8887
daniel@injuredSC.com
www.injuredSC.com

DANIEL L. DRAISEN, ESQ.
*Licensed in SC and OK

September 16, 2021

Hon. Jenny Abbott Kitchings,
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Ex Parte: Donald L. Smith
In Re: Greg Battersby v. J. Kirkman Moorhead, et al.
Appellate Case No. 2020-000070

Dear Mrs. Kitchings:

Enclosed please find a copy of the cover letter and the original Proof of Service for the following documents served on the Appellant and attorney for the Appellant, Donald L. Smith, Esq. in the referenced matter, along with our Motion filing fee in the amount of \$50.00:

1. Motion to Dismiss Appeal (second)
2. Proof of Service

Please let me know if you need anything else.

With kind regards,

THE INJURY LAW FIRM, P.C.


Daniel L. Draisen

DLD
Enclosures



LIFE MEMBER
MILLION DOLLAR ADVOCATES FORUM
The Top Trial Lawyers In America™



cc: Donald L. Smith, Esq.
Steven M. Krause, Esq.
J. Kirkman Moorhead, Esq.

RECEIVED

Sep 08 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., All State Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

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

Respondents.

**APPELLANT'S RESPONSE TO
RESPONDENTS' LETTER TO THE COURT OF APPEALS**

On January 16, 2020, Appellant filed a Notice of Appeal on this case. Due to the difficulty of obtaining the transcripts relating to the underlying cases forming the basis for the instant Appeal, Appellant was not able to file his Initial Brief and Designation of Matter until March 29, 2021. More than a year after Appellant filed his Notice of Appeal, Respondents moved to dismiss the same on April 23, 2021, alleging the following grounds: failure to perfect the appeal, failure to timely file appeal on Orders, dated July 8, 2015, and February 3, 2016; and,

that the January 16, 2019, Order was merely an Administrative Order. Thereafter, Respondents filed their Initial Brief and Designation of Matter on May 7, 2021.

On May 24, 2021, Appellant moved this Honorable Court to hold his appeal in abeyance, raising two issues: premature filing of the Notice of Appeal and the nullity of lower court's order granting the sanctions against Appellant. On June 16, 2021, this Honorable Court issued an Order granting in part Respondents' Motion to Dismiss Appeal of the Circuit Court's Order, dated July 10, 2015, and October 8, 2015, but denying the same as to the appeal from the 2016 and 2019 Orders. (Exhibit 1- Court of Appeal's Order, dated June 16, 2021). In the same Order, the Court denied the Appellant's motion for leave to file Rule 60 SCRPC.

Respondents neither objected nor moved for reconsideration of said Order. Appellant believed the Honorable Court could have honored Appellant's request for abeyance but deemed that in the interest of judicial economy, it would address the issue of premature filing and nullity of the sanctions order. Appellant avers the Honorable Court was not remiss in not dismissing the Appeal based on the first ground raised by Respondents.

Should the Court reconsider Respondents' assertions in their Letter, dated September 7, 2021, Appellant reiterates his position he had prematurely filed his Notice of Appeal in this case considering Form 4 dated April 21, 2016, is not the "final order" that the law contemplates to be subject of an appeal. The cases Cheap O's Truck Stop, Inc., (567 S.E.2d 514 (SC Ct. App.

2002)¹, and *Metts v. Mims*, 384 S.C. 491 (SC 2009)², have addressed this matter by ruling that a Form 4 which specifically indicated a final order would follow, is not a Final Order. And since by Respondents' own submission the Order Dated December 16, 2019, is merely an administrative Order, then it does not partake of a Final Order and did not "fully dispose of the case".

Appellant further asserts the Orders granting sanctions and denying Appellant's Motion for Reconsideration are void since they were issued when the Circuit Court has lost its subject jurisdiction (since the Appellant withdrew the Complaint and all the pleadings and the Circuit Court approved the same), as well as its jurisdiction over the person of Appellant (since the Circuit approved Appellant's motion to withdraw as counsel) prior to Respondents filing their Motion for Sanctions.

Since the Circuit Court has no jurisdiction over the subject matter of the case and the person of the Appellant when it rendered the Sanctions Order, the judgment and all subsequent proceedings thereof, are considered void. *State ex. rel. Turner v. Briggs*, 971 P.2d 581 (Wash. App. Div. 1999). No sanctions can be imposed absent proof of jurisdiction. *Standard v. Olsen*, 74 S. Ct. 768, Title 5, U.S.C. §556 & 558 (b).

¹ *Cheap O's Truck Stop, Inc.*, (567 S.E.2d 514 (SC Ct. App. 2002) declares "As a matter of practice and convenience, a Form 4 order is used on a plethora of occasions as a *FINAL ORDER*. *IF* the Form 4 order is *NOT* efficacious as a final order, the circuit court will specifically and with certitude signify:

- (1) a more formal order will be filed; *OR*
- (2) the final order will be prepared by Attorney; *OR*,
- (3) through the use of words and phrases what action will follow."

² *Metts v. Mims*, 384 S.C. 491 (S.C. 2009)- The Form 4 order was not signed by the judge and it specifically indicated a formal order would follow. Therefore, this form order was not in any way final. See *Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996) (a decree leaving some further act to be done by the court is not final)

Respondents had several chances to address their concerns on the Notice of Appeal but waited until the final briefing to pursue the issue which this Honorable Court is presumed to have considered and ruled in the negative. Respondents had benefitted from all the procedural defects and/or deficiencies in the Circuit Court and continues to use the same to defeat Appellant's meritorious claims. Appellant respectfully requests this Honorable Court consider all the circumstances attendant in this case and rule in the interest of justice.

Accordingly, Appellant prays this Honorable Court will allow the appeal to proceed and decide on the merits of the case, and/or in the alternative, suspend and/or hold this appeal in abeyance to allow Appellant to file his Motion to Vacate the Circuit Court's rulings.

s/Donald L. Smith

Donald L. Smith (SC 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
September 8, 2021.

The South Carolina Court of Appeals

Ex Parte: Donald L. Smith, Appellant,

In Re: Gregg Battersby, Plaintiff,

v.

J. Kirkman Moorehead, Krause, Moorehead & Draisen,
P.A., Allstate Insurance Company, and Allstate
Northbrook Indemnity Company, Defendants,

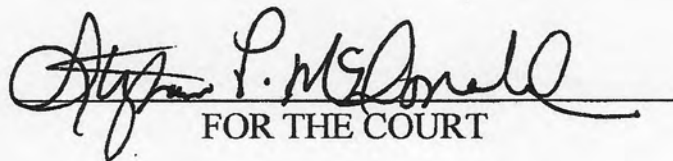
of which J. Kirkman Moorehead, Krause, Moorehead &
Draisen, P.A., are the Respondents.

Appellate Case No. 2020-000070

ORDER

First, the motion to dismiss is granted in part and denied in part. Appellant failed to timely serve and file a notice of appeal from the July 10, 2015 order granting summary judgment and the October 8, 2015 Form 4 order. Therefore, the appeals from the July 10, 2015 order and the October 8, 2015 order are dismissed. The time for appealing the circuit court's 2016 orders relating to sanctions was tolled and began to run from the circuit court's 2019 order denying reconsideration. Accordingly, the appeal from the 2016 orders and 2019 orders shall proceed.

Second, Appellant's motion for leave to file a Rule 60, SCRCP motion with the circuit court is denied.


FOR THE COURT

Columbia, South Carolina

cc:

Donald Loren Smith, Esquire

Steven M. Krause, Esquire

Timothy Alan Nowacki, Esquire

Daniel L. Draisen, Esquire

FILED
Jun 16 2021

RECEIVED

Sep 08 2021

SC Court of Appeals

**FORM 7
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., All State Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

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

Respondents.

PROOF OF SERVICE

Pursuant to Supreme Court of South Carolina's Amended Order 2020-00047, I certify that I have served a copy of Appellant's Reply to Respondents' Letter to Clerk of Court of Appeals, as well as 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

Attorney for Respondents

Mr. Steven M. Krause, Esquire steve@krauselaw.org
Mr. Daniel I. Draisen, Esquire daniel@injuredSC.com

The above-mentioned documents have been served on September 8, 2021.

s/Donald L. Smith
Donald L. Smith (Bar No. : 6699)
Attorney for Appellant
122 N. Main Street
Anderson, SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
September 8, 2021.

RECEIVED

Sep 08 2021

SC Court of Appeals

FORM 8
LETTER TO THE APPEALS COURT CLERK
REPLY TO RESPONDENTS' LETTER TO THE CLERK OF COURT

September 8, 2021

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

RE: Ex Parte: Donald L. Smith (In Re: Battersby v. Kirkman)
Appellate Case No. 2020-000070

Dear Ms. Kitchings:

Please find enclosed the following documents for filing:

- (1) Appellant's Reply to Respondents' Letter to the Clerk of Court; and,
- (2) Proof of Service for same.

Sincerely,

s/Donald L. Smith

Donald L. Smith, (Bar#6699)

122 N. Main Street

Anderson SC 29621

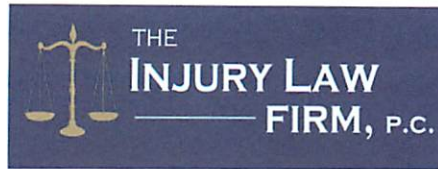
Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Pro Se

cc: Mr. Steven M. Krause, Esquire
Mr. Daniel L. Draisen, Esquire



2006 N. MAIN STREET
ANDERSON, SOUTH CAROLINA 29621
(864) 888-8887
daniel@injuredSC.com
www.injuredSC.com

DANIEL L. DRAISEN, ESQ.
**Licensed in SC and OK*

RECEIVED

Sep 07 2021

SC Court of Appeals

September 7, 2021

Hon. Jenny Abbott Kitchings,
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Ex Parte: Donald L. Smith
In Re: Greg Battersby v. J. Kirkman Moorhead, et al.
Appellate Case No. 2020-000070

Dear Mrs. Kitchings:

I write to inquire about a pending and unresolved matter in the referenced case. I am not certain to whom this should be addressed, or what I need to do to properly bring the matter to the Court's attention. On April 23, 2021, I filed a Motion to Dismiss the appeal on the grounds that it was not properly perfected. No Notice of Appeal was served, in accordance with Appellate Court Rule 203(1)(B), on the Anderson County Clerk of Court. The matter does not presently show in the SC E-Filing system that the case is on appeal, and there is no Notice of Appeal filed in the case documents. A copy of my Motion is attached hereto. The Court ruled on parts II and III of the Motion, did not address part I of the motion, and stated that Mr. Smith could proceed only on the last Order issued awarding sanctions. It is this last Order (the Order awarding sanctions) for which no Notice of Appeal was filed with the Clerk of Court. With final briefs due very shortly, I am uncertain as to whether I need to re-file the Motion to Dismiss for failure to properly perfect the appeal, or how to best address this with the Court. Your assistance with this issue would be greatly appreciated.

With kind regards,

THE INJURY LAW FIRM, P.C.


Daniel L. Draisen



LIFE MEMBER
MILLION DOLLAR ADVOCATES FORUM
The Top Trial Lawyers in America™



DLD

Enclosures

cc: Donald L. Smith, Esq.

Steven M. Krause, Esq.

J. Kirkman Moorhead, Esq.

RECEIVED

Apr 23 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2015-CP-02-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,.....Appellant,

In Re: Greg Battersby,.....Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead
& Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity Company,.....Defendants

of whom:

J. Kirkman Moorhead and Krause, Moorhead
& Draisen, P.A. are,.....Respondents.

MOTION TO DISMISS APPEAL

Daniel L. Draisen, Esq.
The Injury Law Firm, P.C.
2006 North Main Street
Anderson, South Carolina 29621
(864) 888-8887
daniel@injuredSC.com

Steven M. Krause, Esq.
Law Offices of Steven M. Krause, P.A.
207 E. Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
steve@krauselaw.org
Attorneys for Respondents

TABLE OF AUTHORITIES

	<u>Page No.</u>
Cases	
<i><u>Kinghorn v. Sakakini</u></i> 426 S.C. 147, 825 S.E.2d 748 (Ct.App. 2019)	02
SC Appellate Court Rules	
SCACR, Rule 203	01, 02
SCACR, Rule 269	03
SC Rules of Civil Procedure	
SCRCP, Rule 52	02

COME NOW the Respondents in the above-captioned matter and respectfully move the Court for an Order Dismissing the appeal in this matter on the following grounds:

I. Appellant failed to properly perfect his Appeal.

Appellant failed to properly perfect his appeal in this matter. Pursuant to South Carolina Appellate Court Rule 203(1)(B), Notice of Appeal:

(1) Appeals from the Circuit Court, Family Court and Probate Court.

(A) Where to File. The notice of appeal shall be filed with the clerk of the lower court and with the Clerk of the Supreme Court in the following cases:

...In all other cases, the notice of appeal shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals.

(B) When and What to File. **The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served.** (emphasis added)

Appellant did not (and has never) file his Notice of Appeal with the Anderson County Clerk of Court as required by SCACR, Rule 203. Respondents provide the Court with the SC Judicial Department Case History E-Filing Log which shows that the last document filed with the Anderson County Clerk of Court in this matter was the Order of December 16, 2019 (see SC Judicial Department E-Filing Log attached hereto and incorporated by reference thereto as Exhibit A).

As such, Appellant's Notice of Appeal was not properly filed, the filing is procedurally defective, the appeal was not properly perfected, the time within which to properly perfect an appeal has run, and the appeal should be dismissed.

II. The orders granting Summary Judgment and granting an award of Monetary Sanctions were not timely appealed, are the law of the case, and have not been properly been submitted to the Court for consideration.

On June 4, 2015, a hearing was held before the Honorable R. Lawton McIntosh, Circuit Court Judge, who converted Respondents' Motions to Dismiss to Summary Judgment with the

consent of the parties and granted summary judgment as to all causes of action based upon attorney immunity and the other grounds presented by Respondents' attorney, and on July 8, 2015, Judge McIntosh issued a formal Order granting Respondents' Motion for Summary Judgment and Motion to Dismiss (Order dated July 8, 2015 is attached hereto and incorporated by reference thereto as Exhibit B). The trial court's ruling granting Respondents' Motion for Summary Judgment and Motion to Dismiss *was not appealed* by the Plaintiff or the Appellant.

On February 3, 2016, the Honorable R. Lawton McIntosh, Circuit Court Judge, issued a formal Order granting Respondents' Motion for Sanctions pursuant to Rule 11, SCRPC (Order dated February 3, 2016 is attached hereto and incorporated by reference thereto as Exhibit C). Thereafter, on February 18, 2016, Appellant filed his Motion to Reconsider. On April 21, 2016, the trial court denied Appellant's Motion to Reconsider (Form 4 Order dated April 21, 2016 is attached hereto and incorporated by reference thereto as Exhibit D). In Kinghorn v. Sakakini, 426 S.C. 147, 825 S.E.2d 748 (Ct.App. 2019), the Court of Appeals held that the circuit court is not required to state its findings of fact and conclusions of law on motions to dismiss, summary judgment motions, or any other motion except those dealing with involuntary dismissal pursuant to SCRPC, Rule 52(a). While the Form 4 Order mentions the submission of a formal order, no formal order was ever entered by the trial court, and the Form 4 Order was the final order of the court on the matter. The trial court's ruling granting Respondents' Motion for Sanctions *was not appealed* by the Appellant.

Pursuant to SCACR, Rule 203(b)(1):

(a) Notice. A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 262.

(b) Time for Service.

(1) Appeals From the Court of Common Pleas. A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

With regard to the Order granting Respondents' Motion for Summary Judgment, any Notice of Appeal would have had to be filed on or before August 7, 2015; and with regard to the Order imposing monetary sanctions on the Appellant, any Notice of Appeal would have had to be filed on or before May 21, 2016. The time within which to appeal these Orders has long since passed and it is improper to submit same to the Court by "piggy-backing" them onto the December 16, 2019 Order for consideration on appeal in this matter.

Accordingly, any appeal of the trial court's Orders of July 8, 2015 and February 3, 2016, to the extent it is deemed that Appellant has submitted same for review by the Court, should be dismissed as untimely filed.

III. The order appealed is merely an administrative order.

The order appealed in this matter is the trial court's administrative order directing that the monetary sanctions awarded against Appellant, which Appellant has not paid in over three (3) years since being ordered to do so, be entered upon the Judgment Rolls (Order dated December 16, 2019 is attached hereto and incorporated by reference thereto as Exhibit E).

Respondents assert that because the monetary sanctions in this matter were awarded against the Appellant attorney personally, who was not a party to the underlying case, there was confusion

in the Clerk of Court's office with regard to how to enter the judgment against an individual in a case where he was not a party. The trial court's issuance of the December 16, 2019 order in this matter was merely administrative in that it directs the Clerk of Court to enter the monetary sanctions as a judgment against the Appellant in the Judgment Rolls.

The purpose and nature of the order was readily apparent to the Appellant, he is well-versed and studied in the law as a licensed member of the South Carolina Bar. The appeal filed by Appellant in this matter is frivolous or taken solely for the purpose of delaying the entry of judgment against him. As such, Respondents request that the Court impose sanctions pursuant to SCACR, Rule 269, against Appellant.

Respectfully submitted,

s/Daniel L. Draisen

DANIEL L. DRAISEN (SC Bar# 13536)

THE INJURY LAW FIRM, PC

2006 North Main Street

Anderson, South Carolina 29621

(864) 888-8887

(864) 401-8233 facsimile

daniel@injuredSC.com

and

s/Steven M. Krause (w/permission)

STEVEN M. KRAUSE (SC Bar# 3571)

LAW OFFICES OF STEVEN M. KRAUSE, P.A.

207 E. Calhoun Street

Anderson, South Carolina 29621

(864) 225-4000

steve@krauselaw.org

ATTORNEYS FOR THE RESPONDENTS

April 23, 2021

Anderson, South Carolina

EXHIBIT A



2015CP0400667 : Gregg Battersby VS J Kirkman Moorhead , defendant, et al

Common Pleas

Case Number 2015CP0400667**Case Subtype** Use 370 or 380**Filed Date** 03-20-2015**Status** Dismissed[Show/Hide Participants](#)**Plaintiff**

Gregg Battersby

Defendant

J Kirkman Moorhead et al

Assigned Judge

Clerk Of Court C P, G S, And Family Court

File Type

Jury

Name	Description	Type	File Date
Donald Loren Smith	Judgment/Judgment	Judgment	12-16-2019 04:16:38 PM
Timothy Alan Nowacki	Judgment/Judgment	Judgment	12-16-2019 04:16:38 PM
Donald Loren Smith	Judgment/Judgment	Judgment	12-16-2019 04:16:06 PM
Steven M. Krause	Judgment/Judgment	Judgment	12-16-2019 04:16:06 PM
J Kirkman Moorhead	NEF(12-16-2019 04:15:42 PM) Order/Other	Filing	12-16-2019 04:15:49 PM
J Kirkman Moorhead	Order/Other	Order	12-16-2019 04:15:42 PM
J Kirkman Moorhead	NEF(12-10-2019 11:28:11 AM) Order/Order Cover Sheet \$25....	Filing	12-10-2019 11:40:20 AM
J Kirkman Moorhead	Order/Order Cover Sheet \$25.00	Filing	12-10-2019 11:28:11 AM
J Kirkman Moorhead	NEF(12-06-2019 01:06:21 PM) Order/Form 4	Filing	12-06-2019 01:06:31 PM
J Kirkman Moorhead	Order/Form 4	Order	12-06-2019 01:06:21 PM
J Kirkman Moorhead	NEF(12-04-2019 02:04:29 PM) Affidavit/Affidavit of	Filing	12-04-2019 02:21:31 PM
J Kirkman Moorhead	Affidavit/Affidavit of	Filing	12-04-2019 02:04:29 PM
Gregg Battersby	Notice/Notice of Hearing	Filing	11-01-2019 03:58:59 PM
Donald Loren Smith	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Alfred Johnston Cox	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Steven M. Krause	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Timothy Alan Nowacki	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Gregg Battersby	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
J Kirkman Moorhead	NEF(10-15-2019 04:19:31 PM) Motion/Other	Filing	10-15-2019 04:24:43 PM
J Kirkman Moorhead	Motion/Other	Motion	10-15-2019 04:19:31 PM
Gregg Battersby	Order/Form 4 Decision by Court	Order	04-22-2016 11:16:53 AM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	02-22-2016 11:21:42 AM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	02-22-2016 11:20:41 AM
Alfred Johnston Cox	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Steven M. Krause	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Timothy Alan Nowacki	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Gregg Battersby	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Gregg Battersby	Motion/Reconsider	Motion	02-18-2016 04:10:49 PM
Gregg Battersby	Filing Motion and Order Information Form and Coversheet	Filing	02-18-2016 04:10:00 PM
J Kirkman Moorhead	Order/Order	Order	02-04-2016 11:36:05 AM
Krause Moorhead & Draisen PA	Order/Order	Order	02-04-2016 11:36:05 AM
Krause Moorhead & Draisen PA	Verification/Verified	Filing	01-29-2016 10:28:02 AM
J Kirkman Moorhead	Memo/Memo in Support of Court's Proper Exercise of	Filing	01-29-2016 10:26:06 AM
Krause Moorhead & Draisen PA	Memo/Memo in Support of Court's Proper Exercise of	Filing	01-29-2016 10:26:06 AM
Gregg Battersby	Notice/Lack of Jurisdiction over Defs' Motion for Sanctions	Filing	01-27-2016 09:41:12 AM
Gregg Battersby	ADR/Alternative Dispute Resolution (Workflow)	Action	10-16-2015 11:10:03 AM
Gregg Battersby	Order/Form 4	Order	10-08-2015 03:02:55 PM
J Kirkman Moorhead	Memo/Memorandum in Support	Filing	10-08-2015 03:01:52 PM
Krause Moorhead & Draisen PA	Memo/Memorandum in Support	Filing	10-08-2015 03:01:52 PM
Gregg Battersby	Memo/Memorandum in Opposition	Filing	10-08-2015 02:13:00 PM
Gregg Battersby	Memo/Memorandum in Opposition	Filing	10-08-2015 02:13:00 PM
Gregg Battersby	Letter/Letter	Filing	10-07-2015 02:12:04 PM
Gregg Battersby	Memo/Memorandum in Opposition To Request For Sanctions	Filing	09-23-2015 04:36:00 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
Steven M. Krause	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
Timothy Alan Nowacki	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM

Steven M. Krause	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
Steven M. Krause	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
Timothy Alan Nowacki	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
Timothy Alan Nowacki	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
J Kirkman Moorhead	Order for Substitution Of Counsel	Order	08-27-2015	04:20:13 PM
J Kirkman Moorhead	Filing of Motion Coversheet	Filing	08-25-2015	04:24:00 PM
J Kirkman Moorhead	Motion Filing Fee Motion and Order Substitution Of Counsel	Filing	08-25-2015	09:31:00 AM
Allstate Insurance Company	Order/Order	Order	08-20-2015	09:13:09 AM
Allstate Northbrook Indemnity Company	Order/Order	Order	08-20-2015	09:13:09 AM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:41 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:41 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:41 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:36 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:36 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:36 PM
J Kirkman Moorhead	Motion/Sanctions	Motion	07-24-2015	03:03:51 PM
J Kirkman Moorhead	Motion/Sanctions	Motion	07-24-2015	03:03:51 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
J Kirkman Moorhead	Order/Order	Order	07-10-2015	02:19:18 PM
Krause Moorhead & Draisen PA	Order/Order	Order	07-10-2015	02:19:18 PM
Gregg Battersby	Order/Form 4	Order	07-10-2015	02:16:46 PM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:57:18 PM
Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:57:18 PM
Allstate Insurance Company	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:57:18 PM
Allstate Northbrook Indemnity Company	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:57:18 PM
Gregg Battersby	Service/Affidavit Of Service	Filing	07-02-2015	01:56:28 PM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:46:15 PM
Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:46:15 PM
Allstate Insurance Company	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:46:15 PM
Allstate Northbrook Indemnity Company	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:46:15 PM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:44:21 PM
Case Party Inactive	Service/Certificate Of Service	Filing	07-01-2015	02:56:38 PM
Alfred Johnston Cox	Service/Certificate Of Service	Filing	07-01-2015	02:56:38 PM
Gregg Battersby	Service/Certificate Of Service	Filing	07-01-2015	02:52:58 PM
Gregg Battersby	Motion/Motion to Be Relieved as Counsel	Motion	07-01-2015	02:44:29 PM
Gregg Battersby	Motion/Motion to Be Relieved as Counsel	Motion	07-01-2015	02:44:29 PM
Gregg Battersby	Filing/Filing Response to Defendant's Motion for Sanctions	Filing	06-30-2015	02:45:54 PM
Gregg Battersby	Motion/Motion For Motion to Withdraw Pleading	Motion	06-30-2015	02:45:07 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	06-29-2015	09:55:29 AM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	06-29-2015	09:55:29 AM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	06-29-2015	09:55:29 AM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	06-29-2015	09:19:52 AM
Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	06-29-2015	09:19:52 AM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	06-29-2015	09:18:53 AM
Allstate Northbrook Indemnity Company	Affidavit/Affidavit of A. Johnston Cox	Filing	06-29-2015	09:14:13 AM
Allstate Northbrook Indemnity Company	Motion/Sanctions	Motion	06-25-2015	02:56:00 PM
Allstate Northbrook Indemnity Company	Motion/Sanctions	Motion	06-25-2015	02:56:00 PM
Gregg Battersby	Service/Certificate Of Service	Filing	06-25-2015	02:55:00 PM
J Kirkman Moorhead	Service/Certificate Of Service	Filing	06-25-2015	02:55:00 PM
Krause Moorhead & Draisen PA	Service/Certificate Of Service	Filing	06-25-2015	02:55:00 PM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	06-22-2015	03:25:39 PM
Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	06-22-2015	03:25:39 PM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	06-22-2015	03:24:07 PM
J Kirkman Moorhead	Order/Order	Order	06-12-2015	03:55:12 PM
Gregg Battersby	Order/Form 4 Decision by Court	Order	06-05-2015	01:33:20 PM
Gregg Battersby	Memo in Opposition to Moorhead and KMD's Motion to Dismiss	Filing	06-04-2015	01:32:07 PM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	06-04-2015	01:30:45 PM
J Kirkman Moorhead	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:30:08 PM

Krause Moorhead & Draisen PA	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:30:08 PM
Allstate Insurance Company	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:29:22 PM
Allstate Northbrook Indemnity Company	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:29:22 PM
Gregg Battersby	Memo/Memo in Opposition to Def. Allstate Ins. Co.'s Motion	Filing	06-04-2015	01:24:17 PM
J Kirkman Moorhead	Letter/Letter with attachments re: hearing 6-4-15	Filing	06-02-2015	10:07:47 AM
J Kirkman Moorhead	Letter/Letter with attachments re: hearing 6-4-15	Filing	06-02-2015	10:07:47 AM
Gregg Battersby	Service/Certificate Of Hand Delivery	Filing	06-02-2015	10:05:28 AM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Allstate Insurance Company	Motion/Dismiss	Motion	04-30-2015	01:12:00 PM
Allstate Northbrook Indemnity Company	Filing Motion To Dismiss	Filing	04-30-2015	01:12:00 PM
Gregg Battersby	Service/Certificate Of Service	Filing	04-30-2015	01:11:00 PM
J Kirkman Moorhead	Notice/Notice of Presentation	Filing	04-23-2015	03:54:06 PM
Gregg Battersby	Letter Re: Motion to Dismiss for Second Amended Complaint	Filing	04-06-2015	04:15:10 PM
Gregg Battersby	Second Amended Complaint	Filing	03-31-2015	01:23:43 PM
Gregg Battersby	Second Amended Summons	Filing	03-31-2015	01:19:55 PM
Gregg Battersby	Service/Certificate Of Service	Filing	03-31-2015	09:49:04 AM
J Kirkman Moorhead	Motion/Dismiss	Motion	03-31-2015	09:34:01 AM
Gregg Battersby	Amended/Amended Summons And Complaint	Filing	03-31-2015	09:32:02 AM
Gregg Battersby	Summons & Complaint	Filing	03-20-2015	10:58:00 AM

EXHIBIT B

FILED-CLERK'S OFFICE
ANDERSON SC

LCB

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

2015 JUN 10

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

COMMON PLEAS AND
GENERAL SESSIONS

CIVIL ACTION NO.: 2015-CP-04-00667

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity
Company,

**ORDER GRANTING J. KIRKMAN
MOORHEAD AND KRAUSE,
MOORHEAD, & DRAISEN, P.A.'S
MOTION FOR SUMMARY JUDGMENT
AND MOTION TO DISMISS**

Defendants.

THIS MATTER comes before the Court on a Motion to Dismiss Plaintiff's Second Amended Complaint ("Complaint") against Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A., (hereinafter referred to collectively as "Attorneys"), pursuant to South Carolina Rule of Civil Procedure 12(b)(6). After due notice, a hearing was held in this matter on June 4, 2015. Plaintiff was represented by Donald L. Smith, Esq., and Attorneys were represented by Eric K. Englehardt, Esq., of Turner Padgett Graham and Laney, P.A. At the hearing the Motion was converted to a Motion for Summary Judgment at the request of Plaintiff and consent of Attorneys. (Hr'g. Tr. p. 3 ll. 17-23). Having carefully considered the allegations in the Plaintiff's Complaint and arguments and evidence submitted by counsel, the Court grants Attorneys' Motion for Summary Judgment and holds that Attorneys are not liable to Plaintiff under any of the causes of action brought in the Complaint.

BACKGROUND AND FINDINGS OF FACT

Plaintiff brings his Complaint alleging Attorneys are liable to Plaintiff for damages arising out Attorneys' performance of professional activities as attorneys for a client, namely Jan Morton (hereinafter referred to as "Client"). Plaintiff's Complaint also names Allstate Insurance

Company and Allstate Northbrook Insurance Company as Defendants based upon acts arising out of wholly separate transactions from those complained of against Attorneys.¹

The Complaint alleges Attorneys have an attorney-client relationship with Client. (Complaint ¶ 11). In particular, Attorneys are providing legal representation to Client in a separate civil action brought by the Plaintiff against Client. (Ex. 3 to Plaintiff's Memorandum). The Complaint alleges Attorneys and Client conspired to concoct a story that Plaintiff indecently exposed himself to Client, and that Attorneys advised Client to report the incident to the Anderson County Sheriff's Office. (Complaint ¶¶ 12-13). Client did report the incident, and Plaintiff was arrested by the Sheriff on August 2, 2013 and subsequently charged by the Solicitor. (Complaint ¶¶ 14, 17, 27). The Complaint alleges Attorneys knew Client's statements were false, and that Attorneys conspired with Client to use the criminal charges to strengthen a civil case against Plaintiff. (Complaint ¶¶ 16, 28). Additionally, the Complaint alleges Attorneys assisted Client by filing an administrative complaint with South Carolina Department of Labor, Licensing and Regulation ("LLR") regarding the incident. (Complaint ¶ 25).

Plaintiff's Complaint asserts seven causes of action against Attorneys for acts arising out of Attorneys' representation of Client: (1) false imprisonment; (2) defamation; (3) intentional infliction of emotional distress ("IIED"); (4) malicious prosecution; (5) conspiracy; (6) fraud; and (7) abuse of process. At the hearing, Plaintiff stipulated Attorneys were entitled to summary judgment on all causes of action except civil conspiracy. (Hr'g. Tr. p. 16 ll. 9-19). Even if Plaintiff had not stipulated to summary judgment of the other six causes of action in Attorneys' favor, this Court finds that the grounds outlined below for granting summary judgment of the

¹ The causes of action against Allstate and Northbrook were dismissed pursuant to a separate order of this Court under the same Civil Action Number.

conspiracy claim in Attorneys' favor, namely attorney immunity, also warrant summary judgment of those causes of action in Attorneys' favor.

LEGAL STANDARD

At the hearing, Plaintiff submitted a portion of Morton's deposition transcript in support of his arguments, and presented arguments based upon the exhibits attached to his Memorandum in Opposition to Defendant's Motion to Dismiss. When a court is considering a motion to dismiss and matters outside the pleadings are presented to and not excluded by the court, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Rule 12(b), SCRPC; *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 574, 593 S.E.2d 624, 627 (Ct. App. 2004).

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Knight v. Austin*, 396 S.C. 518, 521-22, 722 S.E.2d 802, 804 (2012); Rule 56(c), SCRPC. "The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002) (internal citations omitted).

DISCUSSION AND ORDER

Considering the facts in the light most favorable to Plaintiff, Attorneys were at all times acting within the within the scope of their representation of Client and owed no duty to the third-party, non-client Plaintiff. "Generally, an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509

(2006) (quoting *Gaar v. N. Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986)). Because an attorney normally conducts litigation solely in his professional capacity, the attorney “has no personal interest in the suit” and cannot be held liable to third-party non-clients “for injury allegedly arising out of the performance of his professional activities.” *Id.* at 529, 339 S.E.2d at 889. Further, an attorney owes no duty to a non-client unless he “breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.” *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010). (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)).

Plaintiff failed to allege and the evidence does not show Attorneys ever stepped outside the scope of their representation of Client. Plaintiff argues Attorneys stepped outside of the scope of their representation of Client when they advised Client to report her allegations to the police and further advised Client to recommend to another alleged victim that she also report her own, similar encounters with the Plaintiff. In addition, Plaintiff argues Attorneys stepped outside their role as attorney when they assisted Client with an online complaint form filed with LLR because Client did not need an attorney to file an LLR complaint and nor were Attorneys representing Client when they completed the complaint form. (Hr’g. Tr. pp. 19-20, ll. 10-2). This Court finds this argument unpersuasive. At all times alleged in the Complaint, Attorneys were acting on behalf of and as attorneys for the Client in all the acts complained of by Plaintiff. There is simply no cognizable basis in either law or fact to conclude these acts fall outside the scope of Attorneys’ representation of Client. See *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 23, 567 S.E.2d 881, 893 (Ct. App. 2002). (“The absolute privilege covers anything that may be

said in relation to the matter at issue, whether it be in the pleadings, in affidavits, or in open court.”)

Plaintiff also argues Attorneys acted outside of the scope of their representation and in their own personal interest when they allegedly created, embellished or made up better facts to strengthen Client’s claims. (Hr’g. Tr. pp. 21-24, ll. 15-2). Plaintiff argued at the hearing and in his memorandum that Attorneys conspired with Client because Attorneys would share in any judgment obtained as a result of the suit. (Hr’g. Tr. pp. 21-22, ll. 15-19). Despite Plaintiff’s claims, an attorney has an ethical obligation to zealously to pursue any lawful claim of his client and properly represent and support his client. *Gaar*, 287 S.C. at 529-30 (citing former Rule 32, Canon 7, Rules of Practice in the Supreme Court of South Carolina). And, no different than any other profession, an attorney obtains a fee as compensation for professional services rendered. The fee, which may be paid out of proceeds from a judgment, is directly tied to the representation of the client, and therefore falls squarely within the scope of representation. See *Gaar*, 287 S.C. at 529 (holding that an attorney normally conducts the litigation solely in his professional capacity and he has no personal interest in the suit). This Court finds there is no evidence Attorneys had any personal interest in their representation of Client.

Regarding Plaintiff’s allegations that Attorneys conspired with Client to make up or embellish certain facts to strengthen Client’s claims, Plaintiff points to Client’s deposition testimony that the number of times the LLR complaint states she visited the Plaintiff for treatment was wrong. (Hr’g. Tr. pp. 22-23, ll. 11-20). The relevant portion of Client’s Deposition, as cited at the hearing by Plaintiff, is as follows:

Q: “Dr. Battersby had been treating me for several issues once a week for 20 weeks.” Is that true?

A: "No. The 20 weeks is wrong."

Q: "And can you estimate -- I believe you said earlier that you thought you may have started with Dr. Battersby back in April."

A: "I thought I did, but I went back and looked. It was May 2nd":

Q: "What did you look at?"

A: "The cancelled check from my first visit."

(Dep. of Jan Morton, June 18, 2014, p. 76, ll. 6-17). Contrary to Plaintiff's assertions, this deposition testimony clearly shows Client was mistaken in her original estimation stated in the LLR complaint, and the number was not an embellishment or number otherwise made up by Attorneys. This Court therefore finds there is no evidence Attorneys conspired with Client to makeup or embellish facts to strengthen Client's case.

Turning to the other exception to the general rule of attorney immunity, Plaintiff's Complaint does not allege, and this Court finds that Attorneys owed no duty to the Plaintiff. The Plaintiff is not a client of Attorneys. At the hearing and in his memorandum, Plaintiff argues that Rule 3.3 Candor Toward the Tribunal of the South Carolina Rules of Professional Conduct imposes a duty on Attorneys to Plaintiff. In particular, Plaintiff argued that Attorneys owed Plaintiff a duty of advising their Client not to report her allegations to law enforcement. Rule 3.3 mandates that a lawyer not knowingly make false statements or present evidence the lawyer knows to be false to a tribunal, fail to correct the past representations later discovered to be false, or knowingly permit a client to engage in fraudulent conduct without taking remedial measures or disclosing to the tribunal. By its plain language, this Court finds that Rule 3.3 does not impose upon Attorneys a duty to Plaintiff. Therefore, this Court finds Attorneys are entitled to summary judgment in their favor on all of Plaintiff's claims.

LCB

Assuming arguendo Attorneys owed a duty to Plaintiff, this Court finds Attorneys breached no such duty. Plaintiff alleges Attorneys should have recognized Client was lying when she informed them Plaintiff was wearing a robe during the alleged incident, but then reported later to law enforcement that Plaintiff was wearing a towel. First, the Court finds these are subtle differences of no material distinction, both figuratively and literally, so as to put Attorneys on notice that Client may be lying. Second, the police report which contains the allegedly different descriptors of Plaintiff's attire was not created until *after* Attorneys advised Client to report to the police – the very act Plaintiff claims Attorneys should have advised their Client against doing. The Attorneys therefore would not have had the benefit of the very report Plaintiff claims should have put them on notice.

CONCLUSION

For the foregoing reasons, it is hereby ordered that Attorneys' Motion for Summary Judgment is GRANTED. There being no just reason for delay, FINAL JUDGMENT is hereby entered against the Plaintiff and in favor of the Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A.

AND IT IS SO ORDERED.



R. LAWTON MCINTOSH, JUDGE

Anderson, South Carolina

7-8, 2015

FILED-CLERKS OFFICE
ANDERSON SC
2015 JUL 10 AM 9:42
COMMON PLEAS AND
GENERAL SESSIONS

EXHIBIT C

2cB

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

FILED-CLERK'S OFFICE

ANDERSON IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

NOV 10 - 11 AM 2:06

Gregg Battersby,

COMMON PLEAS AND
FAMILY DIVISION

CIVIL ACTION NO.: 2015-CP-04-00667

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity
Company,

**ORDER GRANTING J. KIRKMAN
MOORHEAD AND KRAUSE,
MOORHEAD, & DRAISEN, P.A.'S
MOTION FOR SANCTIONS**

Defendants.

THIS MATTER comes before the Court on Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A., (hereinafter referred to collectively as "Attorneys") motion for sanctions pursuant to Rule 11, SCRCP, and The South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 (the "Frivolous Proceedings Act"). Attorneys bring this Motion subsequent to a July 10, 2015 order (hereinafter "Order") of this Court granting summary judgment in Attorneys favor as to all of Plaintiff's claims. After due notice, a hearing was held in this matter on October 2, 2015. Plaintiff was represented by Donald L. Smith, Esq., and Attorneys were represented by Steven M. Krause, Esq., of Krause, Moorhead, and Draisen, P.A. Having carefully considered the Order, arguments and evidence submitted by counsel, the Court grants Attorneys' Motion and sanctions the attorney for the Plaintiff under Rule 11, SCRCP. The Court does not sanction the Plaintiff as a party or find any violation of the Frivolous Proceedings Act.

As an initial matter, Plaintiff objected to the Court's jurisdiction over the sanctions motion. Plaintiff's objection came only after this Court rendered its initial decision on January 8, 2016 communicated via email to all parties, and instructed Attorneys to prepare an order

granting the motion for sanctions. In a memorandum filed on January 27, 2016, Plaintiff argued that the Attorney's post-trial motion for sanctions was filed more than ten days after the filing of the Order and therefore this Court is divested of jurisdiction. Plaintiff misunderstands the law governing the timely filing of post-trial motions. In accordance with Rule 59(e), SCRCP, "[a] motion to alter or amend the judgment shall be served not later than 10 days *after receipt of written notice of the entry of the order.*" *In re Beard*, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct. App. 2004). A motion for sanctions must be filed within ten days of the *notice* of entry of judgment. *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006), *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 432, 570 S.E.2d 187, 189 (Ct. App. 2002).

On January 29, 2016, Attorneys filed with the court a verified memorandum attesting that they received the Order on July 23, 2015. A true copy of the Order filed July 10, 2015 from the clerk of court stamped July 23, 2015 was included with the verified memorandum. The Motion for Sanctions was filed with the clerk of court the next day, July 24, 2015. Based upon the Attorney's representations, this Court finds that the Motion was timely filed and therefore this Court has retained jurisdiction. *See USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008)(upholding trial court's finding that a motion to reconsider was timely filed after counsel, an officer of the court bound by the ethical and professional rules of this state, informed the court that she did not receive written notice of the order until more than a month after final judgment was entered).

Turning to the merits of the Motion, under Rule 11(a), SCRCP, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Runyon v. Ex parte Gregory*, 378 S.C. 430, 437-38, 663 S.E.2d 46, 50-51 (2008) citing *Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be

sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Id.* It is irrefutable that a lawyer owes their client zealous advocacy, but that zeal must be constrained within the bounds placed upon them as an officer of the court and under the court's rules. Specifically, Rule 11, SCRCF, expressly sets forth the outer boundaries of acceptable attorney conduct by requiring that there be good ground to support any pleading filed before the court. Thus, that rule prohibits a lawyer from asserting claims or legal positions that are not supported by fact, well-founded under existing law, or through the modification, extension, or expansion of existing law.

Plaintiff brought a complaint alleging that Attorneys are liable to Plaintiff for damages arising out of Attorneys' performance of professional activities as attorneys for a client. Plaintiff asserted seven causes of action against Attorneys. The seven causes of action are: (1) false imprisonment; (2) defamation; (3) intentional infliction of emotional distress ("IIED"); (4) malicious prosecution; (5) conspiracy; (6) fraud; and (7) abuse of process.

At the outset of the hearing on the summary judgment motion, Plaintiff stipulated that Attorneys were entitled to summary judgment on all causes of action except civil conspiracy. (Order p. 2; Hr'g Tr. p. 16 ll. 9-19). The Plaintiff conceded that the law in this state is that an attorney is generally immune from liability to third person arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. *See Pye v. Estate of Fox*, 369 S.C. 55, 564, 633 S.E.2d 505, 509 (2006). It is apparent to this Court that Plaintiff's counsel filed the claims without researching the law on attorney immunity to determine whether the claims were viable and supported by law. Plaintiff's counsel made no argument to the contrary. This Court finds that no reasonable attorney would have brought the

Plaintiff's claims against Attorneys given the well-established case law on attorney immunity and the facts of the case.

Regarding Plaintiff's conspiracy cause of action, this Court finds that Plaintiff's claim was based upon mere suspicion without any supporting evidence. Moreover, after reviewing Plaintiff's counsel arguments in support of the conspiracy cause of action, this Court finds that counsel alleged conspiracy to "throw it against the wall and see if it sticks". The Plaintiff made several arguments in an attempt to give some cognizable basis for his conspiracy claim, none of which this court finds are supported by law or fact.

First, the Plaintiff argued to the Court at the summary judgment hearing that the Attorneys stepped out of the scope of the representation of their client when they advised their client to report possible criminal acts to the police and further advised their client to recommend to another alleged victim that she also report her own, similar encounters with the Plaintiff. More troubling, is that plaintiff's counsel also argued that an attorney is not acting in his capacity as an attorney when assisting a client filing a complaint before a state administrative agency. The Plaintiff argued that Attorneys stepped outside their role as attorneys when they assisted their client with an online complaint against Plaintiff filed with the South Carolina Department of Labor, Licensing, and Regulation because the client did not need an attorney to file the complaint nor were the Attorneys representing the client when they completed the complaint form. (Order p. 2; Summ. J. Hr'g Tr. pp. 19-20, ll. 10-2). The Court found that "there is simply no cognizable basis in law or fact to conclude these acts fall outside the scope of Attorneys' representation of Client." (Order p. 2).

Second, the Court rejected the Plaintiff's argument that Attorneys created, embellished or made up better facts to strengthen their client's claims, and therefore conspired with their client

because Attorney's would share in any judgment obtained as a result of the suit because such an allegation is contrary to well-established law. (Order p. 5). The Court found that Plaintiff presented no evidence to support its bald assertions that Attorneys made up or embellished facts to strengthen their client's case. (Order p. 6). The Court also found, that in accordance with case law, an attorney does not act outside of the scope their representation simply by collecting a fee. (Order p. 5 citing *Gaar v. Myrtle Beach Realty Co., Inc.*, 287 S.C 525, 529, 339 S.E. 2d 888 (holding that an attorney normally conducts the litigation solely in his professional capacity and he has no personal interest in the suit)). The Court then found that there is no evidence here that Attorneys had any personal interest in their representation of their client. (Order p. 5).

Third, Plaintiff argued that Attorneys violated Rule 3.3 Candor Toward the Tribunal of the South Carolina Rules of Professional Conduct and that the rule also imposed a duty on Attorney to Plaintiff. The Court dismissed Plaintiffs argument that Rule 3.3 imposed Attorneys a duty to the Plaintiff, finding that the plain language of the rule creates no such duty. (Order p. 6). The Court also found that even if a duty was owed, the Plaintiffs breached no such duty. Plaintiff alleged that Attorneys should have recognized their client was lying when she informed them that Plaintiff was wearing a robe during the incident, but then later reported to law enforcement that Plaintiff was wearing a towel. The Court found that "these are subtle difference of no material distinction, both figuratively and literally, to put Attorneys on notice that Client may be lying." *Id.* Second, the Court found that the police report which contained the allegedly different descriptions of Plaintiff's attire was not created until after Attorney's advised their client to report to the police. Therefore, the Court found that Attorneys "would not have had the benefit of the very report Plaintiff claims should have put them on notice."

Plaintiff's argument is not reasonably supported by the facts. Plaintiff counsel's theory is on its face factually implausible.

Based upon the foregoing, this Court finds that sanctions are warranted against Plaintiff's counsel under Rule 11, SCRPC. A sanction under Rule 11, SCRPC, may include an order to pay the reasonable costs and attorney's fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. Rule 11(a), SCRPC.

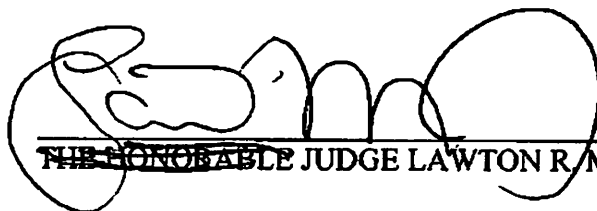
Given the facts and circumstances of this case, I am imposing as a monetary sanction which I calculate based upon the Attorneys' fees and costs for defending the underlying lawsuit and bringing this sanctions motion. Attorneys were forced to notify their malpractice carrier and retain outside counsel. Attorneys also contributed considerably to the defense of the professional association.¹ I find that counsel is responsible for the reasonable expenses, including attorney's fees. Based upon the Affidavits of Attorneys' counsel, I find that the total costs of defending this action of \$11,206.20 are reasonable. Plaintiff's counsel is required to pay to Attorneys \$11,206.20 as a monetary sanction.

¹ Attorneys did not submit and this Court did not consider any time expended by Mr. Moorhead as he is a party to this action. However, this Court notes that it could have ordered Plaintiff's counsel reimburse Attorneys for Mr. Moorhead's time because I decided to impose a monetary sanction.

LeB

Plaintiff's counsel is ordered to pay to Attorneys \$11,206.20 for violating Rule 11, SCRCF. This amount shall be paid within thirty days of the filing date of this order.

AND IT IS SO ORDERED.


~~THE HONORABLE~~ JUDGE LAWTON R. MCINTOSH

Anderson, South Carolina

2-3, 2016

FILED-CLERK'S OFFICE
ANDERSON, SC
JUN 17 - 4 PM 2016
COMMON PLEAS & APPEALS
GENERAL SESSIONS

EXHIBIT D

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN CIVIL CASE

FILED-CLERK'S OFFICE
ANDERSON SC

CASE NO. 2015-CP-04-667



Gregg Battersby

J Kirkman Moorhead, et al

2016 APR 22 AM 8:35

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

COMMON PLEAS AND
GENERAL SESSIONS

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

PLAINTIFF'S MOTION TO RECONSIDER DENIED. MR Krause to prepare formal order.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

26

EXHIBIT E

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gregg Battersby,

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity
Company,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2015-CP-04-00667

**ORDER GRANTING DEFENDANTS
MOTION TO ENTER MONETARY
SANCTIONS IN THE JUDGMENT ROLLS**

THIS MATTER comes before me pursuant to a Motion to Enter Monetary Sanctions in the Judgment Roll against the attorney for the Plaintiff, Donald Loren Smith, Esquire.

The Defendants J. Kirkman Moorhead and the Law Firm of Krause, Moorhead & Draisen, PA were present and represented by Steven M. Krause of the Law Firm of Krause, Moorhead & Draisen, PA.

Donald Loren Smith, Esquire was present.

At the call of the case, the Court inquired if the Motion was merely ministerial and what arguments, evidence or law would be pertinent.

The Defendants, J. Kirkman Moorhead and Krause, Moorhead & Draisen, PA concurred with the Court's rationale. Further, the only reason the Motion was filed was that Mr. Smith was not a named defendant and therefore the previous Order of the Court filed on February 4, 2016 awarding monetary sanctions against Mr. Smith is not listed or recorded in the Judgment Roll.

The Court listened to argument from Mr. Smith which centered upon the fact that the Form Order which was filed on April 22, 2016 denying his Motion for Reconsideration did not contain a formal order denying such reconsideration. Accordingly, he maintains that this Motion is not proper.

The Court does not concur with Mr. Smith's logic but will utilize this Order to again deny his Motion for Reconsideration, even though the Court feels it to be redundant.

In addition, the Court finds that the Motion for Monetary Sanctions previously granted by this Court should be entered as a judgment in the Judgment Roll of Anderson County against Donald Loren Smith, Esquire in the amount of \$11,206.20.

Further, the Clerk of Court is directed to do so.

IT IS SO ORDERED.

R. LAWTON MCINTOSH, JUDGE
TENTH JUDICIAL CIRCUIT

Anderson, South Carolina

_____, 2019



Anderson Common Pleas

Case Caption: Gregg Battersby VS J Kirkman Moorhead , defendant, et al

Case Number: 2015CP0400667

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2019-12-16 14:11:39 page 3 of 3

RECEIVED

Apr 23 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2015-CP-02-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,.....Appellant,

In Re: Greg Battersby,.....Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead
& Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity Company,.....Defendants

of whom:

J. Kirkman Moorhead and Krause, Moorhead
& Draisen, P.A. are,.....Respondents.

PROOF OF SERVICE

I hereby certify that I have served Respondents' Motion to Dismiss Appeal on Donald L. Smith, Esq., Appellant (and attorney for the Appellant), by depositing a copy of same in the United States Mail, postage prepaid, on April 23, 2021 addressed to Donald L. Smith, Esq., 122 North Main Street, Anderson, South Carolina, 29621.

s/Daniel L. Draisen

DANIEL L. DRAISEN (SC Bar# 13536)

2006 North Main Street

Anderson, South Carolina 29621

(864) 888-8887

daniel@injuredSC.com

ATTORNEY FOR THE RESPONDENTS



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 01, 2021

Donald Loren Smith, Esquire
122 N. Main St.
Anderson SC 29621

Mr. Steven M. Krause, Esquire
Law Offices Of Steven M. Krause, P.A.
207 E. Calhoun St.
Anderson SC 29621

Mr. Daniel L. Draisen, Esquire
2006 N. Main Street
Anderson SC 29621

Re: Ex Parte: Donald L. Smith (In re: Battersby v. Kirkman)
Appellate Case No. 2020-000070

Dear Counsel:

Our records reflect the time is approaching to file the record on appeal and final briefs. The Supreme Court issued an order reducing the number of copies required in appellate matters. *See Re: Reduced Number of Copies Required in Appellate Matters* (S.C. Sup. Ct. Order dated August 25, 2021). As permitted by the order, the Court of Appeals has determined a need exists for one additional bound copy of the record on appeal and all final briefs. The additional copies must comply with any binding or cover color requirements specified by Rule 267 of the South Carolina Appellate Court Rules (SCACR).

Accordingly, each party must file an original record on appeal and/or final brief, in either electronic or unbound paper form, as well as **one** bound paper copy, at the time the record on appeal and final briefs are due to be served and filed in accordance with the SCACR.

Additionally, please review the following guidelines as you prepare your record on appeal and final briefs:

1. Pursuant to Rules 209, 210, and 267, SCACR, the record on appeal must include the following:
 - a. The correct case title (provided below) and caption as set forth in Rules 210(d) and 267, SCACR.
 - b. The name and contact information for all counsel representing the parties to the appeal. Please do not include names of counsel that have not previously made an appearance in this case.
 - c. A certificate of counsel, pursuant to Rule 210(g), SCACR.
 - d. A proof of service of the record on appeal, if one has not already been filed with this Court.
 - e. All matters designated by the parties pursuant to Rule 209, SCACR, in compliance with Rule 210(c) and (e), SCACR.
 - f. The binding for the copies of the record on appeal must be in compliance with Rule 267(d), SCACR.
2. Pursuant to Rules 211 and 267, SCACR, all final briefs must include the following:
 - a. The correct case title (provided below) and caption as set forth in Rules 210(d) and 267, SCACR.
 - b. The name and contact information for counsel filing the brief. If you are filing your final brief pro se, you must include your name and contact information on the cover of the brief.
 - c. The signature of the person filing the brief should be on the conclusion page.
 - d. A certificate of counsel for the final brief, pursuant to Rule 211, SCACR.
 - e. A proof of service of the final brief. Mail receipts will not be accepted in lieu of proper proof of service.
 - f. The binding for the copies of all final briefs must be in compliance with Rule 267(d), SCACR.

According to our records, the correct caption for this appeal should read as follows on the record on appeal and all final briefs:

Ex Parte: Donald L. Smith, Appellant,

In Re: Gregg Battersby, Plaintiff,

v.

J. Kirkman Moorehead, Krause, Moorehead & Draisen, P.A., Allstate Insurance Company, and Allstate Northbrook Indemnity Company, Defendants,

of which J. Kirkman Moorehead, Krause, Moorehead & Draisen, P.A., are the Respondents.

We request large parcels such as bound paper copies of final briefs and the record on appeal be sent directly to the Court via the street address: **1220 Senate Street, Columbia, S.C. 29201**. Thank you for your attention. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen

CLERK

RECEIVED

Aug 30 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., All State Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

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

Respondents.

FINAL REPLY BRIEF OF APPELLANT

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
August 30, 2021.

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal.	1
Statement of the Facts	1
Arguments	
I. APPELLANT’S RIGHT TO APPEAL IS NOT LIMITED TO THE TRIAL COURT’S ORDER, DATED DECEMBER 16, 2019	1
II. THE SANTIONS WERE NOT WARRANTED AGAINST APPELLANT	2
Conclusion	4
Certificate of Counsel	5

TABLE OF AUTHORITIES

Statutes

Rules of Professional Conduct

Rule 3.3 3

Rule 3.4 3

South Carolina Rules of Civil Procedure (SCRCP)

Rule 11 4

South Carolina Appellate Court Rules (SCACR)

Rule 203 1

STATEMENT OF ISSUES

- I. WHETHER THE RIGHT TO APPEAL IS LIMITED TO THE TRIAL COURT'S MOST RECENT ORDER, DATED DECEMBER 16, 2019 DIRECTING THE MONETARY SANCTIONS TO BE ENTERED AS JUDGMENT.**
- II. WHETHER THE SANCTIONS WERE WARRANTED AGAINST THE APPELLANT.**

STATEMENT OF FACTS

Appellant adopts and incorporates by reference the Statement of Case and Facts presented in his Initial Brief.

ARGUMENTS

I.

APPELLANT'S RIGHT TO APPEAL IS NOT LIMITED TO THE TRIAL COURT'S ORDER, DATED DECEMBER 16, 2019.

Rule 203 of the South Carolina Appellate Court Rules (SCACR) provides in part:

...When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order and judgment.

Respondents contend the February 3, 2016, Order Granting the Sanctions was not appealed. (Respondent's Final Brief). What Respondents conveniently omitted in their Initial Brief was the fact Appellant filed a Motion for Reconsideration of the aforesaid Order, which was denied by the trial court in its Form 4, dated April 21, 2016. However, since the Form 4 explicitly indicated a formal order was to be issued, and the trial court instructed Respondent Moorhead to draft the same, the Form 4 may not be considered a complete Order or Judgment. (R., p. 6). The December 16, 2019, Order is an indication that Form 4 was not a complete judgment. In short, since the Form 4 was not a complete judgment, appeal at that time would

have been premature.

II.

THE SANTIONS WERE NOT WARRANTED AGAINST APPELLANT.

In their Initial Brief, Respondents argued the Form 4 was the final order since no formal order was ever issued by the trial court. (Respondent's Final Brief). This analysis is illogical. Based on the fact the Court expressly stated a formal order would be forthcoming, when should an appeal have been filed? Would it have been after the first month without a formal order? Would it have been after the first year without an order? Would it have been after the third year without an order? Had Appellant appealed the Form 4 after the issuance of the Form 4, then it would have been dismissed as untimely and premature.

Respondents contend had the trial court issued a formal order, it would not have changed the substance of the ruling of Form 4. That is not necessarily the issue in his case. Appellant relied, and rightfully so, that a formal Order would be issued. The formal order would provide not only the issues on which to appeal, but a date certain to file a Notice of Appeal.

As an alternative theory, Respondents assert that if the matter was to be remanded when Trial Court issues a formal order then it would only give Appellant an opportunity to file an appeal on the underlying Monetary Sanctions against Appellant.

Firstly, despite the Formal Order, not having changed the substance of the court's ruling, it is still needed for Appellant to file his Notice of Appeal.

Secondly, since the December 16, 2019, Order contained clarification of the Form 4 issued on April 21, 2016, this may not be considered merely an Administrative Order, and in fact may take the form of the Formal Order. The Court never filed the Formal Order it stated it

would issue.

Thirdly, in terms of the merits of this case, Respondents have mistakenly declared Appellant conceded to the governing law. To the contrary, Appellant has been consistent in his position the instant case presents an exception to the general rule of attorney immunity doctrine.

Appellant clearly challenged Respondents' and Trial Court's determination that he did not conduct research on the aforementioned doctrine. Appellant has alleged the basis for the filing of the Complaint is the genuine belief Respondent acted outside the scope of his representation. Appellant has presented circumstantial evidence establishing the claim of conspiracy between Dunaway, Neal and Morton, which Respondents' act facilitated. A jury comprised of Anderson County jurors saw the conspiracy to the tune of \$112,000.00, against the remaining defendants, Neal and Morton. (R., pp. 229-230; p. 449).

In arguing Respondent stepped outside the scope of their role as attorneys, Appellant did not refer only to Respondent's act of assisting their client with the online LLR Complaint, but in knowingly providing false information and/details on the LLR Complaint and/or deliberately failing to correct or amend the same. This act runs afoul with Rule 3.3 as well as 3.4 of the Rules of Professional Conduct. Therefore, contrary to Respondents' contentions that complaint was devoid of basis in law or in fact, Appellant had a legal basis in filing the claim for conspiring with the co-defendants to damage Appellant for financial gain.

Appellant filed this Complaint in good faith and did not seek to perpetrate fraud nor cause unnecessary delay on this Court. Respondents have not alleged nor proved Appellant's filing of this complaint is a reprehensible act, going beyond mere negligence and evincing intent. Neither did Respondents aver Appellant filed the Complaint with the sole objective of harassing them. Respondents failed to allege Appellant's bad faith motives.

In sum, Appellant reiterates his position that the sanction imposed against his counsel was improper for the following reasons: (a) the motion did not comply with the consultation requirement under Rule 11 SCRPC; (b) the Complaint and all pleadings, had been withdrawn (pursuant to court order) prior to the request for sanction, (R., p. 17-18); (3) the Circuit Court erred in imposing the sanctions based on FCPSA “reasonable attorney” standards; (4) the complaint filed was not frivolous and was based on facts and documented evidence; (5) there was no finding Appellant was motivated by bad faith in filing the Complaint; (6) sanction was not appropriately tailored to achieve the purpose of the rule. Sanctions are meant to restore the balance to the matter, not to harass or injure the other party.

CONCLUSION

Based on the foregoing, in addition to the arguments made in the opening brief, Appellant respectfully requests this Honorable Court to grant Appellant’s appeal, and to reverse the trial court’s imposition of sanctions against him.

Anderson, South Carolina
August 30, 2021

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

RECEIVED

Aug 30 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead
& Draisen, P. A., Allstate Insurance
Company,
And Allstate Northbrook Indemnity Company,

Defendants,

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

Respondents.

CERTIFICATE OF COUNSEL

I HEREBY CERTIFY that aside from correction of pagination in the Table of Authorities and the body of the brief to conform to the Record on Appeal, this Final Reply Brief of the Appellants in the above-captioned case complies with Rule 211 (b) SCACR.

Submitted by:

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
August 30, 2021

RECEIVED

Apr 27 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2015-CP-02-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,.....Appellant,

In Re: Greg Battersby,.....Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead
& Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity Company,.....Defendants

of whom:

J. Kirkman Moorhead and Krause, Moorhead
& Draisen, P.A. are,.....Respondents.

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Respondents propose the following be included in the Record on Appeal:

1. All items designated in Appellant's Designation of Matter to be Included in Record on Appeal under the caption "Battersby v. Moorhead"; however, with the correct dates that the documents were issued, and specifically:

2. Order Granting J. Kirkman Moorhead and Krause, Moorhead & Draisen, P.A.'s Motion for Summary Judgment and Motion to Dismiss dated July 8, 2015;

3. Order Granting J. Kirkman Moorhead and Krause, Moorhead & Draisen, P.A.'s Motion for Sanctions dated February 3, 2016; and

4. Form 4 Order denying Plaintiff's Motion to Reconsider dated April 21, 2016

CERTIFICATION

I (we) hereby certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

s/Daniel L. Draisen

DANIEL L. DRAISEN (SC Bar# 13536)

THE INJURY LAW FIRM, PC

2006 North Main Street

Anderson, South Carolina 29621

(864) 888-8887

(864) 401-8233 facsimile

daniel@injuredSC.com

and

s/Steven M. Krause (w/permission)

STEVEN M. KRAUSE (SC Bar# 3571)

LAW OFFICES OF STEVEN M. KRAUSE, P.A.

207 E. Calhoun Street

Anderson, South Carolina 29621

(864) 225-4000

steve@krauselaw.org

ATTORNEYS FOR THE RESPONDENTS

April 27, 2021

Anderson, South Carolina

The South Carolina Court of Appeals

Ex Parte: Donald L. Smith, Appellant,

In Re: Gregg Battersby, Plaintiff,

v.

J. Kirkman Moorehead, Krause, Moorehead & Draisen,
P.A., Allstate Insurance Company, and Allstate
Northbrook Indemnity Company, Defendants,

of which J. Kirkman Moorehead, Krause, Moorehead &
Draisen, P.A., are the Respondents.

Appellate Case No. 2020-000070

The Honorable R. Lawton McIntosh
Anderson County
Trial Court Case No. 2015CP0400667

ORDER

Appellant moves the Court for an order to amend their designation of matter. No return to the motion was filed. The motion is hereby Granted. The amended designation of matter has been served and filed. Within thirty (30) days of the date of this order appellant must serve the record on appeal.

FOR THE COURT

BY  CLERK

Columbia, South Carolina

cc:

Donald Loren Smith, Esquire

Steven M. Krause, Esquire

Daniel L. Draisen, Esquire

FILED
Aug 06 2021

The South Carolina Court of Appeals

Ex Parte: Donald L. Smith, Appellant,

In Re: Gregg Battersby, Plaintiff,

v.

J. Kirkman Moorehead, Krause, Moorehead & Draisen,
P.A., Allstate Insurance Company, and Allstate
Northbrook Indemnity Company, Defendants,

of which J. Kirkman Moorehead, Krause, Moorehead &
Draisen, P.A., are the Respondents.

Appellate Case No. 2020-000070

The Honorable R. Lawton McIntosh
Anderson County
Trial Court Case No. 2015CP0400667

ORDER

Appellant moves the Court for an order to amend their designation of matter. No return to the motion was filed. The motion is hereby Granted. The amended designation of matter has been served and filed. Within thirty (30) days of the date of this order appellant must serve the record on appeal.

FOR THE COURT

BY  CLERK

Columbia, South Carolina

cc:

Donald Loren Smith, Esquire

Steven M. Krause, Esquire

Daniel L. Draisen, Esquire

FILED
Aug 06 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Jul 12 2021

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

SC Court of Appeals

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., All State Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

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

Respondents.

**DESIGNATION OF MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL**

Appellant proposes the following to be included in the Record on Appeal:

Battersby v. Neal

1. Appellant's Second Amended Complaint, September 29, 2014
2. Tom Dunaway's Answer and Counterclaim to Second Amended Complaint, October 30, 2014
3. Appellant's Motion to Join as Party Defendant, November 7, 2014
4. Appellant's Reply to Answer and Counterclaim of Defendant Dunaway, November 20, 2014
5. Jan Morton's Answer and Counterclaim to Second Amended Complaint, November 20, 2014
6. Carrie Neal's Answer and Counterclaim to Second Amended Complaint, November 23, 2014
7. Appellant's Motion to Compel All State Insurance, November 24, 2014
8. Gregg Battersby's Removal of Counsel and Motion for a Definite Statement from Tom Dunaway, June 29, 2015

9. Form 4, January 27, 2017 (signed by Judge on January 26, 2017)
10. Verdict Form, January 27, 2017
11. Order Denying Motion to Add Party, February 27, 2017
12. Transcript of Record, June 4, 2015, pp. 1,9, 15-18, 28-33
13. Exhibits in Carrie Neal's Answer and Counterclaim to Appellant's Complaint, June 18, 2014
14. Transcript of Deposition of Jan Morton, pp. 6-11, 13-14, 18-25, 29-31, 36-37, 42, 44-51, 53-59, 71-72
15. Transcription of Deposition of Neal, pp. 12-14, 30-31, 35-37, 41-43, 51, 57
16. Opinion on State of Ohio v. Battersby

Battersby v. Moorhead

1. Appellant's Second Amended Complaint, March 31, 2015
2. Respondents' Motion to Dismiss, March 31, 2015
3. Letter re Second Amended Complaint, April 6, 2015
4. All State Insurance Motion to Dismiss, April 30, 2015
5. Memorandum in Support of All State Motion to Dismiss, June 4, 2015
6. Appellant's Memorandum in Opposition to All State Insurance Motion to Dismiss, June 4, 2015
7. Memorandum in Support of Respondents' Motion to Dismiss, June 4, 2015
8. Appellant's Memorandum in Opposition of Respondents' Motion to Dismiss, June 4, 2015
9. Formal Order Granting All State Insurance Summary Judgment, June 12, 2015
10. All State Insurance Motion for Sanctions, June 25, 2015
11. Affidavit of Johnston Cox, June 29, 2015
12. Appellant's Motion to Withdraw All Pleading, June 30, 2015
13. Appellant's Response to All State Insurance Motion for Sanctions, June 30, 2015
14. Appellant's Motion to be Relieved as Counsel, July 1, 2015
15. Form 4 Motion to Withdraw All Pleading, July 10, 2015 (signed by Judge on July 8, 2015)
16. Order Granting Moorhead Motion to Dismiss, July 10, 2015 (signed by Judge on July 8, 2015)
17. Respondents' Motion for Sanctions, July 24, 2015
18. Order Denying All State Insurance Motion for Sanctions, August 20, 2015
19. Appellant's Memorandum in Opposition to Respondents' Motion for Sanctions, September 23, 2015
20. Appellant's Letter to the Court, Re: Additional Fees asked on Motion for Sanctions, October 7, 2015
21. Respondents' Memorandum in Support of Motion for Sanctions, October 8, 2015
22. Gregg Battersby's Memorandum in Opposition to Motion for Sanctions, October 8, 2015
23. Form 4, Order on Motion to be Relieved as Counsel, October 8, 2015
24. Appellant's Notice of Lack of Jurisdiction over Motion for Sanction, January 27, 2016
25. Memorandum in Support of Court's Proper Exercise of Jurisdiction over Respondents' Motion for Sanctions with Verification, January 29, 2016
26. Order Granting Respondents' Motion for Sanctions, February 4, 2016 (signed by Judge February 3, 2016)

27. Appellant's Motion for Reconsideration, February 18, 2016
28. Form 4 Denying Motion for Reconsideration, April 22, 2016
29. Respondents' Motion to Enter Monetary Sanction in the Judgment Roll, October 15, 2019
30. Transcript of Motion to Enter Monetary Sanctions to the Judgment Roll, December 5, 2019
31. Order Granting Respondents' Motion to Enter Monetary Sanction in the Judgment Roll, December 16, 2019
32. Notice of Appeal, January 13, 2020

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
July 12, 2021.

RECEIVED

Apr 23 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2015-CP-02-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,.....Appellant,

In Re: Greg Battersby,.....Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead
& Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity Company,.....Defendants

of whom:

J. Kirkman Moorhead and Krause, Moorhead
& Draisen, P.A. are,.....Respondents.

MOTION TO DISMISS APPEAL

Daniel L. Draisen, Esq.
The Injury Law Firm, P.C.
2006 North Main Street
Anderson, South Carolina 29621
(864) 888-8887
daniel@injuredSC.com

Steven M. Krause, Esq.
Law Offices of Steven M. Krause, P.A.
207 E. Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
steve@krauselaw.org
Attorneys for Respondents

TABLE OF AUTHORITIES

	<u>Page No.</u>
Cases	
<i><u>Kinghorn v. Sakakini</u></i> 426 S.C. 147, 825 S.E.2d 748 (Ct.App. 2019)	02
SC Appellate Court Rules	
SCACR, Rule 203	01, 02
SCACR, Rule 269	03
SC Rules of Civil Procedure	
SCRCP, Rule 52	02

COME NOW the Respondents in the above-captioned matter and respectfully move the Court for an Order Dismissing the appeal in this matter on the following grounds:

I. Appellant failed to properly perfect his Appeal.

Appellant failed to properly perfect his appeal in this matter. Pursuant to South Carolina Appellate Court Rule 203(1)(B), Notice of Appeal:

(1) Appeals from the Circuit Court, Family Court and Probate Court.

(A) Where to File. The notice of appeal shall be filed with the clerk of the lower court and with the Clerk of the Supreme Court in the following cases:

...In all other cases, the notice of appeal shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals.

(B) When and What to File. **The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served.** (emphasis added)

Appellant did not (and has never) file his Notice of Appeal with the Anderson County Clerk of Court as required by SCACR, Rule 203. Respondents provide the Court with the SC Judicial Department Case History E-Filing Log which shows that the last document filed with the Anderson County Clerk of Court in this matter was the Order of December 16, 2019 (see SC Judicial Department E-Filing Log attached hereto and incorporated by reference thereto as Exhibit A).

As such, Appellant's Notice of Appeal was not properly filed, the filing is procedurally defective, the appeal was not properly perfected, the time within which to properly perfect an appeal has run, and the appeal should be dismissed.

II. The orders granting Summary Judgment and granting an award of Monetary Sanctions were not timely appealed, are the law of the case, and have not been properly been submitted to the Court for consideration.

On June 4, 2015, a hearing was held before the Honorable R. Lawton McIntosh, Circuit Court Judge, who converted Respondents' Motions to Dismiss to Summary Judgment with the

consent of the parties and granted summary judgment as to all causes of action based upon attorney immunity and the other grounds presented by Respondents' attorney, and on July 8, 2015, Judge McIntosh issued a formal Order granting Respondents' Motion for Summary Judgment and Motion to Dismiss (Order dated July 8, 2015 is attached hereto and incorporated by reference thereto as Exhibit B). The trial court's ruling granting Respondents' Motion for Summary Judgment and Motion to Dismiss *was not appealed* by the Plaintiff or the Appellant.

On February 3, 2016, the Honorable R. Lawton McIntosh, Circuit Court Judge, issued a formal Order granting Respondents' Motion for Sanctions pursuant to Rule 11, SCRPC (Order dated February 3, 2016 is attached hereto and incorporated by reference thereto as Exhibit C). Thereafter, on February 18, 2016, Appellant filed his Motion to Reconsider. On April 21, 2016, the trial court denied Appellant's Motion to Reconsider (Form 4 Order dated April 21, 2016 is attached hereto and incorporated by reference thereto as Exhibit D). In Kinghorn v. Sakakini, 426 S.C. 147, 825 S.E.2d 748 (Ct.App. 2019), the Court of Appeals held that the circuit court is not required to state its findings of fact and conclusions of law on motions to dismiss, summary judgment motions, or any other motion except those dealing with involuntary dismissal pursuant to SCRPC, Rule 52(a). While the Form 4 Order mentions the submission of a formal order, no formal order was ever entered by the trial court, and the Form 4 Order was the final order of the court on the matter. The trial court's ruling granting Respondents' Motion for Sanctions *was not appealed* by the Appellant.

Pursuant to SCACR, Rule 203(b)(1):

(a) Notice. A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 262.

(b) Time for Service.

(1) Appeals From the Court of Common Pleas. A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

With regard to the Order granting Respondents' Motion for Summary Judgment, any Notice of Appeal would have had to be filed on or before August 7, 2015; and with regard to the Order imposing monetary sanctions on the Appellant, any Notice of Appeal would have had to be filed on or before May 21, 2016. The time within which to appeal these Orders has long since passed and it is improper to submit same to the Court by "piggy-backing" them onto the December 16, 2019 Order for consideration on appeal in this matter.

Accordingly, any appeal of the trial court's Orders of July 8, 2015 and February 3, 2016, to the extent it is deemed that Appellant has submitted same for review by the Court, should be dismissed as untimely filed.

III. The order appealed is merely an administrative order.

The order appealed in this matter is the trial court's administrative order directing that the monetary sanctions awarded against Appellant, which Appellant has not paid in over three (3) years since being ordered to do so, be entered upon the Judgment Rolls (Order dated December 16, 2019 is attached hereto and incorporated by reference thereto as Exhibit E).

Respondents assert that because the monetary sanctions in this matter were awarded against the Appellant attorney personally, who was not a party to the underlying case, there was confusion

in the Clerk of Court's office with regard to how to enter the judgment against an individual in a case where he was not a party. The trial court's issuance of the December 16, 2019 order in this matter was merely administrative in that it directs the Clerk of Court to enter the monetary sanctions as a judgment against the Appellant in the Judgment Rolls.

The purpose and nature of the order was readily apparent to the Appellant, he is well-versed and studied in the law as a licensed member of the South Carolina Bar. The appeal filed by Appellant in this matter is frivolous or taken solely for the purpose of delaying the entry of judgment against him. As such, Respondents request that the Court impose sanctions pursuant to SCACR, Rule 269, against Appellant.

Respectfully submitted,

s/Daniel L. Draisen

DANIEL L. DRAISEN (SC Bar# 13536)

THE INJURY LAW FIRM, PC

2006 North Main Street

Anderson, South Carolina 29621

(864) 888-8887

(864) 401-8233 facsimile

daniel@injuredSC.com

and

s/Steven M. Krause (w/permission)

STEVEN M. KRAUSE (SC Bar# 3571)

LAW OFFICES OF STEVEN M. KRAUSE, P.A.

207 E. Calhoun Street

Anderson, South Carolina 29621

(864) 225-4000

steve@krauselaw.org

ATTORNEYS FOR THE RESPONDENTS

April 23, 2021

Anderson, South Carolina

EXHIBIT A



2015CP0400667 : Gregg Battersby VS J Kirkman Moorhead , defendant, et al

Common Pleas

Case Number 2015CP0400667**Case Subtype** Use 370 or 380**Filed Date** 03-20-2015**Status** Dismissed[Show/Hide Participants](#)**Plaintiff**

Gregg Battersby

Defendant

J Kirkman Moorhead et al

Assigned Judge

Clerk Of Court C P, G S, And Family Court

File Type

Jury

Name	Description	Type	File Date
Donald Loren Smith	Judgment/Judgment	Judgment	12-16-2019 04:16:38 PM
Timothy Alan Nowacki	Judgment/Judgment	Judgment	12-16-2019 04:16:38 PM
Donald Loren Smith	Judgment/Judgment	Judgment	12-16-2019 04:16:06 PM
Steven M. Krause	Judgment/Judgment	Judgment	12-16-2019 04:16:06 PM
J Kirkman Moorhead	NEF(12-16-2019 04:15:42 PM) Order/Other	Filing	12-16-2019 04:15:49 PM
J Kirkman Moorhead	Order/Other	Order	12-16-2019 04:15:42 PM
J Kirkman Moorhead	NEF(12-10-2019 11:28:11 AM) Order/Order Cover Sheet \$25....	Filing	12-10-2019 11:40:20 AM
J Kirkman Moorhead	Order/Order Cover Sheet \$25.00	Filing	12-10-2019 11:28:11 AM
J Kirkman Moorhead	NEF(12-06-2019 01:06:21 PM) Order/Form 4	Filing	12-06-2019 01:06:31 PM
J Kirkman Moorhead	Order/Form 4	Order	12-06-2019 01:06:21 PM
J Kirkman Moorhead	NEF(12-04-2019 02:04:29 PM) Affidavit/Affidavit of	Filing	12-04-2019 02:21:31 PM
J Kirkman Moorhead	Affidavit/Affidavit of	Filing	12-04-2019 02:04:29 PM
Gregg Battersby	Notice/Notice of Hearing	Filing	11-01-2019 03:58:59 PM
Donald Loren Smith	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Alfred Johnston Cox	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Steven M. Krause	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Timothy Alan Nowacki	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Gregg Battersby	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
J Kirkman Moorhead	NEF(10-15-2019 04:19:31 PM) Motion/Other	Filing	10-15-2019 04:24:43 PM
J Kirkman Moorhead	Motion/Other	Motion	10-15-2019 04:19:31 PM
Gregg Battersby	Order/Form 4 Decision by Court	Order	04-22-2016 11:16:53 AM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	02-22-2016 11:21:42 AM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	02-22-2016 11:20:41 AM
Alfred Johnston Cox	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Steven M. Krause	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Timothy Alan Nowacki	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Gregg Battersby	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Gregg Battersby	Motion/Reconsider	Motion	02-18-2016 04:10:49 PM
Gregg Battersby	Filing Motion and Order Information Form and Coversheet	Filing	02-18-2016 04:10:00 PM
J Kirkman Moorhead	Order/Order	Order	02-04-2016 11:36:05 AM
Krause Moorhead & Draisen PA	Order/Order	Order	02-04-2016 11:36:05 AM
Krause Moorhead & Draisen PA	Verification/Verified	Filing	01-29-2016 10:28:02 AM
J Kirkman Moorhead	Memo/Memo in Support of Court's Proper Exercise of	Filing	01-29-2016 10:26:06 AM
Krause Moorhead & Draisen PA	Memo/Memo in Support of Court's Proper Exercise of	Filing	01-29-2016 10:26:06 AM
Gregg Battersby	Notice/Lack of Jurisdiction over Defs' Motion for Sanctions	Filing	01-27-2016 09:41:12 AM
Gregg Battersby	ADR/Alternative Dispute Resolution (Workflow)	Action	10-16-2015 11:10:03 AM
Gregg Battersby	Order/Form 4	Order	10-08-2015 03:02:55 PM
J Kirkman Moorhead	Memo/Memorandum in Support	Filing	10-08-2015 03:01:52 PM
Krause Moorhead & Draisen PA	Memo/Memorandum in Support	Filing	10-08-2015 03:01:52 PM
Gregg Battersby	Memo/Memorandum in Opposition	Filing	10-08-2015 02:13:00 PM
Gregg Battersby	Memo/Memorandum in Opposition	Filing	10-08-2015 02:13:00 PM
Gregg Battersby	Letter/Letter	Filing	10-07-2015 02:12:04 PM
Gregg Battersby	Memo/Memorandum in Opposition To Request For Sanctions	Filing	09-23-2015 04:36:00 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
Steven M. Krause	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
Timothy Alan Nowacki	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM

Steven M. Krause	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
Steven M. Krause	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
Timothy Alan Nowacki	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
Timothy Alan Nowacki	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
J Kirkman Moorhead	Order for Substitution Of Counsel	Order	08-27-2015	04:20:13 PM
J Kirkman Moorhead	Filing of Motion Coversheet	Filing	08-25-2015	04:24:00 PM
J Kirkman Moorhead	Motion Filing Fee Motion and Order Substitution Of Counsel	Filing	08-25-2015	09:31:00 AM
Allstate Insurance Company	Order/Order	Order	08-20-2015	09:13:09 AM
Allstate Northbrook Indemnity Company	Order/Order	Order	08-20-2015	09:13:09 AM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:41 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:41 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:41 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:36 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:36 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	08-12-2015	02:08:36 PM
J Kirkman Moorhead	Motion/Sanctions	Motion	07-24-2015	03:03:51 PM
J Kirkman Moorhead	Motion/Sanctions	Motion	07-24-2015	03:03:51 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
J Kirkman Moorhead	Order/Order	Order	07-10-2015	02:19:18 PM
Krause Moorhead & Draisen PA	Order/Order	Order	07-10-2015	02:19:18 PM
Gregg Battersby	Order/Form 4	Order	07-10-2015	02:16:46 PM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:57:18 PM
Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:57:18 PM
Allstate Insurance Company	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:57:18 PM
Allstate Northbrook Indemnity Company	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:57:18 PM
Gregg Battersby	Service/Affidavit Of Service	Filing	07-02-2015	01:56:28 PM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:46:15 PM
Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:46:15 PM
Allstate Insurance Company	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:46:15 PM
Allstate Northbrook Indemnity Company	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:46:15 PM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:44:21 PM
Case Party Inactive	Service/Certificate Of Service	Filing	07-01-2015	02:56:38 PM
Alfred Johnston Cox	Service/Certificate Of Service	Filing	07-01-2015	02:56:38 PM
Gregg Battersby	Service/Certificate Of Service	Filing	07-01-2015	02:52:58 PM
Gregg Battersby	Motion/Motion to Be Relieved as Counsel	Motion	07-01-2015	02:44:29 PM
Gregg Battersby	Motion/Motion to Be Relieved as Counsel	Motion	07-01-2015	02:44:29 PM
Gregg Battersby	Filing/Filing Response to Defendant's Motion for Sanctions	Filing	06-30-2015	02:45:54 PM
Gregg Battersby	Motion/Motion For Motion to Withdraw Pleading	Motion	06-30-2015	02:45:07 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	06-29-2015	09:55:29 AM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	06-29-2015	09:55:29 AM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	06-29-2015	09:55:29 AM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	06-29-2015	09:19:52 AM
Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	06-29-2015	09:19:52 AM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	06-29-2015	09:18:53 AM
Allstate Northbrook Indemnity Company	Affidavit/Affidavit of A. Johnston Cox	Filing	06-29-2015	09:14:13 AM
Allstate Northbrook Indemnity Company	Motion/Sanctions	Motion	06-25-2015	02:56:00 PM
Allstate Northbrook Indemnity Company	Motion/Sanctions	Motion	06-25-2015	02:56:00 PM
Gregg Battersby	Service/Certificate Of Service	Filing	06-25-2015	02:55:00 PM
J Kirkman Moorhead	Service/Certificate Of Service	Filing	06-25-2015	02:55:00 PM
Krause Moorhead & Draisen PA	Service/Certificate Of Service	Filing	06-25-2015	02:55:00 PM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	06-22-2015	03:25:39 PM
Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	06-22-2015	03:25:39 PM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	06-22-2015	03:24:07 PM
J Kirkman Moorhead	Order/Order	Order	06-12-2015	03:55:12 PM
Gregg Battersby	Order/Form 4 Decision by Court	Order	06-05-2015	01:33:20 PM
Gregg Battersby	Memo in Opposition to Moorhead and KMD's Motion to Dismiss	Filing	06-04-2015	01:32:07 PM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	06-04-2015	01:30:45 PM
J Kirkman Moorhead	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:30:08 PM

Krause Moorhead & Draisen PA	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:30:08 PM
Allstate Insurance Company	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:29:22 PM
Allstate Northbrook Indemnity Company	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:29:22 PM
Gregg Battersby	Memo/Memo in Opposition to Def. Allstate Ins. Co.'s Motion	Filing	06-04-2015	01:24:17 PM
J Kirkman Moorhead	Letter/Letter with attachments re: hearing 6-4-15	Filing	06-02-2015	10:07:47 AM
J Kirkman Moorhead	Letter/Letter with attachments re: hearing 6-4-15	Filing	06-02-2015	10:07:47 AM
Gregg Battersby	Service/Certificate Of Hand Delivery	Filing	06-02-2015	10:05:28 AM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Allstate Insurance Company	Motion/Dismiss	Motion	04-30-2015	01:12:00 PM
Allstate Northbrook Indemnity Company	Filing Motion To Dismiss	Filing	04-30-2015	01:12:00 PM
Gregg Battersby	Service/Certificate Of Service	Filing	04-30-2015	01:11:00 PM
J Kirkman Moorhead	Notice/Notice of Presentation	Filing	04-23-2015	03:54:06 PM
Gregg Battersby	Letter Re: Motion to Dismiss for Second Amended Complaint	Filing	04-06-2015	04:15:10 PM
Gregg Battersby	Second Amended Complaint	Filing	03-31-2015	01:23:43 PM
Gregg Battersby	Second Amended Summons	Filing	03-31-2015	01:19:55 PM
Gregg Battersby	Service/Certificate Of Service	Filing	03-31-2015	09:49:04 AM
J Kirkman Moorhead	Motion/Dismiss	Motion	03-31-2015	09:34:01 AM
Gregg Battersby	Amended/Amended Summons And Complaint	Filing	03-31-2015	09:32:02 AM
Gregg Battersby	Summons & Complaint	Filing	03-20-2015	10:58:00 AM

EXHIBIT B

FILED-CLERK'S OFFICE
ANDERSON SC

LCB

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

2015 JUN 10

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

COMMON PLEAS AND
GENERAL SESSIONS

CIVIL ACTION NO.: 2015-CP-04-00667

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity
Company,

**ORDER GRANTING J. KIRKMAN
MOORHEAD AND KRAUSE,
MOORHEAD, & DRAISEN, P.A.'S
MOTION FOR SUMMARY JUDGMENT
AND MOTION TO DISMISS**

Defendants.

THIS MATTER comes before the Court on a Motion to Dismiss Plaintiff's Second Amended Complaint ("Complaint") against Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A., (hereinafter referred to collectively as "Attorneys"), pursuant to South Carolina Rule of Civil Procedure 12(b)(6). After due notice, a hearing was held in this matter on June 4, 2015. Plaintiff was represented by Donald L. Smith, Esq., and Attorneys were represented by Eric K. Englehardt, Esq., of Turner Padgett Graham and Laney, P.A. At the hearing the Motion was converted to a Motion for Summary Judgment at the request of Plaintiff and consent of Attorneys. (Hr'g. Tr. p. 3 ll. 17-23). Having carefully considered the allegations in the Plaintiff's Complaint and arguments and evidence submitted by counsel, the Court grants Attorneys' Motion for Summary Judgment and holds that Attorneys are not liable to Plaintiff under any of the causes of action brought in the Complaint.

BACKGROUND AND FINDINGS OF FACT

Plaintiff brings his Complaint alleging Attorneys are liable to Plaintiff for damages arising out Attorneys' performance of professional activities as attorneys for a client, namely Jan Morton (hereinafter referred to as "Client"). Plaintiff's Complaint also names Allstate Insurance

Company and Allstate Northbrook Insurance Company as Defendants based upon acts arising out of wholly separate transactions from those complained of against Attorneys.¹

The Complaint alleges Attorneys have an attorney-client relationship with Client. (Complaint ¶ 11). In particular, Attorneys are providing legal representation to Client in a separate civil action brought by the Plaintiff against Client. (Ex. 3 to Plaintiff's Memorandum). The Complaint alleges Attorneys and Client conspired to concoct a story that Plaintiff indecently exposed himself to Client, and that Attorneys advised Client to report the incident to the Anderson County Sheriff's Office. (Complaint ¶¶ 12-13). Client did report the incident, and Plaintiff was arrested by the Sheriff on August 2, 2013 and subsequently charged by the Solicitor. (Complaint ¶¶ 14, 17, 27). The Complaint alleges Attorneys knew Client's statements were false, and that Attorneys conspired with Client to use the criminal charges to strengthen a civil case against Plaintiff. (Complaint ¶¶ 16, 28). Additionally, the Complaint alleges Attorneys assisted Client by filing an administrative complaint with South Carolina Department of Labor, Licensing and Regulation ("LLR") regarding the incident. (Complaint ¶ 25).

Plaintiff's Complaint asserts seven causes of action against Attorneys for acts arising out of Attorneys' representation of Client: (1) false imprisonment; (2) defamation; (3) intentional infliction of emotional distress ("IIED"); (4) malicious prosecution; (5) conspiracy; (6) fraud; and (7) abuse of process. At the hearing, Plaintiff stipulated Attorneys were entitled to summary judgment on all causes of action except civil conspiracy. (Hr'g. Tr. p. 16 ll. 9-19). Even if Plaintiff had not stipulated to summary judgment of the other six causes of action in Attorneys' favor, this Court finds that the grounds outlined below for granting summary judgment of the

¹ The causes of action against Allstate and Northbrook were dismissed pursuant to a separate order of this Court under the same Civil Action Number.

conspiracy claim in Attorneys' favor, namely attorney immunity, also warrant summary judgment of those causes of action in Attorneys' favor.

LEGAL STANDARD

At the hearing, Plaintiff submitted a portion of Morton's deposition transcript in support of his arguments, and presented arguments based upon the exhibits attached to his Memorandum in Opposition to Defendant's Motion to Dismiss. When a court is considering a motion to dismiss and matters outside the pleadings are presented to and not excluded by the court, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Rule 12(b), SCRPC; *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 574, 593 S.E.2d 624, 627 (Ct. App. 2004).

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Knight v. Austin*, 396 S.C. 518, 521-22, 722 S.E.2d 802, 804 (2012); Rule 56(c), SCRPC. "The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002) (internal citations omitted).

DISCUSSION AND ORDER

Considering the facts in the light most favorable to Plaintiff, Attorneys were at all times acting within the within the scope of their representation of Client and owed no duty to the third-party, non-client Plaintiff. "Generally, an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509

(2006) (quoting *Gaar v. N. Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986)). Because an attorney normally conducts litigation solely in his professional capacity, the attorney “has no personal interest in the suit” and cannot be held liable to third-party non-clients “for injury allegedly arising out of the performance of his professional activities.” *Id.* at 529, 339 S.E.2d at 889. Further, an attorney owes no duty to a non-client unless he “breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.” *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010). (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

Plaintiff failed to allege and the evidence does not show Attorneys ever stepped outside the scope of their representation of Client. Plaintiff argues Attorneys stepped outside of the scope of their representation of Client when they advised Client to report her allegations to the police and further advised Client to recommend to another alleged victim that she also report her own, similar encounters with the Plaintiff. In addition, Plaintiff argues Attorneys stepped outside their role as attorney when they assisted Client with an online complaint form filed with LLR because Client did not need an attorney to file an LLR complaint and nor were Attorneys representing Client when they completed the complaint form. (Hr’g. Tr. pp. 19-20, ll. 10-2). This Court finds this argument unpersuasive. At all times alleged in the Complaint, Attorneys were acting on behalf of and as attorneys for the Client in all the acts complained of by Plaintiff. There is simply no cognizable basis in either law or fact to conclude these acts fall outside the scope of Attorneys’ representation of Client. See *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 23, 567 S.E.2d 881, 893 (Ct. App. 2002). (“The absolute privilege covers anything that may be

said in relation to the matter at issue, whether it be in the pleadings, in affidavits, or in open court.”)

Plaintiff also argues Attorneys acted outside of the scope of their representation and in their own personal interest when they allegedly created, embellished or made up better facts to strengthen Client’s claims. (Hr’g. Tr. pp. 21-24, ll. 15-2). Plaintiff argued at the hearing and in his memorandum that Attorneys conspired with Client because Attorneys would share in any judgment obtained as a result of the suit. (Hr’g. Tr. pp. 21-22, ll. 15-19). Despite Plaintiff’s claims, an attorney has an ethical obligation to zealously to pursue any lawful claim of his client and properly represent and support his client. *Gaar*, 287 S.C. at 529-30 (citing former Rule 32, Canon 7, Rules of Practice in the Supreme Court of South Carolina). And, no different than any other profession, an attorney obtains a fee as compensation for professional services rendered. The fee, which may be paid out of proceeds from a judgment, is directly tied to the representation of the client, and therefore falls squarely within the scope of representation. See *Gaar*, 287 S.C. at 529 (holding that an attorney normally conducts the litigation solely in his professional capacity and he has no personal interest in the suit). This Court finds there is no evidence Attorneys had any personal interest in their representation of Client.

Regarding Plaintiff’s allegations that Attorneys conspired with Client to make up or embellish certain facts to strengthen Client’s claims, Plaintiff points to Client’s deposition testimony that the number of times the LLR complaint states she visited the Plaintiff for treatment was wrong. (Hr’g. Tr. pp. 22-23, ll. 11-20). The relevant portion of Client’s Deposition, as cited at the hearing by Plaintiff, is as follows:

Q: “Dr. Battersby had been treating me for several issues once a week for 20 weeks.” Is that true?

A: "No. The 20 weeks is wrong."

Q: "And can you estimate -- I believe you said earlier that you thought you may have started with Dr. Battersby back in April."

A: "I thought I did, but I went back and looked. It was May 2nd":

Q: "What did you look at?"

A: "The cancelled check from my first visit."

(Dep. of Jan Morton, June 18, 2014, p. 76, ll. 6-17). Contrary to Plaintiff's assertions, this deposition testimony clearly shows Client was mistaken in her original estimation stated in the LLR complaint, and the number was not an embellishment or number otherwise made up by Attorneys. This Court therefore finds there is no evidence Attorneys conspired with Client to makeup or embellish facts to strengthen Client's case.

Turning to the other exception to the general rule of attorney immunity, Plaintiff's Complaint does not allege, and this Court finds that Attorneys owed no duty to the Plaintiff. The Plaintiff is not a client of Attorneys. At the hearing and in his memorandum, Plaintiff argues that Rule 3.3 Candor Toward the Tribunal of the South Carolina Rules of Professional Conduct imposes a duty on Attorneys to Plaintiff. In particular, Plaintiff argued that Attorneys owed Plaintiff a duty of advising their Client not to report her allegations to law enforcement. Rule 3.3 mandates that a lawyer not knowingly make false statements or present evidence the lawyer knows to be false to a tribunal, fail to correct the past representations later discovered to be false, or knowingly permit a client to engage in fraudulent conduct without taking remedial measures or disclosing to the tribunal. By its plain language, this Court finds that Rule 3.3 does not impose upon Attorneys a duty to Plaintiff. Therefore, this Court finds Attorneys are entitled to summary judgment in their favor on all of Plaintiff's claims.

LCB

Assuming arguendo Attorneys owed a duty to Plaintiff, this Court finds Attorneys breached no such duty. Plaintiff alleges Attorneys should have recognized Client was lying when she informed them Plaintiff was wearing a robe during the alleged incident, but then reported later to law enforcement that Plaintiff was wearing a towel. First, the Court finds these are subtle differences of no material distinction, both figuratively and literally, so as to put Attorneys on notice that Client may be lying. Second, the police report which contains the allegedly different descriptors of Plaintiff's attire was not created until *after* Attorneys advised Client to report to the police – the very act Plaintiff claims Attorneys should have advised their Client against doing. The Attorneys therefore would not have had the benefit of the very report Plaintiff claims should have put them on notice.

CONCLUSION

For the foregoing reasons, it is hereby ordered that Attorneys' Motion for Summary Judgment is GRANTED. There being no just reason for delay, FINAL JUDGMENT is hereby entered against the Plaintiff and in favor of the Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A.

AND IT IS SO ORDERED.



R. LAWTON MCINTOSH, JUDGE

Anderson, South Carolina

7-8, 2015

FILED-CLERKS OFFICE
ANDERSON SC
2015 JUL 10 AM 9:42
COMMON PLEAS AND
GENERAL SESSIONS

EXHIBIT C

2cB

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

FILED-CLERK'S OFFICE

ANDERSON IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

NOV 10 - 11 AM 2:06

Gregg Battersby,

COMMON PLEAS AND
FAMILY DIVISION

CIVIL ACTION NO.: 2015-CP-04-00667

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity
Company,

Defendants.

**ORDER GRANTING J. KIRKMAN
MOORHEAD AND KRAUSE,
MOORHEAD, & DRAISEN, P.A.'S
MOTION FOR SANCTIONS**

THIS MATTER comes before the Court on Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A., (hereinafter referred to collectively as "Attorneys") motion for sanctions pursuant to Rule 11, SCRCP, and The South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 (the "Frivolous Proceedings Act"). Attorneys bring this Motion subsequent to a July 10, 2015 order (hereinafter "Order") of this Court granting summary judgment in Attorneys favor as to all of Plaintiff's claims. After due notice, a hearing was held in this matter on October 2, 2015. Plaintiff was represented by Donald L. Smith, Esq., and Attorneys were represented by Steven M. Krause, Esq., of Krause, Moorhead, and Draisen, P.A. Having carefully considered the Order, arguments and evidence submitted by counsel, the Court grants Attorneys' Motion and sanctions the attorney for the Plaintiff under Rule 11, SCRCP. The Court does not sanction the Plaintiff as a party or find any violation of the Frivolous Proceedings Act.

As an initial matter, Plaintiff objected to the Court's jurisdiction over the sanctions motion. Plaintiff's objection came only after this Court rendered its initial decision on January 8, 2016 communicated via email to all parties, and instructed Attorneys to prepare an order

granting the motion for sanctions. In a memorandum filed on January 27, 2016, Plaintiff argued that the Attorney's post-trial motion for sanctions was filed more than ten days after the filing of the Order and therefore this Court is divested of jurisdiction. Plaintiff misunderstands the law governing the timely filing of post-trial motions. In accordance with Rule 59(e), SCRCP, "[a] motion to alter or amend the judgment shall be served not later than 10 days *after receipt of written notice of the entry of the order.*" *In re Beard*, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct. App. 2004). A motion for sanctions must be filed within ten days of the *notice* of entry of judgment. *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006), *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 432, 570 S.E.2d 187, 189 (Ct. App. 2002).

On January 29, 2016, Attorneys filed with the court a verified memorandum attesting that they received the Order on July 23, 2015. A true copy of the Order filed July 10, 2015 from the clerk of court stamped July 23, 2015 was included with the verified memorandum. The Motion for Sanctions was filed with the clerk of court the next day, July 24, 2015. Based upon the Attorney's representations, this Court finds that the Motion was timely filed and therefore this Court has retained jurisdiction. *See USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008)(upholding trial court's finding that a motion to reconsider was timely filed after counsel, an officer of the court bound by the ethical and professional rules of this state, informed the court that she did not receive written notice of the order until more than a month after final judgment was entered).

Turning to the merits of the Motion, under Rule 11(a), SCRCP, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Runyon v. Ex parte Gregory*, 378 S.C. 430, 437-38, 663 S.E.2d 46, 50-51 (2008) citing *Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be

sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Id.* It is irrefutable that a lawyer owes their client zealous advocacy, but that zeal must be constrained within the bounds placed upon them as an officer of the court and under the court's rules. Specifically, Rule 11, SCRCF, expressly sets forth the outer boundaries of acceptable attorney conduct by requiring that there be good ground to support any pleading filed before the court. Thus, that rule prohibits a lawyer from asserting claims or legal positions that are not supported by fact, well-founded under existing law, or through the modification, extension, or expansion of existing law.

Plaintiff brought a complaint alleging that Attorneys are liable to Plaintiff for damages arising out of Attorneys' performance of professional activities as attorneys for a client. Plaintiff asserted seven causes of action against Attorneys. The seven causes of action are: (1) false imprisonment; (2) defamation; (3) intentional infliction of emotional distress ("IIED"); (4) malicious prosecution; (5) conspiracy; (6) fraud; and (7) abuse of process.

At the outset of the hearing on the summary judgment motion, Plaintiff stipulated that Attorneys were entitled to summary judgment on all causes of action except civil conspiracy. (Order p. 2; Hr'g Tr. p. 16 ll. 9-19). The Plaintiff conceded that the law in this state is that an attorney is generally immune from liability to third person arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. *See Pye v. Estate of Fox*, 369 S.C. 55, 564, 633 S.E.2d 505, 509 (2006). It is apparent to this Court that Plaintiff's counsel filed the claims without researching the law on attorney immunity to determine whether the claims were viable and supported by law. Plaintiff's counsel made no argument to the contrary. This Court finds that no reasonable attorney would have brought the

Plaintiff's claims against Attorneys given the well-established case law on attorney immunity and the facts of the case.

Regarding Plaintiff's conspiracy cause of action, this Court finds that Plaintiff's claim was based upon mere suspicion without any supporting evidence. Moreover, after reviewing Plaintiff's counsel arguments in support of the conspiracy cause of action, this Court finds that counsel alleged conspiracy to "throw it against the wall and see if it sticks". The Plaintiff made several arguments in an attempt to give some cognizable basis for his conspiracy claim, none of which this court finds are supported by law or fact.

First, the Plaintiff argued to the Court at the summary judgment hearing that the Attorneys stepped out of the scope of the representation of their client when they advised their client to report possible criminal acts to the police and further advised their client to recommend to another alleged victim that she also report her own, similar encounters with the Plaintiff. More troubling, is that plaintiff's counsel also argued that an attorney is not acting in his capacity as an attorney when assisting a client filing a complaint before a state administrative agency. The Plaintiff argued that Attorneys stepped outside their role as attorneys when they assisted their client with an online complaint against Plaintiff filed with the South Carolina Department of Labor, Licensing, and Regulation because the client did not need an attorney to file the complaint nor were the Attorneys representing the client when they completed the complaint form. (Order p. 2; Summ. J. Hr'g Tr. pp. 19-20, ll. 10-2). The Court found that "there is simply no cognizable basis in law or fact to conclude these acts fall outside the scope of Attorneys' representation of Client." (Order p. 2).

Second, the Court rejected the Plaintiff's argument that Attorneys created, embellished or made up better facts to strengthen their client's claims, and therefore conspired with their client

because Attorney's would share in any judgment obtained as a result of the suit because such an allegation is contrary to well-established law. (Order p. 5). The Court found that Plaintiff presented no evidence to support its bald assertions that Attorneys made up or embellished facts to strengthen their client's case. (Order p. 6). The Court also found, that in accordance with case law, an attorney does not act outside of the scope their representation simply by collecting a fee. (Order p. 5 citing *Gaar v. Myrtle Beach Realty Co., Inc.*, 287 S.C 525, 529, 339 S.E. 2d 888 (holding that an attorney normally conducts the litigation solely in his professional capacity and he has no personal interest in the suit)). The Court then found that there is no evidence here that Attorneys had any personal interest in their representation of their client. (Order p. 5).

Third, Plaintiff argued that Attorneys violated Rule 3.3 Candor Toward the Tribunal of the South Carolina Rules of Professional Conduct and that the rule also imposed a duty on Attorney to Plaintiff. The Court dismissed Plaintiffs argument that Rule 3.3 imposed Attorneys a duty to the Plaintiff, finding that the plain language of the rule creates no such duty. (Order p. 6). The Court also found that even if a duty was owed, the Plaintiffs breached no such duty. Plaintiff alleged that Attorneys should have recognized their client was lying when she informed them that Plaintiff was wearing a robe during the incident, but then later reported to law enforcement that Plaintiff was wearing a towel. The Court found that "these are subtle difference of no material distinction, both figuratively and literally, to put Attorneys on notice that Client may be lying." *Id.* Second, the Court found that the police report which contained the allegedly different descriptions of Plaintiff's attire was not created until after Attorney's advised their client to report to the police. Therefore, the Court found that Attorneys "would not have had the benefit of the very report Plaintiff claims should have put them on notice."

Plaintiff's argument is not reasonably supported by the facts. Plaintiff counsel's theory is on its face factually implausible.

Based upon the foregoing, this Court finds that sanctions are warranted against Plaintiff's counsel under Rule 11, SCRPC. A sanction under Rule 11, SCRPC, may include an order to pay the reasonable costs and attorney's fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. Rule 11(a), SCRPC.

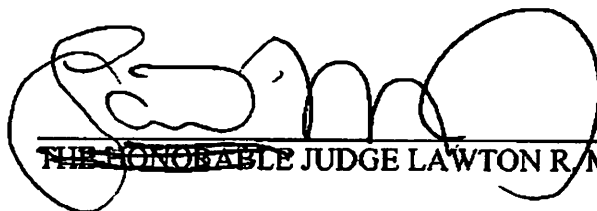
Given the facts and circumstances of this case, I am imposing as a monetary sanction which I calculate based upon the Attorneys' fees and costs for defending the underlying lawsuit and bringing this sanctions motion. Attorneys were forced to notify their malpractice carrier and retain outside counsel. Attorneys also contributed considerably to the defense of the professional association.¹ I find that counsel is responsible for the reasonable expenses, including attorney's fees. Based upon the Affidavits of Attorneys' counsel, I find that the total costs of defending this action of \$11,206.20 are reasonable. Plaintiff's counsel is required to pay to Attorneys \$11,206.20 as a monetary sanction.

¹ Attorneys did not submit and this Court did not consider any time expended by Mr. Moorhead as he is a party to this action. However, this Court notes that it could have ordered Plaintiff's counsel reimburse Attorneys for Mr. Moorhead's time because I decided to impose a monetary sanction.

LeB

Plaintiff's counsel is ordered to pay to Attorneys \$11,206.20 for violating Rule 11, SCRCF. This amount shall be paid within thirty days of the filing date of this order.

AND IT IS SO ORDERED.


~~THE HONORABLE~~ JUDGE LAWTON R. MCINTOSH

Anderson, South Carolina

2-3, 2016

FILED-CLERK'S OFFICE
ANDERSON, SC
JUN 17 - 4 PM 2016
COMMON PLEAS & AFD
GENERAL SESSIONS

EXHIBIT D

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN CIVIL CASE

FILED-CLERK'S OFFICE
ANDERSON SC

CASE NO. 2015-CP-04-667



Gregg Battersby

J Kirkman Moorhead, et al

2016 APR 22 AM 8:35

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

COMMON PLEAS AND
GENERAL SESSIONS

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

PLAINTIFF'S MOTION TO RECONSIDER DENIED. MR Krause to prepare formal order.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

26

EXHIBIT E

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gregg Battersby,

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity
Company,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2015-CP-04-00667

**ORDER GRANTING DEFENDANTS
MOTION TO ENTER MONETARY
SANCTIONS IN THE JUDGMENT ROLLS**

THIS MATTER comes before me pursuant to a Motion to Enter Monetary Sanctions in the Judgment Roll against the attorney for the Plaintiff, Donald Loren Smith, Esquire.

The Defendants J. Kirkman Moorhead and the Law Firm of Krause, Moorhead & Draisen, PA were present and represented by Steven M. Krause of the Law Firm of Krause, Moorhead & Draisen, PA.

Donald Loren Smith, Esquire was present.

At the call of the case, the Court inquired if the Motion was merely ministerial and what arguments, evidence or law would be pertinent.

The Defendants, J. Kirkman Moorhead and Krause, Moorhead & Draisen, PA concurred with the Court's rationale. Further, the only reason the Motion was filed was that Mr. Smith was not a named defendant and therefore the previous Order of the Court filed on February 4, 2016 awarding monetary sanctions against Mr. Smith is not listed or recorded in the Judgment Roll.

The Court listened to argument from Mr. Smith which centered upon the fact that the Form Order which was filed on April 22, 2016 denying his Motion for Reconsideration did not contain a formal order denying such reconsideration. Accordingly, he maintains that this Motion is not proper.

The Court does not concur with Mr. Smith's logic but will utilize this Order to again deny his Motion for Reconsideration, even though the Court feels it to be redundant.

In addition, the Court finds that the Motion for Monetary Sanctions previously granted by this Court should be entered as a judgment in the Judgment Roll of Anderson County against Donald Loren Smith, Esquire in the amount of \$11,206.20.

Further, the Clerk of Court is directed to do so.

IT IS SO ORDERED.

R. LAWTON MCINTOSH, JUDGE
TENTH JUDICIAL CIRCUIT

Anderson, South Carolina

_____, 2019



Anderson Common Pleas

Case Caption: Gregg Battersby VS J Kirkman Moorhead , defendant, et al
Case Number: 2015CP0400667
Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2019-12-16 14:11:39 page 3 of 3

RECEIVED

Apr 23 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2015-CP-02-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,.....Appellant,

In Re: Greg Battersby,.....Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead
& Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity Company,.....Defendants

of whom:

J. Kirkman Moorhead and Krause, Moorhead
& Draisen, P.A. are,.....Respondents.

PROOF OF SERVICE

I hereby certify that I have served Respondents' Motion to Dismiss Appeal on Donald L. Smith, Esq., Appellant (and attorney for the Appellant), by depositing a copy of same in the United States Mail, postage prepaid, on April 23, 2021 addressed to Donald L. Smith, Esq., 122 North Main Street, Anderson, South Carolina, 29621.

s/Daniel L. Draisen

DANIEL L. DRAISEN (SC Bar# 13536)

2006 North Main Street

Anderson, South Carolina 29621

(864) 888-8887

daniel@injuredSC.com

ATTORNEY FOR THE RESPONDENTS

RECEIVED

May 07 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., All State Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

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

Respondents.

REPLY BRIEF OF APPELLANT

Donald L. Smith (Bar No. : 6699)
Attorney for Appellant
122 N. Main Street
Anderson, SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
May 05, 2021.

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	1
Arguments	
I. APPELLANT’S RIGHT TO APPEAL IS NOT LIMITED TO THE TRIAL COURT’S ORDER, DATED DECEMBER 16, 2019.....	1
II. THE SANTIONS WERE NOT WARRANTED AGAINST APPELLANT	2
Conclusion	4

TABLE OF AUTHORITIES

Statutes

Rules of Professional Conduct

Rule 3.3(a)

Rule 3.4

Rule 4.1

South Carolina Rules of Civil Procedure

Rule 11

STATEMENT OF ISSUES

- I. WHETHER THE RIGHT TO APPEAL IS LIMITED TO THE TRIAL COURT'S MOST RECENT ORDER, DATED DECEMBER 16, 2019 DIRECTING THE MONETARY SANCTIONS TO BE ENTERED AS JUDGMENT.**
- II. WHETHER THE SANCTIONS WERE WARRANTED AGAINST THE APPELLANT.**

STATEMENT OF FACTS

Appellant adopts and incorporates by reference the Statement of Case and Facts presented in his Initial Brief.

ARGUMENTS

I.

APPELLANT'S RIGHT TO APPEAL IS NOT LIMITED TO THE TRIAL COURT'S ORDER, DATED DECEMBER 16, 2019.

Rule 203 of the South Carolina Appellate Court Rules (SCACR) provides in part:

...When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order and judgment.

Respondents contend the February 3, 2016 Order Granting the Sanctions was not appealed. (Respondent's Initial Brief, p. 7). What Respondents conveniently omitted in their Initial Brief was the fact Appellant filed a Motion for Reconsideration of the aforesaid Order, which was denied by the trial court in its Form 4, dated April 21, 2016. However, since the Form 4 explicitly indicated a formal order was to be issued, and the trial court instructed Respondent Moorhead to draft the same, the Form 4 may not be considered a complete Order or Judgment. The December 16, 2019 Order is an indication that Form 4 was not a complete judgment. In short, since the Form 4 was not a complete judgment, appeal at that time would

have been premature.

II.

THE SANTIONS WERE NOT WARRANTED AGAINST APPELLANT.

In their Initial Brief, Respondents' argued the Form 4 was the final order since no formal order was ever issued by the trial court. (Respondent's Initial Brief, p. 8). This analysis is illogical. Based on the fact the Court expressly stated a formal order would be forthcoming, when should an appeal have been filed? Would it have been after the first month without a formal order? Would it have been after the first year without an order? Would it have been after the third year without an order? Had Appellant appealed the Form 4 after the issuance of the Form 4, then it would have been dismissed as untimely and premature.

Respondents contend had the trial court issued a formal order, it would not have changed the substance of the ruling of Form 4. That is not necessarily the issue in his case. Appellant relied, and rightfully so, that a formal Order would be issued. The formal order would provide not only the issues on which to appeal, but a date certain to file a Notice of Appeal.

As an alternative theory, Respondents assert that if the matter was to be remanded when Trial Court issues a formal order then it would only give Appellant an opportunity to file an appeal on the underlying Monetary Sanctions against Appellant.

Firstly, despite the Formal Order, not having changed the substance of the court's ruling, it is still needed for Appellant to file his Notice of Appeal.

Secondly, since the December 16, 2019 Order contained clarification of the Form 4 issued on April 2016, this may not be considered merely an Administrative Order, and in fact may take the form of the Formal Order. The Court never filed the Formal Order it stated it

would issue.

Thirdly, in terms of the merits of this case, Respondents have mistakenly declared Appellant conceded to the governing law. To the contrary, Appellant has been consistent in his position the instant case presents an exception to the general rule of attorney immunity doctrine.

Appellant clearly challenged Respondents' and Trial Court's determination that he did not conduct research on the aforementioned doctrine. Appellant has alleged the basis for the filing of the Complaint is the genuine belief Respondent acted outside the scope of his representation. Appellant has presented circumstantial evidence establishing the claim of conspiracy between Dunaway, Neal and Morton, which Respondents' act facilitated. A jury comprised of Anderson County jurors saw the conspiracy to the tune of \$112,000.00, against the remaining defendants, Neal and Morton. (Exhibit 1-Jury Returns Verdict).

In arguing Respondent stepped outside the scope of their role as attorneys, Appellant did not refer only to Respondent's act of assisting their client with the online LLR Complaint, but in knowingly providing false information and/details on the LLR Complaint and/or deliberately failing to correct or amend the same. This act runs afoul with Rule 3.3 as well as 3.4 of the Rules of Professional Conduct. Therefore, contrary to Respondents' contentions that complaint was devoid of basis in law or in fact, Appellant had a legal basis in filing the claim for conspiring with the co-defendants to damage Appellant for financial gain.

Appellant filed this Complaint in good faith and did not seek to perpetrate fraud nor cause unnecessary delay on this Court. Respondents have not alleged nor proved Appellant's filing of this complaint is a reprehensible act, going beyond mere negligence and evincing intent. Neither did Respondents aver Appellant filed the Complaint with the sole objective of harassing them. Respondents failed to allege Appellant's bad faith motives.

In sum, Appellant reiterates his position that the sanction imposed against his counsel was improper for the following reasons: (a) the motion did not comply with the consultation requirement under Rule 11 SCRPC; (b) the Complaint and all pleadings, had been withdrawn (pursuant to court order) (Exhibit 2-Order-Withdrawal of Pleadings) prior to the request for sanction; (3) the Circuit Court erred in imposing the sanctions based on FCPSA “reasonable attorney” standards; (4) the complaint filed was not frivolous and was based on facts and documented evidence; (5) there was no finding Appellant was motivated by bad faith in filing the Complaint; (6) sanction was not appropriately tailored to achieve the purpose of the rule. Sanctions are meant to restore the balance to the matter, not to harass or injure the other party.

CONCLUSION

Based on the foregoing, in addition to the arguments made in the opening brief, Appellant respectfully requests this Honorable Court to grant Appellant’s appeal, and to reverse the trial court’s imposition of sanctions against him.

Anderson, South Carolina
Date: May 7, 2021

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
Attorney for Appellants

RECEIVED

May 07 2021

SC Court of Appeals

FORM 7
PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., All State Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

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

Respondents.

PROOF OF SERVICE

Pursuant to Supreme Court of South Carolina's Amended Order 2020-05-29-02, I certify that I have served a copy of the Reply Brief of Appellant and Certificate of Counsel, and 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

Attorney for Respondents

Mr. Steven M. Krause, Esquire

steve@krauselaw.org

Mr. Daniel I. Draisen, Esquire

daniel@injuredSC.com

The above-mentioned documents have been served on May 7, 2021.

s/Donald L. Smith
Donald L. Smith (Bar No. : 6699)
Attorney for Appellant
122 N. Main Street
Anderson, SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
May 7, 2021.

FORM 8
LETTER TO THE APPEALS COURT CLERK
FILING REPLY BRIEF OF APPELLANT

RECEIVED
May 07 2021
SC Court of Appeals

May 7, 2021

The Honorable Jenny Abbott Kitchings
Clerk of Court South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

RE: Ex Parte: Donald L. Smith (In Re: Battersby v. Kirkman)
Appellate Case No. 2020-000070

Dear Ms. Kitchings:

Please find attach the following documents for filing:

- (1) Reply Brief of Appellant; and,
- (3) Proof of Service.

Sincerely,

s/Donald L. Smith
Donald L. Smith, (Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

cc: Mr. Steven M. Krause, Esquire
Mr. Daniel L. Draisen, Esquire

May 07 2021

SC Court of Appeals

Starr chiropractor wins \$112,100 jury verdict in defamation case

Kirk Brown, kirk.brown@independentmail.com Published 6:21 p.m. ET Jan. 27, 2017



(Photo: File)
[CONNECT](#) [TWEET](#) [LINKEDIN](#) [COMMENT](#) [EMAIL](#) [MORE](#)

A jury decided this week that Starr chiropractor Gregg Battersby is entitled to collect a total of \$112,100 from two Anderson County women who accused him of indecent exposure.

Jurors awarded Battersby \$61,100 in damages from Carrie Neal and \$50,000 from Jan Morton-Ganter, court records show.

Battersby represented himself in the trial involving the defamation lawsuit that he filed against Neal and Morton-Ganter. He said the verdict represented a measure of vindication from the ordeal that he has endured since being arrested on two counts of indecent exposure in August 2013. The charges were dropped by the 10th Judicial Circuit Solicitor's Office in April 2014.

"It has been a living hell," said Battersby, adding that he struggled with depression.

Battersby said that he was falsely accused by the women, and in the suit he said that Neal owed him \$12,000 for past treatments and Neal and Morton-Ganter were friends.

His state chiropractor's license was suspended for nearly two years in connection with his arrest. Although his license was restored in August 2015, the South Carolina Board of Chiropractic Examiners publicly reprimanded Battersby for displaying a misleading banner outside his home office in Starr that said he charged \$25 for office visits.

Battersby said his practice has yet to recover.

"People tend to believe what they want," he said.

Judge Donald B. Hocker has given attorneys for Neal and Morton-Ganter 10 days to file post-trial motions in the case, Anderson County Clerk of Court Richard Shirley said.

ADVERTISING

Morton-Ganter's attorney, Anderson lawyer John Kirkman Moorhead, said he is considering options for a possible appeal.

"We respect the jury's verdict but we are disappointed," he said.

Neal did not attend the trial and her attorney did not return phone calls seeking comment.

Court records show that Neal pleaded guilty to methamphetamine possession last year. She received a three-year suspended sentence and was ordered to serve two years of probation.

Jurors in this week's trial were not told about Battersby's 2006 conviction in Ohio on a public indecency charge.

Battersby also has sued John Skipper, Anderson County sheriff at the time of his 2013 arrest. A judge dismissed the case but Battersby appealed the ruling. His case is pending before the South Carolina Court of Appeals, a clerk said. Skipper lost his re-election bid in November.

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

FORM 4
FILED-CLERK'S OFFICE
ANDERSON SC

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP040667
2015

Gregg Battersby

2015 JUL 10 AM 9:42
COMMON PLEAS AND
GENERAL SESSIONS
Allstate Northbrook
Indemnity Co., et al

RCB

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☒ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

RECEIVED
May 07 2021
SC Court of Appeals

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

2155
Date
7/8/2015

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

LCB

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Richard A. Shirley

Court Reporter

Richard A. Shirley - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Plaintiff's motion to withdraw all pleadings granted. No formal order to follow.

FILED-CLERK'S OFFICE
ANDERSON SC
JUL 10 AM 9:42
COMMON PLEAS AND
GENERAL SESSIONS

The South Carolina Court of Appeals

Ex Parte: Donald L. Smith, Appellant,

In Re: Gregg Battersby, Plaintiff,

v.

J. Kirkman Moorehead, Krause, Moorehead & Draisen,
P.A., Allstate Insurance Company, and Allstate
Northbrook Indemnity Company, Defendants,

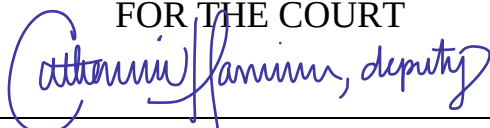
of which J. Kirkman Moorehead, Krause, Moorehead &
Draisen, P.A., are the Respondents.

Appellate Case No. 2020-000070

The Honorable R. Lawton McIntosh
Anderson County
Trial Court Case No. 2015CP0400667

ORDER

The time for serving and filing the appellant's return to the respondents' motion to dismiss is hereby extended until May 13, 2021.

FOR THE COURT
BY  CLERK

Columbia, South Carolina

cc:

Donald Loren Smith, Esquire

Steven M. Krause, Esquire

Timothy Alan Nowacki, Esquire

FILED
May 04 2021

RECEIVED
Mar 29 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., All State Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

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

Respondents.

**DESIGNATION OF MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL**

Appellant proposes the following to be included in the Record on Appeal:

Battersby v. Neal

1. Summons and Complaint, May 30, 2014
2. Defendant Neal's Answer and Counterclaim, June 18, 2014
3. Amended Summons and Complaint, June 19, 2014
4. Reply to Respondent Neal's Counterclaim, June 23, 2014
5. Motion to Quash Subpoena, July 1, 2014
6. Defendant Dunaway's Motion to Dismiss or Strike, July 2, 2014
7. Reply to Motion to Quash Subpoena, July 8, 2014
8. Reply to Motion to Dismiss, July 9, 2014
9. Morton Answer and Counterclaim, July 21, 2014
10. Reply to Morton Answer and Counterclaim, July 31, 2014

11. Order Form 4, September 4, 2014
12. Second Amended Complaint, September 29, 2014
13. Answer and Counterclaim by Dunaway, September 30, 2014
14. Motion to Include as Party Defendant, November 7, 2014
15. Reply to Answer and Counterclaim of Defendant Dunaway, November 20, 2014
16. Morton Answer and Counterclaim, November 20, 2014
17. Motion to Compel All State Insurance, November 24, 2014
18. Reply to Morton Answer and Counterclaim, December 2, 2014
19. Order Substituting Counsel, December 11, 2014
20. Verdict Form 4, January 27, 2017
21. Order Denying Motion to Add Party, February 27, 2017

Battersby v. Moorhead

22. Summons and Complaint, March 20, 2015
23. First Amended Summons and Complaint, March 31, 2015
24. Respondents' Motion to Dismiss, March 31, 2015
25. Second Amended Complaint, March 31, 2015
26. Letter re Second Amended Complaint, April 6, 2015
27. Notice of Presentation, April 23, 2015
28. All State Insurance Motion to Dismiss, April 30, 2015
29. Memorandum in Support of All State Motion to Dismiss, June 4, 2015
30. Appellant's Memorandum in Opposition to All State Insurance Motion to Dismiss, June 2, 2015
31. Respondents' Memorandum in Support of Motion to Dismiss, June 4, 2015
32. Appellant's Memorandum in Opposition of Respondents' Motion to Dismiss, June 4, 2015
33. Order Granting All State Insurance Summary Judgment, June 12, 2015
34. All State Insurance Motion for Sanctions, June 25, 2015
35. Affidavit of Johnston Cox, June 29, 2015
31. Appellant's Motion to Withdraw All Pleading, June 30, 2015
32. Response to All State Insurance Motion for Sanctions, June 30, 2015
33. Motion to be Relieved as Counsel, July 1, 2015
34. Form 4 Motion to Withdraw All Pleading, July 10, 2015
35. Order Granting Moorhead Motion to Dismiss, July 10, 2015
36. Respondents' Motion for Sanctions, July 24, 2015
37. Order Denying All State Insurance Motion for Sanctions, August 20, 2015
38. Memorandum in Opposition to Respondents' Motion for Sanctions, September 23, 2015
39. Respondents' Memorandum in Support of Motion for Sanctions, October 8, 2015
40. Order on Motion to be Relieved as Counsel, October 8, 2015
41. Notice of Lack of Jurisdiction, January 27, 2016
42. Memorandum in Support of Court's Jurisdiction, January 29, 2016
43. Verification, January 29, 2016
44. Order Granting Respondents' Motion for Sanctions, February 4, 2016
45. Motion for Reconsideration, February 18, 2016

46. Form 4 Denying Motion for Reconsideration, February 22, 2016
47. Motion to Enter Monetary Sanction in the Judgment Roll , October 15, 2019
48. Order, December 16, 2019
49. Notice of Appeal, January 13, 2020
50. Transcript of Deposition of Jan Morton
51. Transcription of Deposition of Neal
52. Transcript of Hearing on Motion for Reconsideration
53. Transcript of Motion to Enter Monetary Sanctions to the Judgment Roll, December 5, 2019
54. Memorandum Opinion and Order by Arizona State Board of Chiropractic Examiners, October 17, 2008
55. Case Details: McCord v. Mentor Chiropractic, et al. (Ohio 94CV000120).

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
March 29, 2021.

**FORM 7
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., All State Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

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

Respondents.

PROOF OF SERVICE

Pursuant to Supreme Court of South Carolina's Amended Order 2020-05-29-02, I certify that I have served a copy of the Initial Brief of Appellant and Designation of Matter to Be Included in the Record on Appeal, and Proof of Service of same, upon The Honorable Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals, 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

Attorney for Respondents

Mr. Steven M. Krause, Esquire

steve@krauselaw.org

Mr. Timothy Alan Nowacki, Esquire

tim@theclardylawfirm.com

RECEIVED
Mar 29 2021
SC Court of Appeals

The above-mentioned documents have been served on March 2, 2021.

s/Donald L. Smith
Donald L. Smith (Bar No. : 6699)
Attorney for Appellant
122 N. Main Street
Anderson, SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
March 29, 2021.

RECEIVED

Mar 29 2021

SC Court of Appeals

**FORM 8
LETTER TO THE APPEALS COURT CLERK
FILING INITIAL BRIEF OF APPELLANT AND
DESIGNATION OF MATTER TO BE INCLUDED ON RECORD ON APPEAL**

March 29, 2021

The Honorable Jenny Abbott Kitchings
Clerk of Court South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

**RE: Ex Parte: Donald L. Smith (In Re: Battersby v. Kirkman)
Appellate Case No. 2020-000070**

Dear Ms. Kitchings:

Please find attach the following documents for filing:

- (1) Initial Brief of Appellant;
- (2) Designation of Matter to be Included on Record on Appeal; and,
- (3) Proof of Service.

Sincerely,

s/Donald L. Smith
Donald L. Smith, (Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

cc: Mr. Steven M. Krause, Esquire
Mr. Timothy Alan Nowacki, Esquire

The South Carolina Court of Appeals

Ex Parte: Donald L. Smith, Appellant,

In Re: Gregg Battersby, Plaintiff,

v.

J. Kirkman Moorehead, Krause, Moorehead & Draisen,
P.A., Allstate Insurance Company, and Allstate
Northbrook Indemnity Company, Defendants,

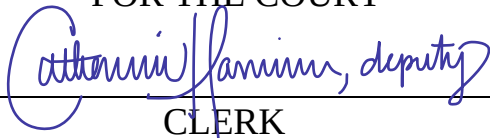
of which J. Kirkman Moorehead, Krause, Moorehead &
Draisen, P.A., are the Respondents.

Appellate Case No. 2020-000070

The Honorable R. Lawton McIntosh
Anderson County
Trial Court Case No. 2015CP0400667

ORDER

The time for serving and filing the appellant's initial brief and designation of matter is hereby extended until March 28, 2021.

FOR THE COURT
BY  deputy
CLERK

Columbia, South Carolina

cc:

Donald Loren Smith, Esquire

Steven M. Krause, Esquire

Timothy Alan Nowacki, Esquire

FILED
Mar 05 2021