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May 11 2023
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Ninth Circuit Court Judge

COA Case No. 2022-1146

J. K. Holmes,

Respondent,

v.

C.E. Holmes,

Petitioner.

Appendix

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

Record on Appeal

The lack of Record on Appeal and lack of briefs is challenged.

The South Carolina Court of Appeals

James Kevin Holmes, Respondent,

v.

Cynthia Elaine Collie, Appellant.

Appellate Case No. 2022-001146

ORDER

This appeal arises out of a notice of entry of judgment entered July 14, 2022. A review of the public index reveals this case was referred to the master-in-equity on that date. Referral of a case to the master-in-equity is not immediately appealable unless the appellant is deprived of a mode of trial. *See N. Carolina Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 347 S.E.2d 97 (1986); *Williford v. Downs*, 265 S.C. 319, 218 S.E.2d 242 (1975); *Collier v. Green*, 244 S.C. 367, 137 S.E.2d 277 (1964). To the extent the appellant is appealing from the order of Judge R. Markley Dennis, Jr. dated June 9, 2022, the public index shows a pending Rule 59(e), SCRCP motion. *See Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341-42 (1986) (directing dismissal of an appeal in which a timely post-trial motion is pending and permitting a second appeal without an additional case initiation fee). Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

_____, C.J.
FOR THE COURT

Columbia, South Carolina

cc:

FILED
Dec 09 2022

The South Carolina Court of Appeals

James Kevin Holmes, Respondent,

v.

Cynthia Elaine Collie, Appellant.

Appellate Case No. 2022-001146

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.[1]

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

FILED
Apr 11 2023

cc:

[1] Because the appeal is not reinstated, we decline to rule upon Appellant's remaining requests.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Ninth Circuit Court Judge

Case No. 2021-CP-10-5478
App. Case No. 2022-1146

J. K. Holmes,

Respondent,

v.

C.E. Holmes,

Appellant.

MOTION FOR RECONSIDERATION AND IF DENIED, PETITION FOR REHEARING EN BANC, AND MOTION TO RECONSTRUCT THE RECORD IN THE LOWER COURT ON REMAND WHERE, WITHOUT EXPLANATION, NO RECORDING FOR THE HEARING CAN BE LOCATED

INTRODUCTION

The Great Statesman, Rep. Elijah Cummings, may he rest in peace, observed, "When we're dancing with the angels, the question will be asked, in *2022*, what did we do to make sure we kept our democracy intact?" Emphasis supplied. Along with Rep. John Lewis, may God rest his soul, it is fitting to remember these lifetimes of steadfast bravery and unremitting courage. It is fitting, as well, to remember the beginnings of that democracy. The framers of our state and Federal Constitutions risked life, limb, and liberty to escape abuses by the British government.

Both state and Federal Constitutions were deliberately crafted to foreclose those abuses here. The framers did not need computers, tablets, or cell phones to discern the basic tenets of fundamental fairness and due process. An impartial decision-maker was seen as a non-negotiable requirement for preventing such abuses. The letter and spirit of our cherished Constitution categorically prohibit deprivation of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws. The right of trial by jury shall be preserved inviolate. As a corollary, another requirement, deemed mandatory and prohibitory, is that no single individual, whether British monarch or government official shall have absolute authority over a citizen's life, liberty, or property without being subject to the right of appeal with meaningful judicial review.

In the instant case, appellant timely reserves, preserves, does not waive, and expressly requests fundamental fairness and substantial rights including but not limited to, meaningful opportunity to be heard at a meaningful time and full and fair trial by jury. There are examples of unrepresented parties and/or traditional filers subjected to a separate second-class system of so-called justice, where the South Carolina Rules of Court are gleefully and cavalierly used as a trap for the unwary. Significantly and materially, there is an abundant body of law decisively declaring separate is never equal. Systemic

institutional biases are acknowledged, including but not limited to, prejudice against minorities along with favoritism under Alex Murdaugh's rules of law. Unequal treatment and the like threaten our democracy and feed the appearance of the proverbial "rigged" system. This issue is of exceptional importance as it is capable of repetition, capable of evading judicial review, and incapable of adequate remedy on appeal. The following inscription is found at the Four Corners of Law in Charleston, SC: Where the rule of law ends, tyranny begins. The Judge J. Waties Waring Judicial Center is named for the renowned crafter of divine dissents lying in repose in Charleston, who must be turning over in his grave at the historically persistent lawlessness of the Four Corriers of Law. As set forth more fully below, it is respectfully submitted our democracy depends on the basic tenets of fundamental fairness and due process just as much, if not more so, in this age of cell phones, tablets, computers, and extraordinary and unprecedented public health and affiliated economic emergencies ongoing and still unfolding.

DISCUSSION

Without being disagreeable, there is disagreement. This matter involves the attached copy of the Decree of Divorce, after almost 30 years and three children of the marriage, to which attorney defendant, with decades of experience, agreed on the record, into which that agreement was incorporated, from which defendant never appealed, and which is now the law of the case. See Rule 16, SCRFC ('The family court has jurisdiction of the parties and control of all subsequent proceedings from the time of service of the summons and complaint.'..." Wazney v. Wazney (S.C. App. 2019). The family court matter is currently pending and is subject to family court confidentiality and privacy which is hereby requested. The family court has exclusive original jurisdiction over domestic matters

pursuant to S.C. Code § § 63-3-510 to 530, including but not limited to, the family home herein, therefore, the Family Court has jurisdiction. Another action is pending in the Family Court between the same parties for the same claim. Jurisdiction can be raised at any time. The appellant respectfully requests reconsideration with abeyance and if denied, requests with abeyance petition for rehearing en banc for the December 9, 2022, dispositional decision by a single individual which is based on error of material fact and law as well as internal inconsistencies. The appellant also makes motion for reconstruction of the record on remand with abeyance where, without explanation, the SCCA's recording for transcripts has a critical gap in the recording for this hearing despite finding recordings for essentially all other hearings on that day, one of many unexplained irregularities in this matter. See attached SCCA correspondence. Assuming the SCCA correspondence is true, why was there unexplained delay with SCCA's correspondence being sent only after dismissal? Why did SCCA's unreasonable delay lead to wrongful sua sponte dismissal by a single individual in the same location? With regard to untrustworthy insider attorney defendant gaming the system, if it can be done, it will be done. That lower court hearing was held ex parte without the required notice to the adversely affected party, who on appeal is told that the South Carolina judicial system has a critical gap in the recording of that hearing which cannot be located and which cannot be transcribed. Accordingly, the December 9, 2022, order should be reversed for that reason alone.

Pursuant to S.C. Code § 14-8-220, *de novo* review is the standard of review at Rule 240(j), SCACR, appeal, which is different than the standard of review for Rule 221, SCACR, rehearing. Ambiguity regarding the proper legal standard pursuant to Rule 240(j), SCACR, appeal is a denial of substantial rights, including but not limited to, due process. Rule 240(j), SCACR, appeal is a S.C. Code § 14-8-220 appeal of an order by an individual judge and the proper legal standard is *de novo*. S.C. Code § 14-8-220. To the extent there is ambiguity, the rule of lenity supports appellant's position. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR

are based, have long been interpreted to provide for review of decisions by a single judge. See Rule 27(c), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the case stands before the appellate court as if it had never been decided. See *Griffin v. State*, 763 N.E.2d 450 (Ind.2002) (citing 5 Arch N. Bobbitt & Frederic C. Sipe, *Bobbitt's Revision, Works' Indiana Practice* § 111.3 (5th ed.1979)). See *Ex parte Northern Pacific Railway Co.*, 280 U.S. 142, 144, 50 S.Ct. 70, 74 L.Ed. 233; *Stratton v. St. Louis Southwestern Railway Co.*, 282 U.S. 10, 15, 51 S.Ct. 8, 75 L.Ed. 135 (The District Judge recognized the rule that if the court was warranted in taking jurisdiction and the case fell within section 266 of the Judicial Code (28 USCA § 380), a single judge was not authorized to dismiss the complaint on the merits, whatever his opinion of the merits might be). "The prior denial of the transfer motion was the order of a single judge. Federal Rule of Appellate Procedure 27(c) provides that 'an action of a single judge may be reviewed by the court.' That order is thus not binding on us as law of the case." *Thompson v. Merit Sys. Protection Bd.*, 772 F.2d 879, 882 (Fed. Cir. 1985). Accordingly, the legal standard of review under these circumstances for Rule 240(j), SCACR, appeal is *de novo*.

As a threshold matter, pursuant to Rule 203, SCACR, the pending Rule 59(e), SCRCP, motion, as noted in the opinion, provides there is no jurisdiction for the July 14, 2022, entry of judgment. Rule 59(e), SCRCP ("the trial judge shall retain jurisdiction"). Unlawfully entering a judgment after a timely filed post-trial motion as in this case is appealable because there is no jurisdiction for such unauthorized entry and because appellant is denied substantial rights including but not limited to, mode of trial as well as substantial rights akin to mode of trial which must be appealed immediately. Appealability of wrongful July 14, 2022, entry of judgment by a clerk is at issue where a single government employee in the clerk's office wrongfully acted pursuant to direct or indirect impermissible ex parte contacts. Instead, the record reflects Rule 38, SCRCP, notice requiring the clerk's office to transfer the matter to the jury trial roster which is hereby requested. Rule 39, SCRCP. Accordingly, the wrongful July 14, 2022, entry is void for lack of jurisdiction and should be vacated and/or reversed.

Moreover, pursuant to SCACR Rules, dismissal is not properly before the court. Due process requires including but not limited to, notice and meaningful opportunity to be heard at a meaningful time. These are matters of great public importance. Further, the State and Federal Constitutions provide, including but not limited to, Constitutional guarantees, protections, and rights under the circumstances. Appellant is prejudiced thereby. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). See also Adam A. Milani & Michael R. Smith, *Playing God: A Critical Look at Sua Sponte Decisions by Appellate Courts*, 69 TENN. L. REV. 245, 251 n.16 (2002).

Further, the opinion's reliance on the public index is misplaced and the appellant, as a traditional filer, respectfully requests a printed copy of the public index relied upon due to apparent inaccuracies/irregularities referenced in the December 9, 2022, opinion. As just one example of the misrepresentations and/or irregularities in the lower court, the June 9, 2022, order on appeal states it was heard on April 20, 2022, however, there was no required notice to the adversely affected party, the undersigned, of that hearing and no recording of that hearing for transcription can be located. Pursuant to Rule 207, SCACR, appellant timely requested the transcript from SCCA, however, there was no response from SCCA. On or about October 17, 2022, appellant timely made another request for transcript, again without response from SCCA. Only after filing a motion herein and paying $50.00 filing fees did the SCCA respond (copy attached) stating SCCA was unable to locate a recording of any hearing in the case that day. In contrast, the attached copy of SCCA's response to the ex-husband attorney defendant shows SCCA'a immediate response when he requested the transcript without timely

copying the other side. Despite locating recordings for essentially all other hearings in the other cases that day, there is a critical gap in the recording for this matter without explanation. The appellant respectfully submits motion for reconstruction of the lower court record of the hearing on April 20, 2022, on remand. The record reflects unequal treatment and irregularities in this matter inviting review. Appellant is prejudiced thereby. But for SCCA's unexplained inability to locate the recording for the transcript of hearing, there would be no dismissal herein. Decades-long insider attorneys, so-called officers of the court, have unclean hands. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

The record reflects further unequal treatment by the proverbial decades-long insider attorneys who engaged in direct or indirect impermissible ex parte contacts with the court and the SCCA while breaching professional responsibilities to, including but not limited to, copy the undersigned. The other side is hereby requested to timely copy the undersigned on all contacts herein whether electronic, written, oral, or other and to provide those copies from the date the case was filed, up to and including the present, and going forward.

In addition, the record reflects unequal treatment regarding request for transcript. Despite three or more timely requests for transcript by the appellant, there was no response. At the same time, with lack of transparency and while being hidden from the undersigned, the decades-long insider untrustworthy attorneys failed to copy the undersigned on their transcript request which received immediate response.

Moreover, appellant had to file a motion and pay a filing fee just to get a delayed response to 3

or more timely transcript requests while SCCA's unexplained delays led to wrongful dismissal. The record reflects direct or indirect impermissible ex parte contacts with the court by untrustworthy attorneys without filing the required motion to dismiss and without paying the filing fees required of other attorneys thereby denying the other party, including but not limited to, notice and meaningful opportunity to be heard at a meaningful time.

Further, in violation of the SCACR Rules, dismissal is not properly before the court: The SCACR Rules do not allow dismissal based on issues that have not been raised by the parties. The SCACR do not allow judges to act as counsel of record for the ex-husband attorney defendant in the pending family court matter and for sua sponte dismissal based on pure speculation regarding questions that have yet to be presented. There is no ROA or factual basis in support of the order. Without factual support, the order is reversible abuse of discretion. Accordingly, the December 9, 2022, order is reversible as a matter of law, judicial overreach, and/or abuse of discretion.

The December 9, 2022, opinion apparently relies word-for-word on Chief Justice Toal's Second Edition of *Appellate Practice in South Carolina* which is now updated in the 3rd Edition with new precedent. Toal *et al., Appellate Practice in South Carolina*, 2d Ed. (2002), p. 94. The first case cited in the opinion is inapposite because it applies to mortgage foreclosures. *No. Carolina Fed. S. & L. Ass'n. v. Twin States Dev. Corp.*, 289 S.C. 480, 347 S.E.2d 97 (1986). There is no mortgage foreclosure in the instant case and mortgages include agreement to referral. Referral can also be entered on consent. There is no consent in this case and in fact, there is timely Rule 38, SCRCP, notice requiring the clerk to transfer the matter to the jury docket. Rule 39, SCRCP. The second case cited supports appellant's position because appellant appeals deprivation of a party's right to trial by jury which must be immediately appealed. *Williford v. Downs*, 265 S.C. 319, 218 S.E.2d 242 (1975). Deprivation of the party's right to trial by jury must be immediately appealed. *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985).

Former Chief Justice Toal's Third Edition provides updated controlling precedent. Toal *et al., Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 155-157. At issue is denial of the appellant's right to trial by jury in a law case. *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 661 S.E. 2d 81 (2008). "[S]ome minimal inquiry will always be necessary on the part of the appellate court considering the appealability of an order which is alleged to have deprived a party of a mode of trial." *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000). "These cases not only permit, but indeed **require, immediate appeal.**" *Id.*(emphasis supplied). The matter herein includes counterclaims with jury demand. Accordingly, the December 9, 2022, order should be reversed.

Significantly and materially, the order entered December 9, 2022, is a violation of Legislative intent that a panel of judges, not a single individual, finally determine an appeal (see, e.g., Rule 240(j), SCACR) as well as a violation of the party presentation rule. S.C. Code § 14-8-220. The American judicial system is an adversary system, not based on inquisitors: In order to ensure the integrity of the judicial system, the norms of that adversarial system prohibit ex parte communications and outside factual research which undercut the appearance of a disinterested court. In both civil and criminal cases, in the first instance and on appeal, the principle of party presentation is followed: The parties frame the issues for decision and the courts have the role of **neutral arbiter** of matters the parties present. *Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (emphasis supplied). In this case, the record reflects the author of the wrongful opinion operating as the ex-husband attorney defendant's counsel of record, not a neutral arbiter. As such, the record reflects the sua sponte order is reversible abuse of discretion. Alex Murdaugh's "the rules don't apply to me" standard-operating-procedure (SOP) was used to entice the judiciary to rubber-stamp his wrongdoing. Similarly, untrustworthy officers of the court herein entice sua sponte wrongdoing thereby denying the other party an opportunity to be heard at a meaningful time. Sua sponte disposition requires, at a minimum, briefing prior to dispositional decision and the entry dated December 9, 2022, is reversible error for this reason

alone. Accordingly, the December 9, 2022, entry should be reversed and reconstruction of the record below is needed on remand. *See Clements v. Young*, 310 S.C. 73, 425 S.E.2d 63 (Ct. App. 1992) (appellant moved for reconstruction of the record on remand to the lower court where the hearing was unrecorded).

In addition, pursuant to S.C. Code § 14-8-220, the appellant respectfully submits Rule 240(j), SCACR, petition for rehearing herein is *de novo* review which does not include the individual judge who signed the order that is the subject of the Rule 240(j), SCACR, review. Appellant filed the appeal pursuant to Rule 240(j), SCACR, for appeal of a single judge's order. S.C. Code § 14-8-220 provides statutory authority for Rule 240(j), SCACR, and provides for **appeal** of the order of a single judge. S.C. Code § 14-8-220. Meaningful review requires that a judge not directly or indirectly participate in appeal of his or her own order. Occasionally, a recently appointed Appellate Court Judge or recent Supreme Court Justice will find him or herself in the position of potentially reviewing an Order that he or she authored. In these cases, the Judge or Justice will recuse him or herself from the position of potentially reviewing an order that he or she authored. A judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Rule 3(E)(1), CJC, Rule 501, SCACR*. Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality. *Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978) (emphasis supplied). Appellant reasonably questions impartiality. In the *Rice* case, then Chief Judge Haynsworth further ruled that, "For many years a federal judge has been prohibited from sitting to hear or determine an appeal in a case or issue tried by him. 28 U.S.C.A. § 47. To say the least, it would be unbecoming for a judge to sit in a United States Court of Appeals to participate in the determination of the correctness, propriety and appropriateness of what he did in the trial of the case. After rendering decisions, some judges remain open minded, and some are unreluctant to confess previous error, but **a reasonable person has a reasonable basis to question the impartiality** of a judge who sits in a United States Court of Appeals

to review his own decision as a trial judge." *Id.* At 1117 (emphasis supplied). The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial. *Id.* at 1116. Granted, this is a Fourth Circuit case, but the principle from this oft-cited case is well-stated, sound, and universally accepted as logical and fair. "There is another way to look at the case, however: as one in which the losing litigant appeals from a ruling by Judge X to an appellate panel that includes Judge X; and it is considered improper—indeed it is an express ground for recusal, see 28 U.S.C. Sec. 47—**in modern American law** for a judge to sit on the appeal from his own case. On this ground the Fourth Circuit held in *Rice* that section 455(a) required the district judge to recuse himself. [*Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978).] We agree with this result." *Russell v. Lane*, 890 F.2d 947 (7th Cir. 1989) (emphasis supplied). Similarly, in this case, "(t)o say the least, it would be unbecoming for a judge" to sit on the Rule 240(j), SCACR, appeal of his own decision. *Rice v. McKenzie*, 581 F.2d 1114, 1117 (4th Cir. 1978). Moreover, in consideration of Legislative intent and the overarching principles incorporated in the State and Federal Constitutions by the framers, due process requires that the appellate court judge who individually signed the dismissal order not participate, directly or indirectly, on appeal of the decision which is the subject of the Rule 240(j), SCACR, *de novo* appeal. Ambiguity regarding the requirement of non-participation on Rule 240(j), SCACR, appeal is a denial of due process. To the extent there is ambiguity, the rule of lenity supports appellant's position. Accordingly, Rule 240(j), SCACR, *de novo* appeal and due process require non-participation by the individual judge who signed the wrongful sua sponte dismissal.

Former Justice Sandra Day O'Connor warned the public about the importance of judicial independence. She wrote "... many Americans today do not see the need for independent judges. Many prefer a judiciary that acts merely as a reflex of popular will." *Judicial Independence and 21st Century Challenges*, Sandra Day O'Connor, The Bencher, July/August 2012. As she explained, "The reason why judicial independence is so important is because **there has to be a safe place** where being right is

more important than being popular; where fairness triumphs strength. That place, in our country, is the courtroom: It can only survive so long as we keep out political influences." *Id.* (emphasis supplied). Public policy, legislative intent, statutory authority, governing case law, State and Federal Constitutional law, the Rules of Court, the SCACR, and fundamental fairness support Rule 240(j), SCACR, *de novo* appeal herein.

In sum, the order dated December 9, 2022, misapprehends and/or overlooks material fact and law. Appellant respectfully objects. This matter is of great public importance and without being disagreeable, there is disagreement. This matter involves the attached copy of the Decree of Divorce to which the attorney defendant, with decades of experience, agreed on the record, into which that agreement was incorporated, from which defendant never appealed, and which is now the law of the case. See Rule 16, SCRFC ('The family court has jurisdiction of the parties and control of all subsequent proceedings from the time of service of the summons and complaint.'..." Wazney v. Wazney (S.C. App. 2019). The family court has exclusive original jurisdiction over the domestic matters herein pursuant to S.C. Code § § 63-3-510 to 530. This matter is currently pending in the Family Court subject to confidentiality and privacy which is hereby requested. It is undisputed that the family court can order child support to continue beyond eighteen years. *SCDSS Child Support v. Mangle*, 633 S.E.2d 903 (S.C. App. 2006). See S.C. Code § 20-7-420(A)(17). Defendant's tax returns confirm support payments made by him pursuant to written agreement and subject to S.C. Code § § 63-3-510 to 530. Legislative intent, exclusive original jurisdiction pursuant to S.C. Code § § 63-3-510 to 530, and the plain language of the Decree (copy attached) to which the ex-husband attorney defendant agreed and which is now the law of the case all provide exclusive jurisdiction over marital property including but not limited to, the family home, in the Family Court. To the extent there is ambiguity, the rule of lenity supports the undersigned's position. Accordingly, the December 9, 2022, order is reversible as a matter of law based on error of material fact and law.

CONCLUSION

For the foregoing reasons and for substantial justice affecting substantial rights, the undersigned respectfully requests this Court grant this motion for reconsideration with abeyance pending resolution and if denied, requests petition for rehearing en banc with abeyance for the December 9, 2022, order. The appellant also makes motion with abeyance for reconstruction of the record on remand where, without explanation, the SCCA's recording for transcripts has a critical gap in the recording for this hearing despite finding recordings for essentially all other hearings on that day, one of many unexplained irregularities in this matter. See attached SCCA correspondence. As the adversely affected party appealing the wrongful ex parte hearing, appellant respectfully requests reconstruction of the record in matters adversely affecting that party and respectfully submits dismissal is premature pending reconstruction of the transcript of record. Accordingly, the December 9, 2022, order should be reversed.

Respectfully submitted,

C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010

App. Case No. 2022-1146

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF CHARLESTON)

Personally came and appeared before me, Notary Public, C. Holmes, who upon being duly sworn and having personal knowledge did depose and say the following:

(1) This matter is before this Honorable Court incident to the divorce decree granted to the undersigned on grounds of adultery after 3 children of the marriage and almost 30 years. This affidavit is submitted in support of the attached.

(2) Defendant's tax returns reflect support payments made by him pursuant to written agreement.

(3) Another action is pending in the Family Court between the same parties for the same claim.

(4) The record reflects unequal treatment and irregularities in this matter inviting review.

(5) The hearing was held ex parte without the required notice to the adversely affected party, who on appeal is told that the South Carolina judicial system has a critical gap in the recording of that hearing which cannot be located and which cannot be transcribed. The December 9, 2022, order should be reversed for that reason alone.

(6) The adversely affected party, the undersigned, has a right to know what transpired at the impermissible ex parte hearing cooked up and orchestrated by old goat attorneys without providing the required notice to the other side that they themselves would demand. Appellant timely appeals denial of substantial rights including mode of trial as well as substantial rights akin to mode of trial which must be appealed immediately.

(7) Appellant had to file a motion and pay a filing fee just to get a delayed response to 3 or more timely transcript requests while SCCA's unexplained delays led to wrongful dismissal. The record reflects direct or indirect impermissible ex parte contacts with the court by untrustworthy attorneys without filing the required motion to dismiss and without paying the filing fees required of other attorneys thereby denying the other party, including but not limited to, notice and meaningful opportunity to be heard at a meaningful time. As former Chief Justice Toal would say: Old goat attorneys are stinking to high Heaven.

(8) Pursuant to the SCACR Rules, the questions on appeal have not yet been specified, therefore, there is no factual support or ROA for the unsubstantiated premise of the dispositional decision by a single individual. There is no ROA or factual record to support the December 9, 2022, order. Accordingly, that order is reversible as a matter of law, judicial overreach, and/or abuse of discretion.

(9) Much like Alex Murdaugh, attorney defendant herein operates with apparent impunity as if "the rules don't apply to me." For the record, the Legislature is cautioned the integrity of the Murdaugh-besmirched South Carolina judicial system is implicated by untrustworthy attorney defendant.

(10) But for SCCA'a unexplained delays with unequal treatment and but for direct or indirect impermissible ex parte contacts by shady Murdaugh-besmirched attorney defendant, the outcome should have and would have been in appellant's favor. Appellant is prejudiced thereby.

(11) The record reflects there is no required motion to dismiss and no payment of the required filing fee. The record reflects direct or indirect impermissible ex parte contacts to wrongfully deny required notice and meaningful opportunity to respond at a meaningful time in order to obtain wrongful sua sponte dismissal by a single individual with no ROA or factual support.

FURTHER THE AFFIANT SAITH NOT.

C. Holmes

Subscribed and sworn to before me,
Notary Public, this 7th day
of December 2022.

NOTARY PUBLIC
My commission expires: 04/18/2032

MENCHIE FOSTER
MY COMMISSION
EXPIRES
04/18/2032
NOTARY PUBLIC
SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT OF THE
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 03-DR-10-3935
	)	
CYNTHIA ELAINE HOLMES,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	DECREE OF DIVORCE
	)	
JAMES KEVIN HOLMES,	)	
	)	
Defendant.	)	
	)	

Trial Judge:	F.P. Segars- Andrews
Court Reporter:	Sharon D. Jones
Plaintiff Attorney:	Cynthia Elaine Holmes, pro se
Defendant's Attorney:	J. Kevin Holmes, pro se
Date of Hearing:	January 30, 2004

This matter came to be heard before me at Charleston, South Carolina on January 30, 2004. Both parties were present at the hearing. Neither party was represented by legal counsel. The purpose of the hearing was to obtain divorce and preserve all other issues pending mediation or subsequent hearings on the merits.

The Court inquired of both parties whether there was any chance of a reconciliation of the marriage. Both parties responded that no reconciliation was possible.

Based upon the testimony of the Plaintiff and Cassandra Alberesius and the documentary evidence admitted into evidence without objection, the Court makes the following findings of fact:

FIRST: The Plaintiff and Defendant are residents of the County of Charleston, State of South Carolina and have been for more than one (1) year prior to the commencement

of this action.

SECOND: The Plaintiff and Defendant last resided together as husband and wife in the County of Charleston, State of South Carolina.

THIRD: The Plaintiff and Defendant were lawfully married on September 4, 1978, in the State of Georgia and of this marriage three (3) children have been born:

FOURTH: The Defendant has committed adultery.

FIFTH: There is no fraud or collusion between the parties in the bringing of this action.

Based upon the foregoing findings of fact, the Court concludes:

FIRST: This Court has jurisdiction of the parties and subject matter of this action.

SECOND: More than 90 days have elapsed since the filing of the Complaint.

THIRD: The Plaintiff is entitled to a divorce on the statutory grounds of adultery.

IT IS HEREBY ORDERED that the Plaintiff is hereby granted a divorce, a *vinculo matrimonii*, on the statutory grounds of adultery; and

IT IS HEREBY ORDERED that all other issues including, but not limited to, temporary and permanent custody, child support, alimony, and the equitable division of marital property and retirement accounts are reserved and preserved pending discovery, mediation, and further Court hearings, if necessary; and

IT IS HEREBY ORDERED that the parties may engage in discovery under the Rules of Civil Procedure including interrogatories, requests for production, requests for

admissions, depositions and subpoenas.

AND IT IS SO ORDERED.

F. P. Segars-Andrews, Presiding Judge
Family Court of the Ninth Judicial Circuit

Charleston, South Carolina

30 day of January, 2004.

ATTEST A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF COURTS & P.C.
BY:
DEPUTY CLERK

Barry Baker

From: Transcripts <transcripts@sccourts.org>
Sent: Monday, October 24, 2022 12:02 PM
To: Barry Baker
Cc: Raines, Tiffany
Subject: James Kevin Holmes v. Cynthia Elaine Collie n/k/a Cynthia Elaine Holmes

Mr. Baker:

It is with sincere regret that we must inform you that the hearing held on April 20, 2022 in Charleston County via WebEx cannot be transcribed as no audio recording can be located. Please let me know if you think this could have been heard on a different date.

Sincerely,

Court Reporter Section