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**Jun 12 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

App. Case No. 2023 - 000763  
COA Case No. 2022-1146

J. K. Holmes,

Respondent,

v.

C. E. Holmes,

Petitioner.

**Return  
and  
Motion for Sanctions**

C. Holmes  
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To: Counsel of Record for Respondent

Without being disagreeable, there is disagreement with the other side's motion which is disputed and which fails for insufficiency and insufficient factual support, if any. The undersigned respectfully submits motion for sanctions against the other side. Another action is pending in the Family Court between the same parties for the same claim. Despite the plain language of the attached Decree of Divorce, the Family Court attorney defendant herein, with years of experience, devised a plan to evade the jurisdiction of the Family Court in order to gain unfair advantage regarding equitable distribution in the pending Family Court matter including but not limited to, retirement and the marital home. The undersigned asserts exclusive original jurisdiction in the Family Court for this Family Court matter pursuant to statutory authority, pursuant to the plain language of the attached Decree of Divorce, and pursuant to confidentiality and privacy requirements for Family Court matters which is hereby requested. S.C. Code § § 63-3-510 to 530; *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983). Jurisdiction can be raised at any time and jurisdiction cannot be waived. This contentious case is a prime example of why confidentiality and privacy applies in Family Court. This matter involves the attached copy of the certified Decree of Divorce, after almost 30 years and three children of the marriage, to which the Family Court 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. The Family Court attorney defendant's tax returns document compliance with the Family Court agreement. Pursuant to the Decree of Divorce, the petitioner timely requested mediation when the youngest child of the marriage was still in school matriculating with good grades and then graduating from Charleston Southern University. Instead of complying with the Family Court Order for mediation, the Family Court attorney defendant responded with ambush litigation.

By way of background, another action is pending in the Family Court between the same parties for the same claim. The family court has exclusive original jurisdiction over domestic matters pursuant to S.C. Code § § 63-3-510 to 530. The petitioner timely appeals herein the impermissible ex parte hearing in the circuit court without required notice and without meaningful opportunity to be heard at a meaningful time. The petitioner timely made three or more requests for transcript from the South Carolina Court Administration (SCCA). Without benefit of any motion to dismiss, without benefit of Record on Appeal (ROA), without benefit of transcript for the impermissible ex parte circuit court hearing or other factual support, and after notice that the SCCA is unable to locate the audio recording for the transcript, a single individual lower appellate court judge entered sua sponte dismissal before jointly filed Record on Appeal (ROA) is due, without notice, and without meaningful opportunity to respond at a meaningful time. After the petitioner filed motion herein for SCCA to respond to multiple timely transcript requests, the SCCA's out-of-time response stated, without explanation, that the SCCA's audio for transcripts has a critical gap in the recording of the impermissible ex parte hearing despite finding recordings for essentially all other hearings on that day. Apparently, neither the circuit court nor the petitioner had notice of that hearing. It is unclear why the SCCA did not timely respond to the appellant's timely requests for transcript until after the appeal is dismissed by a single individual lower appellate court judge. The petitioner timely filed motion to reconstruct the record in the trial court and has a substantial interest therein. 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); Toal *et al.*, *Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 378. The petitioner filed Rule 240(j), SCACR, appeal of wrongful unnoticed sua sponte dismissal by a single individual lower appellate court judge. The improper, less burdensome legal standard was wrongfully applied. Pursuant to S.C. Code § 14-8-220, *de novo* review is the standard of review at Rule 240(j), SCACR, appeal. To the extent there is ambiguity, the rule of lenity supports the petitioner's position.

The lower appellate court opinions are reversible as a matter of law. Petition for a writ of certiorari is timely served and filed.

These are matters of great public importance including but not limited to, uniformity in application of the SCACR in the lower appellate court, confidentiality and privacy in Family Court matters, attempts by untrustworthy attorney defendant to take unfair advantage of Covid interruptions in normal court operations, denial of substantial rights to the other side, denial of substantial rights to unrepresented parties, and/or failure to comply with South Carolina Supreme Court Covid Administrative Orders. But for attempts by untrustworthy so-called officers of the court to take unfair advantage of Covid interruptions including impermissible ex parte hearing and inadequate record for meaningful judicial review, the outcome should and would be in petitioner's favor. The petitioner is prejudiced thereby. It is respectfully submitted a lower appellate court judge cannot in good faith deny the importance of adequate record for meaningful judicial review. *See, e.g., Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 146 (4<sup>th</sup> Cir. 2020) (remanded for lack of adequate explanation for meaningful review: "(T)he court disposed of the substance of the issue in a single sentence. See J.A. 252. We need more explanation to conduct meaningful appellate review of the court's disposition of the motion."). The petitioner timely appeals lack of jurisdiction/authority to provide clear title to real estate thereby arbitrarily and capriciously reducing market value. Pursuant to Chief Justice Beatty's November 8, 2021, Covid Administrative Order No. 2021-11-8-02, petitioner's timely request for hearing is filed in the Family Court: *This action was required because in-person proceedings in non-emergency matters in the family court had been suspended due to an increase in COVID-19 cases in South Carolina.* Covid Administrative Order No. 2021-11-8-02 (emphasis supplied).

By analogy, the Biblical story and the phrase "split the baby" has its roots in Hebrew lore in the story of two mothers claiming before King Solomon that each was the real mother of an infant son. The story found in 1 Kings 3:16-28 states that two mothers living in the same house, each the mother of an infant son, came to Solomon. One of the babies had been smothered, and each claimed the

remaining boy as her own. Calling for a sword, Solomon declared his judgment: the baby would be cut in two, each woman to receive half. It was the love of the mother that proved the truth of the matter asserted. If the Family Court attorney defendant's motives were pure, he too should and would object to arbitrarily and capriciously reducing fair market value. Instead, he elects to conduct ambush litigation to evade jurisdiction of the Family Court simply because he thinks he can get away with it.

The petitioner moves before this Honorable Court for an Order pursuant to Rule 269, SCACR, and Rule 11, SCRCP, ruling counsel of record for respondent, after 10 days notice, to show cause, if any he can, why he should not be held in contempt of court and why sanctions should not be imposed for, including but not limited to, contemptuously ignoring, disrespecting, and failing to comply with the plain language of the Order of the Family Court in the attached Decree of Divorce, deceitfully attempting to evade the jurisdiction of the Family Court, and/or redundantly filing in the court of common pleas the same claim between the same parties without just cause wasting judicial resources and improperly delaying resolution of important public matters including but not limited to, retirement. Pursuant to Rule 269, SCACR, and/or Rule 11, SCRCP, this motion with supporting affidavit is based on the grounds the respondent deliberately misrepresents material facts as stated above and as set forth more fully below.

Rule 269, SCACR, provides, "Where an appeal, petition, or motion is frivolous or taken solely for the purpose of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after 10 days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require."

In a violation of the Rules of Professional Conduct, the Family Court attorney defendant's counsel of record willfully and maliciously entices this Honorable Court to rely on the defamatory false claim of disbarment in an unprofessional attempt to gain undue influence and prejudice the case. The record reflects that respondent himself has defended the petitioner against wrongful claims of frivolity.

See *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 402, 110 S.Ct. 2447, 110 L.Ed.2d 359, 58 USLW 4763 (1990)(the lack of any legal requirement other than the talismanic recitation of “‘frivolous’ will foreclose meaningful review” (emphasis supplied)). Former Chief Justice Pleicones agreed with petitioner’s counsel of record that *Southeastern Site Prep Llc v. Atl. Coast Builders*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App., 2011), invalidated application of the revised FPA because the purported act occurred prior to its effective date of 2005. Retroactive application of the revised FPA is unconstitutional. *Id.* The respondent is well aware of that fact and has made that same argument on petitioner’s behalf. The Family Court attorney defendant has unclean hands. The petitioner challenges counsel on the other side to produce evidence of disbarment, if any he can, within 10 days of service of this motion. Even if that false claim were true, which it is not, it is a violation of the Rules of Professional Responsibility to introduce a disciplinary matter to gain unfair advantage in pending litigation. That unprofessional conduct corroborates respondent’s lack of meritorious defense in this appeal.

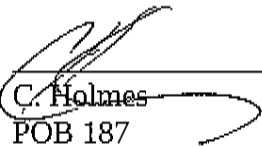
With regard to delay, when the undersigned timely requested mediation in the Family Court pursuant to the Decree, the Family Court attorney defendant responded with ambush litigation. But for the Family Court attorney defendant’s ambush litigation, the matter should have and likely would have been resolved in the Family Court by now. The record herein reflects and this Court is cautioned regarding untrustworthy attorney’s ambush litigation tactics against the unwary, unrepresented parties, heirs property defendants, others, and/or lay persons unfamiliar with ambush litigation tactics. Specifically, the record herein reflects that the other side filed patently false affidavit of service without copying the other side, then certified it, and without required notice wrongfully sought improper default.

On page 2 of respondent’s motion, the other side concedes that appeal of an order denying a mode of trial (jury trial) is appealable. This appeal includes but is not limited to, jurisdictional issues, denial of jury trial, and other. The undersigned respectfully motions for reconstruction of the record in

the court of common pleas where without explanation the SCCA is unable to locate the audio for transcript for that impermissible hearing without required notice. The undersigned respectfully submits this motion for sanctions to discourage the other side's wrongdoing, to prevent future material misrepresentations, delay, and/or ambush litigation tactics. The record herein reflects pending counterclaims with jury demand and timely Rule 38 and Rule 39, SCRCF, notice. The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Rule 38, SCRCF. Pursuant to Rule 39, SCRCF, respondent can consent to trial by jury. It is fair to say the other side would object if respondent were denied the right to trial by jury, denied required notice and other substantial rights, denied the right to follow the South Carolina Rules of Court, and denied the right to appeal. Respondent has not claimed he is unable to proceed in Family Court. He simply thinks he can "get a better deal." Legal title is not dispositive. The Family Court Bar should and would have a public interest in Family Court defendants who can evade the jurisdiction of the Family Court simply by filing a duplicitous and duplicative claim in the court of common pleas. Respondent has not and cannot in good faith claim he has not caused delay. Pursuant to Chief Justice Beatty's November 8, 2021, Covid Administrative Order No. 2021-11-8-02, petitioner's timely request for hearing is filed in the Family Court which is hereby requested.

For substantial justice affecting substantial rights and for good cause, the petitioner respectfully requests this Honorable Court grant this motion including reconstruction of the record in the trial court and respectfully requests denial of the other side's motion. It is axiomatic that without the transcript, the ROA, or other factual support, the lower appellate court opinion is reversible abuse of discretion based on pure speculation and/or inadequate record with inadequate explanation for meaningful review. In addition, after 10 days from service of this motion, the other side should be sanctioned for the false claim of disbarment and false claims made in this matter, or elsewhere, should be withdrawn which is hereby requested.

Respectfully submitted,



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