

**BRIEF OF APPELLANT**

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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AUG 15 2023

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Judge G. D. Morgan Jr.

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Case No. 2022-CP-23-05634

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Alicia Ruffin,

Appellant,

v.

Dr. David Mitchell &  
Carolina Orthopedic & Neurological  
Associates

Respondent,

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[INITIAL] BRIEF OF APPELLANT (Additional)

Alicia Ruffin  
563 Duncan Station Drive  
Duncan, South Carolina 29334  
(864) 814-8350  
As: Equitable Beneficiary

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### **STATEMENT OF ISSUES ON APPEAL**

1. DID THE COURT OF COMMON PLEAS ERR BY NOT ADDRESSING THE APPELLANT TIMELY SUBMISSION TO RECUSE JUDGE G.D. MORGAN JR. FROM CASE NO.: 2022CP4202745?

2. WAS THE APPELLANT’S CIVIL RIGHTS GRANTING DUE PROCESS VIOLATED UNDER THE 14<sup>TH</sup> AMENDMENT?

3. DID THE COURTS OR ATTORNEY ERR BY SERVING AS WITNESS OR GAVE TESTIMONY DURING THE COMMENCEMENT OF FEBRUARY 17, 2023, MOTION TO DISMISS HEARING?

4. DID THE COURTS OR ATTORNEY SERVE AS WITNESS OR GAVE TESTIMONY DURING THE COMMENCEMENT OF FEBRUARY 17, 2023, MOTION TO DISMISS HEARING?

5. DID THE APPELLANT SATISFY THE 4 ELEMENTS OF A DEFAMATION CLAIM?

## STATEMENT OF THE CASE

This civil matter of Defamation was first before the Spartanburg Court of Common Pleas, during the filing there appeared to be actions of bias against the Appellant in favor of the Respondent; before the case ever appeared before a judge. There is no record of the court order ADR's completion and the Respondent '*Failed to Properly Answer*' the Appellant's Original Complaint. The Appellant requested a Change of Venue understanding that the hearing maybe just served at another Venue; due to the Respondent having ties to the community. The Venue was forwarded to the Greenville County 13<sup>th</sup> Judicial Circuit Court of Common Pleas and the Appellant filed in a timely manner a Motion for the Recusal of Judge G. D. Morgan Jr. on 11/22/2022 when the Appellant became aware that Judge Morgan Jr. was an Alumnus of MCG for over 20 years. At the time, Attorney Amanda Neely was employed by Wilson, Jones Carter, & Baxley, PA; she was removed from the SC Workers' Compensation, Case Id: 1815744; after it was brought to the attention of the Appellant that evidence was being tampered, concealed, and/or altered. When the venue was changed; the Appellant waited for Proper Reply to the Appellant's claim to date, nothing has been received from the Respondent. The request for the Recusal remains unanswered, then January 2023; Judge G. D. Morgan Jr. was Appointed Chief of Administrative Purposes.

According to the County Zoning for Greenville County, Greenville County has 2 Chief Justices for Administrative Purposes. And yet, to protect the integrity of the case and any possibilities of the appearances of Impropriety the case was not resigned, nor was the request for Recusal was never answered. The Attorney that was First Representing the interests for the Respondent were actual members of the same Bar Association. Attorney David Lee Williford, II and Attorney Mitchell Appleby is no longer representing the interests of the Respondent. But Attorney Mitchell Appleby and Judge G. D. Morgan Jr. is on record on February 17, 2023, violating SC Rule 2.9. (A) (b) Ex Parte Communications; (A) *A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter...* (b) *the judge makes provision promptly to notify all other parties of the substance of the Ex parte Communication, and gives the parties and opportunity to respond...* The Appellant was not properly notified of a scheduled hearing for February 17<sup>th</sup> 2023. The Appellant was awaiting a response to the November 2022 Request for Recusal. The zoning for Greenville County allows for them to be (2) Chief Justices for Administrative Purposes. This case was not referred to by the other Chief Justice even after the submission of compelling evidence. One of many duties of Chief Justice for Administrative Purposes is to arrange, schedule and assign cases to the

court roster. The 13<sup>th</sup> Circuit failed to follow its own rules regarding mandating of a court ordered ADR before a civil matter is placed on the docket. After a Letter of Intent to Suit has been issued pursuant to SC Code §15-79-125(C)(E). The Respondent should be held in default and should not be permitted to offer any evidence to challenge the allegations contained in the formal charges deemed pursuant to Rule 24 (a); for *Failing to Properly Answer* the Appellant's Complaint. But on February 17, 2023, Appellate's case was dismissed with Prejudice. Which is the reason why the Appellate is seeking Equal Access to Justice by appealing to the Court of Appeals.

The Appellant presented the 13<sup>th</sup> Judicial Circuit Court of video & audio of the July 26, 2019, Office Visit. The wishes to Offer into Evidence; the video of the July 26, 2019, of Dr. MICHAEL DAVID MITCHELL's office. Greenville county Clerk's office stated that the evidence should have was sent with a complaint from Spartanburg County Magistrate Office. But there was no mention of the Audio/Video of the Office Visit was mentioned within the Testimony of the Judge G. D. Morgan Jr. and Atty. Appleby on February 17, 2023, although the Complaint clearly states, on Page 2

*“Under SC law 17-30-30, the Plaintiff protect herself and can produce the actual events of the July 26, 2019, office visit by means of a video recording. Dr. David Mitchell stated, “I am sorry that I hurt you.” Video account on disk. Please*

*compare to written Ex. 8 pg. 23-25.”* Based on the testimony from both the Court and Atty. Appleby, they both acknowledge receiving the Original/Spartanburg Complaint but withheld from the record the mention of audio/video of the actual account. Page 5 of the transcription Notes: *<THE COURT: Yeah, they’re in—we pulled your motions out of the Spartanburg file, because your motions were not in the Greenville file>--<MR. Appleby: Sure.>< THE COURT: --after they changed venue>. <MR. APPLEBY: Okay. Have you seen them: I have copies as well.>* *<THE COURT: Yeah, I’ve read them, yeah.* The court later states on Page 8 of the transcript,>

*<“THE COURT: Okay. Fine. I’ll find that it appears that the plaintiff has been given proper notice. She was given notice by the defense attorney, and the Court has also provided her notice, as well.>* An email from opposing counsel is NOT an order for the COURT pursuant to Rule 45 (a) (1) *Nowhere* on record, does either party state or provided proof by way of a shape or form of acknowledgement that the Appellant ever received notification of the hearing, in fact both stated that they had not heard from the Appellant, but Judge was prepared to state that Appellant received notice anyway. And the Respondent previously stated, ***“I brought with me—anticipating this possibility.”*** Based on the Atty. Appleby’s statement of premeditation indicating to have prior knowledge of the Appellant not be appearing for court, although he testified that he had no communication with the Appellant.

The Court “Rushed to Judgement” by several facts. The Appellant never received notice of the February 17, 2023, Motion Dismiss Hearing. According to the testimony of Attorney Appleby, on page 4 of transcript, “MR. APPLEBY: I have not seen her. I brought with me—anticipating this possibility.” How was it possible that Atty. Appleby was aware of the possibly of the Appellant not making an appearance and being prepared for such an event? And he expressed, “I have not seen her.” The Appellant has never ever met Atty. Appleby or his partner face-to-face or even online. And according to testimony Dr. David Mitchell was not present. But the transcript consists of testimony/ dialogue between the Judge G. D. Morgan Jr. and Atty. Appleby mitigating the Statute of Limitations for Defamation. Defamation is a SC Personal injury Tort claim that has the Statute of Limitations of 3 years to file a claim. And then there is the possibility of ASSAULT charges that holds *NO Statute of Limitations in SC*. Based on the *recording*, Dr. David Mitchell acknowledged that he injured the Appellant during the exam and on the recording. You can hear the Appellant requesting Dr. Mitchell to stop, he ignored the Appellant’s request to stop by continuing with the exam; she begged and pleaded to the point of tears.

Dr. Mitchell prior to July 26, 2019 stated twice that he felt medically that there was nothing else that he could do for the Appellant and that he was going to

**“relinquish”** medical care another physician. Dr. David Mitchell and the office of CONA failed to diagnose the Appellant. There were no prior indications of hostility on the part of the Appellant and/or her husband even after the Appellant suffered permanent injuries at the hand of PA, William Sean Irving while being Supervised by Dr. David Mitchell on 04/12/2019 and after Dr. Mitchell prescribing the Appellant to wear a Neck brace for 5 months “weakening” the Appellant’s neck muscles. The events that were recorded on July 26, 2019; do not match the events Dr. David Mitchell charted. The recording showed that Dr. Mitchell attempted to provoke a negative response from the Appellant and her husband. When the negative response did not occur; he charted defamatory remarks to portray a false narrative of an altercation that never occurred. Even the letter, dismissing the Appellant, was not issued until 3 weeks after the incident and even then, he extended medical care for an additional 30 days. Thus indicating, that Dr. Mitchell never felt threatened or a since harm, because his narrative never happened. He knew that his defamatory remarks; coming from a license physician would have impact in hindering future medical treatment for the Appellant. So, the Appellant filed a Claim of Personal Injury/Defamation since, his Defamatory remarks was published and did have an impact on her SC Workers’ Compensation Claim; her benefits that was terminated on 11/30/2020 and his statement also delayed benefits

from Social Security Disability for a matter of 2 years; delaying necessary to treatment to now 5 Occupational Diseases that involved CONA physicians.

The actions of the 13<sup>th</sup> Circuit Court displays actions of bias to lean in favor of the Respondent by ordering a hearing to be conducted without the Appellant being properly processed serve and decision being adjudicated. Yes, the Appellant received an email on the Letter of the Respondent. But the Respondent is not the Officer of the Court.

Then According to Rule 12 (b), the Plaintiff is to give from 10 to 15 days to be allowed submit a Motion and that along with Appellant's Civil Rights to Due Process continued to be violated by attempting to remove the Appellant's rights to an in-person hearing, the Appellant's submission of the video that would implicate Dr. Mitchell's wrongful actions would not have been able to be viewed. The Chief Justice of Administrative Purposes; Judge G.D. Morgan Jr. orders the Appellant to appear before him again on June 12, 2023, before his appointment is completed on July 2023.

The appellant hereby wishes to claim upon which to seek relief under Section 1985 claim, Claims Under 42 U.S.C. §

Section 1986 provides in relevant part:

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representative. For all damages caused by such wrongful act, which such person by reasonable diligence could have prevented....

And ...Title 18, U.S.C., Section 1001 makes it a crime:

- 1) knowingly and willfully.
- 2) make any materially false, fictitious, or fraudulent statement or representation.
- 3) in any matter within the jurisdiction of the executive, legislative or judicial branch of the United States.

The Appellant sent the Request for Recusal to the Court of Common Pleas, 92 days before the case was before Judge G.D. Morgan Jr. on February 17, 2023. But according to duties and responsibilities of Chief Justice of Administrative Purposes; Judge Morgan Jr. would have had at least one month to prepare and review scheduling Non-Jury Civil Cases, which indicates Pre-mediation and then later prematurely issuing a Summary Judgement Order to work to fall in accord with Respondent's request for Dismissal. The Greenville District 13 Court system has 2 Chief Justices of Administrative Purposes, yet by his own actions Judge Morgan Jr. did not acquiesce to the other Chief Justice of Administrative Purposes to schedule and assign a different Judge to preside other than himself to demonstrate no position of bias or improprieties. In addition, to the testimony without the express Consent of the Appellant; the court and the Respondent gave clear testimony of Force Judgement to Decision to Dismiss the Appellant's Case and violated the Appellant's Rights to Due Process although the Appellant provided clear evidence by means of video of the day in question. The court's action are in direct violation of Canon 3 B (1) of the Code of Judicial Conduct, Rule 501, SCACR.

### Standard of Review

“To succeed on a defamation claim, a plaintiff must establish: (1) a false statement, (2) about the plaintiff, (3) published without privilege to a third party, (4) with fault of at least negligence on the part of the defendant, and (5) the statement was with defamatory per se or caused special harm to the plaintiff.” *Watley v. Ohio Dept. of Rehab & Corr.*, 10<sup>th</sup> Dist. Franklin No. 07AP-902, 20080OHIO-3691, ¶ 26

(1&2) Dr. David Mitchell’s charted July 26, 2019, words were false statement against the Appellant and her husband; and can be proved as by the July 26, 2019 audio/video and testimony from Case Manager, Linda Salido of CaseWorks.

(3,4,&5) This false statement was part of the December 10, 2020 SC Workers Compensation Final Decision Order, and the part of the January 13, 2021 SSA Disability Decision and what is worse the Medical chart system of the Continent US; since the world’s Medical charting system uses EPIC; anyone without prior knowledge or consent of from the Appellant with Medical, Insurance and etc. has access to EPIC has the ability to view this false information. This falls under negligence and fault to cause special harm to the Appellant’s character, since there was no reason to cause damage to the Appellant’s character; the plaintiff and her husband did nothing to Dr. Mitchell or CONA staff, even after the injury caused by Dr. Mitchell by prescribing the Appellant to wear a neck brace for 5 months,

“weakening” the Appellant’s neck muscles and after the injury caused by PA, William Sean Irving; that sent the Appellant to the ER. And the office and staff failed to diagnose the Appellant’s 5 Occupational Diseases.

“On the other hand, a statement is defamatory per quod if it can reasonably have two meanings, one innocent and one defamatory. Therefore, when the words of a statement are not themselves, or per se, defamatory, but they are susceptible to a defamatory meaning, then they are defamatory per quod. Whether an unambiguous statement constitutes defamation per se is a question of law.”

(Citations omitted.) Woods at ¶29. “When a statement is found to be defamation per se, both damages and actual malice are presumed to exist.” Knowles v. Ohio State Univ., 10<sup>th</sup> Dist. Franklin No. 02AP-527, 2002 -Ohio-6962, ¶24 Dr. David Mitchell weaponized his words in his charting “abusive”, “confrontational

“Further, the essential elements of a communication protected by qualified privilege are: [1] good faith, [2] an interest to be upheld, [3] a statement limited in its scope to this purpose. [4] a proper occasion, and [5] publication made in a proper manner and to proper parties only. Finally, if a defendant establishes all five elements for application of a qualified privilege, a plaintiff can defeat its application only by showing by clear and convincing evidence that the defendant

acted with actual malice.” (Internal citations omitted.) Mallory v. Ohio University, 10<sup>th</sup> Dist. Franklin No. 01AP-278, 2001-Ohio-8762, ¶¶21-22. The Appellant submitted clear evidence by means of the video of July 26, 2019. During the video, Dr. Mitchell was repeatedly hurting the Appellant and the Appellant requested begging “Please....” for him to stop. And he continued and then to let report that the Appellant and her husband was “abusive” and had “a confrontational attitude.” Charting these absolutely, false statements was willfully, malicious, and negligent. And under Title 18, U.S.C., Section 1001...A crime. When an individual, says, “Stop” or give, show indicates for an individual to stop and an individual does not; it is called “Assault”.

### **Arguments**

1. DID THE COURT OF COMMON PLEAS ERR BY NOT ADDRESSING THE APPELLANT’S TIMELY SUBMISSION TO RECUSE JUDGE G.D. MORGAN JR. FROM CASE NO.: 2022CP4202745? Based on the testimony on record. The court NEVER acknowledged the Request for Recusal submitted by the Appellant on and received by the Greenville County Clerks office on 11/22/2022. Judge G. D. Morgan Jr. NEVER answered the Request for Recusal on the Record.

2.. WAS THE APPELLANT’S CIVIL RIGHTS GRANTING DUE PROCESS VIOLATED UNDER THE 14<sup>TH</sup> AMENDMENT? Based on the testimony on record. The Respondent’s attorney attempted to convince the court that the case filed was a Medical Malpractice case. But the Court was Firm in their decision that the case is indeed a Defamation case. Under SC Code §17-28-350 a person “willfully and maliciously destroys, alters, conceals, or tampers with physical evidence or biological material that is required to be preserved pursuant to this article with the intent to mislead the courts” and/or SC Code §16-9-340 (2) “destroy, impede, or attempt to obstruct or impede the administration of justice in any court.” Are punishable by law. According to the Respondent’s attorney testimony, he was prepared that the Appellant would not be present to appear at court and he withheld evidentiary proof; the actual recording of July 26, 2019, office that contradicts what Dr. David Mitchell wrote in the Appellant’s medical chart. But when the courts asked, of any other submission. The Respondent denied knowing of any other submissions. And he had in his possession the video of the day in question. This evidence would have at least granted the Appellant a Continuance or Reconsideration of the case due to the fact that the Appellant not being properly notified of to be present.

3. DID THE COURTS OR ATTORNEY SERVE AS WITNESS OR GAVE TESTIMONY DURING THE COMMENCEMENT OF FEBRUARY 17, 2023, MOTION TO DISMISS HEARING? Based on the testimony on record; statements by the Courts asked questions concerning testimony for the plaintiff; the Respondent provided testimony in answer for the Appellant without the given consent/ and or permission of the Plaintiff and the Court also gave testimony on behalf of the Plaintiff without the given consent or permission for the Plaintiff both was allowed and accepted on to record to “Force in Judgement a Decision of Dismissal”. These are actions in violation of Canon 3 B (1) of the Code of Judicial Conduct, Rule 501, SCACR and SC Rule 3.7.

4. DID THE RESPONDENT WITHHOLD EVIDENTARY PROOF FROM THE COURTS? DID THE COURT HAVE PRIOR KNOWLEDGE OF THIS? Based on the testimony on record, according to the statement of the Court and that of the Respondent’s attorney both the Court and Attorney acknowledged having the Complaint and all submissions of the Appellant and acknowledged; they have read its contents. The Respondent gave false testimony without the Appellant being allowed to object that Dr. David Mitchell was “Process Served by the Appellant”. The Appellant has been unemployed since the time of the Initial Injury; October 4,

2018. The Appellant has not worked for the U.S. Postal Service since 2017, a Service of process must be completed by a person who is not a party in the lawsuit and who is over the age of eighteen. The US. The Postal Service is the 5<sup>th</sup> Branch of government i.e., Navy, Airforce, Army, Marines. The Post Service are commissioned under oath and with the authority to deliver a Summons and Complaint pursuant to Rule 4(d) (8) of SC section 15-9-210. Service of process on domestic corporations. In addition, according to the letter of Representation from the Respondent, the Respondent did not inform the Appellant of Representation until after the deadline August 26, 2022. Summons and Complaint was postmarked July 25, 2022. The Respondent's position for Motion to Dismiss should have been dismissed and the Appellant's position won be default on that premise alone.

5. DID THE APPELLANT SATISFY THE ELEMENTS OF A DEFAMATION CLAIM? The Appellant understands that the Burden of Proof rests upon the Accuser. That is why along with the Plaintiff's Response to Defendant's Motion for Dismissal/Motion for Summary Judgement; the Plaintiff submitted the video/audio recording of the July 26, 2019, Office visit. The Appellant's statement, "*(Video Account on disk. Please compare to written Exh. 8 pg.23-25)* the video showed what happened that day versus what Dr. Mitchell charted; thus, making

what Dr. Mitchell statement false and defamatory. And there also is the testimony of Case Manager for Caseworks of Linda Salido, who was the other witness of what occurred that day and other days the Appellant had suffered abuse.

That is the first element of a Defamation Claim; the defamatory statement being false; the Respondent has still failed to provide a proper answer for the complaint. A Failure to Properly Answer is direct admission guilt. Based on the testimony on record, the Appellant was clear that the defamatory remarks made and false charting by Dr. Mitchell was him accusing the Appellant and her husband of expressing animosity and displaying a confrontational attitude and allegations of abuse from the Appellant and her husband. Intent to harm and the false statement being published is the second and third element of Defamation claim.

Dr. Mitchell weaponized his words to cause harm and irreparable damage to the Appellant's and her husband's character. The Respondent statement, "that's a privileged publication as part of the legal process." If the Appellant were present; I would have objected pursuant to SC Section 16-13-451 & 450 *making unlawful and punishable to publish any false statement with malicious intent and actions... for damages for libel or slander under the existing law.* And a doctor's opinion would be deemed as a statement of fact since they are sworn in an oath and promise to state only the truth; the law permits a claim to be placed against an individual that violates that oath of promise. The words penned by Dr. Mitchell


could be perceived as express acts of aggression indicative of possible Criminal behavior; that would unduly influence and intimidate the any reader; since being penned by a physician. Dr. Mitchell took an Oath to cause no harm and that is by word and deed. It was his responsibility to accurately detail the truth in the Appellant's chart. Based on the admission of the Respondent's Attorney, reported, "I imagine, and then included in the worker's comp commission report...." The Respondent withheld information that it was a Worker's Compensation Final Order/Decision to terminate the Appellant's Workers Compensation Benefits. The Respondent attempted to make light or mitigate the true nature of where Dr. Mitchell's false statement was published. And that it was also used in the Appellant's Social Security Disability Determination decision. By withholding this information in hopes of mitigating and diminishing the Appellant's actual losses.

## Conclusion

Ever since the Appellant has filed this Complaint against Dr. David Mitchell; Opposing Counselors has Failed to Proper Answer to the Complaint; and each court Spartanburg Court of Common Pleas and the Greenville 13<sup>th</sup> Circuit has allowed the violation of procedure and have violated procedure to protect the interests of Dr. David Mitchell; what happen to “Equal Access to Justice” for everyone? As a patient of Dr. David Mitchell, the Appellant has suffered injury to her physical body and her character and that of her husband. Being a patient allows for some vulnerability and room for trust, but that vulnerability is not a surrender of an individual’s Civil Rights. Based on the Testimony of the Court and the Respondent’s Counsel, both served as witnesses for the Appellant and gave false testimony on the *Record; the Force Rushed to Judgement*, should be deem as unethical and unlawful. The Respondent’s Failure to Respond, should be ruled as Default Judgement in favor of the Appellant. The Appellant seeks relief by means of an Injunction of Protection the interests of the case for the Appellant until the completion of all cases that are directly and indirectly related to the Appellant’s work-related/Occupational Diseases. The Appellant has suffered Mental and especially physical stress of an aggravated nature from these events from his, his

PA and CONA contribution to the Appellant's Occupational Diseases of CRPS (Chronic Regional Pain Syndrome, Algoneurodystrophy, Cervical Myelopathy, Major Depressive Disorder and PTSD. The Appellant begs for Relief in the amount of \$500,000 from Dr. MICHAEL DAVID MITCHELL and \$500,000 from Carolina Orthopaedic Neurological Associates as employers of Dr. MICHAEL DAVID MITCHELL AND PA, WILLIAM SEAN IRVING for allowing and supporting the physicians in document the fraudulent charting information. They are to completely remove all false and negative statements and connotations as it relates to July 26, 2019, and any alluding of those false and negative statements and medical care and/or treatment by Dr. David Mitchell, CONA and staff members.

Further affiant sayeth not!

 8/15/2023  
 Affiant, Attorney in Fact  
 As: Equitable Beneficiary

UCC 1-207.7

Without prejudice and Respectfully Submitted.,

Cc: David Williford and Mitchell Appleby  
 And/or In care of New Atty.  
 15 S Main St., Suite 602  
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Circuit Court Judge  
 G. D. Morgan Jr.  
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