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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

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App. Case No. 2022-01749

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James John Todd Kincannon, .....Appellant,

vs.

Ashely Suzanne Griffith, .....Respondent.

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**RESPONDENT'S INITIAL BRIEF**

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## **QUESTION PRESENTED**

Did Judge Keesley properly grant Ms. Griffith summary judgment in the lawsuit brought by her ex-husband Mr. Kincannon and arising out of their 2019 divorce when:

- 1) it does not contain a short and plain statement requesting relief to which Kincannon is entitled;
- 2) it is part of a pattern of abusive litigation;
- 3) it attempts to relitigate matters which are Res Judicata from the divorce decree; and
- 4) the agreement alleged in the pleadings violates the statute of frauds?

## **STATEMENT OF THE CASE**

On April 6, 2015, the Lexington County Solicitor's Office charged James John Todd Kincannon ("Kincannon") with criminal domestic violence arising out of an assault on his then wife, Ashely Griffith ("Griffith") that occurred on March 26, 2015. On September 1, 2015, Griffith filed for divorce from Kincannon in Lexington County Family Court. Griffith hired Vance Stricklin and Amber Fulmer to represent her in the divorce. Mr. Stricklin and Ms. Fulmer were employed as attorneys at the Moore Taylor Law Firm.<sup>1</sup> The next day, the Honorable W. Greg Seigler granted Griffith an Ex Parte Restraining Order against Kincannon. The Family Court case ended with a hearing on January 24, 2017, at which time the Honorable Peter R. Nuessle approved an agreement between Kincannon and Griffith and granted a divorce to Griffith. The Decree of Divorce and Order Approving Agreement were issued on February 17, 2017, and filed on March 1, 2017, with the Lexington County Clerk of Court's Office.

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<sup>1</sup> Mr. Stricklin has since left Moore Taylor to become a Richland County Family Court Judge. Ms. Fulmer is also no longer with Moore Taylor.

Mr. Kincannon has persisted in filing additional lawsuits against Ms. Griffith and appeals relating to those lawsuits. A list of his filings and appeals follows:

1. James John Todd Kincannon v. Ashely Suzanne Griffith: 2016-LP-32-00727
  - a. Lexington County
  - b. Lis Pendens
  - c. Filed August 12, 2016
2. James John Todd Kincannon v. Ashely Suzanne Griffith: 2018-LP-32-00262
  - a. Lexington County
  - b. Lis Pendens
  - c. Filed March 28, 2018
3. James John Todd Kincannon v. Ashely Suzanne Griffith, Vance Stricklin, Amber Fulmer, Moore Taylor Law Firm, P.A.: 2019-CP-32-01168
  - a. Lexington County
  - b. Abuse of Process, Civil Conspiracy, Trespass on the Case, South Carolina Unfair Trade Practices Act, Negligent Supervision, and South Carolina Omnibus Adult Protection Act.
  - c. Filed March 21, 2019
  - d. Dismissed with prejudice by Order of Dismissal on July 2, 2019
  - e. Dismissal affirmed by Order Denying Plaintiff's Motion for Reconsideration filed July 30, 2019
  - f. Dismissal affirmed by Court of Appeals February 22, 2023; Petition for Certiorari pending
4. James John Todd Kincannon v. Ashely Suzanne Griffith: 2019-CP-32-02268
  - a. Lexington County
  - b. Declaratory, Legal, and Equitable Relief; Notice to incorporate all filings and notice of intent to claim Res Judicata, Judicial Estoppel, and related claim and issue preclusion doctrines
  - c. Filed May 30, 2019
  - d. Order dismissing complaint and denying motion to dismiss the counterclaim filed December 13, 2019
  - e. Order denying Plaintiff's motion for reconsideration and to alter or amend the December 13, 2019 order filed November 17, 2022
  - f. Appeal of the December 13, 2019 order filed December 13, 2022; this is the current appeal
5. James John Todd Kincannon v. Ashely Suzanne Griffith: 2019-LP-32-00290
  - a. Lexington County
  - b. Lis Pendens
  - c. Filed April 19, 2019
  - d. Pending

6. James John Todd Kincannon v. Ashely Suzanne Griffith: 2019-LP-32-00391
  - a. Lexington County
  - b. Lis Pendens
  - c. Filed June 6, 2019
  - d. Pending
  
7. James John Todd Kincannon v. Ashely Suzanne Griffith: 2016-CP-23-04027
  - a. Greenville County
  - b. Declaratory Judgment, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Promissory Estoppel, Partition, Equitable Recoupment
  - c. Filed June 30, 2016
  - d. Dismissed March 28, 2018 via Form 4 with Prejudice
  
8. James John Todd Kincannon v. Ashely Suzanne Griffith: 2016-CP-23-04873
  - a. Greenville County
  - b. Declaratory Judgment, Note Regarding Lis Pendens
  - c. Filed August 17, 2016
  - d. Dismissed per Rule 41(a) on January 6, 2017
  
9. Ashely Griffith v. James Kincannon: Appellate Case No. 2016-001411
  - a. Writ of Supersedeas filed by James John Todd Kincannon regarding Noodle the dog
  - b. He filed five Supplemental Notices of Appeal under this docket number
  - c. Remittitur referring to the lower court issued on September 26, 2016
  - d. Order filed September 30, 2016, from Court of Appeals denies his Petition for Supersedeas and ordered Kincannon to return Noodle by Monday, October 3, 2016, at 4:00 p.m. at the Lexington County Sheriff's Department.
  
10. James John Todd Kincannon v. Ashely Suzanne Griffith: Appellate Case No. 2022-001749
  - a. Notice of Appeal filed December 13, 2022, re 2019-CP-32-02268.
  - b. Appealing Judge Keesley's Order granting dismissal of the Complaint and denying dismissal of the counterclaim dated December 13, 2019, and Judge Keesley's November 17, 2022, Order denying Plaintiff's motion to alter or amend dismissal of the Complaint.
  
11. James John Todd Kincannon v. Ashely Suzanne Griffith, Vance Stricklin, Amber Fulmer, Moore Taylor Law Firm, P.A.: Appellate Case No. 2023-000607
  - a. Petition for Writ of Certiorari filed April 17, 2023, regarding 2019-CP-32-01168; *See also* 2019-001501

12. James John Todd Kincannon v. Ashely Suzanne Griffith, Vance Stricklin, Amber Fulmer, Moore Taylor Law Firm, P.A: Appellate Case No. 2019-001501
- a. Notice of Appeal filed August 31, 2019, regarding 2019-CP-32-01168
  - b. Appealing Judge Stilwell's Order entered July 2, 2019, granting Defendants' motion to dismiss, and Judge Stilwell's Order entered July 30, 2019, denying Plaintiff's motion for reconsideration
  - c. Opinion 2023-UP-070 filed February 22, 2023, affirming the lower court's orders
  - d. Petitioner filed motion for rehearing March 9, 2023
  - e. Order denying petition for rehearing filed March 17, 2023
  - f. Petition for Writ of Certiorari filed April 21, 2023; *See also* 2023-000607

In addition to the numerous lawsuits and appeals regarding his ex-wife, Mr. Kincannon has filed the following *pro se* lawsuits:

13. J. Todd Kincannon v. Carolina Business Equipment Inc: 2014-CP-32-02696
- a. Lexington County
  - b. Summons and Complaint Filed July 24, 2014
  - c. Order of Dismissal Filed July 31, 2015
  - d. Motion to Amend Order of Dismissal filed by Kincannon on August 28, 2015
  - e. Order to Amend Dismissal filed on September 3, 2015
14. J. Todd Kincannon v. TD Bank U.S. Holding Company: 2015-CV-32-1070204
- a. Lexington County
  - b. Summons and Complaint filed January 27, 2015
  - c. Mediation – Dismissed without prejudice June 22, 2015
15. James John Todd Kincannon v. Nicole Howland, defendant, et al: 2017-CP-23-03622
- a. Greenville County
  - b. Summons and Complaint filed June 5, 2017
  - c. Plaintiff's Motion to Proceed Informa Pauperis filed June 5, 2017
  - d. Order denying Informa Pauperis filed June 13, 2017
  - e. Motion to Reconsider Petition to Proceed Informa Pauperis filed June 16, 2017
  - f. Order Dismissing Case without Prejudice filed July 25, 2017
16. James John Todd Kincannon v. U.S. Bank National Association: 2019-CP-15-00294
- a. Colleton County
  - b. Summons and Complaint filed April 16, 2019
  - c. Order Denying Motion to Proceed in Forma Pauperis filed April 16, 2019
  - d. Filing fees waived April 16, 2019
  - e. ADR filed November 12, 2019
  - f. Case dismissed April 16, 2019

17. Kincannon et al v. U.S. Bank National Association, et al: 2:21-cv-02248
  - a. Notice of removal from Colleton County Court of Common Pleas (re 2021-CP-15-00318)
  - b. Matter dismissed December 10, 2021
  
18. James John Todd Kincannon v. Doctor's Care, P.A.: 3:17-00669
  - a. Complaint filed March 10, 2017, alleging disability discrimination, breach of contract, and unfair trade practices
  - b. Matter was dismissed May 31, 2017, for failure to prosecute
  
19. J. Todd Kincannon v. John Doe, the Lexington County deputy sheriff, Richard Roe, et al 3:18-cv-00821
  - a. Complaint filed March 26, 2018, alleging violations of his civil rights
  - b. Dismissed on June 27, 2018, for failure to prosecute
  
20. James John Todd Kincannon v. Nicole Howland, et al: 3:17-cv-00866
  - a. Complaint filed March 31, 2017, alleging libel, slander, reckless infliction of emotional distress, and tortious interference with existing and prospective contractual relations after FITSNews falsely reported he was charged with kidnapping
  - b. Dismissed on May 4, 2017, for failure to allege a constitutionally-cognizable injury, failure of defamation claim, and failure to establish court has subject jurisdiction
  
21. James John Todd Kincannon v. Nicole Howland: 3:17-00360
  - a. Complaint filed February 6, 2017, seeking a declaratory judgment against Ms. Howland as to whether she had prosecutorial immunity for her actions in the criminal prosecution of Plaintiff and alleged civil rights violations
  - b. Dismissed March 14, 2017, for lack of subject matter jurisdiction
  
22. J. Todd Kincannon v. Nicole Howland, Eric Kirkland, et al: 3:18-cv-00945
  - a. Complaint filed April 6, 2018, alleging violation of civil rights related to his April 6, 2015, arrest for criminal domestic violence
  - b. Dismissed for failure to prosecute June 26, 2018
  
23. J. Todd Kincannon v. The State of South Carolina: 6:17-cv-00670
  - a. Complaint filed March 10, 2017, alleging election irregularities and seeking a declaratory judgment
  - b. Dismissed for Failure to Prosecute filed July 17, 2017

24. Kincannon v. South Carolina Commission on Lawyer Conduct 3:14-cv-02832

- a. Complaint filed July 14, 2014 alleging a deprivation of his free speech, equal protection, and due process rights
- b. Dismissed February 2, 2015, for failure to prosecute pursuant to FRCP 4 and failure to comply with FRCP 4.

Most recently, this Court ruled against Mr. Kincannon in appellate case number 2019-001501 in which he sued Ms. Griffith and her lawyers Vance Stricklin and Amber Fulmer for claims including abuse of process, civil conspiracy, trespass on the case, South Carolina Unfair Trade Practices Act, negligent supervision, and South Carolina Omnibus Adult Protection Act. On February 22, 2023, this Court affirmed Judge Stilwell's order dismissing that case. Mr. Kincannon has since petitioned for certiorari to the South Carolina Supreme Court.

Mr. Kincannon has also recently threatened to serve a Rule to Show Cause on Ms. Griffith, though it is not known what basis he would have for this. (May 22, 2023, Email of T. Kincannon).

The present lawsuit was filed May 30, 2019, approximately two years after Mr. Kincannon and Ms. Griffith's divorce was final. (Summons and Complaint; Decree of Divorce filed March 1, 2017). The Complaint seeks "declaratory, legal and equitable relief." (Complaint ¶ 23.) At paragraph 5, the Complaint seeks a finding of equitable title on behalf of Mr. Kincannon to a home located at 306 Springwalk Lane. This home was found to be non-marital property owned by the wife in the divorce decree. (See, Divorce Decree ¶ C). The Complaint also alleges equitable claims to "an automobile," "tangible personal property," and reimbursements "for various payments." (Complaint ¶¶ 6, 7, and 9).

Ms. Griffith moved to dismiss or for summary judgment on the basis that the 2017 Divorce Decree is res judicata and collateral estoppel as to the allegations in the Complaint. On November 19, 2019, Judge Keesley heard Ms. Griffith's motion and dismissed Mr. Kincannon's case. (Keesley Order December 12, 2019).

On December 16, 2019, counsel for Ms. Griffith sent a copy of this order to Mr. Kincannon by United States mail. *See* Letter, Order and Certificate of Service from Lynn Ivey to Todd Kincannon on December 16, 2019. One year later on December 3, 2020, Mr. Kincannon filed a motion for reconsideration. On October 31, 2022, Judge Keesley issued a scheduling order in which he allowed Mr. Kincannon to submit any materials in support of his motion despite the untimeliness of the motion. On November 17, 2022, Judge Keesley denied Mr. Kincannon's motion for reconsideration. (Keesley Order of November 17, 2022). Mr. Kincannon then appealed Judge Keesley's order on December 13, 2022.

### **ARGUMENTS**

#### **I. JUDGE KEESLEY PROPERLY DISMISSED MR. KINCANNON'S LAWSUIT AS IT DID NOT STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED, AND IT IS A PART OF A PATTERN OF ABUSIVE FILINGS**

Kincannon's complaint sets forth a hodgepodge of allegations and questions. It seeks an equitable apportionment of real property, an automobile, and unknown personal property. (Complaint ¶¶ 5, 6, and 7). It alleges rescission and breach of contract. Rather than stating factual allegations, it poses a series of unanswered questions regarding a "meeting of the minds" and enforceable contracts in Paragraphs 11, 12, 13, 14 and 15. *See*, Complaint. It does not set forth the relief it seeks. *See*, Pages 6 and 7 of Complaint.

As such, it is not a "short and plain statement of the facts showing that the pleader is entitled to relief" or "a demand for judgment for the relief to which he deems himself entitled." (Rule 8, SCRCF). The complaint is nonsense, and Griffith cannot reasonably ascertain what she is alleged to have done in violation of the law or what it is Kincannon is asking the Court to do. As a result, the Complaint is defective under the rules of civil procedure, and Judge Keesley properly granted summary judgment.

Mr. Kincannon has a long history of abusive and repetitive frivolous legal filings. He has now sued his ex-wife four times in the Court of Common Pleas despite the resolution of their divorce through a divorce decree. *See, Kincannon v. Griffith*, 2016-CP-23-04873, 2016-CP-23-4027, 2019-CP-32-01168, and 2019-CP-32-2268. He has filed four Lis Pendens against her property. *See, 2016-LP-32-00727, 2018-LP-32-00262, 2019-LP-32-0290, and 2019-LP-32-0391.* He has sued the lawyers who represented his ex-wife. *See, 2019-CP-32-01168.* He has sued the Lexington County Sheriff's Office regarding his arrest for criminal domestic violence and psychiatric evaluation. *See, Kincannon v. Doe*, 3:18-00821. He has sued Lexington County prosecutor Nicole Howland four times. First he sued her for prosecutorial misconduct and civil rights violation. *See, Kincannon v. Howland*, 3:17-00360. A second time he sued her along with the Sheriff's Office for his arrest and prosecution on domestic violence. *See, Kincannon v. Kirkland*, 3:18-00945. A third time he sued her along with a media website for publishing his arrest on the internet. *See, Kincannon v. Howland and FITS News*, 3:17-866. And a fourth time he sued her along with FITS News. *See, Kincannon v. Howland and FITS News*, 2017-CP-23-03622. He has sued the State of South Carolina over a voting irregularity. *See, Kincannon v. State of South Carolina*, 6:17-00670. And, he sued the Commission on Lawyer Conduct for threatening his license to practice law.<sup>2</sup> *Kincannon v. The South Carolina Commission on Lawyer Conduct*, 3:14-02832. He also sued Doctor's Care for refusing to provide him medical care. *See, Kincannon v. Doctor's Care* 3:17-00669.

As a result, there is an ample history of abusive filings by Mr. Kincannon, and Judge Keesley properly denied him permission to continue to amend this frivolous filing based on Mr.

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<sup>2</sup> Kincannon is a suspended lawyer. *See, In Re Kincannon*, 413 S.E.2d 491(2015).

Kincannon's history of frivolous litigation. *See, City of Columbia v. Assa 'ad-Faltas*, 420 S.C. 28, 800 S.E.2d 782 (2017) (imposing restrictions on Assa'ad-Faltas for abuse of judicial system).

**II. JUDGE KEESLEY PROPERLY DISMISSED THE COMPLAINT AS ITS ALLEGATIONS ARE RES JUDICATA DUE TO THE PARTIES' PREVIOUS DIVORCE DECREE**

By the Complaint's own terms, the claims the complaint attempts to set forth arose in "June of 2016." (Complaint ¶ 4). Mr. Kincannon and the Respondent Ms. Griffith were divorced approximately one year later on March 1, 2017. (Decree of Divorce, March 1, 2017). This decree represents that the parties "advised the Court they had reached a full agreement as to all issues present before the Court, except the issue of divorce, which rests within the sole discretion of the Family Court." (Divorce Decree Page 2). The decree goes on to indicate that the house at 306 Springwalk Lane "is wife's separate non-marital property."

Nevertheless, Kincannon has filed Lis Pendens regarding the property, and he has filed this lawsuit alleging that he has equitable title to this property. He also alleges an interest in unnamed personal property and a vehicle. (*See* ¶¶ 5, 6 and 9 of Complaint). Assuming Kincannon had some interest in the unidentified personal property, vehicle or land, the interest would have existed at the time Judge Nuessle approved the divorce decree and the division of the property. Judge Nuessle's order assigns Ms. Griffith the home at 306 Springwalk Lane. *See*, p. 2, ¶ C of divorce decree. The order also divides all personal property and vehicles. Mr. Kincannon brought the current lawsuit seeking an interest in the home, vehicle and personal property already divided by Judge Nuessle's order. As a result, he is barred from bringing this lawsuit by res judicata.

Res judicata bars subsequent actions between the same parties when the claim arises from the same occurrence that was the subject of a prior action between those parties. *Plum Creek Dev. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). Res judicata requires: 1) identity of the parties, 2) identity of the subject matter, and (3) adjudication of the issue in the former

action. *Sealy v. Dodge*, 289 S.C. 543, 545, 347 S.E.2d 504, 505 (1986). The parties are the same. Kincannon is now civilly suing his ex-wife Griffith. The subject matter is the same. This suit applies to a home, vehicle and personal property. The home is specifically assigned in the divorce decree to Ms. Griffith. (p 2, ¶ C Divorce Decree). The decree also divides the parties' vehicles. *See*, p 3, ¶ F Divorce Decree. And, the decree divides personal property. *See*, p 2, ¶ E Divorce Decree. Thus, the subject matter in the current lawsuit was specifically allocated in the divorce. Finally, the divorce decree signed by Judge Nuessle recites that it records "a full agreement as to all issues before the Court." (p 2 Divorce Decree). Thus, the ownership of both real and personal property was adjudicated in the divorce settlement.

### **III. AS AN ADDITIONAL SUSTAINING GROUND, KINCANNON'S CLAIMS TO AN EQUITABLE INTEREST IN REAL PROPERTY VIOLATE THE STATUTE OF FRAUDS**

The divorce decree establishes that "Husband agrees the residence where wife resides at 306 Springwalk Lane, West Columbia, South Carolina 29169 is wife's separate non-marital property. Husband agrees wife has legal title to this residence." (p 2, ¶ C Divorce Decree). Kincannon appears to argue that despite this language in the divorce decree, he has an equitable interest in 306 Springwalk Lane. He then argues that his interest could not be disbursed in the Family Court action because 306 Springwalk Lane is non-marital property. He did not disclose this alleged equitable interest in 306 Springwalk Lane at the time of the divorce decree. Now he relies upon this previously undisclosed interest in the property to sue his ex-wife in the Court of Common Pleas.

Whatever interest Kincannon alleges he has in 306 Springwalk is not supported by any writing or any allegation of a writing. South Carolina Code Section 32-3-10 also called the Statute of Frauds requires that:

No action shall be brought whereby: ...

- (3) To charge any person upon any agreement made upon consideration of marriage;
- (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; or
- (5) To charge any person upon any agreement that is not to be performed within the space of one year from the making thereof;

Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

Whatever agreement Kincannon alleges, it asserts some interest in land stemming from the parties' marriage. In addition, it must have been for longer than one year because the divorce action was filed September 1, 2015, and this lawsuit was filed over three years later on May 30, 2019. The divorce decree makes no mention of any pending equitable interest or agreement between the parties as Kincannon alleges in the current lawsuit.

As a result, any interest Kincannon alleges is inconsistent with the Statute of Frauds, and his lawsuit was properly dismissed for that reason.

#### **IV. JUDGE KEESLEY PROPERLY RELIED ON THE DIVORCE DECREE AS RES JUDICATA DESPITE KINCANNON'S ALLEGATION THAT GRIFFITH IS NOT IN COMPLIANCE WITH THE DECREE**

Kincannon argues that the divorce decree is not binding upon him because Ms. Griffith has not complied with that decree. Ms. Griffith does not agree with this characterization. But, even if it were correct, the divorce decree is res judicata as to the allegations in this lawsuit.

Once the divorce decree is entered it is final and binding on the parties. Any action to enforce its provisions must be brought in Family Court. The Court of Common Pleas does not have jurisdiction to enforce the Family Court Order. *See*, S.C. Code Ann. § 63-3-530 ("The family court has exclusive jurisdiction: ... (2) ... for settlement of all legal and equitable rights of the parties in the action and to the real and personal property of the marriage... (25) to modify or

vacate any orders issued by the court... (30) to make any order necessary to carry out the provision of this title....”).

As a result, Kincannon cannot relitigate his divorce decree in circuit court simply because he alleges his ex-wife did not comply with the decree.

### **CONCLUSION**

Judge Keesley properly dismissed Kincannon’s case with prejudice because:

1. The pleadings did not present a short and plain claim for relief to which Kincannon was entitled and Kincannon has a long history of abusive and frivolous legal filings;
2. Res judicata controls the parties’ property distribution as set out in their divorce decree;
3. Kincannon’s claims violate the Statute of Frauds; and
4. Kincannon cannot relitigate his domestic case in the Court of Common Pleas.

Respectfully submitted,

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