THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge
Walton J. McCloud, Circuit Court Judge

Case No. 2023-001005

Donald R. McCabe and Marion J. Smith, Respondents,

v.

Dennis Gallipeau, Appellant.

APPELLANT'S INITIAL BRIEF

Appellant, Dennis M. Gallipeau, *pro se*, files his initial brief.

December 3, 2023

Dennis M. Gallipeau, *pro se*
1920 Ashford Lane
Columbia, SC 29210
(803) 238-8735
Appellant

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B. Statement of Issues on Appeal

I. Does Section 16-9-10, et seq, of the South Carolina Code of Laws create a civil remedy?

II. Did the Circuit Court commit reversable error: (i) by conducting a hearing via WebEx in which Appellant clearly expressed his unwillingness to consent to; (ii) by entertaining, and entering a judgment by default prior to any entry of default by the clerk; and (iii) by allowing, and relying upon a claim of service of a motion for judgment by default upon an unrepresented party via email only?

C. Statement of the Case

On or about January 8, 2020, Appellant sued his HOA's management company (and a trash collection business) for failing to ensure that the trash removal company was conducting its business in a lawful manner, alleging that the management company, MJS, Inc, was negligent in its duties.

Two and a half years into the litigation, and on the eve of a hearing scheduled on Appellant's motion for summary judgment, MJS, Inc. filed an affidavit of its owner, Marion J. Smith. That affidavit was filed for the sole purpose of creating "issues" that it knew would prevent the Circuit Court judge from granting Appellant's summary judgment motion.

Appellant believed then, and believes to this day, that Marion J. Smith committed perjury in his affidavit, perjury suborned by Respondent, attorney Donald R. McCabe, who often goes by the name of D. Ryan McCabe, a state legislator. Accordingly, Appellant filed a second lawsuit, this one against Mr. Smith and his attorney, Donald R. McCabe in which he alleged several offenses against public justice.

After Appellant's repeated attempts to depose Mr. Smith failed, Appellant filed a motion to seeking more responsive answers to two (2) of the standard interrogatories permitted under Rule 33, SCRCV.

On May 1, 2023, following a hearing, the circuit court granted Mr. Smith's and attorney McCabe's motions to dismiss. And then, on October 2, 2023, another circuit court judge entered a judgment by default on Mr. Smith's and Mr. McCabe's counterclaims against Appellant in their respective answers to Appellant's complaint, answers that were filed without any proof of service and in which no proof of service was filed until twenty (20) days after the answers were filed with the court, certifications of service that were and are blatantly false.

D. Standard of Review

Appellant, a 71 year old pro se litigant, believes that the appropriate standard of review for Issue I, which represents an interpretation of a statute, is a question of law. As for Issue II, Appellant believes that the appropriate standard of review is abuse of discretion in that the circuit court lacked jurisdiction to entertain, let alone grant, Respondents' motions to dismiss and that conducting the hearing via the WebEx forum without Appellant's consent, was not only abuse of discretion, but was also clear error and that its order was issued without jurisdiction and was a nullity.

Accordingly, Appellant asks the Court to review both circuit court decisions/orders, de novo.

E. Argument

In its "Order on Defendants' Motion for Dismissal under Rule 12 (B)(6) filed March 10, 2023" the circuit court made what Appellant believes to be several incorrect interpretations of the statute, Section 16-9-10, et seq, SC Code of Laws.

The first such error was the circuit court's finding that the statute in question does not create a civil remedy for persons, such as Appellant, who have been "grieved, hindered or molested" by acts of perjury and or subornation of perjury. Appellant respectfully disagrees.

The second error in its interpretation of the statute is that even if the statute does create a civil remedy, then (a) any such cause of action would only apply and become 'ripe' if the perjury and or subornation of perjury results in a "judgment" against the aggrieved party. Appellant respectfully disagrees that a "judgment" is the one and only result that would trigger the filing of a civil action, and (ii) that the fine(s) authorized by the statute "can be read in the context of seeking one-half of any fine imposed." Order, at page 4, and that allowing civil actions under the statute, "would likely open a Pandora's Box of litigation." Order, supra. Appellant respectfully disagrees as to both interpretations of the statute.

It is Appellant's position that Section 16-9-10, et seq, does indeed create a civil remedy for any person, such as Appellant, who is "grieved, hindered or molested" by the perjury and or the subornation of perjury in an active civil action, that is exactly what the statute says, that it does create a civil remedy.

Further, any such civil action is not limited to, or conditioned upon or even dependent upon the entry of a "judgment" only that would trigger the civil remedy the statute clearly creates. And lastly, contrary to the circuit court's interpretation of the statute, there is, and indeed can be no "splitting", or "halving," any fine imposed under the statute, whether it be imposed in a criminal action or, as here, in a civil action. The statute seems quite clear on this point: "The **one** moiety of the fines by this article shall be for the state (in a criminal action) and the other moiety to such person as shall be grieved, hindered or molested by reason of the offense ...". Sec. 16-9-50, SC Code of Laws. (bold added)

It seems clear to Appellant that rather than "open[ing] a Pandora's Box, our legislature enacted the statute to not only compensate persons such as Appellant but also to serve an additional deterrent to such acts being committed in the civil actions, and not to open Pandora's Box. The circuit court's interpretation to the contrary strikes Appellant as being a rather sad commentary of the Judiciary's perception of the lawyers and litigants who come before the trial courts in this state.

There is, and can only be, one fine, imposed either in a criminal action or in a civil action. Our Legislature knew that law enforcement would likely have the funding, and means, to only pursue the most egregious acts of perjury and or the subornation of perjury, and would more than likely take the position that the matter should be dealt with in a civil not criminal matter.

As for the second issue before this Court, Appellant alleges that the circuit court abused its discretion in several ways. First, it held a hearing using the WebEx forum even though Appellant clearly declined to consent to. And then it not only entertained a motion for default judgement, it granted the motion and entered judgment by default without any previous entry of default, let alone notice to the Appellant of the entry of default, denying Appellant of the opportunity to attempt to have the entry of default set aside. Instead, the circuit court entered default and then immediately entered a judgment by default, all in one breath. Transcript, at page 5, "And so we'd ask the court to enter default against him. I'd also ask the court to enter a judgment [against] Mr. Gallipeau," to which the Court replied, "Okay." Transcript at page 6.

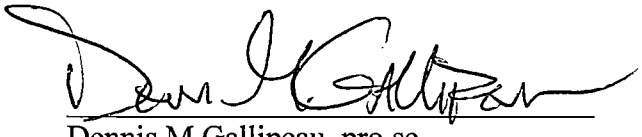
And that is exactly what the circuit court did. It entered default and default judgment all in one breath during a WebEx hearing in which Appellant never consented to holding in that forum, relying upon two (2) false certificates of service.

F. Conclusion

The Honorable William P. Keesley incorrectly interpretated and applied Section 16-9-10, et seq, SC Code of Laws, and the Honorable Walton J. McCloud committed reversable error granting Respondents' motions for judgment by default and by denying Appellant's motion to set aside the judgment by default.

Appellant asks the Court to overrule both decisions.

Respectfully submitted,



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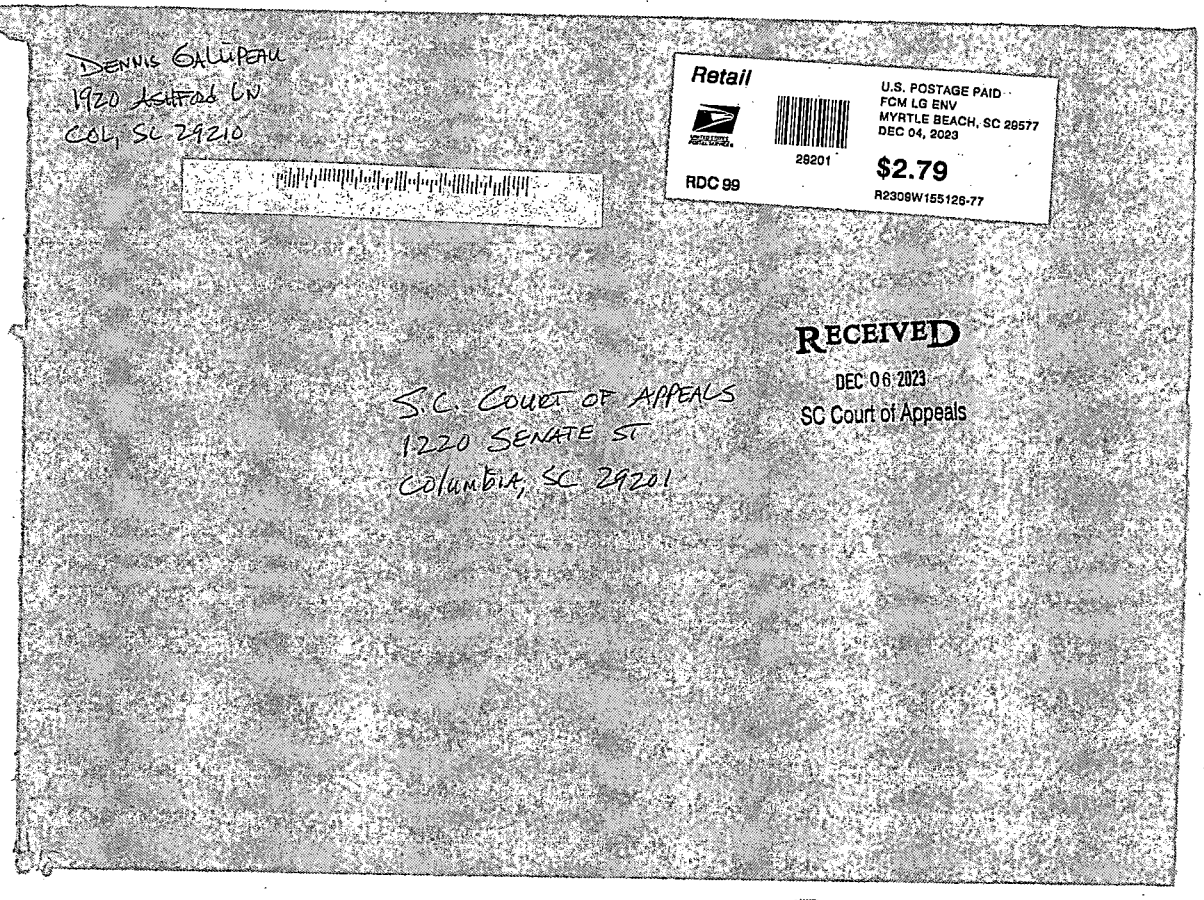
PROOF OF SERVICE

I certify that I have caused to be served Respondents, Donald R. McCabe and Marion J. Smith, Appellant's Initial Brief, by US First Class Mail to Respondents counsel of record, Stephanie Trotter Kellahan, 4500 Fort Jackson Blvd., Suite 250, Columbia, SC 29209 on December 4, 2023

Dennis M. Gallipeau



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