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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Hon. William P. Keesley, Circuit Court Judge

Appellate Case No. 2022-001749

James John Todd Kincannon,

Appellant,

v.

Ashely Suzanne Griffith,

Respondent.

RECORD ON APPEAL

Other Counsel of Record:
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West Columbia, SC
Attorney for Respondent

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RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
JAMES JOHN TODD KINCANNON,	)	
	)	
Plaintiff,	)	ORDER ON DEFENDANT'S
	)	MOTION FOR SUMMARY
vs.	)	JUDGMENT AND PLAINTIFF'S
	)	MOTION TO DISMISS
ASHELY SUZANNE GRIFFITH,	)	
	)	Case No.: 2019-CP-32-02268
Defendant.	)	

Heard: November 19, 2019, at Westbrook/Lexington County Judicial Center
 Plaintiff: Pro Se
 Attorneys for the Defendant: James Edward (Ward) Bradley, Esquire
 Court Reporter: Patricia A. Szoke

This lawsuit is an attempt by the plaintiff to obtain some type of recovery arising from ownership of a residence, an automobile, and perhaps other unspecified property. Effectively, this is an ongoing dispute related to his divorce from the defendant. There are two motions before the court: (1) The defendant moves for dismissal or for summary judgment based on the prior order of the Family Court; and (2) The plaintiff seeks an order dismissing the counterclaim. The motion for dismissal of the Complaint is granted. The motion to dismiss the counterclaim is denied. The Clerk of Court shall docket this case in non-jury court before the Chief Judge for Administrative Purposes to determine the Counterclaim's request for injunctive relief.

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. Summary judgment is not appropriate where further inquiry into the facts of the case is

desired to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusion to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000). South Carolina follows the scintilla of evidence standard.

Dismissal on the pleadings is an especially drastic remedy. It is generally limited to the four corners of the pleadings themselves. Here, the court agrees to look at matters beyond the pleadings, as seemingly requested by both parties.

BACKGROUND

On February 13, 2017, a Family Court judge signed an order of divorce which incorporated a settlement and property division reached by the parties.¹ The parties were married in February 2013, and separated on or about August 26, 2015. Both sides point to the following language in the order:

C. Husband agrees the residence where Wife resides at 306 Springwalk [Spring Walk] Lane, West Columbia, South Carolina 29169 is Wife's separate non-marital property. Husband agrees that Wife has legal title to this residence.

This case may present the most convoluted status of any this court has ever considered, and the Complaint is a hodgepodge of references to various potential legal theories of recovery. The ones specifically mentioned are contract, rescission of contract, and declaratory judgment, though there also vague references to unnamed equitable remedies. In his Complaint, the plaintiff asserts that he is unable to specify all the causes of action that he might be using to seek recovery because he needs to know what the

¹ The wife was represented by counsel. The defendant appeared pro se, but is trained in the law, currently on inactive status with the South Carolina Bar.

defendant's responses will be. In addition, the Complaint has a significant section where the plaintiff poses a series of questions rather than pleading proper assertions. This is not proper pleading. Normally, the court would allow amendment, but this lawsuit is part of a pattern of repeated legal actions filed by the plaintiff against his former wife. In at least one of those actions, a judge has determined that the plaintiff is engaging in misuse of legal process. The court is determining these motions based on matters that are facially apparent.

The Complaint filed May 30, 2019, states:

1. This is an action principally for breach or, alternatively, for rescission of a contract or otherwise enforceable agreement between Plaintiff and Defendant, who were at the time married but separated at the instance of Defendant, entered into an apparently enforceable contract calling for Plaintiff to purchase approximately \$300,000 of property out of his separate non-marital assets and transfer that property to Defendant's possession whereupon the property would become Defendant's separate non-marital property upon Defendant's performance of a marital reconciliation sought by Plaintiff provided the reconciliation occurred within one year of the agreement. Defendant took possession of the property but failed to perform the marital reconciliation within one year of the agreement (or thereafter) and subsequently divorced Plaintiff. Accordingly, Plaintiff maintains this action for breach of contract and related claims such as rescission.² [sic]

In other places in the Complaint, the plaintiff refers to equitable recovery. Initially, the court will address the claim involving real estate.

CLAIMS RELATED TO REAL PROPERTY

The Complaint references that the property was conveyed to the defendant by McGuinn Homes, LLC through deed dated August 29, 2015, recorded September 9,

² The Complaint also makes a claim related to a BMW automobile that was discussed in the divorce decree and considered by this court later in this order.

2015. As indicated above, this would fall immediately around the August 26, 2015 (on or about) date that the Family Court found that the parties separated.³

So, the plaintiff is claiming that there is an enforceable agreement, entered during the separation, while the parties were still married, whereby he agreed to use his non-marital assets of approximately \$300,000 to purchase "property," and that this property, including this residence, would be placed in the defendant's name, subject to the agreement.⁴ He claims that he agreed to give her possession of this residence and that it would become her separate marital property, if she reconciled with him within one year of that alleged agreement. No date has been provided as to when the agreement was entered, but, logically, it had to have been on or before the date of the execution of the deed or, at the very latest, the date the deed was filed on September 9, 2015. Therefore, based on the plaintiff's allegations and the documents in this file, any such agreement had to have been entered within a two-week period in late August or early September of 2015.

According to the Complaint, the plaintiff did more than allow the defendant to have possession during the separation. The property was transferred directly from McGuinn Homes, Inc. to the defendant.

The parties did not reconcile. They were separated for more than a year, and when these parties appeared for their divorce hearing on January 24, 2017, the division of property was still in dispute. At that time, the plaintiff knew that an essential term of this purported contract had not been met: there was no reconciliation within a year. He knew that part of the representation to the Family Court as a settlement enabled the plaintiff to

³ The public record shows that this is a general warranty deed conveying fee simple title, and that it was made in consideration of \$190,153.00 paid to McGuinn Homes.

⁴ The reference to \$300,000 apparently relates to a large number of unspecified expenditures.

obtain a divorce without further delay. Nothing in the divorce decree indicates that the plaintiff specifically reserved any right to seek either this real estate itself or the right to maintain a claim for it. The plaintiff's argument is that such rights were protected by the declaration that the residence is the defendant's non-marital property. As discussed below, this argument ignores his inconsistent act of changing the non-marital status from his own to that of his wife.

South Carolina Code §20-3-630 deals with marital and non-marital property. It reads, in part:

(A) The term "marital property" as used in this article means all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation as provided in Section 20-3-620 regardless of how legal title is held, except the following, which constitute nonmarital property:

(1) property acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse;

(2) property acquired by either party before the marriage and property acquired after the happening of the earliest of:

(a) entry of a pendente lite order in a divorce or separate maintenance action [the court has not been advised of any temporary order];

(b) formal signing of a written property or marital settlement agreement; or

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(3) property acquired by either party in exchange for property described in items (1) and (2) of this section;

(4) property excluded by written contract of the parties. "Written contract" includes any antenuptial agreement of the parties which must be considered presumptively fair and equitable so long as it was voluntarily executed with both parties separately represented by counsel and pursuant to the full financial disclosure to each other that is mandated by the rules of the family court as to income, debts, and assets;

(5) any increase in value in nonmarital property, except to the extent that the increase resulted directly or indirectly from efforts of the other spouse during marriage.

Interspousal gifts of property, including gifts of property from one spouse to the other made indirectly by way of a third party, are marital property which is subject to division.

(B) The court does not have jurisdiction or authority to apportion nonmarital property.

Viewing the evidence in the light most favorable to the plaintiff, there could have been an issue as to whether the house was acquired using non-marital assets that the plaintiff had before the marriage. [See §20-3-630(A)(3) property is non-marital if acquired "by either party in exchange for [non-marital] property described in items (1) and (2) of this section."] The plaintiff anchors his Complaint on §20-3-630(B) and cases that have interpreted jurisdictional requirements establishing that the Family Court lacks jurisdiction to apportion non-marital property. Apportioning or dividing a particular asset is different than considering all the assets of the parties, marital and non-marital, as the Family Court is required to do in evaluating the propriety of the property settlement.

Concerning marital property, §20-3-620 provides, in subsection (B), that "In making apportionment through equitable division, the court must give weight in such proportion as it finds appropriate to all of the following factors: . . . (13) "liens and any other encumbrances upon . . . the separate property of either of the parties, and any other existing debts incurred by the parties or either of them during the course of the marriage . . .[.]" [Emphasis added]. So, the Code appears to require that an encumbrance of any type upon the separate property of either of the parties or any debt incurred during the marriage should be called to the attention of the Family Court in evaluating the propriety of the division of property contained in the decree. There is no indication that the Family Court was apprised of the purported agreement that the plaintiff is advancing in this lawsuit.

The only reasonable construction that the court can determine regarding the plaintiff's position is as follows: 1) he agreed with his wife that he would convert his non-martial assets into a residence, which would become her non-martial property, if she reconciled with him within one year of their separation; 2) she breached the contract by not reconciling; 3) after one year, the parties divorced and entered into a settlement related to their property, which was incorporated into a binding Family Court order; 4) pursuant to the Family Court settlement, the subject residence is established to be the defendant's non-martial property, which is the status that she would have occupied had she reconciled; and, 5) this declaration that the residence is the defendant's non-marital property allows him to bring this action in circuit court to obtain relief based on the original, unfulfilled contract.

The agreement was not in writing. The Statute of Frauds, §32-3-10, provides, in part:

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.

To the extent that the deed might be considered a writing or memorandum, deeds are not signed by the grantee, so there is nothing supplied to the court indicating a writing signed by the defendant. This action concerns an interest in real estate. In addition, it is

an agreement made upon condition of marriage in that it is based entirely on a condition that the defendant reconcile and remain married to the plaintiff, though no term has been advanced as to how long she would be required to remain married to him after the initial reconciliation. Viewing all evidence and all reasonable inferences therefrom in the light most favorable to the plaintiff, the purported agreement cannot be enforced through Common Pleas court because it does not comply with the Statute of Frauds. There is no evidence of a valid cause of action based on breach of contract.⁵

RESCISSION

As for any claim for rescission of contract, the remedy for rescission is to return the parties to the same position they occupied before the contract was entered (the *status quo ante*). The relief in this instance would presumably be some form of restitution, including a cause of action for unjust enrichment, though no such cause of action is specifically pleaded here.

Am Jur 2d – Contracts §513 reads, in part:

V. Modification, Extinguishment, and Renewal, C. Rescission, Termination, or Discharge, 1. Nature of Contractual Rescission, Termination, or Discharge, § 513 - Methods of discharge or termination of contracts

Generally, a contract may be canceled only under its own terms or through mutual agreement. Contracts have the effect of law for the parties and may be dissolved only through the consent of the parties or on grounds provided by law. A contract may be discharged by performance in accordance with its terms, or by the expiration of the time during which it

⁵ To the extent that this claim can be considered by further post-divorce action related to property over which the Family Court lacked jurisdiction, §20-3-620(A) provides:

In a proceeding for . . . disposition of property following a prior decree of dissolution of a marriage by a court which . . . lacked jurisdiction to dispose of the property, and in other marital litigation between the parties, the court shall make a final equitable apportionment between the parties of the parties' marital property upon request by either party in the pleadings.

is to remain operative. In addition, there are several other methods of discharging contracts, including rescission by agreement or by virtue of a contractual provision, rescission for original invalidity, and rescission for failure of consideration or a material breach or default. Parties to a valid contract may rescind or abandon it, or substitute another in its place, or by conduct inconsistent with the continued existence of the original contract estop themselves from asserting any right thereunder.

Definition:

To "rescind" a contract is to abrogate or cancel the contract, unilaterally or by agreement, or to make void; to repeal or annul.

Rescission is an equitable remedy that invalidates an agreement, not a cause of action, which rests on the equitable principle that a person shall not be allowed to enrich him- or herself unjustly at the expense of another.

[Emphasis added]. The effect of the remedy of rescission is generally to extinguish a rescinded contract so effectively that in contemplation of law it has never had existence, and to put or restore the parties to status quo.

The remedy of rescission and restitution is an alternative to damages in an action for breach of contract.

It is difficult to understand how rescinding this alleged contract could result in any benefit in this lawsuit for the plaintiff. In the light most favorable to the plaintiff, if the purported contract were considered never to have existed, the *status quo ante* would be to place the parties in a situation where the defendant would not have the residence and the plaintiff would have the assets that he alleges to have been non-marital. However, that status is one where there would have been no determination by the Family Court that the assets were non-marital. The wife would be able to claim that various assets were marital property, subject to equitable division, and/or that they were separate property of the plaintiff that the Family Court was required to consider under the equitable division standards, which may affect the division of the marital property. As discussed below, what the plaintiff did in Family Court is inconsistent with the granting of relief in this court on the equitable grounds presumably alleged here.

OTHER EQUITABLE RELIEF

If the plaintiff wants to assert some quasi-contract or equitable relief in circuit court, he is precluded because he engaged in an intervening action, inconsistent with preservation of his rights. If he wanted to maintain his right to bring this lawsuit, he was required to have maintained the position in Family Court that the residence is his non-marital property, not convert it to be the wife's non-marital property through the Family Court case. As mentioned previously, §20-3-630(A)(3) declares that property is non-marital if acquired "by either party in exchange for [non-marital] property described in items (1) and (2) of this section." His argument now is that he used his non-marital assets to acquire this residence. He may have prevailed on that issue had he pursued it, but he abandoned that position in the Family Court by converting his purportedly non-marital property into becoming his wife's non-marital property. The mere reference to the property being non-marital, thus outside the jurisdiction of the Family Court to apportion, ignores the distinction between whose non-marital property it is.⁶

Promissory Estoppel:

To the extent that the plaintiff seeks recovery under promissory estoppel, that also fails. In *Satcher v. Satcher*, 351 S.E.2d 477, 570 S.C. 535 (Ct. App. 2002), the court stated:

I. Promissory Estoppel

A contract and promissory estoppel are two separate and distinct legal theories. They "are two different creatures of the law; they are not legally synonymous; the birth of one does not spawn the other." *Duke Power Co. v. S.C. Pub. Serv. Comm'n*, 284 S.C. 81, 100, 326 S.E.2d 395, 406 (1985). Our courts recognize a remedy in equity if the claimant can prove:

- (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3)

⁶ The mere designation of property as non-marital also does not prevent the Family Court from considering that fact and any claim of liens or encumbrances upon the couple's separate property, as cited in the statutes above.

the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.

Woods v. State, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct.App.1993).

The applicability of the doctrine depends on whether the refusal to apply it “would be virtually to sanction the perpetration of a fraud or would result in other injustice.” Citizens Bank v. Gregory's Warehouse, Inc., 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct.App.1988). Unlike a contract which requires a meeting of the minds and consideration, promissory estoppel looks at a promise, its subsequent effect on the promisee, and in certain cases bars the promisor from making an inconsistent disposition of the property.

The Complaint alleges no promise on the part of the defendant. To the degree that one might extrapolate from the argument a promise by the defendant to convey the residence to the plaintiff, if the parties did not reconcile within one year, the parties went through a divorce and property division months after the year had expired, and the plaintiff agreed to have the residence determined to be the non-marital property of the defendant, titled in her name.

Equitable Trusts:

- A. Resulting Trust: Equity can enforce through a resulting trust the rights of a person who pays for property that is titled in the name of another person.
- B. Constructive Trusts: Equity can impose a trust upon and enforce rights related to property based on an agreement, understanding, promise, or similar arrangement between parties related to that property.

If the plaintiff desired to proceed by claiming equitable trust, those claims must also fail. Resulting and constructive trusts allow a court in equity to determine whether someone has an interest in property titled in another person's name. But, there are at least a couple of equitable maxims that preclude the plaintiff's relief in circuit court in this instance: 1) Equity aids the vigilant, not those who sleep on their rights; and, 2) Equity

considers as done what ought to have been done. The plaintiff had the ability to maintain his position related to this property when he was in Family Court and, if the court determined the issue in his favor and declared this residence to be his non-marital property, any dispute as to its division would be appropriate in circuit court. If the Family Court determined the residence to be marital property, he could have appealed. Instead, he converted the non-marital property status from himself to his wife, and he now seeks to undo that through this action.

To the extent that case law or §20-3-620(A) may be read to allow the Court of Common Pleas to resolve this dispute, the court finds that it is patently inequitable for the plaintiff to circumvent the Family Court process through this lawsuit.

PERSONAL PROPERTY

The Complaint also seeks relief concerning personal property. The following paragraphs outline those allegations.

6. Plaintiff and Defendant each claim equitable title to an automobile purchased with Plaintiff's funds presently in Defendant's possession.
7. Plaintiff and Defendant each claim equitable title to various other items of tangible personal property purchased with Plaintiff's funds presently in Defendant's possession
8. Plaintiff and Defendant dispute whether Defendant has a contractual, legal, or equitable obligation to reimburse Plaintiff for various payments Plaintiff made for Defendant's benefit for personal property that is either intangible or unreturnable, such as utilities payments, college tuition payments, etc.

These assertions are in direct contravention of the Family Court decree. With the exception of specific provisions concerning a pet and a BMW automobile, the decree makes it clear that the parties agreed that each party would keep the personal property in his or her possession, including any financial accounts, and be responsible for any debts

in their respective names. As for the pet dog, there is an agreement about possession of the pet and what happens in the event that one party is unable to care for the dog. As for the BMW, the decree indicates that the parties knew that the BMW was no longer in the possession of the wife, who had acquired a different vehicle, and each party was given sole ownership of the vehicles in their respective possession. For reasons similar to those discussed above concerning legal and equitable remedies related to the real estate, and based on res judicata and principles of collateral estoppel, the court finds that these portions of the lawsuit concerning personal property, on their face, are things that have been decided by the Family Court and cannot be litigated or re-litigated here.

MENTAL HEALTH

The plaintiff alleges that the agreements that he entered were made at a time when he lacked mental capacity. If he wishes to set aside the Family Court's order, Rule 2 of the SCRFC adopts Rule 60, SCRCP, and the plaintiff must make any application to set aside the Family Court order in that court. This court has no authority to deal with that issue.

PLAINTIFF'S MOTION TO DISMISS THE COUNTERCLAIM

The plaintiff moves to dismiss the defendant's counterclaim which seeks to have the court enjoin the plaintiff from filing lawsuits against the defendant, unless they are pre-cleared for filing by a circuit judge. The plaintiff believes that there is no precedent for such and that it would require the court to adopt a new set of special rules.

Respectfully, he is mistaken. Though it is a drastic remedy, numerous courts, including circuit courts in South Carolina and the South Carolina Supreme Court have taken this

action. [See for example the Supreme Court's rulings related to Dr. Marie-Therese Assa'ad-Faltas.]

Section 15-36-10, et seq., Code of Laws of South Carolina, which is known as the South Carolina Frivolous Civil Proceedings Act, includes in subsection (G)(3) a provision for injunctive relief. There is both precedent and statutory authority for issuing an injunction related to abusive filing. However, before any such injunction can be entered, a hearing would need to be held, preferably before the Chief Judge for Administrative Purposes, to determine the appropriate relief, if any. The motion to dismiss the counterclaim is denied.

THEREFORE, IT IS ORDERED that this Complaint is dismissed and the motion to dismiss the Counterclaim is denied.

[Electronic signature follows on separate page.]



Lexington Common Pleas

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith

Case Number: 2019CP3202268

Type: Order/Summary Judgment

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2019-12-12 17:35:37 page 15 of 15

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
 JAMES JOHN TODD KINCANNON,	)	
	)	
Plaintiff,	)	ORDER ON PLAINTIFF'S
	)	MOTION TO ALTER OR AMEND
vs.	)	DISMISSAL OF COMPLAINT
	)	
ASHELY SUZANNE GRIFFITH,	)	
	)	Case No.: 2019CP3202268
Defendant.	)	

The plaintiff filed a motion for reconsideration and to alter or amend an order entered on December 13, 2019. Having reconsidered the issues raised and the arguments advanced in the motion, it is respectfully denied.

This motion was filed on December 3, 2020, nearly a year after the order. There is an explanation contained in a lengthy footnote in the motion that the plaintiff claims that he did not receive the order and that his filing was timely. Unless the present motion was overlooked, the court learned of it when the Clerk of Court sent a notice on Friday, October 28, 2022. Accepting the assertion that the motion was filed and served in a timely fashion, the parties were notified that the motion will be decided on written submissions, and deadlines for submissions were established in a scheduling order.

The plaintiff has responded that he relies upon what he has previously submitted, and the defense indicated that it will not be providing additional documentation, either. Since the case has a defense motion pending on an upcoming roster, this order is being expedited in an attempt to avoid further delay.

It is the court's opinion that the lengthy order issued on December 13, 2019, explained the basis of each ruling, properly recited the history of the case, and addressed everything that was raised. The court does not feel that any modifications to the order are appropriate.

AND IT IS SO ORDERED.

[Electronic signature follows on separate page.]



Lexington Common Pleas

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith , defendant,
et al
Case Number: 2019CP3202268
Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2022-11-16 16:41:15 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

JAMES JOHN TODD KINCANNON,

Plaintiff,

v.

ASHELY SUZANNE GRIFFITH,

Defendant.

Case No. 2019-CP-32-2268

**PLAINTIFF'S MOTION FOR
CONTINUANCE DUE TO SCHEDULING
CONFLICT WITH FEDERAL COURT
AND MOTION AND REQUEST FOR ADA
ACCOMMODATION IN RESCHEDULING
HEARING**

2019 OCT -7 130610

FILED

Plaintiff James John Todd Kincannon respectfully moves for a continuance of the hearing scheduled for October 1, 2019 at 11:00 a.m. due to his mandatory appearance in federal court in Spartanburg, South Carolina on October 1, 2019 at 10:00 a.m. in In re James John Todd Kincannon, Case No. 19-04762-hb. Plaintiff is pro se in both cases and cannot appear in both, and the federal court hearing cannot be postponed due to its nature—a motion to extend a stay in execution-of-judgment proceedings that will otherwise expire shortly after the hearing date. Continuance of the federal court proceeding would cause extreme prejudice to Plaintiff and, for all practical purposes, cause him to lose the matter in litigation in the federal courts. Neither party in the instant case will be prejudiced by continuance of the hearing set for October 1, 2019 given the nature of the state court hearing—a motion to dismiss and motion for summary judgment by the defense.

Plaintiff also moves for a continuance and requests that the hearing not be rescheduled until late October or early November at the earliest as a disability accommodation pursuant to the Americans with Disabilities Act. Plaintiff suffers from severe attention deficit, bipolar, anxiety, and depressive that cause Plaintiff to sometimes

require extra time to prepare for court proceedings and hearings, particularly proceedings of major complexity or importance where written filings are required. Plaintiff has been unable due to his psychiatric disorder to fully prepare for the scheduled hearing in this case and also meet all other litigation obligations in the federal court matter referenced above, the obligation to fully and diligently respond in good faith to a counterclaim in this case which is due on September 27, 2019, and litigation obligations in various other matters, some of which are related to this case and others of which are not.

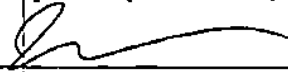
In particular, Plaintiff is hampered by the fact that he suffers from severe attention deficit disorder but cannot take any medication for it because the medication necessary to treat it would exacerbate the symptoms of his bipolar disorder to a medically dangerous degree. Further, the medication Plaintiff is prescribed for his bipolar disorder causes extreme drowsiness and causes Plaintiff to sleep for sixteen to eighteen hours a day, which greatly hampers Plaintiff's ability to prepare litigation materials and engage in any other activities which are time consuming and require exceptional diligence, as is nearly always the case with respect to litigation matters.

Plaintiff request for continuance is based on all applicable South Carolina and federal law, including but not limited to the Americans with Disabilities Act, as Plaintiff is indisputably an individual with a qualifying disability entitled to reasonable accommodation under the ADA. Plaintiff's requested accommodation is plainly reasonable, as neither party will be prejudiced by postponing consideration of Defendant's motions for dismissal and summary judgment until late October or early November. Plaintiff, however, would be greatly prejudiced if the hearing were to go forward on October 1, 2019, since Plaintiff would be unable to appear due to the federal

court proceeding in Spartanburg which cannot be continued under any circumstances due to the nature of those proceedings.

A copy of the federal court hearing notice is attached as an exhibit. Should the Court require Plaintiff to provide any further information about his psychiatric conditions in order to obtain the requested ADA accommodation, Plaintiff will certainly endeavor to do so as soon as possible after learning that the Court requires additional information regarding the matter.

Respectfully submitted,



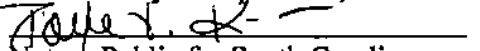
September 25, 2019

JAMES JOHN TODD KINCANNON
216 Jones Avenue
Simpsonville, South Carolina 29681
864-963-4374
ToddKincannon@gmail.com
Plaintiff Pro Se

VERIFICATION

Plaintiff James John Todd Kincannon, first being duly sworn, hereby verifies under oath and penalty of perjury the accuracy of the foregoing statements of fact in this filing, all of which Plaintiff has personal knowledge of.

Sworn to and subscribed before me
this 25th day of September, 2019


Notary Public for South Carolina
My commission expires: 6/2/2025


JAMES JOHN TODD KINCANNON

*Continuance granted,
Ali Renee Lee
10/4/2019*

Exhibit

United States Bankruptcy Court
District of South Carolina

Case Number: 19-04762-hb

Chapter: 13

In re:

James John Todd Kincannon
aka J. Todd Kincannon

NOTICE OF HEARING

Filed By The Court

9/10/19

Laura A. Austin
Clerk of Court
US Bankruptcy Court

PLEASE TAKE NOTICE that a hearing will be held at:

Donald Stuart Russell Federal Courthouse
201 Magnolia Street
Spartanburg SC 29306-2355

on October 1, 2019 at 10:00 AM, to consider and act upon the following document(s):

Motion to Extend Automatic Stay Filed by James John Todd Kincannon.

The document(s) related thereto have been filed with the Court. Any party objecting to the relief sought must file a response with the Clerk of Court in accordance with applicable rules and statutes and must serve the party seeking the relief with a copy of said objection by 9/24/19. Any party objecting but failing to appear in prosecution of the objection may be considered to have waived the objection.

Laura A. Austin
Clerk of Court
United States Bankruptcy Court

By: D Lee, Deputy Clerk
1100 Laurel Street
Columbia, SC 29201-2423
(803) 765-5436

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
 JAMES JOHN TODD KINCANNON,	)	
	)	
Plaintiff,	)	SCHEDULING ORDER ON
	)	MOTION TO ALTER OR AMEND
vs.	)	DISMISSAL OF COMPLAINT
	)	
ASHELY SUZANNE GRIFFITH,	)	
	)	Case No.: 2019CP3202268
Defendant.	)	

On December 3, 2020, the plaintiff filed a motion for reconsideration of the summary judgment portion of an order that the court had entered nearly a year before on December 13, 2019. The Clerk of Court alerted the court to this outstanding motion on Friday, October 28, 2022. While the court has concerns about whether the motion is timely, it will be decided on written submissions pursuant to Rule 59(f), SCRPC.

The moving party must file any documents in support by November 9, 2022. If the responding party wishes to file anything in opposition, they are to be filed by November 18, 2022. If there is a response, the moving party has until November 28, 2022, to file a reply.

A copy of anything that is filed is to be forwarded to wkeesleyj@sccourts.org.

AND IT IS SO ORDERED.

[Electronic signature follows on separate page.]



Lexington Common Pleas

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith , defendant,
et al
Case Number: 2019CP3202268
Type: Order/Scheduling Order

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2022-10-31 09:27:41 page 2 of 2

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP3202268

James John Todd Kincannon
PLAINTIFF(S)

Ashely Suzanne Griffith et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter was before the Court on Monday, November 28, 2022, at 11:00 a.m. upon the Defendant's Motion to Dissolve Lis Pendens filed with the Court on September 23, 2022. James John Todd Kincannon, the Pro-Se Plaintiff, was not present and was not represented by Counsel. Present representing the Defendant was James Edward Bradley, Esq. This hearing was conducted via Judge Knie's Virtual Courtroom and recorded by the WebEx record function with the consent of the party present. At the commencement of the hearing the Court informed Defendant that the Court had received a communication from Plaintiff via electronic mail, copied to all parties, that he could not access the hearing via WebEx but consented to the relief requested by Defendant. After hearing from the Defendant, this Court agrees to continue this matter and have it scheduled so that Plaintiff can appear in person at a future hearing.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/28/2022 .

James John Todd Kincannon for James John Todd Kincannon
James John Todd Kincannon for James John Todd Kincannon

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Lexington Common Pleas

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith , defendant,
et al
Case Number: 2019CP3202268
Type: Order/Electronic Form 4

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

Electronically signed on 2022-11-28 21:04:29 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTONJames John Todd Kincannon

Plaintiff(s)

vs.

Ashely Suzanne Griffith

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP -

2019 CP 3202268

Submitted By: James John Todd Kincannon
Address: 216 Jones Ave, Simpsonville SC 29681SC Bar #: Pro Se
Telephone #: 864-963-4374
Fax #: _____
Other: _____
E-mail: toddkincannon@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled-out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☒ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20____-NI-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Incapacitated Adult Settlement (790)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | | |

Submitting Party Signature: _____

Date: May 29, 2019

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

JAMES JOHN TODD KINCANNON,

Case No. 2019-CP-32022-68

Plaintiff,

v.

ASHELY SUZANNE GRIFFITH,

Defendant.

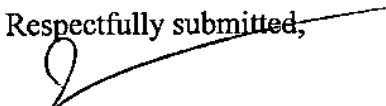
SUMMONS

FILED
2019 MAY 30 AM 8:58
CLERK OF COURT
LEXINGTON, SC

TO DEFENDANT ABOVE-NAMED:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint on the Plaintiff (whose address is below) within thirty days after the service thereof, exclusive of the date of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and a judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,


JAMES JOHN TODD KINCANNON
216 Jones Avenue
Simpsonville, South Carolina 29681
864-963-4374
ToddKincannon@gmail.com
Plaintiff Pro Se

May 20⁹, 2019

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

JAMES JOHN TODD KINCANNON,

Case No. _____

Plaintiff

v.

ASHELY SUZANNE GRIFFITH,

Defendant.

2019 CP3202268

COMPLAINT
(Jury Trial Demanded)

2019 MAY 30 AM 8:58

CLERK OF COURT
LEXINGTON COUNTY
SOUTH CAROLINA

FILED

JURISDICTIONAL ALLEGATIONS

1. This is an action principally for breach or, alternatively, for rescission of a contract or otherwise enforceable agreement between Plaintiff and Defendant, who were at the time married but separated at the instance of Defendant, entered into an apparently enforceable contract calling for Plaintiff to purchase approximately \$300,000 of property out of his separate non-marital assets and transfer that property to Defendant's possession whereupon the property would become Defendant's separate non-marital property upon Defendant's performance of a marital reconciliation sought by Plaintiff provided the reconciliation occurred within one year of the agreement. Defendant took possession of the property but failed to perform the marital reconciliation within one year of the agreement (or thereafter) and subsequently divorced Plaintiff. Accordingly, Plaintiff maintains this action for breach of contract and related claims such as rescission.

2. The South Carolina Court of Common Pleas has subject matter jurisdiction over actions of this nature and based on the facts and circumstances of the case, venue is proper in Lexington County.

3. Plaintiff James John Todd Kincannon is a resident of Greenville County, South Carolina at present and has been a resident of Lexington County, South Carolina at times relevant to this action.

4. Defendant Ashely Suzanne Griffith is a resident of South Carolina and has been at all times relevant to this matter. Regardless of Defendant's present county of domicile, which is unknown to Plaintiff, the Lexington County Court of Common Pleas has personal jurisdiction over Defendant with respect to the causes of action asserted herein based on her residence and domicile in Lexington County at the time the causes of action arose in June of 2016.

GENERAL FACTUAL ALLEGATIONS

5. Plaintiff and Defendant each claim equitable title to a parcel of real property purchased with Plaintiff's funds presently in Defendant's possession located in Lexington County and fully described as follows:

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, known and designated as Lot 40 on that certain Final Plat of Harvest Glen Phase IIA prepared for Harvest Glen Dev. LLC by Survey One, LLC dated January 8, 2015, revised June 24, 2015 and recorded August 3, 2015 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 17810, Page 257. Said lot having such size, shape, dimensions and boundaries as will be referenced on said plat.

This being the same property conveyed to the above-named Defendant¹ by deed² of McGuinn Homes, LLC dated August 28, 2015 and recorded September 9, 2015 in Book 17890, Page 23 in the Land Records of Lexington County, South Carolina.

This being a portion of the property conveyed to McGuinn Homes, LLC by deed of Harvest Glen Land, LLC dated May 28, 2015 and recorded June

¹ Defendant's full legal name is Ashely Suzanne Griffith. In the referenced deed, Defendant is identified as "Ashely Griffith" with no middle name given. In tax records of Lexington County, Defendant is erroneously identified as "Ashley Griffith."

² This deed was assigned an instrument number of #2015042864.

10, 2015 in Book 17696, Page 26 E in the Land Records of Lexington County, South Carolina.

TMS #004516-02-006 (formerly part of 004599-09-007)

Property Address: 306 Spring Walk Lane
West Columbia, SC 29169

a/k/a³

306 Springwalk Lane
West Columbia, SC 29169

6. Plaintiff and Defendant each claim equitable title to an automobile purchased with Plaintiff's funds presently in Defendant's possession.
7. Plaintiff and Defendant each claim equitable title to various other items of tangible personal property purchased with Plaintiff's funds presently in Defendant's possession.
8. Plaintiff and Defendant dispute whether Defendant has a contractual, legal, or equitable obligation to reimburse Plaintiff for various payments Plaintiff made for Defendant's benefit for personal property that is either intangible or unreturnable, such as utilities payments, college tuition payments, etc.
9. The parties agree that the property purchases and payments were made pursuant to an agreement between them that both intended to be an enforceable contract but disagree as to whether Defendant did what was necessary under the agreement to gain equitable title to the real and tangible personal property at issue and extinguish her obligation to reimburse Plaintiff for payments made on her behalf for intangible and unreturnable personal property.

³ The deed refers to the property address as 306 Spring Walk Lane, West Columbia, SC 29169. In other documents, the property address is designated as 306 Springwalk Lane, West Columbia, SC 29169.

FOR THE CAUSES OF ACTION
DECLARATORY, LEGAL, AND EQUITABLE RELIEF

10. Plaintiff seeks declaratory relief regarding all issues of law and fact necessary to the determination of the parties' rights and obligations vis-à-vis the matters at issue in this litigation, including but not limited to the following issues of law and fact:

11. Did the parties' minds meet as to an agreement concerning these matters and, if so, what were the terms of that agreement?

12. If the Court finds the parties' minds met as to an agreement, did Plaintiff possess the necessary contractual capacity to enter into the agreement?

13. If the Court finds the parties' minds met as to the terms of an agreement and that Plaintiff had the necessary contractual capacity to enter into the agreement, did the agreement constitute an enforceable contract or otherwise create enforceable quasi-contractual obligations as though an enforceable contract had been entered into, or did the agreement fail to constitute an enforceable contract due to the absence of valuable consideration, mutual mistake, unilateral mistake, duress, violation of the South Carolina Omnibus Adult Protection Act, or for some other reason?

14. If the Court determines enforceable contractual obligations existed, have the parties fully performed their obligations under the contract and, if not, what remedies does the disappointed party have?

15. If the Court determines no enforceable contractual obligations existed, does Plaintiff have any legal or equitable interest in the real and personal property and any legal or equitable right to repayment or recovery of funds expended for the intangible and unreturnable personal property?

16. Plaintiff is informed and believes that whatever combination of rulings the Court makes on the various issues of fact and law necessary to declare the rights and obligations of the parties vis-à-vis these matters, Plaintiff will be entitled to a judgment that establishes that he has equitable title to all real and personal property that is returnable, a money judgment with respect to funds expended to purchase the intangible and unreturnable personal property at issue, and compensatory damages for loss of use of the property and other consequential damages due to consequential harm suffered by Plaintiff as a result of Defendant's unlawful and/or inequitable retention of the property at issue. Plaintiff may also be entitled to punitive damages and seeks them if the Court finds them to be available under any theory of liability Plaintiff advances.

17. Plaintiff cannot plead these matters with anymore specificity at this time because Plaintiff has very little idea what Defendant's contentions will be as to the terms of the agreement between the parties, whether or not the agreement constitutes an enforceable contract, whether or not she has fully performed whatever obligations the agreement purported to impose on her, and what, if any, remedies Plaintiff has available. Plaintiff will engage in immediate discovery as to these matters and amend his Complaint to state with specificity all issues of fact and law that appear to be in dispute between the parties concerning these matters so that the Court will be able to rule on them accordingly.

18. Plaintiff believes the easiest path to resolution of this dispute is a ruling that Plaintiff lacked requisite contractual capacity.

19. At all times relevant to this matter, Plaintiff suffered from severe, untreated, and undiagnosed bipolar disorder which rendered him incapable of possessing the requisite contractual capacity to enter into any contract which would have resulted in the asset

transfers at issue in this case. Plaintiff's bipolar disorder was untreated and undiagnosed throughout all of 2015, 2016, 2017, and the first half of 2018.⁴

20. Defendant and her counsel have repeatedly claimed that Plaintiff suffered from severe mental illness during 2015 and thereafter in litigation concerning other matters and in other contexts, and all of the various representations made by Defendant, directly and vicariously through her counsel, alleging Plaintiff suffers from mental disorders and mental instability are hereby incorporated by reference into this Complaint.

**NOTICE AS TO INCORPORATION BY REFERENCE OF
ALL OF DEFENDANT'S FILINGS IN LITIGATION WITH PLAINTIFF
AND NOTICE OF INTENTION TO ASSERT RES JUDICATA, JUDICIAL
ESTOPPEL, AND RELATED CLAIM AND ISSUE PRECLUSION DOCTRINES**

21. All of Defendant's filings and legal and factual representations to courts in the parties' divorce action, the Statute of Elizabeth action related to these matters, and in all other litigation between the parties related to the foregoing disputes is hereby incorporated by reference.

22. Notice is hereby given that Plaintiff presently intends to assert res judicata, judicial estoppel, and all other applicable claim and issue preclusion doctrines in this litigation against Defendant based on the representations she has made to other courts related to these matters and relevant provisions of the judgments and other enforceable rulings in those matters to the extent such representations are helpful to Plaintiff's positions in this litigation.

PRAYER FOR RELIEF

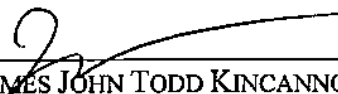
23. Plaintiff prays for a jury trial on all factual disputes between the parties and all issues of damages and all other matters trial by jury as of right or by advisory jury,

⁴ Plaintiff's bipolar disorder was first diagnosed in July of 2018, and Plaintiff has been treated with medication and therapy since that time.

judicial rulings on all questions of law and the applicability of equitable doctrines after all factual disputes and other jury matters have been determined by a jury, and a judgment awarding all declaratory, legal, and equitable relief available to Plaintiff based on the findings of the jury and rulings of the trial judge. Plaintiff also seeks an award of the costs of this action and any other relief determined to be available by the Court.

Respectfully submitted,

May 29, 2019


 JAMES JOHN TODD KINCANNON
 216 Jones Avenue
 Simpsonville, South Carolina 29681
 864-963-4374
 ToddKincannon@gmail.com
 Plaintiff Pro Se

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
James John Todd Kincannon,	)	C/A No. 2019-CP-32-02268
	)	
Plaintiff,	)	
vs.	)	ANSWER AND COUNTERCLAIM
	)	
Ashely Suzanne Griffith	)	
	)	
Defendant.	)	
_____	)	

The Defendant Ashely Suzanne Griffith answers the Complaint as follows:

AS A FIRST DEFENSE

1. Unless specifically admitted in this Answer, Ms. Griffith denies each and every allegation of the Complaint.

AS A SECOND DEFENSE

2. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

3. Ms. Griffith denies the allegations of Paragraph 1.

4. In response to Paragraph 2, Ms. Griffith admits Lexington County is the proper venue, but denies the remaining allegations of Paragraph 2.

5. Ms. Griffith admits the allegations of Paragraph 3.

6. Ms. Griffith denies the allegations of Paragraphs 4, 5, 6, 7, 8, and 9.

7. In response to Paragraph 10, Ms. Griffith realleges her previous allegations and denials.

8. Ms. Griffith denies the allegations of Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.

9. In response to Paragraph 21, Ms. Griffith realleges her previous allegations and denials.

10. Ms. Griffith denies the allegations of Paragraph 22.

11. Ms. Griffith denies the allegations of Paragraph 23.

12. Ms. Griffith denies the Plaintiff is entitled to recover the relief sought in the Complaint.

AS A THIRD DEFENSE

13. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

14. Ms. Griffith asserts the laches and the statute of limitations as a full defense in this matter.

AS A FOURTH DEFENSE

15. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

16. This lawsuit fails to state a claim upon which relief may be granted, and Ms. Griffith moves to dismiss on that basis pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

AS A FIFTH DEFENSE

17. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

18. This lawsuit has not been served, and Ms. Griffith moves to dismiss the lawsuit for lack of service of process.

AS A SIXTH DEFENSE

19. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

20. Ms. Griffith alleges the statute of frauds as a defense as the Complaint alleges an oral contract to convey land.

AS A SEVENTH DEFENSE

21. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

22. The parties were divorced on March 1, 2017.

23. The divorce decree is attached as Exhibit A to this Answer and Counterclaim.

24. The divorce decree was incorporated by the order of the Honorable Peter Nuessle, and, pursuant to this court order all issues between the parties were resolved by agreement and incorporated court order.

25. The court ordered agreement resolved all issues of property, divisions between the parties, and all issues which have been alleged in this Complaint.

26. Ms. Griffith pleads res judicata and collateral estoppel as affirmative defenses in this matter and relies upon the previous order of Judge Nuessle as the basis for these claims.

AS AN EIGHTH DEFENSE AND FIRST COUNTERCLAIM

27. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

28. The Plaintiff has brought multiple legal proceedings against Ms. Griffith since the parties separated, during the divorce, and after the divorce as indicated by Exhibit B.

29. Mr. Kincannon's repeated non meritorious use of the legal system is an abuse of process, an abuse of the legal system and an abuse of Ms. Griffith.

30. Ms. Griffith hereby asks that the Court exercises its equitable power to enjoin abuses of the legal system and abuse of participants in the legal system by issuing a pre-filing injunction against James John Todd Kincannon.

31. In particular, Ms. Griffith asks that this injunction require that before Mr. Kincannon be allowed to bring lawsuits against her, he obtain the permission of a South Carolina circuit judge based upon review of the allegations and the determination that the allegations might have merit.

AS A NINTH DEFENSE AND SECOND COUNTERCLAIM

32. Each and every allegation set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

33. The allegations made in this Complaint are frivolous and spurious.

34. As a result, Ms. Griffith asks that this Court exercise its inherent power pursuant to Rule 11 and its power pursuant to the South Carolina Frivolous Proceedings Act to award attorney's fees to her as have been incurred in this lawsuit.

WHEREFORE, the Defendant Ashely Suzanne Griffith having responded to the allegations of the Complaint ask that the Complaint be dismissed with prejudice, that the Court awards the relief requested in this counterclaim, and for such other relief as the Court deems fair and equitable.

[Signature block to follow]

MOORE TAYLOR LAW FIRM, P.A.

By: s/James Edward Bradley

James Edward Bradley, SC Bar # 66130

P.O. Box 5709

West Columbia, SC 29171

(803) 796-9160

ward@mttlaw.com

Attorney for Defendant

West Columbia, South Carolina

August 22, 2019

COPY

STATE OF SOUTH CAROLINA)

IN THE FAMILY COURT
FOR THE ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON)

Ashely S. Griffith,)

Plaintiff,)

**DECREE OF DIVORCE AND ORDER
APPROVING AGREEMENT**

vs.)

James John Todd Kincannon,)

Defendant)

C.A. No. 2015-DR-32-2268

Date of Hearing:
Presiding Judge:
Plaintiff's Attorneys:January 24, 2017
Peter R. Nuessle
C. Vance Stricklin, Jr.
Amber C. FulmerDefendant's Attorney:
Court Reporter:*Pro Se*
Carole ShealyLISA COMER
CLERK OF COURT
LEXINGTON, SC

2017 MAR -1 PM 4:22

FILED

This action was filed by Plaintiff (hereinafter also referred to as "Wife") on September 1, 2015. An Ex Parte Restraining Order was issued on September 2, 2015. The affidavit of service that was filed indicates Defendant (hereinafter also referred to as "Husband") was served personally with the pleadings and the Restraining Order on September 4, 2015. Husband did not serve an Answer.

This matter is currently before this Court for a final merits hearing. Notice of the hearing was properly served upon Husband. Wife was present at the hearing along with her attorneys C. Vance Stricklin, Jr. and Amber C. Fulmer. Husband was also present, but was not represented by counsel. Husband indicated he did not desire counsel and wished to proceed with the hearing *pro se*. Upon inquiring into Husband's education, life skills, and his desire to proceed without counsel, I find and conclude the Husband is capable of representing himself and should be

pm/41

allowed to proceed *pro se*.

The Court then proceeded with the hearing. After the direct and cross examination of two of the Plaintiff's witnesses, the Court recessed to allow the parties the opportunity to discuss a potential settlement. The parties then 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, and desired to orally recite the terms of the agreement on the record. Thereafter, the Court reconvened and the terms of the parties' agreement were placed on the record.

I find the parties agreement as placed on the record and reduced herein below to writing is as follows:

AGREEMENT

A. The parties' agree the Court has personal and subject matter jurisdiction over this action and of the parties. Venue is proper in the Lexington County Family Court.

B. The parties' agree each shall waive alimony and spousal support from the other. The parties' agree this is a permanent and irrevocable waiver of alimony and spousal support.

C. 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.

D. Wife agrees Husband is entitled to whatever interest he may have in the residence located at 200 Townes Road, Columbia, South Carolina 29210. The parties are not acknowledging there is an interest in the residence, but are acknowledging that should such interest exist, Husband is entitled to the interest in this residence.

E. The parties' agree each shall keep the personal property currently in his or her

PM

EXHIBIT A

possession and control. The parties' agree the dog Noodle is non-marital property and this Court has no jurisdiction to award the dog to either party. The parties' are not agreeing as to the ownership of Noodle; however, Husband agrees that if he is incapacitated unable to care for Noodle for an extended period of time, Wife shall have the first right to care for Noodle.

F. The parties' agree each shall have the ownership and possession of the vehicle currently in his or her possession. Husband's vehicle is a Nissan Pathfinder, and Wife previously owned a BMW but has since traded that vehicle in for a GMC Terrain. Each party shall be responsible for any liabilities and expenses related to his or her vehicle such as the payments, taxes, repairs, maintenance, and the like, and shall hold the other harmless and indemnify the other from the same.

G. The parties agree that each shall retain the ownership of his or her own checking, savings, investment, retirement, or other account titled in his or her name, free and clear of any claim or interest by the other. Each party waives any interest he or she may have in the other party's checking, savings, investment, retirement, or other account titled in the name of the other party.

H. Each party shall be responsible for the debt in his or her name. Each party agrees they shall indemnify and hold the other harmless of any liability related to the debts retained by him or her. The parties acknowledge they have no joint debts.

I. The parties agree each shall be responsible for his or her own health, dental, and vision insurance. Each party shall be responsible for his or her own non-covered and non-reimbursed medical, dental, vision, and other healthcare related expenses incurred during this litigation and in the future.

J. Husband agrees he shall be placed under a permanent injunction prohibiting

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Husband from directly contacting, threatening, harassing, molesting, bothering, intimidating, or otherwise interfering with Wife at any time or place. This prohibition does not preclude Husband from legal process service on Wife.

K. Husband agrees he shall be responsible for \$23,000.00 toward Wife's attorney's fees and costs incurred in this matter. Husband agrees this \$23,000.00 shall be reduced to a judgment against him.

L. Wife agrees to dismiss her pending Rule to Show Cause and Complaint for Contempt. Husband acknowledges he has filed a number of items with this Court and the South Carolina Court of Appeals. Husband acknowledges that whatever items he filed with the Family Court and South Carolina Court of Appeals shall be dismissed.

M. The parties agree that if the Court approved the parties' agreement, Wife would amend her Complaint to seek a divorce based on one year's continuous separation, and Husband would consent and waive his statutory response time.

Based upon the agreement of the parties as recited above and the record before me, I make the following Findings of Fact and Conclusions of Law and Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Wife is a citizen and resident of Lexington County, South Carolina, and has been so in excess of three (3) months prior to the commencement of this action.

2. Husband was a citizen and resident of Lexington County, South Carolina, and had been so in excess of three (3) months prior to the commencement of this action. Husband currently resides in Greenville County.

3. The parties last resided together as wife and husband in Lexington County, South Carolina.



4. The parties are currently wife and husband, having been married to each other on February 6, 2013. The parties had a formal wedding ceremony in a church on April 6, 2013. There are no children of the marriage and none are expected.

5. As agreed upon by the parties and recited above, this Court has jurisdiction of the parties and subject matter herein. Venue is proper in Lexington County, South Carolina.

6. I find and conclude Wife made a motion to supplement her pleadings to request a divorce on the grounds of one year's continuous separation without cohabitation. Husband waived his response time and joined in the Wife's requested relief. Wife testified the parties' separated on or about August 26, 2015. Wife testified the parties had remained separate and apart since that time without intervening cohabitation. I find Wife's testimony was fully corroborated by her corroborating witness. Based upon the testimony and the record before me, I find and conclude Wife is entitled to a divorce, a vinculo matrimonii, from the Husband based upon one year's continuous separation without intervening cohabitation.

7. I find and conclude there has been no collusion between the parties for the purpose of obtaining a divorce.

8. I find that all other matters arising between the parties as a result of the marriage, except the issues of divorce, have been resolved by the parties' agreement as recited on the record and reduced to writing herein above. Both parties were separately examined under oath as to the terms of the agreement and circumstances surrounding its negotiation. It was clearly established that:

- (a) They had been successful in reaching an agreement resolving all of the issues of their marriage;
- (b) The agreement recited on the record and reduced to writing herein above was their agreement;

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- (c) Each party entered into the agreement freely and voluntarily;
- (d) Each party stated neither was threatened, forced, or coerced into entering in this agreement;
- (e) Each party understood all terms of the agreement;
- (f) The agreement as recited on the record and reduced to writing herein above reflects the entire agreement between them;
- (g) Each party participated in the negotiation of the agreement;
- (h) Neither party had any questions about the agreement they desired to ask the Court or counsel;
- (i) Each party had sufficient information regarding the other's finances, income, assets, and debts at the time they entered into this agreement;
- (j) Each party provided truthful information regarding his or her own finances, income, assets and debts to the other party;
- (k) Neither party was under the influence of any drugs, intoxicants, or medications that would affect their judgment at the time they entered into this agreement;
- (l) Wife testified she was satisfied with the services provided by her attorneys, her attorneys had done everything she had asked them to do, and her attorneys had discussed all aspects of the agreement with her;
- (m) Husband testified he understood he was not represented by Mr. Stricklin, Ms. Fulmer, or the Moore Taylor Law Firm, P.A. Husband testified he did not have any complaints against Wife's attorneys or their firm;
- (n) Each party had ample time to speak with a CPA or financial advisor regarding the tax consequences or financial implications of the agreement, had they so desired;
- (o) Each party understood that the agreement regarding the division of property and debts was permanent, and if approved by the Court, cannot be changed in the future;
- (p) Each party understood a waiver of alimony is permanent and neither could come back before the Court at any time in the future to request alimony;
- (q) Each party understood they were giving up their right to a trial where they could have been allowed to present witnesses and other information to support

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their requests, and each party affirmatively stated they were waiving their right to trial;

- (r) Each party believes the agreement was in their his or her best interests and the best interests of their spouse;
- (s) Based on all the circumstances surrounding the negotiation of the agreement, they believed it to be fair and equitable to themselves and the other party;
- (t) Each party testified they would be able to comply with all terms of the agreement;
- (u) Each party understood once the agreement is approved, it would be enforceable through the Court's contempt powers which means that either party could be fined, sentenced to a jail term and/or ordered to perform community service if found in contempt of the agreement; and
- (v) Each party desired to have the Court approve the agreement and make it an Order of the Court.

9. The record reflects that the parties have had the opportunity to exchange financial information, and have otherwise satisfied themselves that they know enough of each other's financial situation including earnings, needs, obligations, and assets to make intelligent decisions regarding the financial aspects of this case. Accordingly, I find each party was familiar with the income, expenses, debts and assets of the other.

10. After having conducted examinations of both parties, I find and conclude that both Husband and Wife appeared sincere, honest and truthful in the representations made under oath and that neither party was under the influence of alcohol nor was either's judgment impaired by drugs or other substances. Each entered into this Agreement freely, knowingly, voluntarily, and without threats or coercion. This Court thereafter independently reviewed the details of this Agreement which I specifically find to be fair, equitable, reasonable and in the best interests of the parties. Forsythe v. Forsythe, 290 S.C. 253, 349 S.E.2d 405, (Ct. App. 1986). Accordingly, I find that I should approve, adopt, merge and incorporate this Agreement as part of

10/17

the Order of this Court.

ORDER

Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that:

A. Wife is awarded a divorce, a vinculo matrimonii, from Husband on the ground of one year's continuous separation without cohabitation;

B. the parties' agreement as recited on the record and reduced to writing above, is hereby approved, confirmed, merged and incorporated into this Order by this Court, thereby rendering it the Order of the Court, and either party violating the terms and conditions of this Order shall be subject to the contempt sanctions of this Court; and

IT IS SO ORDERED.

PM
12/8

Aiken, South Carolina

February 13, 2017

[Signature]
PETER R. NUESSLE, PRESIDING JUDGE
FAMILY COURT – ELEVENTH CIRCUIT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
James John Todd Kincannon,	)	C/A No. 2019-CP-32-02268
	)	
Plaintiff,	)	
vs.	)	EXHIBIT B
	)	
Ashely Suzanne Griffith	)	
	)	
Defendant.	)	
_____	)	

List of Actions filed James John Todd Kincannon

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
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. Pending

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. Ashley 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

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

JAMES JOHN TODD KINCANNON,
Plaintiff,

Case No. 2019-CP-32-2268

v.

REPLY

ASHELY SUZANNE GRIFFITH,
Defendant.

FILED
2020 DEC -7 PM 4:36
LISA M. COOPER
CLERK OF COURT
LEXINGTON, SC

Plaintiff James John Todd Kincannon submits the following reply to Defendant Griffith's counterclaim:

INTENTION TO AMEND

As Defendant's counsel and the Court are aware, Plaintiff suffers from disabilities that cause him to require additional time to complete litigation tasks, especially the preparation of drafted documents. Plaintiff has not had time to fully prepare a reply to Defendant's counterclaims in the amount of time allotted by rule. Plaintiff is accordingly preparing and serving this abbreviated, non-final reply and serving it on the last day of the deadline period. Plaintiff will continue working to prepare a final version of this reply and file it, together with a motion to amend if necessary², when complete.

FOR A FIRST DEFENSE

RESPONSE TO THE FACTUAL ALLEGATIONS OF THE COUNTERCLAIMS

1. All factual allegations not expressly responded to herein are denied.

¹ The Court may wonder about the timeliness of this reply given that the Court denied Plaintiff's motion to dismiss the counterclaim by order dated December 13, 2019. Plaintiff did not receive notice of entry of the order (written or otherwise) until November 11, 2020. This reply is being served on November 30, 2020 the fifteenth day thereafter in accordance with Rule 12, SCRPC. (November 26-27, 2020 were state holidays and November 28-29, 2020 were weekend days.) This reply is therefore timely.

² It is Plaintiff's hope to have the final reply prepared within the time allowed for amendment as of right under Rule 15, SCRPC. However, that seems unlikely given the other litigation tasks Plaintiff must complete related to this matter that are of more pressing importance over the short term.

2. Paragraph 27 of the first counterclaim incorporates by reference all prior allegations in Defendant's combined filing entitled "Answer and Counterclaim." None of those prior allegations in Defendant filing appear to relate to the frivolous proceedings counterclaim asserted in Paragraphs 27-31. To the extent any factual allegations do appear in Paragraphs 26-31 that are relevant to the first counterclaim, such factual allegations are denied.

3. Paragraph 28 alleges that Plaintiff has brought multiple legal proceedings against Defendant since the parties separated, during the divorce, and after the divorce as indicated by Exhibit B to the counterclaim. Plaintiff denies instituting any legal proceedings against Defendant prior to Defendant initiating the divorce action. Plaintiff admits commencing litigation after Defendant initiated the divorce action, all of which was non-frivolous and which was responsive to Defendant's improper litigation efforts in the divorce action and in a criminal domestic violence proceeding to use those proceedings to improperly secure concessions or advantage against Plaintiff in disputes over non-marital property that were not the proper subject of either the divorce action or the criminal domestic violence proceeding.

4. In further response to Paragraph 28, Plaintiff denies Defendant's implication that Plaintiff has improperly multiplied litigation against Defendant. All of the proceedings referenced in the counterclaim were ancillary proceedings properly responsive to Defendant's conduct in either the divorce action or the criminal domestic violence proceeding. South Carolina law required Plaintiff to go to a different forum to litigate those matters because general civil litigation is not within the subject matter jurisdiction of either the South Carolina family court or any South Carolina criminal court.

Defendant's implicit suggestion that Plaintiff has attempted to harass Defendant with litigation is incorrect—Defendant has merely sought to defend himself in the proper forum from Defendant's misconduct in other for a.

5. Paragraph 29 alleges that Plaintiff has engaged in "repeated non meritorious use of the legal system" and has thereby committed "an abuse of process, an abuse of the legal system and an abuse of [Defendant]." This is a conclusory and non-specific allegation and not a well-pleaded factual allegation to which no response is required; nonetheless, Plaintiff denies the allegation.

6. In further response to Paragraph 29, Plaintiff alleges that to the best of his knowledge, every allegation of fact and every legal argument Plaintiff has advanced in the various proceedings at issue were non-frivolous.

7. Paragraphs 30 and 31 of the first counterclaim are in the nature of a prayer for relief to which no response is required. Nonetheless, Plaintiff denies that Defendant is entitled to any of the relief prayed for or any other relief sought in the counterclaims because Plaintiff has not engaged in frivolous or otherwise improper litigation conduct.

8. Paragraph 32 of the second counterclaim incorporates by reference all prior allegations in Defendant's combined filing entitled "Answer and Counterclaim." None of those prior allegations in Defendant filing, save those of the first counterclaim, appear to relate to the frivolous proceedings counterclaim asserted in Paragraphs 32-34. To the extent any factual allegations do appear in Paragraphs 1-26 that are relevant to the second counterclaim, such factual allegations are denied.

9. Paragraph 33 generally alleges that the allegations Plaintiff has made in the complaint in this action are "frivolous and spurious." This is a conclusory and

insufficiently specific allegation and not a well-pleaded factual allegation to which no response is required; nonetheless, Plaintiff denies the allegation.

10. Paragraph 34 of the second counterclaim is in the nature of a prayer for relief to which no response is required. Nonetheless, Plaintiff denies that Defendant is entitled to any of the relief prayed for or any other relief sought in the counterclaims because Plaintiff has not engaged in frivolous or otherwise improper litigation conduct.

FOR A SECOND DEFENSE
JUMBLED AND IMPROPERLY SEPARATED CLAIMS

11. Defendant's two counterclaims are improperly pleaded in a manner commonly referred to as "jumbling."

12. It would appear that Defendant's intention is to assert two separate "frivolous proceedings"-type causes of action, one based on the statutory South Carolina Frivolous Proceedings Sanctions Act and a second based on Rule 11, SCRCP.

13. The first counterclaim cause of action references neither the South Carolina Frivolous Civil Proceedings Sanctions Act nor Rule 11, SCRCP, and it is unclear whether the first counterclaim is based on either, both, or some third theory.

14. The second counterclaim cause of action references both the South Carolina Frivolous Civil Proceedings Sanctions Act (although it incorrectly refers to it as the "South Carolina Frivolous Proceedings Act") and Rule 11, SCRCP.

15. This is not proper pleading. If Defendant wants to assert two cause of actions, one based on the South Carolina Frivolous Civil Proceedings Sanctions Act and another based on Rule 11, SCRCP, then Defendant must plead two separate causes of action, one based on each theory.

16. The Court must direct Defendant to file an amended pleading correcting the jumbling issue and must strike both claims if Defendant fails to do so.

FOR A THIRD DEFENSE
FACTUAL INSUFFICIENCY

17. Both counterclaims fail to state facts sufficient to constitute a cause of action under either the South Carolina Frivolous Civil Proceedings Sanctions Act or Rule 11, SCRCF.

18. Neither counterclaim contains any well-pleaded allegations of fact. In this context, a well-pleaded allegation of fact would be a claim that a specific factual allegation or legal conclusion/legal argument asserted by Plaintiff is not only incorrect as a matter of fact or law, as appropriate, but is so far outside the bounds of proper litigation advocacy as to be frivolous in violation of either the South Carolina Frivolous Civil Proceedings Sanctions Act, Rule 11, SCRCF, or both.

19. Defendant's counterclaims contain no allegations of this nature. The only allegations are broad conclusory statements that Plaintiff has engaged in frivolous litigation conduct. This is factually insufficient to constitute a cause of action under either theory asserted by Defendant.

20. This is not a mere pleading quibble. Plaintiff literally has no idea what particular factual allegations or legal contentions in this case or any other case involving these parties are contended by Defendant to be frivolous. Plaintiff cannot possibly prepare for trial on either of Defendant's causes of action without Defendant having pleaded with specificity the precise factual allegations or legal contentions by Plaintiff are supposedly frivolous.

21. Defendant's claims come nowhere close to meeting the pleading standard in a fact-pleading jurisdiction like South Carolina and would not even satisfy the pleading standard in a notice-pleading jurisdiction like federal court. Based on this, the Court should compel Defendant to file an amended pleading setting out with specificity what factual claims or legal contentions by Plaintiff are claimed as frivolous by Defendant. Should Defendant fail to file an amended pleading, the Court should dismiss the counterclaims.

FOR A FOURTH DEFENSE
FAILURE TO COMPLY WITH PROCEDURAL REQUIREMENTS

22. Defendant has failed to comply with the explicit procedural requirements of the South Carolina Frivolous Civil Proceedings Sanctions Act by failing to specifically identify to Plaintiff the specific factual allegations and/or legal arguments that Defendant claims to be frivolous so that Defendant may avail himself of his statutory right to submit amended filings that seek to correct the alleged frivolity.

23. Defendant has failed to comply with the implicit procedural requirements of Rule 11, SCRCP in the same way. While Rule 11 does not specifically state that a party must be given an opportunity to cure prior to the imposition of sanctions, such a requirement is inherently imposed by basic equitable considerations.

24. Defendant is barred from seeking any relief for Plaintiff's allegedly frivolous litigation conduct until such time as Defendant notifies Plaintiff as to the precise nature of the claims of frivolity and has given Defendant a fair opportunity to make whatever corrections Plaintiff concludes are necessary to his prior filings.

FOR A FIFTH DEFENSE
WAIVER/PRECLUSION

25. Defendant has waived any contention that Plaintiff's conduct in previously concluded litigation was frivolous by failing to seek and obtain a ruling to that effect in such litigation. Defendant is accordingly precluded in this case from complaining about Plaintiff's allegedly frivolous conduct in prior cases by waiver or a similar preclusion doctrine.

FOR A SIXTH DEFENSE
TIMELINESS

26. For the same reasons raised in the prior defense, Defendant's counterclaims are untimely to the extent they seek relief for things that have happened in previous cases involving these parties.

FOR A SEVENTH DEFENSE
IMPROPER FORUM

27. For the same reasons raised in the prior two defenses, this case is an improper forum for Plaintiff's claims regarding Defendant's conduct in other cases. The proper fora for those claims were the fora in which those cases were brought.

FOR AN EIGHTH DEFENSE
INSUFFICIENTLY SPECIFIC REMEDY

28. Although Plaintiff strongly objects to Defendant's effort to obtain a ruling by the Court that Plaintiff has engaged in any sort of improper litigation conduct in this case or in any other, the particular remedy Defendant seeks in her counterclaims is not wholly objectionable to Plaintiff.

29. Plaintiff does not particularly mind if his filings in this matter or any other are subject to some sort of automatic preliminary judicial review for facial frivolity.

30. However, Plaintiff would object to any sort of injunction that would place judges in any sort of direct oppositional role to Plaintiff as de facto party opponents, particularly in a situation where Plaintiff had to file an appeal from an ex parte frivolity review ruling.

31. Plaintiff would further object to any regime that would unduly burden Plaintiff from a practical matter or from a financial standpoint, as paper and postage is not free.

32. The bare-bones demand by Defendant for an injunction, without specifying the exact nature of the injunction or how the “preliminary frivolity review process” would work, is insufficiently specific, and it is neither Plaintiff’s duty nor the Court’s duty to draft an injunction for Defendant.

33. The Court should direct Defendant to amend her pleading and include a detailed prayer for relief that includes a draft injunction as an exhibit to the pleading. If Defendant proposes a reasonable injunction, Plaintiff will consent to its entry and there will no longer be any case or controversy relating to Defendant’s counterclaims.

FOR A NINTH DEFENSE
NO PRESENTLY JUSTICIABLE CONTROVERSY

34. The only relief Defendant seeks in her counterclaims appears to be an order requiring Plaintiff to submit future litigation filings to the Court for some sort of ex parte “frivolity review” by a judge before Plaintiff is permitted to proceed on such pleadings.

35. As Plaintiff has indicated previously and in this filing, Plaintiff has no fundamental objection to an order of this nature. Plaintiff has no intention of filing frivolous material in this case or any other, and Plaintiff therefore does not care if judges review his filings on an ex parte basis to determine whether anything in a particular filing is objectively frivolous on its face.

36. Accordingly, there is no presently justiciable controversy in this matter. Defendant wants an order compelling Plaintiff to do something he is perfectly willing to do so long as the order spells out with reasonable specificity how the process is supposed to work so that Plaintiff and the judge(s) who have to perform these reviews know what their rights and duties are and there is no procedural confusion.

37. Before asking the Court to adjudicate this “controversy,” Defendant has a duty to determine whether there actually is any controversy to adjudicate. The Court should direct Defendant to prepare a draft order and submit it to Plaintiff, and direct Plaintiff to respond by proposing any corrections or additions that Plaintiff believes are necessary, and so on until an impasse is reached. Only in that situation would there be a justiciable controversy in this matter that would enable the Court to adjudicate Defendant’s counterclaims.

FOR A TENTH DEFENSE
UNCLEAN HANDS

38. Defendant is barred from the relief sought by the doctrine of unclean hands.

39. Defendant herself has engaged in substantial frivolous and other improper litigation conduct, including but by no means limited to seeking to have a South Carolina family court issue improper rulings on non-marital property disputes plainly outside that court’s limited subject matter jurisdiction.

40. Plaintiff will assert additional examples of frivolous and other improper litigation conduct by Defendant by way of an amended pleading.

FOR AN ELEVENTH DEFENSE
PLAINTIFF'S PREVIOUSLY UNDIAGNOSED AND UNTREATED MENTAL ILLNESS

41. At times relevant to this matter, Plaintiff suffered from a severe psychiatric illness that severely impacted Plaintiff's ability to effectively handle litigation.

42. Plaintiff submits that his psychiatric condition is a defense to Defendant's claims. Plaintiff will elaborate with respect to this defense by way of an amended pleading.

FOR A TWELFTH DEFENSE
DEFENSES RAISED IN PRIOR FILINGS

43. Plaintiff believes he has included all defenses raised in his prior filings in this reply but to the extent any have been inadvertently omitted, Plaintiff hereby incorporates them by reference. Plaintiff will ensure that all material that should be included in this reply is included in his amended reply.

ADDITIONAL DEFENSES

44. Plaintiff reserves the right to assert any and all additional defenses in an amended reply that will be submitted to the Court as soon as Plaintiff is able to complete it.

PRAYER FOR RELIEF

Plaintiff respectfully requests the Court direct Defendant to file an amended pleading correcting the pleading deficiencies complained of herein and dismiss the counterclaims if Defendant fails to do so. In the event one or both of these counterclaims, as presently pleaded or as amended, proceed to trial, Plaintiff respectfully prays for a judgment in his favor on all contested issues.

November 30, 2020

Respectfully submitted,


s/James John Todd Kincannon
JAMES JOHN TODD KINCANNON
Plaintiff Pro Se

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff, certify that I have on the date below served the foregoing on Defendant through her counsel of record both by postal mail and electronic mail in accordance with the various rules and orders governing such matters, including those related to COVID-19.

November 30, 2020


s/James John Todd Kincannon
JAMES JOHN TODD KINCANNON
PLAINTIFF PRO SE

State of South Carolina	)	
	)	In the Court of Common Pleas
County of Lexington	)	
	)	
James John Todd Kincannon,	)	
	)	2019-CP-32-02268
Plaintiff(s),	)	
	)	November 19, 2019
versus	)	
	)	Lexington, South Carolina
Ashley Suzanne Griffith,	)	
	)	
Defendant(s).	)	
_____	)	

TRANSCRIPT OF RECORD

B E F O R E:

The Honorable William P. Keesley

A P P E A R A N C E S:

James Edward Bradley, Esquire
Attorney for the Defendant

PROVIDED FOR: James John Todd Kincannon, Plaintiff

FOR COPIES CONTACT: Patricia A. Szoke, CVR
Official Court Reporter
Fifth Judicial Circuit, At-Large
pszoke@sccourts.org

Hearing..	4
Certificate..	39

E X H I B I T S

FOR THE PLAINTIFF:

(WHEREUPON, no exhibits were introduced during
this proceeding.)

FOR THE DEFENDANT:

(WHEREUPON, no exhibits were introduced during
this proceeding.)

P R O C E E D I N G S

(START TIME: 11:40 A.M.)

THE COURT: Kincannon versus Griffith. Okay. There are two (2) Motions pending. A Motion for Summary Judgment was filed August 23rd, 2019 by the defendant. A Motion to Dismiss the Counterclaims was filed by the plaintiff on October the 1st, 2019.

Mr. Bradley?

MR. BRADLEY: Thank you, Judge. Ward Bradley here on behalf of Ashley Griffith. With me is Sierra Carini who is a new lawyer with our law firm.

Ashley and Mr. Kincannon were married. They were divorced in February of 2017. And surrounding that divorce and after that divorce, before that divorce, Mr. Kincannon has filed multiple *lis pendens* and lawsuits against Ashley. The most recent one was a conspiracy lawsuit against our law firm and against Ashley, and some sort of wrongful arrest allegations.

PLAINTIFF JAMES KINCANNON: Your Honor --

MR. BRADLEY: That one --

PLAINTIFF JAMES KINCANNON: Your Honor, I must respectfully object. And I -- I know we're here just in oral argument, but his Motion for Summary Judgment is based on one single ground. And what he's arguing right now has nothing to do with it.

1 THE COURT: I'm going to hear both of your arguments.
2 Go ahead, Mr. Bradley.

3 MR. BRADLEY: Thank you, Judge. That lawsuit was
4 recently dismissed by Judge Stilwell on a finding that it
5 didn't have any merit. He's appealed that to the Court of
6 Appeals.

7 These two (2) Motions, somewhat, go together in that
8 we counterclaimed for a filing injunction against Mr.
9 Kincannon based on his history of multiple lawsuits against
10 Ms. Griffith and other people with whom she's associated.
11 Mr. Kincannon has filed quite a few lawsuits against her,
12 which have all been dismissed one way or the other. And
13 this was the most recent of them.

14 Judge, do you have a copy of the complaint there?
15 Would you like a copy? Would it make it easier?

16 THE COURT: I -- I -- you know, I've got it. And --
17 and Ms. Green, if you -- I can pull it up. It's up now.

18 MR. BRADLEY: Okay. I -- really, I just want to talk
19 about what the lawsuit's about, which is the very first
20 sentence of the lawsuit. It appears to allege some sort of
21 a contract between Mr. Kincannon and Ms. Griffith, it took
22 place sometime before they were divorced. Pursuant to
23 which, Ms. Griffith was to give him some amount of property
24 that she owned. That's the best way I can summarize what
25 he said in his complaint. So, apparently, it's a breach of

1 contract and he's also filed a *lis pendens* to encumber this
2 property, which is a home located at 306 Springwalk Lane,
3 West Columbia.

4 So he's alleged that there was a contract, which he
5 has not provided and he hasn't responded to our Discovery
6 when we asked for this contract, but he said there's a
7 contract pursuant to which she was supposed to give him
8 this property, or he has some interest in this property, or
9 some equitable interest in this property that's titled to
10 her and that she received title to in 2015, two (2) years
11 before they were divorced.

12 The basis for our Motion is really simple, Judge. Do
13 you -- do you have a copy of our Motion there?

14 THE COURT: Sure.

15 MR. BRADLEY: Attached to that is Judge Nettle's
16 Divorce Decree in this case between Mr. Kincannon and Ms.
17 Griffith. This was an agreed upon divorce decree that was
18 entered as an Order of the Court by Judge Nettle. And on
19 page two (2), under the agreement section, it recite -- it
20 addresses this exact piece of property that the lawsuit Mr.
21 Kincannon has brought is about. Under C, under agreement,
22 it says, (as read), "Husband agrees the residence where
23 wife resides at 306 Springwalk Lane, West Columbia is
24 wife's separate, non-marital property. Husband agrees wife
25 has legal title to this residence."

1 So the agreement, which was signed by Judge Nettle
2 made in open court, reviewed with Mr. Kincannon in open
3 court, and not appealed says that -- he agreed that the
4 house is her separate, non-marital property. The lawsuit
5 alleges that he has an interest in that house. It alleges
6 that he has some sort of equitable interest because somehow
7 he funded the purchase of the home.

8 And so the basis for our Motion is, in his divorce,
9 Mr. Kincannon agreed and it was entered as a Court Order
10 that the house belonged to Ms. Griffith as her separate
11 property. And in this lawsuit, he alleges that the house,
12 as well as some personal property, he has some equitable
13 interest in it outside of the divorce. So from a matter of
14 res judicata or collateral estoppel, these issues aren't
15 even addressed. And for that reason, we don't think he
16 should be allowed to go forward with this lawsuit against
17 Ms. Griffith, which is just one in a long series of
18 lawsuits he's brought against this woman relating to their
19 relationship outside of the Family Court, Judge. And
20 that's the basis for our Motion.

21 THE COURT: All right. Mr. Kincannon?

22 PLAINTIFF JAMES KINCANNON: Your Honor, the first
23 thing I'll say is that I -- I acknowledge there have been
24 other lawsuits filed, but I don't think that's relevant
25 here. And I'll explain why. First of all, it has nothing

1 to do with whether or not plaintiff is -- or defendant is
2 entitled to summary judgement. But second of all, the
3 reason there are multiple lawsuits is because the South
4 Carolina Supreme Court and the Court of Appeals have
5 correctly interpreted statute, as by the General Assembly,
6 which says that the subject matter jurisdiction of the
7 Family Court is limited to marital property.

8 This was a marriage that lasted only two (2) years.
9 It the -- the divorce filing occurred two (2) years and
10 several months after the marriage. And the vast majority,
11 in terms of asset value, of the assets at issue were non-
12 marital property. In *Bowen versus Bowen* -- and Your Honor,
13 if you don't mind, I'd like to hand up a memorandum and
14 affidavit that I've served on opposing counsel?

15 THE COURT: Sure.

16 PLAINTIFF JAMES KINCANNON: Thank you. (Hands
17 document to the Court.)

18 THE COURT: Yes, sir. (Receives document.)

19 PLAINTIFF JAMES KINCANNON: In *Bowen versus Bowen*, and
20 *Coon versus Coon*, and a number of other cases, the South
21 Carolina Supreme Court and Court of Appeals have
22 unanimously said that when there's a marriage dissolution
23 that involves marital and non-marital property, the -- the
24 party seeking divorce in marital property, that's one
25 lawsuit, but then the non-marital property issues have to

1 be addressed in other lawsuits in Circuit Court. And I
2 guess, in -- you know, it could be Magistrate's Court, or
3 Federal District Court in the right kind of a case, but the
4 point is, is that this multiplicity of lawsuits that
5 opposing counsel is complaining about is absolutely
6 required by the *Bowen* case and the *Coon* case.

7 This case -- and the other cases that opposing counsel
8 is complaining about that revolve around property -- are
9 entirely related to non-marital property. There is a
10 statute. And South Carolina case law is crystal clear that
11 the Family Court has no subject matter jurisdiction to
12 adjudicate non-marital property disputes. And the Family
13 Court in this case did not. A reading of the -- the Final
14 Divorce Decree rules that this residence at 306 Springwalk
15 Lane is non-marital property. It describes it as wife's
16 separate non-marital property. And it describes it saying
17 that there -- that wife has legal title to the residence,
18 but all that means is is that Ms. Griffith held legal title
19 to the property at the time.

20 This case involves a challenge to equitable title.
21 And as you know, equitable title of superior legal title.
22 And this case involves strictly non-marital property. My
23 affidavit -- and it's interesting that opposing counsel and
24 -- and her -- and his client have not filed a counter
25 affidavit. My affidavit establishes clearly that this is

1 non-marital property. The transactions at issue involved a
2 transfer of non-marital property from me, which was the
3 sale of non-marital property that I held. And then the use
4 of the proceeds of that sale were used to purchase non-
5 marital property from Ms. Griffith. The parties stipulated
6 in Family Court that this property involved was non-marital
7 and the stipulation says -- and I have -- it -- I -- unable
8 -- I don't have a copy of it, although I believe one is on
9 file. Although, I was unable to get to the Clerk's Office
10 to get a copy of it before the hearing. The stipulation
11 says that the property is non-marital and that it -- it
12 will not be equitably distributed by the Family Court.

13 So this Summary Judgement Motion is based entirely on
14 collateral estoppel and res judicata based on the Family
15 Court's Final Order. Well, collateral estoppel and res
16 judicata require that an issue be actually litigated and be
17 important to the judgement in another court. Well, South
18 Carolina Family Courts don't have subject matter
19 jurisdiction over non-marital property. They don't have
20 subject matter jurisdiction to award it in an equitable
21 distribution. They don't have subject matter jurisdiction
22 to adjudicate controversies relating to it.

23 And again, the *Bowen versus Bowen* case is -- and there
24 were three (3) of them, but those cases are crystal clear.
25 And they say that when non-marital property issues arise in

1 a divorce, the Family Court adjudicates the marital
2 property issues and the Circuit Court -- or Magistrates
3 Court, whatever -- the court of general jurisdiction
4 adjudicates the non-marital property issues. So all I have
5 done in this case is bring a companion action to the Family
6 Court case. The Family Court case adjudicated the non-
7 marital property. This case adjudicates the marital
8 property -- or I'm sorry, flip that around. The Family
9 Court adjudicated the marital property. And the reason I
10 brought this case is to adjudicate the remaining issues
11 relating to the non-marital property.

12 Res judicata and collateral estoppel necessarily
13 depend upon a valid judgement. And a judgement -- first
14 off, I don't believe -- and if you read the Family Court
15 Order carefully it says, (as read), "Non-marital" -- that
16 this is non-marital property that's at stake in this case.
17 The property at stake in this case is non-marital property
18 and that's what the Family Court found. The second the
19 Family Court found that it was non-marital property, it
20 divested itself of jurisdiction equitably distributed. It
21 divested itself of jurisdiction to adjudicate the
22 controversy relating to non-marital property.

23 So I've only done -- despite what opposing counsel
24 says, I have only done what the South Carolina Supreme
25 Court and Court of Appeals have said you must do in a case

1 where a divorce involves non-marital and marital property.
2 What I have done is bring a separate action in Circuit
3 Court to deal with the non-marital property issues and
4 that's what all the other Circuit Court actions were
5 involved in. One action was like this, I dismissed it
6 without prejudice. Another action relating to other non-
7 marital property issues. The only other action, it related
8 to tortious conduct by Ms. Griffith, which has absolutely
9 nothing to do with the marital disputes.

10 So in this case and -- and I'll quote -- I'm sorry, I
11 believe it's the first *Bowen* decision. If I can turn the
12 page here. It is. *Bowen versus Bowen*, 327 SC 561, 490 SC
13 2(d), 271, from the Court of Appeals in 1997, this is what
14 the *Bowen* Court said, (as read), "Once the Family Court
15 determined the properties were non-marital, it had no
16 jurisdiction to address their ownership or deal with them
17 in any way. See South Carolina Code N20-7-473." Quoting,
18 (as read), "The Family Court does not have jurisdiction or
19 authority to apportion non-marital property. The parties'
20 respective interests in the real estate question must be
21 handled as if the parties were not married. Therefore,
22 that determination must be left for another day."

23 And in the *Bowen* cases the party arguing about the
24 non-marital property had to go to Circuit Court and had to
25 get a Circuit Court judge to rule on an equitable title to

1 the non-marital property. And this is exactly what the
2 Court also said in -- in *Coon versus Coon*, also a Court of
3 Appeals case. And it talks about subject matter
4 jurisdiction, Family Court. (As read), "Subject matter
5 jurisdiction refers to the Court's power to hear and
6 determine cases that a general class, which the parties in
7 question belong." South Carolina annotated section 20-7-
8 420(2) grants the Family Court exclusive jurisdiction,
9 quote, (as read), "To hear and determine actions for
10 divorce a vinculo matrimonii, and in other marital
11 litigation between the parties, and for settlement of all
12 legal and equitable rights of the parties in the actions in
13 and to the real and personal property of the marriage,"
14 emphasis added. And then that Court said, quote --
15 parenthesis, quote, (as read), "Stating the Family Court
16 does not have jurisdiction to apportion non-marital
17 property."

18 My affidavit makes clear that this case involves non-
19 marital property. There are numerous South Carolina
20 reported opinions, published opinions, that say, (as read),
21 "Non-marital property cannot be adjudicated, disputes over
22 that cannot be adjudicated by the Family Court. Once the
23 Family Court determines it's non-marital property, the
24 Family Court loses jurisdiction to say who gets it, loses
25 jurisdiction to adjudicate controversies. And at that

1 point in time, anybody who still wants to fight about it
2 has to go to Circuit Court, which is what I've done.

3 So collateral estoppel and res judicata are the sole
4 grounds for opposing counsel's Motion for Summary Judgement
5 and Dismissal. And collateral estoppel and res judicata
6 can't apply where a Court Order is void for lack of subject
7 matter jurisdiction. Now, I don't think the Family Court
8 Order's void for lack of subject matter jurisdiction on
9 this because I don't think it -- it adjudicates any
10 controversies relating to non-marital property, but even if
11 it did it would be void for lack of subject matter
12 jurisdiction under the *Bowen cases*, the *Coon cases*,
13 numerous other cases. And res judicata and collateral
14 estoppel cannot arise where there is a -- where an Order is
15 void for lack of subject matter jurisdiction. This is the
16 only form that can adjudicate these issues. This is the
17 only form with subject matter jurisdiction. The Family
18 Court is a Court of specific statutory jurisdiction, which
19 lacks jurisdiction over these issues.

20 So I've done exactly what the Supreme Court and the
21 Court of Appeals said by bringing these cases -- by
22 bringing this case over non-marital property to adjudicate
23 equitable title to non-marital property in the Circuit
24 Court. That's all I could have done. I could not have
25 adjudicated these issues in the Family Court and they were

1 not adjudicated in the Family Court. If there's any
2 dispute about that then the remedy for opposing counsel is
3 -- is not Summary Judgement in this case, but is a Motion
4 to Clarify in Family Court, whether or not the Family Court
5 intended to adjudicate non-marital property issues. And if
6 this Court wants to hold off ruling on Summary Judgement
7 until the Family Court decides that, that's fine. But if
8 the Family Court ruled that way, that ruling would be void
9 for lack of subject matter jurisdiction.

10 I -- I guess, that's -- oh, and there's one other
11 issue with regard to this. Opposing counsel and -- and his
12 client have unclean hands with regard to this transaction,
13 and unclean hands barred them from proceeding on their
14 argument about the Family Court case. In my affidavit, in
15 Opposition to Summary Judgement, I lay out that opposing
16 counsel's client, Ms. Griffith, has willfully and
17 intentionally violated the Family Court Order. The Family
18 Court Order called for her to transfer title of an
19 automobile, which was marital property, to me. I'm in
20 possession of the automobile, but Ms. Griffith has failed
21 and refused to transfer legal title to me, which means I
22 can't go get a tag. I can't go insure the car and I can't
23 use the car.

24 My affidavit sets out that she's willfully and
25 intentionally violated the Order. Opposing counsel and his

1 client have not responded to that. They have not filed a
2 counter affidavit saying they've complied with it, so at
3 this stage of the proceedings they have to be deemed wrong
4 -- in the wrong on that. And that's the truth, those are
5 the true facts. She has not done that. And a party
6 seeking the use of a Court Order for collateral estoppel
7 and res judicata can't rely on that Order due to the
8 Unclean Hands Doctrine, if they have willfully and
9 intentionally violated a material provision of it. Ms.
10 Griffith has. And because of that, that's sort of my
11 second argument, if the first one fails.

12 Even if they're right about everything they've argued,
13 unclean hands still bars Ms. Griffith from using that
14 Family Court Order as res judicata or collateral estoppel
15 against me in this proceeding because she's willfully and
16 intentionally violated it and hasn't disputed that. And
17 that affidavit was served on opposing counsel, and they had
18 time to prepare a counter affidavit, they -- they could've
19 served it on me prior to the hearing and they didn't. They
20 do not dispute, at this stage of the proceedings, that Ms.
21 Griffith willfully and intentionally violated the Family
22 Court Order and violated a material provision of it.
23 Therefore, right now, they can't use that Order for
24 collateral estoppel or res judicata purposes.

25 So that's my entire argument on the Summary Judgment

1 issue. And, I guess, I'll yield to opposing counsel for
2 any reply he might have. And then, I guess, we can take up
3 my Motion to Dismiss their counterclaim.

4 THE COURT: Yes, sir. Do you have any response?

5 MR. BRADLEY: Briefly, Your Honor. The Family Court
6 Order says, (as read), "Husband agrees the residence where
7 wife resides at 306 Springwalk Lane, West Columbia, South
8 Carolina 29169 is wife's separate non-marital property."
9 That was a finding by consent in Family Court, it was on
10 appeal. Mr. Kincannon is bound by that finding, which is
11 that the property belongs to Ms. Griffith.

12 Now, it's somewhat of a circular argument to say, (as
13 stated), "Well, it does say that they agree it's non-
14 marital property," and it says that in here. And the
15 purpose of them agreeing that it was non-marital property
16 clearly is that it belongs to the wife. If, in fact, Mr.
17 Kincannon had an equitable interest in the property as he
18 alleges today, the property would have had to be marital
19 property because that's what marital property is. So he's
20 sort of created a circular argument here to say, (as
21 stated), "Well, it's non-marital property and therefore I
22 can file another lawsuit about it because I have an
23 interest in it." Whereas in the agreement, which he agreed
24 to and it was entered by Judge Nettles, he agreed that he
25 didn't have an interest in it.

1 So what he's saying now is, (as stated), "I did have
2 an interest in it, but it's non-marital property, so we're
3 going to litigate that in Circuit Court." But if he had an
4 interest in it, it would've had to have been marital
5 property. His, sort of, theory is that there's some
6 contract entered into before the divorce and sometime
7 during the marriage that she would give him this property,
8 or give him some interest in it, or he has some equitable
9 interest in it that's outside the Domestic Court. If he
10 had an interest in it, it would have to be marital
11 property.

12 As far as him discussing the *Bowen* case, what happened
13 in *Bowen* was the parties had a prenuptial agreement and
14 they agreed that certain property was non-marital. They
15 consented to it during the divorce hearing. And then the
16 Family Court judge apportioned the property anyway. And
17 there was an appeal in which the parties said, (as stated),
18 "Look, we agreed this was not marital and the Family Court
19 can't apportion non-marital property," which is definition
20 on -- the Court agreed to that. Here what we've got is a
21 finding from the Family Court that Mr. Kincannon agreed
22 himself that the house belonged to the wife, which was
23 separate, non-marital property. And now he's coming in
24 Circuit Court and taking a directly opposite position of
25 that. That's the basis for our Motion for Summary

1 Judgement.

2 And I know we're going to argue this in a second, but
3 he's filed four (4) *lis pendens* against this woman, and six
4 (6) -- and four (4) separate lawsuits against her,
5 including two (2) appeals through the South Carolina Court
6 of Appeals. So at this point, Your Honor, that -- the
7 litigation is becoming abusive and that's the basis for the
8 Motion to Summary Judgement as well. As well as our
9 argument, and Motion, and -- Counterclaim really, it's a
10 Counterclaim, not a Motion -- for a pre-filed injunction
11 against Mr. Kincannon.

12 PLAINTIFF JAMES KINCANNON: Your Honor, if I could --
13 because I think this is probably going to end up in the
14 Court of Appeals, if I could have leave to correct the
15 record on something, I'd appreciate it. I have not argued
16 that there was a contract that -- and I'll preface this by
17 saying there's some complexity here, but I haven't argued
18 that there was a contract that required Ms. Griffith to
19 transfer property she owned to me. That's not what
20 happened. The property originated is my property. There
21 was a parcel of land, which was indisputably non-marital
22 property in Greenville County. There was an agreement
23 between me and Ms. Griffith that I would sell that non-
24 marital property, use the proceeds that were still non-
25 marital to purchase property for her, which would become

1 her non-marital property.

2 And I claim two (2) things, principally, in this case.
3 Number one, that Ms. Griffith breached the terms of that
4 contract and therefore equitable title either A, never
5 transferred to her, or B, reverted to me after she
6 breached. And secondly, and this is probably the principle
7 argument, that I lack psychiatric capacity -- excuse me,
8 psychiatric capacity to enter into that contract with her
9 and to transfer those assets to her. Ms. Ralley said that
10 the only way she could have possibly gained equitable
11 title, or there could possibly be any equitable dispute, is
12 if this property was marital in nature. Well, that's not
13 correct. If the contract of -- relating to the transfer
14 from me of non-marital assets to her of non-marital assets,
15 if the contract was breached by Ms. Griffith then I either
16 have a breach of contract claim against her sounding in
17 law, or a rescission claim, or a mutual estate claim, or
18 something of that nature sounding in equity. None of that
19 has anything to do with marital property. So I do have
20 equitable claims that are totally apart from marital
21 property disputes.

22 And that's also true with regard to my principle
23 argument, I think, which will end up being the main
24 argument, which is that I suffered at the time -- and this
25 is undisputed -- from a severe psychiatric illness, which

1 caused me to make horrendously poor decisions where Ms.
2 Griffith was concerned. And I've retained expert witness
3 at -- who is right now evaluating things. And her
4 preliminary opinion is that I had lacked contractual
5 capacity to enter into the contract with Ms. Griffith that
6 resulted in this transfer of property to her. This lawsuit
7 argues that. And this lawsuit says that -- that (as
8 stated), "Hey, this was a non-marital property transfer,
9 non-marital property from me, which became non-marital
10 property of her."

11 Now, I am seeking to reverse this transfer under
12 equitable grounds, seeking rescission, because I lack
13 contractual capacity due to severe psychiatric illness,
14 which was so severe -- I might add -- that Ms. Griffith and
15 her counsel asked for a conservator to be appointed for me
16 in the Family Court case. And interestingly -- and this I
17 think is a serious issue -- the Court ruled on the final
18 adjudication case and entered a final Family Court Order of
19 divorce without ruling on whether or not a conservator
20 needed to be appointed for me.

21 In hindsight, now that I've retained an expert witness
22 who's given me preliminary opinions, my view is that the
23 final ruling in Family Court is void, or at least voidable,
24 because I lacked psychiatric capacity at that point in time
25 to even enter into. But even beyond that, this case

1 involves strictly non-marital property disputes. And the
2 complaint says it's non-marital property. My affidavit
3 says it's non-marital property. And this is key, under the
4 *Bowen cases*, we stipulated in the Family Court that this
5 was non-marital property and that the Family Court Final
6 Ruling would not adjudicate or apportion any of the
7 property that's at issue here. That was a binding
8 stipulation entered into on the record by me, and Ms.
9 Griffith and her counsel, the same firm in this case. We
10 entered into that stipulation in the Family Court case and
11 it's undisputed. So the fact that -- and that in and of
12 itself, when I saw this Family Court Order I understood
13 that what we were agreeing to was that Ms. Griffith, at
14 that time, held legal title on the property. There was
15 never an agreement with regard to any equitable claims.
16 And the stipulation expressly excluded equitable claims.
17 There are no equitable disputes. Any equitable disputes
18 whatsoever survived that.

19 And again, I don't know what else a person can do in
20 my situation who's faced with a divorce and a non-marital
21 property dispute. I was willing to give Ms. Griffith
22 practically whatever she wanted with regard to the marital
23 property because there was practically none. It was a two
24 (2) year old, six (6) month marriage at the time she filed
25 divorce. I was uninterested in litigating the relatively

1 minimal property issues with regard to the Family Court
2 case and so I agreed with whatever they wanted with regard
3 to the marital property. I intended and stipulated -- or
4 thought I had stipulated -- that non-marital property would
5 not be part of the Family Court adjudication.

6 And in fact, even if I hadn't stipulated to that, the
7 South Carolina Supreme Court and Court of Appeals have been
8 crystal clear that Family Court lacks subject matter
9 jurisdiction to adjudicate non-marital property issues.
10 The reason I had to appeal the Family Court Order is
11 because I didn't think it adjudicated any controversies
12 over non-marital property, it certainly doesn't appear to.
13 So this -- this Order from the Family Court, it's either A,
14 it does not adjudicate non-marital property equitable
15 disputes, which have been raised in this case. Either it
16 doesn't adjudicate them, or it does and -- or it purports
17 to, in which case it's void for lack of subject matter
18 jurisdiction. And collateral estoppel and *res judicata*
19 cannot arise from a Court Order that is void for lack of
20 subject matter jurisdiction. There has to be a valid Court
21 Order. If a Family -- if a Magistrate's Court case
22 adjudicated a seventy thousand dollar (\$70,000.00) property
23 dispute, that would be void for subject matter
24 jurisdiction. If a Federal District Court case adjudicated
25 a controversy over five dollars (\$5.00) that wasn't a

1 federal question, that would be void for lack of subject
2 matter jurisdiction. *Res judicata* and collateral estoppel
3 cannot arise from an Order entered in the absence of
4 subject matter jurisdiction.

5 So I don't think the Family Court Order adjudicates or
6 purports to adjudicate disputes regarding non-marital
7 property, it certainly doesn't say that there are any. And
8 I think if it were trying to adjudicate then it would at
9 least say there are some, it doesn't. But even if it did,
10 it's void for lack of subject matter jurisdiction. And
11 collateral estoppel and *res judicata* cannot arise from an
12 Order that's void for lack of subject matter jurisdiction.

13 And that's all I have to present about the Summary
14 Court thing. And I'll be happy -- if Mr. Bradley doesn't
15 have anything else, or if he does he can say it, but then
16 to go into my Motion to Dismiss.

17 THE COURT: We'll deal with your Motion, please.

18 PLAINTIFF JAMES KINCANNON: All right. Thank you,
19 Your Honor. As to the Motion to Dismiss, Mr. Bradley's
20 complaint -- my Motion to Dismiss is based on really two
21 (2) grounds. One is Rule 12(b)(6), which argues that it
22 fails to state facts sufficient to constitute a cause of
23 action. And the second one is that -- and this is kind of
24 a unique cause of action Mr. Bradley has brought and so
25 it's kind of a unique defense. He wants there to be

1 special rules of Civil Procedure that apply to me and no
2 one else relating to how I file lawsuits against his
3 client, but his complaint fails to lay out with any
4 specificity what rules he wants. He says that -- and that
5 I filed frivolous lawsuits against his client.

6 Now, just to start off, none of -- no Court has ever
7 found any of these lawsuits to be frivolous. And in -- one
8 of them was dismissed without prejudice and has been
9 brought back in this case. He says there are four (4).
10 The other one I prevailed in by way of an agreement. That
11 involved another non-marital property dispute that's not
12 before the Court here today. And the other one involved an
13 abuse of process claim where his client went to police
14 officers and prosecutors and asked them to demand that I
15 concede in civil cases unrelated to a criminal matter in
16 exchange for a criminal plea agreement. That case was
17 dismissed by Judge Stilwell, but he didn't find it was
18 frivolous. He just dismissed it. And de dismissed it
19 under 12(b)(6) and I've appealed it. He didn't find it was
20 frivolous.

21 So the first argument that I would have is, is that
22 Mr. Bradley's counterclaim fails to establish in any way,
23 just has -- contains conclusory allegations, that I filed
24 abusive, and harassing, and -- presumably -- frivolous
25 cases against his client. It doesn't say how any of them

1 are abusive. It doesn't say how any of them are frivolous.
2 His only argument is that, (as stated), "Well, hey, there's
3 this large number of cases involving these -- these
4 litigants, they must therefore be frivolous and abusive."
5 Well, that's not good enough. As I explained in the *Bowen*
6 *versus Bowen* case and the *Coon versus Coon* case, the South
7 Carolina Supreme Court and Court of Appeals
8 interpreting the Legislature Statutes on these issues have
9 said clearly that there's gonna be a multiplicity of cases
10 when there are numerous non-marital property disputes that
11 are also involved in divorce. If there are -- in this
12 case, involve two (2) different non-marital property
13 disputes and divorce -- that's a minimum of three (3) cases
14 right there. And I have filed four (4), I think. And
15 that's what they've all -- except for the abusive process
16 case, that's what this has all been, me just trying to
17 follow *Bowen versus Bowen* and *Coon versus Coon*. I didn't
18 invent the statute and didn't write the statute, which says
19 that Family Courts only have jurisdiction over marital
20 issues. And that in cases where there is multiple non-
21 marital property disputes there has to be a bunch of other
22 cases filed in Circuit Court, or Magistrate's Court, or
23 Federal District Court, or whatever. I didn't do that.
24 That -- that was -- I've never been a member of the South
25 Carolina Legislature. They wrote the statute. The South

1 Carolina Supreme Court and Court of Appeals interpreted the
2 statute and they've said, (as stated), "In cases like this
3 where you have multiple non-marital property issues and a
4 divorce there have got to be a bunch of different cases."

5 And that's -- that's all this is. I would have been
6 perfectly happy to have all this adjudicated in one action,
7 but South Carolina Law does not allow for that. And the
8 *Bowen versus Bowen* case is clear. There were three (3)
9 different appeals in that case. I think there were two
10 (2), or possibly three (3) Family Court plus Circuit Court
11 Actions. That's just how you have to litigate these cases.
12 And as far as the Abusive Process Action goes, that's
13 totally outside the realm of every -- everything else.
14 That's nothing to do with marital property or non-marital
15 property. Ms. Griffith, for leverage in her divorce,
16 alleged that I committed criminal domestic violence against
17 her. Then persuaded upon a prosecutor to offer me a deal
18 where if I would surrender to her on unrelated civil cases
19 they would drop the criminal case. I think that's an abuse
20 of criminal process and I brought an action about it. And
21 the Court dismissed it, but didn't find it was frivolous
22 and it's before the Court of Appeals on a 12(b)(6) appeal.

23 So Mr. Bradley's counterclaim doesn't contain any
24 allegations whatsoever in allocation of fact or any
25 explanation as to why -- how I've violated his client's

1 rights by filing frivolous or abusive claims against her.
2 I'm sorry that this has taken so many different cases to
3 work through. I wish that weren't the case, but that's
4 just what you have to do in South Carolina based on the
5 *Bowen case*, and the *Coon case*, and other cases about these
6 types of issues.

7 And the other part of my argument is not just that he
8 hasn't alleged what -- and I -- and I think -- backing up a
9 bit. I think the -- the best Order from this Court would
10 be to dismiss his counterclaim with leave to amend and
11 assert with specificity what he thinks I've done that
12 constitutes abusive litigation, or frivolous litigation, or
13 anything along those lines. The complaint is -- or his
14 counterclaim is threadbare, it contains nothing but
15 conclusory allegations that I've done these bad these, but
16 it doesn't say what was frivolous or what was abusive about
17 these cases. So that's what I would ask the Court to enter
18 a ruling about.

19 However, even if the Court's not inclined to do that,
20 there's another problem with his -- with his counterclaim
21 and it's this, what he wants me to do is before I file some
22 lawsuit against his client is to get *ex parte* pre-
23 clearance, I guess from a Circuit Court judge or from
24 whatever judge presides over the Court that I would file
25 the case in. Now, I -- as I've said in my Motion, I have

1 no philosophical opposition to that. I have no problem
2 whatsoever letting judges look over my filings before I
3 file them. I think in every single case a judge would have
4 given a check mark on an *ex parte* basis and then we would
5 have proceeded, but apparently what he wants me to do is to
6 treat my civil filings the way a Criminal Court might treat
7 a search warrant application. That I go before a judge on
8 an *ex parte* basis and ask for them to sign off on what I
9 want done, which is for some action to be filed, or for
10 some motion to be filed, or whatnot.

11 Now, I don't mind doing that. I -- I have no problem
12 whatsoever and don't object to sending filings to judges to
13 look over before I file them. And I am risk adverse as far
14 as filing frivolous cases goes. I don't want to do that.
15 I would never want to do that. I want to win these cases.
16 I don't want to give Ms. Griffith ammunition to argue
17 they're frivolous. So I have no problem whatsoever of
18 sending my filings to judges to look over ahead of time.
19 The problem with what Mr. Bradley's asking for, though, is
20 that his complaint -- or his counterclaim, I should say --
21 doesn't establish with specificity the rules by which this
22 occurs. What happens if I want to appeal? Does -- do I
23 file an appeal and then the judge that I'm appealing, does
24 he or she have to file a reply or a response brief? I
25 mean, I -- I don't know. And that's the problem with

1 asking for extraordinary relief like this is that if you --
2 if Mr. Bradley wants me -- wants the civil -- Rules of
3 Civil Procedure and Rules of Appellate Procedure re-
4 written, as far as I'm concerned, so that I have to jump
5 through hoops that the average litigant doesn't, I'm fine
6 with that. But he has not set forth in his counterclaim a
7 comprehensive list or rules for how he wants this to go.
8 And it's not your job and it's not my job to figure that
9 out for him.

10 And since I filed my Motion to Dismiss arguing this
11 saying, (as stated), "I have no real objection to this. If
12 you want this done, that's fine, just lay out the rules."
13 He's had an opportunity to file something with the Court
14 saying, (as stated), "Well, here's how this should work.
15 Mr. Kincannon has -- you know, if he wants to file
16 something, he needs to submit it to a Court and then the
17 Court has ten (10) days to respond, blah, blah, blah." He
18 has not put together anything like that. So I have no idea
19 how a Court can grant him this relief that he seeks without
20 totally re-writing the Rules of Civil Procedure and the
21 Appellate Court Rules. And if he wants that, he has to put
22 it together. If he wants me to be subject to this special
23 regime, that's fine. But he need to put together a
24 comprehensive set of rules for how I need to do things.
25 What happens in cases like I file on the last day of a

1 deadline, what happens then? Is the deadline stayed until
2 such time as the Court rules on whether or not I can
3 actually for real file this thing I've submitted to be
4 filed? I mean, he has to put all that together. He
5 hasn't.

6 So that's my argument. His complaint or his
7 counterclaim fails to allege facts that would allow Court
8 to rule for him on these frivolous claims arguments. He
9 fails to establish how any of my prior filings have been
10 frivolous. And I've just explained how I think they're
11 not. So I think it should be dismissed based on 12(b)(6)
12 just for that matter, but I think the dismissal should be
13 without prejudice. And if he wants to file an amended
14 counterclaim specifying in detail, (as stated), "Hey, Mr.
15 Kincannon, here are all the problems with your prior
16 pleadings and here is what I think the Court needs to do in
17 the future, here are the new rules of Civil Procedure that
18 apply to you and no one else," if he wants to do that,
19 that's fine. I would -- I'll probably end up consenting to
20 that since all he wants is for me to get free clearance
21 from Courts before filing, which I think won't be a
22 problem. But if he wants to do that, I think the Court
23 needs to dismiss his current claim and compel him to file a
24 new claim laying all this out, alleging facts -- specific
25 facts saying how my prior cases are frivolous and abusive,

1 and setting forth a rules regime that I can follow and the
2 Courts can follow. See, the major problem here is right
3 now, if I sent you an email and said, (as stated), "Hey,
4 Judge Keesley, here's a filing that I would like to file
5 against Ashley Griffith. Can you take a look at this for
6 me before I file it?" I don't know any judge in the state
7 that's going to respond to that. No judge would have any
8 idea that they had to. That's just not done.

9 So if Mr. Bradley wants this regime where I have to
10 get pre-clearance, he has to set up in a Proposed Order or
11 in his Complaint, he has to set up proposed rules that --
12 that I'm supposed to follow and that judges know they're
13 supposed to follow because I -- I can't imagine a judge
14 isn't going to say, (as stated), "Well, Mr. Kincannon, this
15 is an *ex parte* communication. I can't tell you whether
16 your complaint is valid or not. You need to just go ahead
17 and file it. And if they -- if the defense moves to
18 dismiss, they move to dismiss." We've gotta have some kind
19 of an order specifying how all this works because I can't
20 comply with what Mr. Bradley wants if he's not going to
21 explain to the Courts and to me how this new rule system
22 works.

23 THE COURT: Your response?

24 MR. BRADLEY: Thank you, Judge. This is the fourth
25 (4) lawsuit Mr. Kincannon's filed against Ms. Griffith, in

1 addition to the divorce. I agree that it's unusual to ask
2 for a pre-filing injunction and I've never done it before.
3 I'm aware that it's quite often done in Federal Court with
4 *habeas* petitions with serial filers because it creates
5 conditions for the Court. I'm happy to find any
6 information, if we litigate this case and it gets to a
7 point where a Court is convinced that we're correct on that
8 to aid in a Court fashion and a remedy for it. The purpose
9 of the remedy is just so that Ms. Griffith can be left
10 alone.

11 There's really no point in seeking a finding that any
12 lawsuit is frivolous brought by Mr. Kincannon because Mr.
13 Kincannon has no money. He's filed all these *pro se*
14 petitions *in forma pauperis*. The only remedy that I know
15 that you get for a frivolous lawsuit is sanctions and he
16 has no money to pay. In fact, he's filed his appeal with
17 the Court of Appeals *in forma pauperis* of the most recent
18 lawsuit that was dismissed by Rob Stilwell.

19 And so the basis for the counterclaim is just finding
20 a way to get this woman some relief from being continually
21 sued by this man after the -- they divorced. And certainly
22 just the pleading at this point for not adhere -- a hearing
23 to prove what we believe is going on, which is just
24 harassment of her through the legal system. But at the
25 appropriate time we can do that. We think it's a remedy

1 within the power of the Circuit Court to render. We think,
2 based upon the facts of this case that it's appropriate.
3 And that's the reason we put a counterclaim in for that
4 remedy and our answer, Your Honor.

5 THE COURT: Anything else?

6 PLAINTIFF JAMES KINCANNON: All I would say is that if
7 Mr. Bradley wants to lay out in his -- I mean, I have to --
8 when I file a Motion to Dismiss, if it's denied I have to
9 file a reply. And there are no factual allegations in the
10 counterclaim which establish how any of my previous filings
11 were abusive or frivolous. And I contend they weren't
12 based on this *Boon versus* -- or *Coon versus Coon* and *Bowen*
13 *versus Bowen case*, which says this is how you have to
14 litigate divorces where there are a bunch of non-marital
15 property disputes in addition to the divorce dispute.

16 All I would ask that the Court find that Mr. Bradley's
17 counterclaim lacks factual allegations supporting his claim
18 that my -- any -- that I have some propensity for filing
19 frivolous cases and abusive cases against his client. And
20 that his allegations are conclusory, which they are. And
21 compelling him to file an amended counterclaim saying, (as
22 stated), "Hey, you know, here are the specific instances
23 where you have filed an abusive or frivolous case, here's
24 why it's frivolous, here's why it's abusive." And then I
25 could file an answer -- or I mean, I guess it's a reply --

1 and respond to it. But I guess my Motion to Dismiss is as
2 much a Motion to make more definite and certain as it is a
3 Motion to Dismiss.

4 If Mr. Bradley and his client want to claim that I'm
5 filing abusive and frivolous cases against them, that's
6 their right. I don't mind defending that, but they won't
7 say what particularly it is that makes any of my previous
8 cases abusive or frivolous. And I don't think they are.
9 None of the Courts that heard them found that they were.
10 And if you want to talk about *res judicata* and collateral
11 estoppel, well there's an issue there, but -- you know,
12 even beyond that, I don't want to get into a big argument
13 about that. All I want to get into an argument about is if
14 Mr. Bradley claims that something I filed for is abusive or
15 frivolous, he needs to say specifically what it was, why it
16 was frivolous, why it was abusive and then I can respond to
17 it.

18 As his complaint -- or his counterclaim is -- is
19 styled right now -- the way it's written right now, all I
20 can do is file a general denial. He doesn't make any
21 specific allegations whatsoever about how anything I've
22 done in previous cases was abusive or frivolous. He just
23 says they were and that's that. So I would ask the Court
24 to dismiss his -- his counterclaim based on Rule 12(b)(6)
25 with leave to amend and give him an opportunity to file an

1 amended counterclaim saying, (as stated), "Here are the
2 specific things that you've done, Mr. Kincannon, that were
3 abusive and frivolous in previous cases. And based on this
4 -- based on your alleged propensity to keep filing abusive
5 and frivolous things, this is my grounds for equitable
6 relief, which is a prefiling injunction. And also, in
7 addition to that, here's how this prefiling injunction
8 stuff should work."

9 Mr. Bradley appears to be familiar -- I am not
10 familiar, but he appears to be familiar with *pro se habeas*
11 petition prefiling injunctions in Federal Court. Well, I
12 haven't the faintest idea what the rules are for that and
13 how it works when a *habeas* petitioner asks the Court to
14 look over his stuff before he files it. But if Mr. Bradley
15 wants that to be the rule in this case, I honestly don't
16 care. But he needs to put together in his complaint -- or
17 his counterclaim a list of rules which would govern that so
18 that judges know what I'm doing when I send them an email
19 and say, (as stated), "Here's this complaint I'd like you
20 to look over, Judge. I am just sending it to you, it's *ex*
21 *parte*. Let me know what you think. If you don't like it,
22 I'll try to change it before I file the thing and serve it
23 on his client." I mean, right now no South Carolina judge
24 is going to have any idea what I'm doing if I do that.
25 They will be clueless and they will probably think that I'm

1 doing something wrong by sending them an *ex parte*
2 communication asking them to look over my filing. I mean,
3 honestly, I don't care if that's what we do. I have no
4 problem just typing up filings, and sending them to judges,
5 and getting a checkmark, and then filing and serving them
6 formally on his client. But he's going to have to put
7 together a list of rules and procedures whereby judges know
8 what they're doing and I know what I'm doing so that --
9 that we can all figure this out *ex parte* before his client
10 has to deal with it.

11 So that's all I have to say. I don't really have any
12 -- I mean, even though I've moved to dismiss it, I don't
13 really care if he gets an order saying I have to let judges
14 look at what I file before I file it. That's fine with me,
15 but we've got to have a series of rules established for --
16 you know, to let judges know that they have an obligation
17 to look at my stuff. And to also let judges know -- you
18 know, well, what are their obligations if I appeal? I
19 mean, what would happen, for instance, if I sent something
20 to Judge Lee who, I think, is the chief admin judge right
21 now. If I sent her a -- from a civil complaint and she
22 didn't think it was -- it was valid and I did think it was
23 valid. Do I file an appeal? Who's the opposing party, is
24 it Judge Lee? I mean, is she required to prepare a brief
25 in the Court of Appeals and argue against my -- I have no

1 idea. I -- it's not my job to know, it's not her job to
2 know and it's, frankly, not your job to know. It's Mr.
3 Bradley's job to lay all that out so that -- so that I can
4 follow whatever rules he wants imposed on me and just,
5 importantly, so that the judges can because, like I said,
6 no judge in South Carolina is going to have the faintest
7 idea of what I'm doing if I send them something and say,
8 (as stated), "Hey, please look at this." And they're
9 probably going to think I'm doing something wrong, and get
10 mad at me and -- you know, it's just a nightmare if Mr.
11 Bradley doesn't put together some kind of a comprehensive
12 rules guidance that he wants established so that I have due
13 process and so that judges understand what I'm doing and
14 why I'm sending them *ex parte* communications asking them to
15 pre-clear my filings.

16 THE COURT: Thank you. I'll notify of decisions in
17 writing. Thank you very much.

18 MR. BRADLEY: Thank you, Your Honor.

19 PLAINTIFF JAMES KINCANNON: Thank you, Judge.
20
21

22 (WHEREUPON, the hearing in the above-
23 entitled matter was concluded at 12:31 p.m.)
24
25

Be it known that I, the undersigned Patricia A. Szoke, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, before the Court of Common Pleas for Lexington County, South Carolina, so given on November 19, 2019, to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand this
5th day of February, 2023.

Patricia A. Szoke

Patricia A. Szoke, CVR
Certified Verbatim Reporter
Official Court Reporter
South Carolina Judicial Branch
Fifth Judicial Circuit -- At-Large
Notary Public for South Carolina
My commission expires 10/8/2030.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
James John Todd Kincannon,	)	C/A No. 2019-CP-32-02268
	)	
Plaintiff,	)	
vs.	)	MOTION TO DISMISS OR
	)	FOR SUMMARY JUDGMENT
	)	
Ashely Suzanne Griffith	)	
	)	
Defendant.	)	
_____	)	

You will please take notice that the Defendant Ashely Suzanne Griffith hereby moves to dismiss this Complaint with prejudice or for summary judgment as is deemed best by the Court.

In particular, this lawsuit alleges property disputes and oral agreements to distribute property which were made before the parties' divorce. A copy of the parties' divorce decree signed by The Honorable Peter Nuessle is attached as Exhibit A to this motion. The divorce decree resolved all property disputes and other disputes between the parties.

As a result, this lawsuit should be dismissed with prejudice pursuant to res judicata and collateral estoppel as the issues between the parties have already been resolved by way of a court order and agreement in domestic court.

MOORE TAYLOR LAW FIRM, P.A.

By: s/James Edward Bradley
 James Edward Bradley, SC Bar # 66130
 P.O. Box 5709
 West Columbia, SC 29171
 (803) 796-9160
ward@mttlaw.com
 Attorney for Defendant

West Columbia, South Carolina
 August 23, 2019

COPY

STATE OF SOUTH CAROLINA)

IN THE FAMILY COURT
FOR THE ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON)

Ashely S. Griffith,)

Plaintiff,)

**DECREE OF DIVORCE AND ORDER
APPROVING AGREEMENT**

vs.)

James John Todd Kincannon,)

Defendant)

C.A. No. 2015-DR-32-2268

Date of Hearing:
Presiding Judge:
Plaintiff's Attorneys:January 24, 2017
Peter R. Nuessle
C. Vance Stricklin, Jr.
Amber C. FulmerDefendant's Attorney:
Court Reporter:*Pro Se*
Carole ShealyLISA COMER
CLERK OF COURT
LEXINGTON, SC

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FILED

This action was filed by Plaintiff (hereinafter also referred to as "Wife") on September 1, 2015. An Ex Parte Restraining Order was issued on September 2, 2015. The affidavit of service that was filed indicates Defendant (hereinafter also referred to as "Husband") was served personally with the pleadings and the Restraining Order on September 4, 2015. Husband did not serve an Answer.

This matter is currently before this Court for a final merits hearing. Notice of the hearing was properly served upon Husband. Wife was present at the hearing along with her attorneys C. Vance Stricklin, Jr. and Amber C. Fulmer. Husband was also present, but was not represented by counsel. Husband indicated he did not desire counsel and wished to proceed with the hearing *pro se*. Upon inquiring into Husband's education, life skills, and his desire to proceed without counsel, I find and conclude the Husband is capable of representing himself and should be

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allowed to proceed *pro se*.

The Court then proceeded with the hearing. After the direct and cross examination of two of the Plaintiff's witnesses, the Court recessed to allow the parties the opportunity to discuss a potential settlement. The parties then 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, and desired to orally recite the terms of the agreement on the record. Thereafter, the Court reconvened and the terms of the parties' agreement were placed on the record.

I find the parties agreement as placed on the record and reduced herein below to writing is as follows:

AGREEMENT

A. The parties' agree the Court has personal and subject matter jurisdiction over this action and of the parties. Venue is proper in the Lexington County Family Court.

B. The parties' agree each shall waive alimony and spousal support from the other. The parties' agree this is a permanent and irrevocable waiver of alimony and spousal support.

C. 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.

D. Wife agrees Husband is entitled to whatever interest he may have in the residence located at 200 Townes Road, Columbia, South Carolina 29210. The parties are not acknowledging there is an interest in the residence, but are acknowledging that should such interest exist, Husband is entitled to the interest in this residence.

E. The parties' agree each shall keep the personal property currently in his or her

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EXHIBIT A

possession and control. The parties' agree the dog Noodle is non-marital property and this Court has no jurisdiction to award the dog to either party. The parties' are not agreeing as to the ownership of Noodle; however, Husband agrees that if he is incapacitated unable to care for Noodle for an extended period of time, Wife shall have the first right to care for Noodle.

F. The parties' agree each shall have the ownership and possession of the vehicle currently in his or her possession. Husband's vehicle is a Nissan Pathfinder, and Wife previously owned a BMW but has since traded that vehicle in for a GMC Terrain. Each party shall be responsible for any liabilities and expenses related to his or her vehicle such as the payments, taxes, repairs, maintenance, and the like, and shall hold the other harmless and indemnify the other from the same.

G. The parties agree that each shall retain the ownership of his or her own checking, savings, investment, retirement, or other account titled in his or her name, free and clear of any claim or interest by the other. Each party waives any interest he or she may have in the other party's checking, savings, investment, retirement, or other account titled in the name of the other party.

H. Each party shall be responsible for the debt in his or her name. Each party agrees they shall indemnify and hold the other harmless of any liability related to the debts retained by him or her. The parties acknowledge they have no joint debts.

I. The parties agree each shall be responsible for his or her own health, dental, and vision insurance. Each party shall be responsible for his or her own non-covered and non-reimbursed medical, dental, vision, and other healthcare related expenses incurred during this litigation and in the future.

J. Husband agrees he shall be placed under a permanent injunction prohibiting

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Husband from directly contacting, threatening, harassing, molesting, bothering, intimidating, or otherwise interfering with Wife at any time or place. This prohibition does not preclude Husband from legal process service on Wife.

K. Husband agrees he shall be responsible for \$23,000.00 toward Wife's attorney's fees and costs incurred in this matter. Husband agrees this \$23,000.00 shall be reduced to a judgment against him.

L. Wife agrees to dismiss her pending Rule to Show Cause and Complaint for Contempt. Husband acknowledges he has filed a number of items with this Court and the South Carolina Court of Appeals. Husband acknowledges that whatever items he filed with the Family Court and South Carolina Court of Appeals shall be dismissed.

M. The parties agree that if the Court approved the parties' agreement, Wife would amend her Complaint to seek a divorce based on one year's continuous separation, and Husband would consent and waive his statutory response time.

Based upon the agreement of the parties as recited above and the record before me, I make the following Findings of Fact and Conclusions of Law and Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Wife is a citizen and resident of Lexington County, South Carolina, and has been so in excess of three (3) months prior to the commencement of this action.

2. Husband was a citizen and resident of Lexington County, South Carolina, and had been so in excess of three (3) months prior to the commencement of this action. Husband currently resides in Greenville County.

3. The parties last resided together as wife and husband in Lexington County, South Carolina.

4. The parties are currently wife and husband, having been married to each other on February 6, 2013. The parties had a formal wedding ceremony in a church on April 6, 2013. There are no children of the marriage and none are expected.

5. As agreed upon by the parties and recited above, this Court has jurisdiction of the parties and subject matter herein. Venue is proper in Lexington County, South Carolina.

6. I find and conclude Wife made a motion to supplement her pleadings to request a divorce on the grounds of one year's continuous separation without cohabitation. Husband waived his response time and joined in the Wife's requested relief. Wife testified the parties' separated on or about August 26, 2015. Wife testified the parties had remained separate and apart since that time without intervening cohabitation. I find Wife's testimony was fully corroborated by her corroborating witness. Based upon the testimony and the record before me, I find and conclude Wife is entitled to a divorce, a vinculo matrimonii, from the Husband based upon one year's continuous separation without intervening cohabitation.

7. I find and conclude there has been no collusion between the parties for the purpose of obtaining a divorce.

8. I find that all other matters arising between the parties as a result of the marriage, except the issues of divorce, have been resolved by the parties' agreement as recited on the record and reduced to writing herein above. Both parties were separately examined under oath as to the terms of the agreement and circumstances surrounding its negotiation. It was clearly established that:

- (a) They had been successful in reaching an agreement resolving all of the issues of their marriage;
- (b) The agreement recited on the record and reduced to writing herein above was their agreement;

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- (c) Each party entered into the agreement freely and voluntarily;
- (d) Each party stated neither was threatened, forced, or coerced into entering in this agreement;
- (e) Each party understood all terms of the agreement;
- (f) The agreement as recited on the record and reduced to writing herein above reflects the entire agreement between them;
- (g) Each party participated in the negotiation of the agreement;
- (h) Neither party had any questions about the agreement they desired to ask the Court or counsel;
- (i) Each party had sufficient information regarding the other's finances, income, assets, and debts at the time they entered into this agreement;
- (j) Each party provided truthful information regarding his or her own finances, income, assets and debts to the other party;
- (k) Neither party was under the influence of any drugs, intoxicants, or medications that would affect their judgment at the time they entered into this agreement;
- (l) Wife testified she was satisfied with the services provided by her attorneys, her attorneys had done everything she had asked them to do, and her attorneys had discussed all aspects of the agreement with her;
- (m) Husband testified he understood he was not represented by Mr. Stricklin, Ms. Fulmer, or the Moore Taylor Law Firm, P.A. Husband testified he did not have any complaints against Wife's attorneys or their firm;
- (n) Each party had ample time to speak with a CPA or financial advisor regarding the tax consequences or financial implications of the agreement, had they so desired;
- (o) Each party understood that the agreement regarding the division of property and debts was permanent, and if approved by the Court, cannot be changed in the future;
- (p) Each party understood a waiver of alimony is permanent and neither could come back before the Court at any time in the future to request alimony;
- (q) Each party understood they were giving up their right to a trial where they could have been allowed to present witnesses and other information to support

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their requests, and each party affirmatively stated they were waiving their right to trial;

- (r) Each party believes the agreement was in their his or her best interests and the best interests of their spouse;
- (s) Based on all the circumstances surrounding the negotiation of the agreement, they believed it to be fair and equitable to themselves and the other party;
- (t) Each party testified they would be able to comply with all terms of the agreement;
- (u) Each party understood once the agreement is approved, it would be enforceable through the Court's contempt powers which means that either party could be fined, sentenced to a jail term and/or ordered to perform community service if found in contempt of the agreement; and
- (v) Each party desired to have the Court approve the agreement and make it an Order of the Court.

9. The record reflects that the parties have had the opportunity to exchange financial information, and have otherwise satisfied themselves that they know enough of each other's financial situation including earnings, needs, obligations, and assets to make intelligent decisions regarding the financial aspects of this case. Accordingly, I find each party was familiar with the income, expenses, debts and assets of the other.

10. After having conducted examinations of both parties, I find and conclude that both Husband and Wife appeared sincere, honest and truthful in the representations made under oath and that neither party was under the influence of alcohol nor was either's judgment impaired by drugs or other substances. Each entered into this Agreement freely, knowingly, voluntarily, and without threats or coercion. This Court thereafter independently reviewed the details of this Agreement which I specifically find to be fair, equitable, reasonable and in the best interests of the parties. Forsythe v. Forsythe, 290 S.C. 253, 349 S.E.2d 405, (Ct. App. 1986). Accordingly, I find that I should approve, adopt, merge and incorporate this Agreement as part of

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the Order of this Court.

ORDER

Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that:

A. Wife is awarded a divorce, a vinculo matrimonii, from Husband on the ground of one year's continuous separation without cohabitation;

B. the parties' agreement as recited on the record and reduced to writing above, is hereby approved, confirmed, merged and incorporated into this Order by this Court, thereby rendering it the Order of the Court, and either party violating the terms and conditions of this Order shall be subject to the contempt sanctions of this Court; and

IT IS SO ORDERED.

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Aiken, South Carolina

February 13, 2017

[Signature]
PETER R. NUESSLE, PRESIDING JUDGE
FAMILY COURT – ELEVENTH CIRCUIT

ORIGINAL ^{✓C}

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

JAMES JOHN TODD KINCANNON,

Plaintiff,

v.

ASHELY SUZANNE GRIFFITH,

Defendant.

Case No. 2019-CP-32-2268

**AFFIDAVIT OF PLAINTIFF IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

GENERAL INFORMATION

1. The undersigned Plaintiff, James John Todd Kincannon, having personal knowledge of all facts stated herein, except those stated or clearly indicated to be upon information and belief (and as to those matters, Plaintiff is informed and believes them to be true), hereby deposes and says under oath the following:

2. This affidavit verifies all facts alleged in the Complaint. In addition, this affidavit is submitted in opposition to Defendant's Motion for Summary, which relies on a single ground: the unsworn allegation by Defendant that a prior divorce decree between the parties (filed March 1, 2017 in a divorce action filed by Defendant against Plaintiff on September 1, 2015) resolves all property disputes between the parties and therefore precludes this action.

3. This unsworn allegation by Defendant is false and is, upon information and belief, made in bad faith. The final divorce decree in the divorce action only resolves disputes between the parties regarding the equitable distribution of marital property. It does not resolve disputes arising out of the property at issue in this circuit court case, which is non-marital in character.

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CISA H. CONER
CLERK OF COURT
LEXINGTON SC

4. 100% of the property at issue in this case was paid for entirely using funds derived from Plaintiff's sale of property that was non-marital in character—a parcel of real estate in Greenville County that was Plaintiff's separate non-marital property.

5. Plaintiff never used the Greenville County real property in support of the parties' marriage in any way or took any other action of any kind that could conceivably have transmuted the property from non-marital property into marital property.

6. Plaintiff never used the funds derived from the sale of the Greenville County real property in support of the marriage in any way or took any other action of any kind that could conceivably have transmuted the funds or property purchased with them from non-marital into marital property.

7. The two primary items of property purchased with the funds derived from the sale of Plaintiff's Greenville County real property are the parcel of residential real property in West Columbia and a BMW X5 automobile. The intention of the parties with respect to the transactions at issue in this case were that Plaintiff would purchase those items for Defendant and that upon their purchase, they would become Defendant's separate non-marital property. (The parties had the same intention with respect to payments made for Defendant's benefit which were not technically property purchases, such as payments to retire her debts, including but not limited to college tuition payments.)

8. After those items were purchased, and the other property at issue in this matter, neither Plaintiff nor Defendant used such property in support of the marriage or took any other action of any kind that could conceivably have transmuted the property from non-marital property into marital property.

9. The parties entered into a stipulation to this effect with respect to the West Columbia residential real property and the BMW X5 automobile in the divorce action. Plaintiff is unable to locate an executed copy of that stipulation as of this writing but such stipulation is on file with the Lexington County Family Court in the parties' divorce action. That stipulation expressly provides that the West Columbia residence and the BMW X5 automobile are non-marital property and, therefore, are not and cannot be subject to the jurisdiction of the Lexington County Family Court's final order equitably distributing the marital property.

10. The parties intended that the divorce decree incorporate this stipulation regarding the non-marital character of the property at issue in this case, and the divorce decree expressly states that the West Columbia residence is non-marital property. The divorce decree does not address the status of the BMW X5 automobile because Defendant was no longer in possession of it by the time the final divorce decree was entered on March 1, 2017, but had that automobile still been in Defendant's possession at that time, Defendant would have insisted the final divorce decree affirmatively establish its non-marital character just as it does with respect to the West Columbia residence.

11. In the divorce case, Plaintiff reasonably relied upon the parties' stipulation regarding the non-marital character of the property at issue in this case, and Plaintiff continues to rely upon that stipulation in this case. Plaintiff has every right to do so both as a matter of law and as a matter of fact, since the fact the property at issue in this case is non-marital in nature has never been disputed by the parties and still is not, so far as Plaintiff is aware.

12. At no point in time have Plaintiff or Defendant entered into any agreement, nor has the family court nor any other court ruled upon, the controversies presented by this case—specifically, Plaintiff's contention that non-marital property to which Defendant presently holds legal title, derived from the proceeds of a sale of Plaintiff's non-marital property, is property to which Plaintiff holds equitable title because he either retained it ab initio due to psychiatric illness and a lack of contractual capacity at the time the transactions occurred, because Defendant violated the parties' agreement relating to the property, because the transactions are void or invalid for some other reason (lack of meeting of the minds of the parties, unilateral or mutual mistake, etc.), or because of any other reason. Neither party raised any of these controversies to the family court, nor could they have, because the family court lacks subject matter jurisdiction over disputes involving non-marital property, and no other court has issued any rulings regarding the matter whatsoever.

13. Plaintiff, in bringing this action, has done precisely what the South Carolina Supreme Court has directed in cases where divorcing spouses have disputes regarding non-marital property. The South Carolina Supreme Court, in numerous cases (many of which will be cited in Plaintiff's memorandum of law regarding these issues) has made crystal clear that the family court is the improper forum to resolve non-marital property controversies and has expressly commanded parties like Plaintiff to commence circuit court actions regarding non-marital property disputes while leaving marital property disputes to the family court, since family courts lack subject matter jurisdiction over non-marital property disputes.

14. In this case, Plaintiff has fully complied with the South Carolina Supreme Court's dictates regarding controversies over non-marital property arising between divorcing spouses, and the claims by Defendant and her counsel that such disputes were, or should have been, adjudicated by the Lexington County Family Court are incorrect and have plainly been made in bad faith. Defendant was competently represented in the divorce action and in this action by lawyers who know the difference between marital and non-marital property and who also know that family courts have subject matter jurisdiction over marital property disputes only and that circuit courts must adjudicate non-marital property disputes. Plaintiff does not seek any sanction against Defendant or her counsel for their bad faith arguments in this regard, but Plaintiff does respectfully request the Court take note of the obvious bad faith of Defendant and her counsel in contending that a family court divorce decree has adjudicated non-marital property issues and is a res judicata-based or collateral estoppel-based bar on future circuit court litigation arising out of a non-marital property dispute between divorcing spouses.

**FACTS ESTABLISHING THE INVALIDITY OF THE FAMILY COURT ORDER
TO THE EXTENT IT DISTRIBUTES NON-MARITAL PROPERTY**

15. If the Court is somehow persuaded that the terms of the family court divorce decree actually do distribute non-marital property or resolve disputes between the parties as to non-marital property, Plaintiff contends the family court order is void and invalid either in toto or with respect to the particular terms that distribute non-marital property or resolve disputes between the parties as to non-marital property.

16. It is black letter law that South Carolina family courts lack subject matter jurisdiction over non-marital disputes between divorcing parties, and Plaintiff did not and would never have consented to the Lexington County Family Court exercising subject

matter jurisdiction over such matters. (Further, even if the Court should find that Plaintiff did somehow unintentionally consent—as if that were possible, which it is not—subject matter jurisdiction cannot be conferred by consent and, therefore, such consent was void as a matter of law.)

17. Further, there was no meeting of the minds between the parties that could possibly have given the family court jurisdiction to apportion non-marital property in the divorce decree. The divorce decree was the product of an agreement between the parties, an agreement that Plaintiff understood applied only and exclusively to the distribution of marital property. Plaintiff did not and would never have agreed to any resolution of non-marital property disputes in a family court, and the record of proceedings in the family court makes clear that Plaintiff never did, and would never have, entered into any such agreement with Defendant.

18. Plaintiff's position is that the divorce decree does not attempt to distribute non-marital property or resolve any disputes between the parties as to non-marital property, but even if this Court should find that the family court divorce decree does so, the divorce decree is void and invalid due to the lack of subject matter jurisdiction over non-marital property disputes and due to a lack of meeting of the minds between Plaintiff and Defendant as to the terms of the agreement that is encapsulated in the divorce decree. Plaintiff understood—correctly—that the only property controversies the family court would resolve were controversies over marital property, and that is all Plaintiff intended to agree to. Any issues relating to non-marital property were outside the scope of the family court proceeding and there could not have been, and there was not, any meeting of the minds between the parties as to non-marital property issues in the family court case.

19. Plaintiff is informed and believes, based on conversations with psychiatric treatment providers and a prospective expert witness he is in the process of retaining regarding mental capacity issues in this case, that he lacked mental capacity to enter into an agreement of the sort that would have resulted in a family court final divorce decree that distributed the non-marital property at issue to Defendant. Should the Court determine, over Plaintiff's objections, that the divorce decree distributes non-marital property to Defendant and is not void for lack of subject matter jurisdiction or a lack of meeting of the minds between the parties, Plaintiff respectfully requests this Court refrain from granting summary judgment to Defendant until Plaintiff's prospective expert witness has concluded the ongoing examination of Plaintiff's psychiatric condition and Plaintiff has an opportunity to commence proceedings in a proper court to invalidate the final divorce decree on the grounds of lack of mental capacity. Of particular importance to this issue is the fact that Defendant petitioned the family court for appointment of a guardian for Plaintiff in the divorce action due to Plaintiff's psychiatric illness but the family court did not rule on that issue prior to entering the final divorce decree, nor was the guardian issue addressed in the final divorce decree.

20. Neither collateral estoppel, res judicata, or any other issue or claim preclusion doctrines apply to a prior court order issued in the absence of subject matter jurisdiction or to a settlement agreement, whether encapsulated in a court order or not, that was entered in the absence of a legally valid meeting of the minds between the parties or to a court order entered in a case with a litigant suffering from psychiatric illness sufficient to warrant appointment of a guardian.

**DEFENDANT'S UNCLEAN HANDS REGARDING THE FAMILY COURT
DIVORCE DECREE PROHIBIT HER FROM USING IT IN THIS LITIGATION**

21. Defendant cannot rely on the final divorce decree in this litigation because she has materially violated the terms of the final divorce decree by failing to transfer marital property to Plaintiff that the order designates as Plaintiff's—in particular, a Nissan Xterra automobile that was indisputably marital property and that Plaintiff is indisputably awarded by the clear and unambiguous terms of the divorce decree.

22. Plaintiff has fully complied with all provisions of the divorce decree.

23. Accordingly, Defendant has unclean hands with respect to the divorce decree and, pursuant to the doctrine of unclean hands and related legal doctrines, cannot use the divorce decree to advance her position in this litigation.

24. The salient facts of Defendant's failure and refusal to comply with the terms of the divorce decree are as follows:

25. The divorce decree awards the automobile in Plaintiff's possession at the time of the divorce to Plaintiff. That automobile is a Nissan Xterra to which Defendant held prior title. Plaintiff's name is not, and has never been, on the title to that automobile.

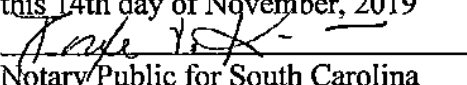
26. After the divorce decree was entered, Plaintiff notified Defendant through her counsel in the divorce proceeding that she had a duty and obligation under the divorce decree to transfer title to Plaintiff and requested that Defendant do so. Defendant failed to transfer title to Plaintiff and has never done so. Accordingly, although Plaintiff is in possession of the automobile, it is useless to Plaintiff because Plaintiff does not have title to the automobile and is therefore unable to obtain a valid tag and registration or insure the automobile. This has caused Plaintiff substantial inconvenience and expense, as he does not own any other automobiles, and has been forced to rent an automobile from his parents as a result of Defendant's failure to transfer title to him of the Nissan Xterra.

27. Defendant's failure and refusal to transfer title of the Nissan Xterra automobile to Plaintiff, as plainly required by the final divorce decree she now relies on in this litigation, is a willful, material, and intentional violation of the family court 's final divorce decree and is misconduct constituting unclean hands with respect to the divorce decree and bars her from using that divorce decree to her advantage in this litigation.

28. Defendant cannot use a court order from another case for advantage in this case where she has willfully, materially, and intentionally violated the court order in question. Because of her unclean hands, the Court must refuse to grant her motion for summary judgment even if the Court would otherwise be inclined to do so.

29. Further affiant sayeth not.

Sworn to and subscribed before me
this 14th day of November, 2019


Notary Public for South Carolina

My commission expires: 6/2/2025

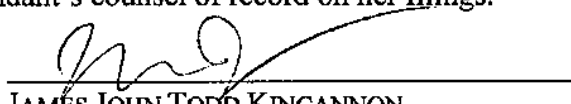
Respectfully submitted,


JAMES JOHN TODD KINCANNON
Plaintiff Pro Se

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff, certify that I have on the date below served the foregoing on Defendant through her counsel of record in accordance with Rule 5, SCRCF at the address indicated on their filings and by electronic mail to ensure immediate delivery at the email address listed for Defendant's counsel of record on her filings.

November 14, 2019


JAMES JOHN TODD KINCANNON
PLAINTIFF PRO SE

ORIGINAL SC

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

JAMES JOHN TODD KINCANNON,

Plaintiff,

v.

ASHELY SUZANNE GRIFFITH,

Defendant.

Case No. 2019-CP-32-2268

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

Plaintiff James John Todd Kincannon respectfully submits the following memorandum of law in opposition to the summary judgment motion of Defendant Ashely Suzanne Griffith, which is based on a single ground: that the final divorce decree between Plaintiff and Defendant establishes a collateral estoppel and/or res judicata bar to this action in which Plaintiff seeks adjudication of controversies arising out of transfers of *non-marital* property from Plaintiff to Defendant.

ANALYSIS

Plaintiff's Main Argument Against Defendant's Summary Judgment Motion

Plaintiff's main argument in opposition to Defendant's summary judgment motion is a simple one: it is undisputed that 100% of the property at issue in this circuit court case is, and always has been, non-marital property. The final divorce decree does not—and lawfully cannot—distribute non-marital property or adjudicate non-marital property disputes because South Carolina family courts lack subject matter jurisdiction over non-marital property disputes. See, e.g., Coon v. Coon, 356 S.C. 342, 348, 588 S.E.2d 624 (Ct. App. 2003):

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LEXINGTON SC

“Subject matter jurisdiction refers to the court’s ‘power to hear and determine cases of the general class to which the proceedings in question belong.’” Watson v. Watson, 319 S.C. 92, 93, 460 S.E.2d 394, 395 (1995) (quoting Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994)). South Carolina Code Annotated section 20-7-420(2) (Supp. 2003) grants the family court the exclusive jurisdiction “[t]o hear and determine actions: [f]or divorce a vinculo matrimonii . . . and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and *personal property of the marriage*.” (emphasis added); cf. S.C. Code Ann. § 20-7-473 (Supp.2003) (stating the family court does not have jurisdiction to apportion nonmarital property).

There are numerous other reported opinions from South Carolina appellate courts that come to the same conclusion, and in the Bowen cases, the South Carolina Supreme Court and Court of Appeals made crystal clear that when a married couple have disputes involving marital and non-marital property, the family court has exclusive subject matter jurisdiction over the marital property disputes and the circuit court has exclusive subject matter jurisdiction over the non-marital property disputes. See Bowen v. Bowen, 327 S.C. 561, 490 S.E.2d 271 (Ct. App. 1997) (Bowen I); Bowen v. Bowen, 345 S.C. 243, 547 S.E.2d 877 (Ct. App. 2001) (Bowen II); and Bowen v. Bowen, 352 S.C. 494, 575 S.E.2d 553 (2003) (Bowen III).

The Bowen I court could not have been clearer that once it is determined in a family court divorce action that certain property is non-marital in character, any disputes arising between the divorcing spouses arising out of that non-marital property must be submitted to the circuit court and cannot be adjudicated by the family court:

Once the family court determined the properties were nonmarital, it had no jurisdiction to address their ownership or deal with them in any way. See S.C.Code Ann. § 20-7-473 (Supp.1996) (“The [family] court does not have jurisdiction or authority to apportion nonmarital property.”). The parties’ respective interests in the real estate in question must be handled as if the parties were not married. Therefore, that determination must be left for another day.

Bowen v. Bowen, 327 S.C. 561, 566, 490 S.E.2d 271, 273 (Ct. App. 1997).

In this case, the family court's final divorce decree expressly concludes that the West Columbia residence at issue in this circuit court case is non-marital property, and though it does not contain any express conclusions regarding the non-marital status of the BMW X5 automobile or the other property at issue in this case, Plaintiff and Defendant stipulated in the family court divorce action that the BMW X5 automobile was non-marital property, and it is factually and legally undisputed that the other miscellaneous property at issue in this case is and always has been non-marital in nature.

South Carolina family court's lack subject matter jurisdiction over

As explained in Plaintiff's affidavit in opposition to Defendant's motion for summary judgment, which is incorporated herein by reference, none of the property at issue in this case is, or ever was, marital property. The parties never intended for the property to become marital property, and the parties never took any actions that could transmute the property into marital property. Either Plaintiff holds equitable title to the property as his separate non-marital property or Defendant holds equitable title to the property as her separate non-marital property—there is no other possible ruling as to the character of the property. That the property is indisputably non-marital is reflected not only by the divorce decree and Plaintiff's affidavit in opposition to summary judgment but also by a stipulation entered into by the parties in the divorce action to the effect that the property was non-marital in character in the divorce action which is reflected by the

final divorce decree, which expressly concludes that the West Columbia residential property presently in Defendant's possession is non-marital property.¹

Even assuming for the sake of argument that the family court final divorce decree adjudicates non-marital property disputes between Plaintiff and Defendant, it is axiomatic that a court order entered in the absence of subject matter jurisdiction does not give rise to collateral estoppel (issue preclusion) or res judicata (claim preclusion). As the South Carolina Supreme Court noted in Holmes v. East Cooper Community Hosp., Inc., 408 S.C. 138, 758 S.E.2d 483 (2014):

Under the doctrine of collateral estoppel, when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.

Id. at 149 (quoting Carman v. S.C. Alcoholic Beverage Control Comm'n, 317 S.C. 1, 6, 451 S.E.2d 383, 386 (1994) (capitalization as in original)).

A court order defective due to a lack of subject matter jurisdiction is not a "valid and final judgment." To whatever extent the family court's final divorce decree adjudicates non-marital property disputes between Plaintiff and Defendant, it is void for lack of subject matter jurisdiction per the Coon and Bowen cases above (and the statutes they cite) and is therefore not a valid final judgment. Defendant accordingly cannot rely on it for collateral estoppel or res judicata or any other preclusion doctrine. Plaintiff does not believe the family court order adjudicates any non-marital property disputes, but even if it does, it is void for lack of subject matter jurisdiction and is not a valid final judgment that Defendant can rely on in this litigation.

¹ Defendant was no longer in possession of the BMW X5 automobile by the time the family court issued its final divorce decree, and none of the other property at issue in this case was mentioned in the family court order.

Not only is the law on Plaintiff's side, but policy considerations are as well. Although Plaintiff has professional expertise as a civil litigator, Plaintiff has no prior professional experience as a divorce lawyer and would never have elected to proceed pro se in the family court divorce action if the parties' non-marital property disputes could have been adjudicated by the family court. Plaintiff elected to proceed on a pro se basis in the family court case because Defendant waived her right to pursue alimony in her divorce complaint and there was very little marital property at issue since the parties had only been married for approximately two years when Defendant filed for divorce. South Carolina statutes establishing and governing South Carolina family courts and South Carolina published appellate opinions made crystal clear that non-marital property disputes cannot be adjudicated by family courts and all such matters are reserved for circuit courts or other proper courts in which Plaintiff has litigation experience (such as the magistrate's court or federal district court in a proper case). South Carolina public policy precludes litigants like defendant from bootstrapping non-marital property disputes in family court cases because doing so not only violates South Carolina statutory and decisional law, it also violates clear public policy that South Carolina family courts do not adjudicate non-marital property disputes.

For the foregoing reasons, and any others argued by Plaintiff at the hearing on Defendant's motion for summary judgment and those included in Plaintiff's affidavit in opposition to summary judgment, Plaintiff respectfully requests the Court rule that nothing in the family court's final divorce decree does, or legally could, preclude this action which strictly seeks adjudication of non-marital property disputes between Plaintiff and Defendant and does so in the only forum with subject matter jurisdiction

over such issues per the South Carolina appellate courts' published decisions in the Bowen and Coon cases and numerous other cases clearly establishing that family courts lack subject matter jurisdiction over non-marital property disputes between divorcing spouses.

Plaintiff's Unclean Hands Argument Against Defendant's Summary Judgment Motion

Even if Plaintiff's main argument against Defendant's summary judgment motion is rejected by the Court, and the Court somehow finds that the final divorce decree contains a valid and enforceable adjudication of non-marital property disputes, Plaintiff must nonetheless prevail because Defendant has willfully and intentionally failed to abide by the terms of the final divorce decree and cannot use a court order she has willfully and intentionally violated for her own advantage in this litigation.

The factual basis of Plaintiff's unclean hands argument is contained in Plaintiff's affidavit submitted in opposition to Defendant's summary judgment motion. The final divorce decree equitably distributed a Nissan Xterra automobile, which was indisputably marital property, to Plaintiff. That Nissan Xterra was Defendant's property prior to the marriage but was converted into marital property during the marriage, and the parties agreed and the family court ruled that Plaintiff was awarded the Nissan Xterra automobile in the equitable distribution of marital property. Yet Defendant has steadfastly willfully and intentionally failed and refused to transfer legal title of the Nissan Xterra automobile to Plaintiff, rendering the automobile useless to Plaintiff since Plaintiff cannot insure an automobile that is not in his name, nor can Plaintiff obtain a valid registration and tag to an automobile that is not in his name.

Defendant's conduct with regard to the Nissan Xterra automobile constitutes a willful and intentional violation of a material provision of the final divorce decree, a court order that Plaintiff has fully and entirely complied with. Because Defendant has willfully and intentionally violated a material provision of the final divorce decree, Defendant has unclean hands with respect to that matter and cannot use the final divorce decree as either a sword or a shield in this or any other litigation.

Defendant's summary judgment motion based on the final divorce decree is fundamentally equitable in character, since Defendant seeks to prevail in this action in which Defendant has raised equitable causes of action. "[O]ne who comes to the court seeking equity must come with clean hands." Emery v. Smith, 361 S.C. 207, 220, 603 S.E.2d 598 (Ct. App. 2004). Defendant's hands are unclean with respect to the final divorce decree because she has willfully and intentionally failed and refused to abide by its material terms, and a party who willfully and intentionally violates a material provision of a court order cannot rely on preclusive effects of that order in subsequent litigation or use the order to their advantage in any other way.

Plaintiff's Lack of Contractual Capacity in the Family Court Matter

In the event the Court is nonetheless inclined to rule that the family court divorce decree adjudicates non-marital property disputes in a manner that precludes this circuit court action, Plaintiff respectfully requests, based on his affidavit submitted in opposition to Defendant's summary judgment motion, that the Court refrain from entering final judgment against Defendant in this case until Defendant has had a reasonable opportunity to petition the family court to declare the divorce decree void because Defendant suffered from a severe psychiatric illness at the time the divorce settlement was agreed to that

precluded him having sufficient contractual capacity to enter into a settlement—particularly a settlement affecting rights to valuable non-marital property such as the West Columbia residence and the BMW X5 automobile—and to challenge the validity of the family court divorce decree for other non-frivolous reasons, including but not limited to the lack of meeting of the minds, mistake, and any other proper grounds that Plaintiff submits to the family court.

As Plaintiff's affidavit establishes, Plaintiff had absolutely no intention of settling any controversies relating to non-marital property in the settlement agreement which is encapsulated in the divorce decree, and Plaintiff has a good faith belief based on consultation with psychiatric health experts that he suffered from psychiatric illness sufficiently severe to deprive him of the necessary contractual capacity to enter into a settlement agreement of that nature in the family court case. Plaintiff is informed and believes he will be able to present expert testimony to that effect in this case and, if necessary, in the family court matter, and Defendant obviously also believed Plaintiff lacked capacity in the family court matter because Defendant petitioned the family court for appointment of a guardian for Plaintiff in the divorce matter, but the family court entered the final divorce decree without adjudicating Defendant's petition for appointment of a guardian for Plaintiff. (And, importantly, Plaintiff's psychiatric capacity, or lack thereof, was not adjudicated in any way in the divorce action.)

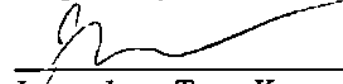
For these reasons, even if the Court would ordinarily be inclined to grant Defendant's motion for summary judgment, Plaintiff respectfully requests the Court refrain from entering final judgment in that event, stay this case, and direct Plaintiff to diligently prepare and make application to the family court to declare the final divorce

decree void due to Plaintiff's lack of contractual capacity, failure of meeting of the minds, mistake, or for any other valid reason that Plaintiff presents to the family court.

CONCLUSION

For the foregoing reasons and all other argument properly submitted by Plaintiff at the hearing and in his affidavit, Plaintiff respectfully requests the Court deny Defendant's motion for summary judgment based on collateral estoppel and res judicata allegedly arising from the family court divorce decree without prejudice to Defendant's right to seek summary judgment on any other proper grounds.

Respectfully submitted,

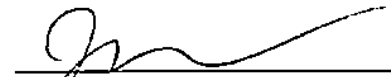


JAMES JOHN TODD KINCANNON
Plaintiff Pro Se

November 19, 2019

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff, certify that I will serve the foregoing on Defendant by hand-delivery to her counsel of record at the hearing on Defendant's motion for summary judgment and will additionally email a copy of the same to Defendant's counsel prior to the hearing.



JAMES JOHN TODD KINCANNON
PLAINTIFF PRO SE

November 19, 2019

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

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IN THE COURT OF COMMON PLEAS
AM 11:05

JAMES JOHN TODD KINCANNON

LISA M. COMER
CLERK OF COURT
LEXINGTON, SC
Plaintiff,

Case No. 2019-CP-32-2268

v.

ASHELY SUZANNE GRIFFITH,

Defendant.

**PLAINTIFF'S MOTION FOR
RECONSIDERATION OF
ORDER GRANTING DEFENDANT
SUMMARY JUDGMENT**

Plaintiff James John Todd Kincannon respectfully moves for reconsideration of the summary judgment portion of the Court's Order on Defendant's Motion for Summary Judgment and Plaintiff's Motion to Dismiss filed December 13, 2019. This motion for reconsideration is made pursuant to all potentially applicable rules of civil procedure, including but not limited to Rule 59(e), SCRC¹, and the inherent power of South Carolina courts to reconsider and amend prior rulings when justice so requires.

**PLAINTIFF'S INTENTION TO AMEND THIS MOTION AND SUBMIT
A SUPPORTING MEMORANDUM AND FILINGS PLAINTIFF IS PREPARING
FOR THE FAMILY COURT IN RESPONSE TO THIS COURT'S ORDER**

¹ The Court may wonder about the timeliness of this motion given that Rule 59(e), SCRC¹ requires that motions for reconsideration "shall be served not later than 10 days after receipt of written notice of the entry of the order." Although the order at issue was filed on December 13, 2019, Plaintiff was unaware of that fact until November 11, 2020 when Lynn Ivey, an employee of Defendant's counsel's law firm, copied Plaintiff on an emailed letter to the Hon. Walton J. McCleod, IV requesting the case be transferred from the jury trial roster to the non-jury roster in light of the Court's order of December 13, 2019, a copy of which was attached to the letter. Plaintiff did not receive any formal or informal notice, written or otherwise, from the clerk of court or opposing counsel prior to that time indicating that any such order had been entered. Plaintiff has reviewed the courthouse casefile to determine whether any notice was ever sent, and it appears that notice was only provided to Defendant's counsel because Defendant's counsel is a participant in the South Carolina electronic filing system. Plaintiff is not a participant in the electronic filing system and therefore no notice was provided to Defendant. This is per the docket entry entitled "NEF(12-13-2019 08:36:46 AM) Order/Summary Judgment" and the associated document, which indicates that Defendant's counsel was sent notification of entry of the order but Plaintiff was not. No other document in the casefile reflects Plaintiff ever having been sent notice of entry of the order or the order itself, and Plaintiff did not in fact receive any sort of notice until the email of Ms. Ivey on November 11, 2020. Accordingly, this motion is timely since it is being served November 23, 2020, which is the tenth day after November 11, 2020 since November 21st and 22nd are a Saturday and Sunday, respectively.

At the outset, Plaintiff respectfully notifies the Court that ten days' time has been an insufficient amount of time for Plaintiff to prepare what Plaintiff would consider to be a carefully drafted and completely accurate motion for reconsideration. The principal reason for this is Plaintiff's psychiatric limitations, principally bipolar disorder and ADHD both of which are of a severe nature, which cause Plaintiff to ordinarily need additional time to prepare litigation filings that have any measure of complexity to them. Plaintiff is ordinarily capable of preparing simply filings like a notice of appeal or something of that nature in the ordinary amount of time, but this particular motion in this particular matter is exceptionally complicated legally and exceptionally taxing on Plaintiff. Further, Plaintiff's bipolar medication seems to lengthen depressive phases as a side-effect of limiting Plaintiff's manic phases, which is necessary for Plaintiff's treatment, and Plaintiff has been in a depressive phase for the entirety of the ten day time period with respect to this motion.

During litigation between these parties before the Court of Appeals on unrelated matters, Plaintiff has frequently request and always obtained extensions of time, almost never exceeding two-and-a-half times the usual deadline period, within which to prepare filings. Plaintiff respectfully submits that his filings in that action have been well and properly prepared with those extensions of time, and Plaintiff respectfully requests that this Court grant Plaintiff the same disability accommodations in this case pursuant to the Americans with Disabilities Act and the due process and equal protection clauses of the federal and state constitutions. Plaintiff is presently preparing a formal ADA request but has prioritized work on this filing for understandable reasons—i.e., the ADA request might be denied and Plaintiff wants to get everything in that he can in this filing just in

case there is no opportunity for amended motion or memorandum supplementing this filing.

Further, it appears to Plaintiff that many if not all of the Court's problems with Plaintiff's causes of action could be cured with an amended complaint and, perhaps, further litigation in the family court divorce action to either vacate or clarify the final divorce decree. In particular, Plaintiff believes the family court necessarily must vacate the final divorce decree due to Plaintiff's psychiatric condition during the pendency of the divorce action, and Plaintiff is preparing a filing to that effect as well. Plaintiff anticipates seeking to stay this case while pursuing that relief in the family court, since this Court's main problem with Plaintiff's causes of action in this case appears to be the family court divorce decree.

GROUND FOR RECONSIDERATION

1. Plaintiff respectfully submits all matters appearing in the previously filed Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment (which is incorporated herein by reference) and the previously filed Affidavit of Plaintiff in Opposition to Defendant's Motion for Summary Judgment (which is also incorporated herein by reference) on which the Court either (a) ruled against Plaintiff or (b) did not rule as grounds for reconsideration by the Court of the ruling granting summary judgment to Defendant. As stated above, Plaintiff will submit to the Court a memorandum re-arguing each of these points in light of the Court's ruling. Without limiting the foregoing and without foreclosing additional argument to be presented in the memorandum, Plaintiff respectfully calls the Court's attention to several particular matters that appear to be of special importance:

2. It appears the Court overlooked Plaintiff's uncontested argument (and uncontested factual assertions in Plaintiff's affidavit) that Defendant is precluded from relying on the family court divorce decree in this litigation because she has materially violated the terms of the divorce decree that she now seeks to rely on in this litigation. Defendant and her counsel did not dispute Plaintiff's factual assertions that she has materially violated the divorce decree in any way, and Defendant's counsel elected not to dispute Plaintiff's argument that Defendant was, therefore, precluded from relying on the divorce decree in this litigation because of her unclean hands. Defendant's failure to contest Plaintiff's factual claims on this issue and further failure to contest Plaintiff's legal argument on this issue left the Court with no choice but to rule for Plaintiff on that issue and refuse to consider the family court divorce decree in this case because Defendant failed to contest Plaintiff's factual contentions or legal position on that matter. Had the Court ruled for Plaintiff that it could not consider the family court divorce decree in this matter due to Defendant's undisputed unclean hands regarding that decree, the Court necessarily would have denied Defendant's summary judgment motion.

3. Even if Defendant's hands were clean with respect to the family court divorce decree, the Court's summary judgment was still erroneous for several additional reasons. The fundamental effect of the Court's summary judgment ruling is that a South Carolina family court hearing a divorce case has the power to fully and finally adjudicate non-marital property disputes between the husband and wife in addition to equitably dividing the marital property in its final divorce decree. This is erroneous for a number of reasons:

- a. South Carolina family courts are statutory courts of limited subject matter jurisdiction. They lack jurisdiction to adjudicate non-marital property disputes

between husbands and wives in divorce actions, and any purported adjudication is void for lack of subject matter jurisdiction. South Carolina's appellate courts made this clear in the Bowen v. Bowen cases cited in Plaintiff's memorandum in opposition to summary judgment. "Once the family court determined the properties were nonmarital, it had no jurisdiction to address their ownership or deal with them in any way." Bowen v. Bowen, 327 S.C. 561, 566, 490 S.E.2d 271, 273 (Ct. App. 1997). Allowing a South Carolina family court divorce decree to finally adjudicate a non-marital property dispute—which is the effect of the summary judgment ruling in this case—leads to a parade of legal horrors generally and in this particular case:

b. It denies the party who seeks to adjudicate the non-marital property matter in circuit court of his or her state constitutional right to a jury trial on all legal causes of action and defenses.

c. It denies the party who seeks to adjudicate the non-marital property matter in circuit court of his or her state constitutional right to a judicial officer who is legally competent to adjudicate the matter. Circuit court judges are members of a court of general jurisdiction who are legally competent to adjudicate disputes over non-marital property. Family court judges are members of a specialized court who are not legally competent² to adjudicate disputes over non-marital property.

d. In this particular case, the outcome punishes Plaintiff for attempting to comply with the General Assembly's intent and the intent of South Carolina

² Plaintiff does not mean to cast any sort of aspersions as to family court judges. Plaintiff uses the term "competent" in the sense of "legally competent," not "professionally competent." Obviously plenty of family court judges would be perfectly good circuit court judges and vice versa. Even so, a person appointed to the office of family court judge in South Carolina is not *legally* competent to adjudicate a non-marital property dispute incident to a divorce action.

appellate court rulings in the Bowen v. Bowen line of cases and similar cases by seeking a circuit court venue for non-marital property disputes after a divorce action had resolved all marital property disputes. This outcome likewise rewards Defendant and her counsel for improperly seeking to have the Lexington County family court adjudicate non-marital property disputes in violation of the General Assembly's intent and the intent of South Carolina appellate court rulings in the Bowen v. Bowen line of cases and similar cases. Constitutional due process and fundamental fairness considerations of a constitutional and non-constitutional dimension do not permit this outcome. Plaintiff has followed the Bowen v. Bowen procedure and Defendant has not, and the law does not allow Defendant to profit from this course of action, nor does it permit Plaintiff to lose his constitutional right of access to court with respect to the non-marital property dispute under these circumstances. If South Carolina law permits the outcome in this case—where Plaintiff has lost his day in court on non-marital property issues by way of a family court divorce decree despite clear South Carolina caselaw stating that no such outcome is possible—then this particular aspect of South Carolina law violates the due process protections of the federal and state constitutions.

e. As the Court accurately notes on page 2 of the order, “This case may present the most convoluted status of any this court has ever considered[.]” Plaintiff entirely agrees with the Court, but respectfully submits that the reason for this is the Bowen v. Bowen line of cases, which require a multiplicity of complex, interrelated litigation whenever non-marital property disputes arise between a husband and wife in a divorce action. Plaintiff has had no choice but to

engage in complex litigation in these matters because there is simply no alternative given the Bowen v. Bowen cases and the statutory scheme applicable to the South Carolina family courts, which entirely denies to them any form of “supplemental jurisdiction” over non-marital property disputes and requires the complicated piecemeal adjudication of such matters in multiple cases in multiple courts.

4. On page 3 of the summary judgment order, the Court indicates that ordinarily it would allow Plaintiff an opportunity to file an amended complaint to cure apparent pleading deficiencies, but declines to do so because “In at least one of those actions [other litigation involving Plaintiff and Defendant], a judge has determined that the plaintiff is engaging in misuse of legal process.” No case or ruling is cited and Plaintiff is not familiar with any such ruling.³ Accordingly, Plaintiff respectfully submits that this is an apparent error in the order, and respectfully requests the Court permit Plaintiff a single opportunity to file an amended complaint to cure any and all pleading deficiencies the Court believes are present in the complaint.

5. On page 6 of the order, the Court indicates that “there is no indication that the Family Court was apprised of the purported agreement that the plaintiff is advancing in this lawsuit.” Plaintiff respectfully submits that in his filings in this action, there is a reference to a stipulation made by Plaintiff and Defendant presented to the family court to the effect that the house and automobile at issue in this case were non-marital property and outside the family court’s jurisdiction. See Exhibit 1. This stipulation, as Plaintiff

³ There has been a substantial amount of litigation between these parties so it is presumably possible that Plaintiff has simply forgotten what the Court is referring to, but Plaintiff is reasonably certain that no judge has found he has engaged in any sort of abuse of process in these matters.

understood it, took all disputes and issues relating to the house and automobile entirely outside the purview of the family court for all time.

6. Regarding the statute of frauds issue, Plaintiff respectfully submits that the statute of frauds has no application to this case because Defendant has admitted in writing the existence of the agreement at issue in writing in other litigation, both in the family court matter and in litigation in Greenville County regarding the Statute of Elizabeth. See Exhibit 2. Where a party has admitted the existence of an agreement in writing, particularly in court filings, that party can no longer rely on the Statute of Frauds as a defense to the agreement. Further, if the agreement was in fact void due to the lack of a writing, then the property should revert to Plaintiff, not remain with Defendant. If an agreement to transfer property from Party A to Party B is void for lack of a writing, then Party A retains the property, not Party B. Finally, not all of Plaintiff's causes of action rely on the existence of a writing and are therefore not defeated by the lack of a writing.

7. On page 9 of the order, the Court states that it is difficult to understand how Plaintiff could be entitled to rescission in this matter and references a potentially unpleaded cause of action for unjust enrichment. With respect to this matter, Plaintiff respectfully requests an opportunity to file an amended complaint fully articulating his position on this matter.

8. On page 10 of the order, the Court states that "If the plaintiff wants to assert some quasi-contract or equitable relief in circuit court, he is precluded because he engaged in an intervening action, inconsistent with the preservation of his rights. If he wanted to maintain his right to bring this lawsuit, he was required to have maintained the position in Family Court that the residence is his non-marital property, not convert it to be the wife's

non-marital property through the Family Court case.” Plaintiff respectfully submits that his efforts in the family court case relevant to this matter were solely aimed at removing the house and automobile issues from that litigation and that Plaintiff believed in good faith he had accomplished that by way of the stipulation enclosed as Exhibit 1.

9. On page 10 of the order, the Court states “[Plaintiff]’s argument now is that he used his non-marital assets to acquire the residence. He may have prevailed on that issue had he pursued it, but he abandoned that position in the Family Court[.]” It was and is undisputed that Plaintiff did in fact use his non-marital assets to acquire the residence at issue, and based on the stipulation entered by the parties in the divorce action, that matter appeared to Plaintiff to be forever set aside from the family court case.

10. On page 12, the Court states “To the extent that case law or Section 20-3-620(A) may be read to allow the Court of Common Pleas to resolve this dispute, the court finds that it is patently inequitable for the plaintiff to circumvent the Family Court process through this lawsuit.” Plaintiff respectfully submits that this is an erroneous conclusion because there is no family court process to circumvent with respect to non-marital property disputes. The Bowen v. Bowen cases make clear that once a family court determines property to be non-marital, there is no more process in the family court. It is undisputed in this case and in all other litigation between these parties that the residence and automobile at issue are non-marital assets. Therefore there was no family court process for Plaintiff to circumvent. To the extent the Court is troubled by Plaintiff’s litigation conduct in this matter, Plaintiff again submits to the Court that Plaintiff simply does not know what else to do based on the Bowen v. Bowen cases. Once the family court determined that the residence and automobile were non-marital, which occurred by

stipulation in the family court case, then there was simply nothing else for the family court or Plaintiff to do or say about the matter in that litigation. This is the clear dictate of Bowen v. Bowen and Plaintiff respectfully submits that he cannot be faulted for trying to follow it.

11. Plaintiff respectfully disagrees with the Court's determination that it cannot consider Plaintiff's mental health in this proceeding. Plaintiff submits that the perception the Court has of the Plaintiff's conduct in the family court case is erroneous in part because the Court has not taken Plaintiff's mental status during those proceedings into consideration.

12. Finally, as alluded to above, the Court's summary judgment ruling indicates that the Court is under a number of misperceptions about the conduct of Plaintiff and Defendant in the family court case and in related prior litigation between these parties. Plaintiff, which is the result of Defendant's counsel pursuing a litigation strategy of focusing on attacking Plaintiff personally rather than addressing the legal merits of the various legal issues at play in this matter, something that has gone on from the very beginning of this litigation and has only recently shown signs of abating. Plaintiff has responded by attempting as best he could to focus on the actual facts and law, but Defendant's counsel has successfully clouded the air so much regarding the prior litigation between the parties that Plaintiff is now losing on equitable grounds arising from his prior conduct in other litigation where Defendant, not Plaintiff, was the party engaged in inequitable litigation conduct, and provably so. Plaintiff respectfully requests the Court allow Plaintiff an opportunity to file an amended complaint and grant a Plaintiff a bona fide rehearing in the matter as opposed to a perfunctory denial of reconsideration

to give Plaintiff an opportunity to present material to the Court that Plaintiff is confident will conclusively and persuasively demonstrate that Defendant, not Plaintiff, behaved inequitably in prior litigation. Plaintiff has attempted to make that showing to this Court already, but if given an opportunity to amend the complaint, Plaintiff could carefully and conclusively satisfy all concerns raised by the Court in the summary judgment order about allowing this case to proceed.

CONCLUSION

Plaintiff respectfully requests the Court temporarily vacate the grant of summary judgment, permit Plaintiff an opportunity to file an amended complaint and pursue whatever proceedings are necessary in the family court to satisfy this Court that the family court did not adjudicate any non-marital property disputes in the divorce case and/or vacate the divorce decree due to Plaintiff's mental health or other issues, and rehear Defendant's summary judgment motion once Plaintiff has had an opportunity to complete those tasks and have a full and fair opportunity to present the best case he can to this Honorable Court.

Respectfully submitted,


s/James John Todd Kincannon
JAMES JOHN TODD KINCANNON
Plaintiff Pro Se

CERTIFICATE OF SERVICE

I, the undersigned Plaintiff, certify that I have on the date below served the foregoing on Defendant through her counsel of record both by postal mail and electronic mail in accordance with the various rules and orders governing such matters, including those related to COVID-19.

November 23, 2020


s/James John Todd Kincannon
JAMES JOHN TODD KINCANNON
PLAINTIFF PRO SE

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2020 DEC -3 AM 11:04 CASE NO.: 2019-CP-32-2268

James John Todd Kincannon

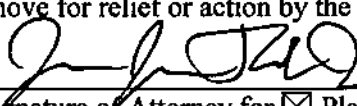
vs.

Ashely Suzanne Griffith

LISA M. COOPER
CLERK OF COURT
LEXINGTON, SC

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Defendant.

Plaintiff's Attorney: James John Todd Kincannon, Bar No. Pro Se Address: 216 Jones Avenue, Simpsonville SC 29681 Phone: 864-963-4374 Fax _____ E-mail: toddkincannon@gmail.com Other: _____		Defendant's Attorney: Ward Bradley, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion for Reconsideration Estimated Time Needed: 40 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant November 23, 2020 Date submitted			
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☒ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☒ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRPC)			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

ORIGINAL

FILED STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON 2019 OCT -1 12:30 PM		IN THE COURT OF COMMON PLEAS Case No. 2019-CP-32-2268
JAMES JOHN TODD KINCANNON, Plaintiff,	LISA M. COMER CLERK OF COURT LEXINGTON SC	
v.		PLAINTIFF'S MOTION TO DISMISS DEFENDANT'S COUNTERCLAIM CAUSES OF ACTION PURSUANT TO RULE 12(b)(6), SCRPC
ASHELY SUZANNE GRIFFITH, Defendant.		

Plaintiff James John Todd Kincannon moves to dismiss the causes of action raised by way of counterclaim in Defendant's Answer and Counterclaim pursuant to Rule 12(b)(6), SCRPC. The grounds for Plaintiff's Motion to Dismiss are as follows:

South Carolina law does not recognize Defendant's cause of action seeking to compel Plaintiff to obtain some form of ex parte preclearance from a circuit court judge prior to filing things with the court, and even though Plaintiff has no philosophical objection to having a judge preclear his filings (as Plaintiff is confident that every filing he might ever make in the future would obtain judicial approval), South Carolina law contains no procedures governing such a system and Defendant fails to articulate any procedures by which she proposes that such a system function. If Defendant wishes Plaintiff to be subjected to an ex parte preclearance system, she must, at the very least, plead with particularity a complete set of rules of civil procedure governing such a system that explain how a judge is to be selected for this process, that set up rules by which the system will function which comply with the due process and equal protection clauses of the state and federal constitution and fully conform to all presently extant rules of civil procedure to the extent they would otherwise apply, and which establish an ex

parte appellate mechanism whereby the Plaintiff would be entitled to appeal any adverse ruling by the ex parte preclearance judge and the judge would be compelled to defend his or her ex parte ruling on appeal.

Neither the Court nor Plaintiff can craft the various rules for Defendant that would be necessary in order to make her ex parte preclearance cause of action viable. Plaintiff accordingly requests the Court dismiss this particular counterclaim cause of action without prejudice to Defendant's right to amend her Answer and Counterclaim to include a full set of procedures by which she expects the ex parte preclearance system to function that establish all needful and necessary rules—that are in full compliance with the due process and equal protection guarantees of the federal and state constitutions and all existing rules of procedure—governing the system she expects Plaintiff, circuit court judges, and appellate court judges to follow and fully setting forth how such a system would operate and interact with the usual system of procedural rules.

Even if Defendant were to craft a full and complete set of procedural rules governing her proposed ex parte preclearance system, Defendant has not adequately alleged facts sufficient to entitle her to this sort of extraordinary relief, relief which would literally rewrite the South Carolina Rules of Civil Procedure and South Carolina Appellate Court Rules as applied to Plaintiff and every circuit court judge and appellate court judge in the State of South Carolina. Extraordinary allegations are necessary in order to entitle a litigant to extraordinary relief, and none of the allegations in Defendant's counterclaim causes of action rise to the level of extraordinary.

In fact, none of Defendant's allegations even rise to the level of ordinary allegations because all are either impermissibly vague or impermissibly conclusory.

Defendant fails to plead with requisite specificity her claims that Plaintiff has commenced and prosecuted frivolous or abusive claims against her either in the instant case or in prior cases between these parties. Plaintiff cannot possibly respond to general claims of frivolous or abusive litigation, and Plaintiff seeks dismissal of Defendant's causes of action on this ground as well. In the alternative, Plaintiff seeks an order compelling Defendant to make her counterclaim pleading more definite and certain pursuant to Rule 12(e), SCRCF with respect to her allegations of frivolity and abusive litigation conduct by specifying the specific filings, arguments, and allegations Plaintiff has made that are alleged by Defendant to be frivolous and abusive together with a reasonably specific explanation of why she contends these particular filings, arguments, and allegations to be frivolous and abusive.

With respect to this particular case, Plaintiff asks the Court to take judicial notice of the various filings in other litigation between Plaintiff and Defendant in which Defendant and her counsel have made extreme adverse allegations regarding Plaintiff's psychological state and mental condition which plainly indicate that Defendant and her counsel had actual knowledge that Plaintiff lacked the requisite mental capacity to enter into the transactions with Defendant described in the Complaint in this matter and lacked the requisite mental capacity to adequately litigate the matter any sooner than now.¹ The allegations Defendant and her counsel have made in this regard make clear that Plaintiff's Complaint is by no means frivolous and is, instead, a good faith effort to obtain a judicial adjudication as to the validity of transactions with Defendant made at a time when

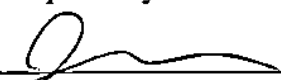
¹ Plaintiff is still in the process of compiling all the various filings in other litigation where Defendant and/or her counsel, acting on her behalf and at her direction, represented to a court that Plaintiff suffered from severe psychological disabilities and mental defects at the time the transactions referenced in the Complaint in this action took place. Plaintiff will submit that material to the Court as a filing supplemental to this motion as soon as he is done compiling it.

Plaintiff was indisputably laboring under extreme psychological disabilities. Accordingly, Defendant's claim that Plaintiff's Complaint is in any way frivolous is itself objectively frivolous, as Defendant not only has actual knowledge of facts which outright prove, or at least strongly support, Plaintiff's claim that he lacked the requisite mental capacity to enter into the transactions at issue but Defendant has used such facts to support her position in other litigation between and involving the parties by way of numerous attacks on Plaintiff's mental state in such other litigation.

Plaintiff respectfully requests the Court dismiss Defendant's counterclaim causes of action or take some other action described herein, and Plaintiff reserves the right to seek Rule 11 and frivolous proceedings sanctions against Defendant and her counsel ased on her frivolous counterclaim causes of action.²

Respectfully submitted,

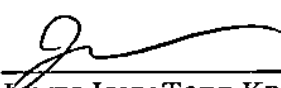
September 27, 2019


 JAMES JOHN TODD KINCANNON
 216 Jones Avenue
 Simpsonville, South Carolina 29681
 864-963-4374
 ToddKincannon@gmail.com

CERTIFICATE OF SERVICE

The undersigned Plaintiff hereby certifies service by first class mail on the date below indicated in accordance with Rule 5, SCRPC on all Defendants by and through their counsel of record, Ward Bradley of the Moore Taylor Law Firm, P.A., at the correct mailing address listed for Mr. Bradley and his firm.

September 27, 2019


 JAMES JOHN TODD KINCANNON

² Plaintiff recognizes the irony of arguing that an allegation of frivolity is itself frivolous, but that is the situation in this case.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2019 OCT 7 12:30 PM
CASE NO.: 2019-CP-32-2268

James John Todd Kincannon,

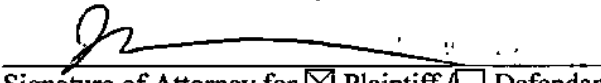
vs.

Ashely Suzanne Griffith,

Defendant.

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: James John Todd Kincannon, Bar No. Pro Se Address: 216 Jones Avenue, Simpsonville SC 29681 Phone: 864-963-4374 Fax _____ E-mail: toddkincannon@gmail.com Other: _____	Defendant's Attorney: James "Ward" Bradley, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Dismiss Counterclaim Estimated Time Needed: 15 mins Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant 9-27-2019 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☒ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

2019 CP3202268

STATE OF SOUTH CAROLINA,)
)
 COUNTY OF LEXINGTON)
)
 James John Todd Kincannon)
)
 Plaintiff)
)
 vs.)
)
 Ashely Suzanne Griffith)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

**MOTION AND AFFIDAVIT TO
 PROCEED IN FORMA PAUPERIS**

FILE NO.

FILED
 2019 MAY 29 PM 3:11
 CLERK OF COURT
 11th JUDICIAL CIRCUIT

I, James John Todd Kincannon, being duly sworn, state that I am the Plaintiff and that I do not have the funds available to pay the costs of filing and service in the present matter. I hereby request that the complaint be filed and service made without costs.

Sworn to and Subscribed before me
 this ~~29th~~ day of ~~February~~, 2019.

29th day May
 [Signature]
 Notary Public for South Carolina

My Commission expires 6/2/25

[Signature]
 Signature of Plaintiff or
 Person Filing Complaint on Behalf of
 Plaintiff

ORDER

☒ Leave is *granted* to proceed in forma pauperis without payment of the filing fee.

☐ Leave is granted to proceed in forma pauperis without payment of the service cost.

☐ Leave is *denied* to proceed in forma pauperis.

Dated: May 30, 2019
 Lexington, South Carolina

[Signature]
 JUDGE/CLERK OF COURT

FILED
 2019 MAY 30 AM 8:57
 LISA M. DODD
 CLERK OF COURT
 11th JUDICIAL CIRCUIT

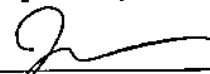
NOTICE TO PLAINTIFF: The Court may assess costs against either party at hearing.

STATE OF SOUTH CAROLINA		FILED	
COUNTY OF LEXINGTON		IN THE COURT OF COMMON PLEAS	
JAMES JOHN TODD KINCANNON,		Case No. _____	
Plaintiff		2019 CP3202268	
v.		AFFIDAVIT RE FINANCIAL INFORMATION	
ASHELY SUZANNE GRIFFITH,			
Defendant.			

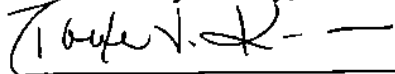
The undersigned Plaintiff, first being duly sworn, hereby deposes and states the following:

1. Attached is an authentic copy of a financial status affidavit filed in support of a motion to proceed in forma pauperis, which was granted by the Hon. Alison Renee Lee, in an unrelated case on March 21, 2019.
2. Plaintiff's financial status has not changed in any way since that affidavit was prepared and filed in the unrelated case, and it is incorporated herein by reference to this affidavit. All information contained therein continues to be an accurate statement of Plaintiff's financial affairs.

Respectfully submitted,


 JAMES JOHN TODD KINCANNON
 216 Jones Avenue
 Simpsonville, South Carolina 29681
 864-963-4374
 ToddKincannon@gmail.com
 Plaintiff Pro Se

Sworn to and subscribed before me
 this 29th day of May, 2019



South Carolina Notary Public
 My Commission Expires: 6/2/25

2019 CP3201168

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

James John Todd Kincannon

Plaintiff,

Ashely S. Griffith et. Al

Defendant.

IN THE CIVIL COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

FINANCIAL DECLARATION

OF James John Todd Kincannon

Docket No. _____

HUSBAND/FATHER		WIFE/MOTHER	
Address	<u>516 Jones Ave, Simpsonville, SC 29681</u>	Address	
Age	<u>37</u>	Age	
Occupation	<u>None</u>	Occupation	
Employer	<u>None</u>	Employer	
Employer Address	<u>—</u>	Employer Address	

Gross Monthly Income	Husband/Father	Wife/Mother
Principal Earnings from Employment ¹	0	
Overtime, Tips, Commission, Bonuses ²	0	
Pensions, Retirement, and Annuities income	0	
Additional Employment income	0	
Social Security Benefits (SSA) and VA Benefits	0	
Disability and Worker's Compensation Benefits	0	
Unemployment and AFDC	0	
Spousal or Child Support (from other marriage/relationship)	0	
Dividends, Interest, Trust Income, and Capital Gains	0	
Rental Income and Business Profits	0	
Other (Specify):	0	
TOTAL GROSS MONTHLY INCOME	0	

Payroll Deductions from Monthly Income	Husband/Father	Wife/Mother
Federal Income Tax ³	0	
State Income Tax	0	
Social Security and Medicare Tax (FICA)	0	
Self-Employment Tax	0	
Health and Dental Insurance (Adult)	0	
Health and Dental Insurance (Child)	0	
Union Dues	0	
Voluntary Retirement Contribution (401(k), 457, IRA)	0	
Mandatory Retirement Contribution	0	
Savings Plan	0	
Other (Specify):	0	
TOTAL MONTHLY DEDUCTIONS	0	
NET MONTHLY INCOME⁴	0	

Estimate monthly expenses: (Specify which party is the custodial parent and list name and relationship of all members of household whose expenses are included.) \$2,100

MONTHLY EXPENSES ¹	Husband/Father	Wife/Mother
Residential Rent Payment	~~\$1,399~~	
Note or Mortgage Payment on Residence(s)	\$1,399	
Food and Household Supplies ⁶	\$400	
Utilities, Water, and Garbage Collection	\$150	
Telephone and Cellular Phone	\$50	
Medical, Dental and Disability Insurance Premiums (not deducted from paycheck)		NA
Life Insurance Premiums (not deducted from paycheck)		
Child Support (from other relationship)		
Work Related Day Care		
Spousal Support (from prior marriage)		
Auto Payment		
Auto Insurance, taxes, gasoline, and maintenance ⁷	\$100	
SUBTOTAL:	<u>\$2,100</u>	
Real Property Tax on Residence(s)		
Maintenance for household ⁸		
Adult Clothing		
Children's Clothing ⁹		
Cable Television, Satellite, and Internet/Online Services		
Laundry and Dry Cleaning ¹⁰		NA
Medical and Dental Expenses (not paid by insurance)		
Prescriptions, Glasses, and Contacts (not paid by insurance)		
Children's incidental expenses ¹¹		
School lunches, supplies, field trips, and fees ¹²		
Entertainment ¹³		
Adult incidental expenses ¹⁴		
All Installment payments ¹⁵		
Other (Specify):		
SUBTOTAL:	<u>\$2,100</u>	
TOTAL MONTHLY EXPENSES	\$2,100	NA

Installment Loan Payments Section

Creditor	For	Monthly Payment	Balance	Owed by ¹⁶
U.S. Bank Disputed	Mortgage	\$1,399	~ \$380,000	MC
Parents	Living Expenses	\$600 ~ \$1200	~ \$35,000	MC
Miscellaneous Smaller Debts			~ \$20,000	MC

Other Debts and Obligations *not* payable in monthly installments

Creditor	For	Date Payable	Balance	Owed by ¹⁶
U.S. Bank Disputed	Mortgage	Arrears	N/A \$300,000	Me

Are you currently in Bankruptcy? ☒ YES ☐ NOAre any obligations listed above, including mortgage and note payments, in arrears? ☒ YES ☐ NO

If yes, please list the obligations in arrears.

Obligation to U.S. Bank / Obligation to Parents.

All Marital Property Known to Parties

Assets	Husband/Father	Wife/Mother	Joint
Cash and Money in Checking Account(s)	0		
Money in Savings Account(s), Credit Union, Money Market, or Cert. of Dep.	0		
Value of Voluntary Retirement Account(s)	0		
Value of Pension Account	0	NA	NA
Value of Publicly Held Stocks, Bonds, Securities, Mutual Funds	0		
Value of Privately Held Stocks and Other Business	0		
Value of Real Estate - Net of Mortgage Balances	0		
Value of All Other Property ¹⁷	0		
TOTAL ASSETS	0		

Any Non Marital Property Known to Parties

Description of Asset	Title Owner	Date of Acquisition	Source of Funds to Acquirer	Estimate Present market Value
None				

If total assets are less than \$300,000.00, sign and have notarized.

If total assets are greater than \$300,000.00, itemize assets by completing additional sections below and sign and have notarized.

Financial Accounts Section¹⁸

Owner	Name of Institution	Type of Account	Balance
None			

Voluntary Retirement Accounts and Pension Accounts Section

Type of Account	Value
None	

Publicly Held Stocks, Bonds, Securities, Mutual Funds Section (Non-Retirement)¹⁹

Name of Company	Number of Shares/Type of Account	Value
None		

Real Estate Section²⁰ of my interest

Owner	Address	Value	Mortgage Balance	Mortgage Equity
Parents & me	3105 Palmetto Blvd	\$5 ← Nominal	~\$130,000	\$0

Other Property Section²¹

In foreclosure of process

Owner	Description of Asset	Value	Loan Balance	Equity
ME	Chase in Action Assets in this case	?	—	—
ME	Related choses in action	?	—	—

Signature [Signature]

Sworn to before me this 19th of March, 2019.

[Signature] (SEAL)

Notary Public for South Carolina

My commission expires: 6/2/2025

FILED
2019 MAR 21 PM 4:20
LISA H. COOPER
CLERK OF COURT
COLUMBIA, SC

Custodial Parent (if applicable): NA

1. A recent paystub should be attached to the Financial Declaration. To compute Principal Earnings from Employment, first determine whether you are paid semi-monthly, biweekly, or weekly. If you are paid semi-monthly, multiply the gross amount of your pay check by two. If you are paid biweekly, multiply the gross amount of your pay check by 26 and then divide by 12. If you are paid weekly, multiply the amount of your paycheck by 52 and divide by twelve. Round to the nearest whole dollar.
2. To compute Overtime, Tips, Commission, and/or Bonuses, take an average of your monthly earnings from overtime, tips, commission, bonuses, etc. from the past three years or the length of employment if employed less than three years (including this year).
3. To compute State, Local, and Social Security Tax deductions, use the same formula used to compute principal earnings in endnote 1 above, or consult or have your attorney consult an accountant.
4. Net monthly Income is equal to Total Gross Monthly Income minus Total Monthly Deductions.
5. Do not include any expense in the Monthly Expenses section that has already been included in the Deductions from Gross Monthly Income on page one of the Declaration.
6. Food Expense is to include the cost of groceries, toiletries, cleaning supplies, and casual eating out.
7. Auto Expenses are to include gasoline, oil changes, tune-ups, tire replacement, maintenance, and related items.
8. Maintenance for Household is to include appliance and household repairs, landscaping, house cleaning, pest control, pool service, alarm service, and other related items.
9. Clothing Expense is to include shoes and clothing purchases, clothing repair and alterations, and related items.
10. Laundry Expense is to include the cost of laundry service, dry cleaning, and related items.
11. Children's Incidental Expenses are to include allowance, summer camp, baby sitters, lessons, activities, participatory sports, and related items.
12. School Expense is to include tuition, supplies, field trips, dues, tutors, locker rentals, school lunches, and other related items.
13. Entertainment is to include movies, theater, vacations, sporting events, compact discs, digital video discs, and related items.
14. Adult Incidental Expenses are to include cosmetics, hair and nail care, books, magazines, newspapers, business dues, memberships, pets, charity, religious dues or tithes, gifts, bank charges, hobbies, and related items.
15. All Installment Loan Payments is the total amount itemized in Installment Loan Payments Section, which should include all loan payments not already listed as a monthly expense. Examples: home equity loan, credit cards, etc.
16. Indicate which spouse legally owes the payment (husband, wife, or joint).
17. Other property is to include automobiles (minus loan balance), boats (minus loan balance), furniture, furnishings, china, silver, jewelry, collectibles, and other personal property.
18. Itemize Financial Accounts such as checking, savings, credit union, money market, or certificate of deposit accounts in the Financial Accounts Section.
19. Itemize Publicly Held Stocks, Bonds, Securities, Stock Options and Mutual Funds (excluding retirement accounts) in the Publicly Held Stocks, Bonds, Securities, Mutual Funds Section.
20. Itemize each parcel of Real Estate in the Real Estate Section.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2019 CP3202260
CASE NO.: 2019-CP-

James John Todd Kincannon

Plaintiff,

vs.

Ashely Suzanne Griffith

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

2019 MAY 29 PM 3:11

Plaintiff's Attorney: James John Todd Kincannon, Bar No. Pro Se Address: 216 Jones Ave, Simpsonville SC 29681 Phone: 864-963-4374 Fax _____ E-mail: toddkincannon@gmail.com Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____																	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																			
SECTION I: Hearing Information																			
Nature of Motion: In Forma Pauperis Motion Estimated Time Needed: 5 min Court Reporter Needed: ☒ YES / ☐ NO																			
SECTION II: Motion/Order Type																			
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.																			
Signature of Attorney for ☒ Plaintiff / ☐ Defendant		May 29, 2019 (w/ complaint) Date submitted																	
SECTION III: Motion Fee																			
☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) <table border="0" style="width: 100%;"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Domestic Abuse or Abuse and Neglect</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☒ Indigent Status</td> <td>☐ Motion for Stay in Bankruptcy</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td>☐ Motion for Publication</td> </tr> <tr> <td>☐ Motion for Execution (Rule 69, SCRCF)</td> <td>☐ Proposed order submitted at request of the court; or,</td> </tr> <tr> <td colspan="2">reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>				☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party	☐ Domestic Abuse or Abuse and Neglect	☐ Post-Conviction Relief	☒ Indigent Status	☐ Motion for Stay in Bankruptcy	☐ Sexually Violent Predator Act	☐ Motion for Publication	☐ Motion for Execution (Rule 69, SCRCF)	☐ Proposed order submitted at request of the court; or,	reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter: _____		☐ Other: _____	
☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party																		
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☒ Indigent Status	☐ Motion for Stay in Bankruptcy																		
☐ Sexually Violent Predator Act	☐ Motion for Publication																		
☐ Motion for Execution (Rule 69, SCRCF)	☐ Proposed order submitted at request of the court; or,																		
reduced to writing from motion made in open court per judge's instructions																			
Name of Court Reporter: _____																			
☐ Other: _____																			
JUDGE'S SECTION		JUDGE CODE _____																	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		Date: _____																	
CLERK'S VERIFICATION																			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____																			

ORIGINAL

FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

2019 OCT -1

PM 12:29

IN THE COURT OF COMMON PLEAS

JAMES JOHN TODD KINCANNON

LISA H. BOHER
CLERK OF COURT
LEXINGTON SC

Case No. 2019-CP-32-2268

Plaintiff,

v.

ASHELY SUZANNE GRIFFITH,

Defendant.

**PLAINTIFF'S MOTION FOR
CONTINUANCE DUE TO SCHEDULING
CONFLICT WITH FEDERAL COURT
AND MOTION AND REQUEST FOR ADA
ACCOMMODATION IN RESCHEDULING
HEARING**

Plaintiff James John Todd Kincannon respectfully moves for a continuance of the hearing scheduled for October 1, 2019 at 11:00 a.m. due to his mandatory appearance in federal court in Spartanburg, South Carolina on October 1, 2019 at 10:00 a.m. in In re James John Todd Kincannon, Case No. 19-04762-hb. Plaintiff is pro se in both cases and cannot appear in both, and the federal court hearing cannot be postponed due to its nature—a motion to extend a stay in execution-of-judgment proceedings that will otherwise expire shortly after the hearing date. Continuance of the federal court proceeding would cause extreme prejudice to Plaintiff and, for all practical purposes, cause him to lose the matter in litigation in the federal courts. Neither party in the instant case will be prejudiced by continuance of the hearing set for October 1, 2019 given the nature of the state court hearing—a motion to dismiss and motion for summary judgment by the defense.

Plaintiff also moves for a continuance and requests that the hearing not be rescheduled until late October or early November at the earliest as a disability accommodation pursuant to the Americans with Disabilities Act. Plaintiff suffers from severe attention deficit, bipolar, anxiety, and depressive that cause Plaintiff to sometimes

require extra time to prepare for court proceedings and hearings, particularly proceedings of major complexity or importance where written filings are required. Plaintiff has been unable due to his psychiatric disorder to fully prepare for the scheduled hearing in this case and also meet all other litigation obligations in the federal court matter referenced above, the obligation to fully and diligently respond in good faith to a counterclaim in this case which is due on September 27, 2019, and litigation obligations in various other matters, some of which are related to this case and others of which are not.

In particular, Plaintiff is hampered by the fact that he suffers from severe attention deficit disorder but cannot take any medication for it because the medication necessary to treat it would exacerbate the symptoms of his bipolar disorder to a medically dangerous degree. Further, the medication Plaintiff is prescribed for his bipolar disorder causes extreme drowsiness and causes Plaintiff to sleep for sixteen to eighteen hours a day, which greatly hampers Plaintiff's ability to prepare litigation materials and engage in any other activities which are time consuming and require exceptional diligence, as is nearly always the case with respect to litigation matters.

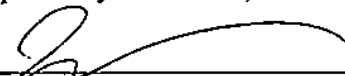
Plaintiff request for continuance is based on all applicable South Carolina and federal law, including but not limited to the Americans with Disabilities Act, as Plaintiff is indisputably an individual with a qualifying disability entitled to reasonable accommodation under the ADA. Plaintiff's requested accommodation is plainly reasonable, as neither party will be prejudiced by postponing consideration of Defendant's motions for dismissal and summary judgment until late October or early November. Plaintiff, however, would be greatly prejudiced if the hearing were to go forward on October 1, 2019, since Plaintiff would be unable to appear due to the federal

court proceeding in Spartanburg which cannot be continued under any circumstances due to the nature of those proceedings.

A copy of the federal court hearing notice is attached as an exhibit. Should the Court require Plaintiff to provide any further information about his psychiatric conditions in order to obtain the requested ADA accommodation, Plaintiff will certainly endeavor to do so as soon as possible after learning that the Court requires additional information regarding the matter.

Respectfully submitted,

September 25, 2019


 JAMES JOHN TODD KINCANNON
 216 Jones Avenue
 Simpsonville, South Carolina 29681
 864-963-4374
 ToddKincannon@gmail.com
 Plaintiff Pro Se

VERIFICATION

Plaintiff James John Todd Kincannon, first being duly sworn, hereby verifies under oath and penalty of perjury the accuracy of the foregoing statements of fact in this filing, all of which Plaintiff has personal knowledge of.

Sworn to and subscribed before me
 this 25th day of September, 2019


 JAMES JOHN TODD KINCANNON

 Notary Public for South Carolina
 My commission expires:_____

Exhibit

United States Bankruptcy Court
District of South Carolina

Case Number: 19-04762-hb

Chapter: 13

In re:

James John Todd Kincannon
aka J. Todd Kincannon

NOTICE OF HEARING

Filed By The Court

9/10/19

Laura A. Austin
Clerk of Court
US Bankruptcy Court

PLEASE TAKE NOTICE that a hearing will be held at:

Donald Stuart Russell Federal Courthouse
201 Magnolia Street
Spartanburg SC 29306-2355

on **October 1, 2019 at 10:00 AM**, to consider and act upon the following document(s):

Motion to Extend Automatic Stay Filed by James John Todd Kincannon;

The document(s) related thereto have been filed with the Court. Any party objecting to the relief sought must file a response with the Clerk of Court in accordance with applicable rules and statutes and must serve the party seeking the relief with a copy of said objection **by 9/24/19**. Any party objecting but failing to appear in prosecution of the objection may be considered to have waived the objection.

Laura A. Austin
Clerk of Court
United States Bankruptcy Court

By: D Lee, Deputy Clerk
1100 Laurel Street
Columbia, SC 29201-2423
(803) 765-5436

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 James John Todd Kincannon,)
 Plaintiff,)
 vs.)
)
 Ashely Suzanne Griffith et al.,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT
 CASE NO.: 2019-CP-32-2268
 MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET

Plaintiff's Attorney: James John Todd Kincannon, Bar No. Pro Se Address: 216 Jones Avenue, Simpsonville SC 29681 Phone: 864-963-4374 Fax _____ E-mail: toddkincannon@gmail.com Other: _____	Defendant's Attorney: James "Ward" Bradley, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for Continuance and ADA Accommodation Estimated Time Needed: No Hearing Requested Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant 9-25-2019 Date submitted	
SECTION III: Motion Fee ☐ PAID – AMOUNT: \$ _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☒ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
James John Todd Kincannon,	)	C/A No. 2019-CP-32-02268 and
	)	C/A No. 2019-CP-32-01168
Plaintiff,	)	
vs.	)	MOTION TO DISSOLVE
	)	LIS PENDENS
	)	
Ashely Suzanne Griffith	)	
	)	
Defendant.	)	
_____	)	

YOU WILL PLEASE TAKE NOTICE that the Defendant Ashely Suzanne Griffith hereby moves for an Order of the Court dissolving all Lis Pendens filed against 306 Spring Walk Lane, West Columbia, TMS #004513-02-006.

DISCUSSION

James John Todd Kincannon has sued Ashely Griffith in two lawsuits and filed four (4) Lis Pendens against 306 Spring Walk Lane which Ms. Griffith owns. The lawsuits and their current status follows:

1. James John Todd Kincannon v. Ashely Griffith, Moore Taylor Law Firm, et al., 2019-CP-32-01168. Summary Judgment was entered disposing of all claims in this matter, and Mr. Kincannon has appealed the rulings. The matter is currently pending before the South Carolina Court of Appeals bearing Appeal No. 2019-001501.
2. James John Todd Kincannon v. Ashely Suzanne Griffith, Action No. 2019-CP-32-02268. Summary Judgment has been entered against Mr. Kincannon. He has filed a Motion to Reconsider which has not yet been ruled upon.

In addition, Mr. Kincannon has filed four (4) Lis Pendens against 306 Spring Walk Lane, West Columbia, TMS 004513-02-006, as follows: 2019-LP-32-00391 filed June 6, 2019; 2019-LP-32-00290 filed April 19, 2019; 2018-LP-32-00262 filed March 28, 2018; and 2016-LP-32-00727 filed August 12, 2016.

Both lawsuits regarding the parties have been resolved in favor of Ms. Griffith. The remaining Lis Pendens serve to impair the title to this property which Ms. Griffith has not been able to sell as a result of the Lis Pendens.

There is no legitimate basis for the Lis Pendens to remain in place as Mr. Kincannon's claims against Ms. Griffith have been found to be without merit.

With this in mind, the Defendant asks that the Court issue an order dissolving all Lis Pendens filed against 306 Spring Walk Lane, West Columbia, as requested above.

MOORE BRADLEY MYERS LAW FIRM, P.A.

By: s/ James Edward Bradley
James Edward Bradley, SC Bar # 66130
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
ward@mbmlawsc.com
Attorney for Defendant

West Columbia, South Carolina
September 23, 2022

Certificate of Electronic Notification

Recipients

James Bradley - Notification transmitted on 08-23-2019 03:05:08 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP3202268

Official File Stamp: 08-23-2019 03:04:15 PM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith

Document(s) Submitted: Motion/Dismiss & Summary Judgment

- Exhibit/Filing of Exhibits

Filed by or on behalf of: James Edward Bradley

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

James Edward Bradley for Ashely Suzanne Griffith et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

James John Todd Kincannon for James John Todd Kincannon

James John Todd Kincannon for James John Todd Kincannon

NOTICE OF MOTION SCHEDULING

August 30, 2019



Motion "MDISJM - Motion/Dismiss & Summary Judgment" for Case: 2019CP3202268 - James John Todd Kincannon VS Ashely Suzanne Griffith has been added to the following Motions Roster:

131 - Motions Roster for Week of September 30, 2019

This hearing of this motion has been scheduled for 10/1/2019 at 11:00 AM.

The Common Pleas motion roster for the week of September 30th, 2019 has been published to the web. All requests for continuances must be filed by Wednesday September 25, 2019 @ 5pm.

If this motion is resolved before the scheduled date and time, please notify the following: Krystle Woodlief at kwoodlief@lex-co.com.

Mail Notice To:	Court Info:
James John Todd Kincannon 216 Jones Avenue Simpsonville, SC 29681	Common Pleas Lexington County Judicial Center 205 East Main Street Lexington, SC 29072-9072

**If you have any questions regarding the scheduling of this motion, please contact the courts at:
(803) 785-8212**

Respectfully,

Lisa M. Comer
Clerk of Court

NOTICE OF MOTION SCHEDULING

October 16, 2019



Motion "MOTMOT - Motion to Dismiss Defendants Counterclaim" for Case: 2019CP3202268 - James John Todd Kincannon VS Ashely Suzanne Griffith has been added to the following Motions Roster:

133 - Motions Roster for Week of November 18, 2019

This hearing of this motion has been scheduled for 11/19/2019 at 11:00 AM.

The Common Pleas motion roster for the week of November 18, 2019 has been published to the web. Please check the web for a copy of the roster at www.lex-co.sc.gov under Clerk of Court tab.

All requests for continuances must be filed by Wednesday, November 13, 2019 @ 5pm.

If this motion is resolved before the scheduled date and time, please notify the following:
Krystle Woodlief at kwoodlief@lex-co.com.

Mail Notice To:

James John Todd Kincannon
216 Jones Avenue

Simpsonville, SC 29681

Court Info:

Common Pleas
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072-9072

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(803)785-8212

Respectfully,

Lisa M. Comer
Clerk of Court

NOTICE OF MOTION SCHEDULING

October 16, 2019



Motion "MDISJM - Motion/Dismiss & Summary Judgment" for Case: 2019CP3202268 - James John Todd Kincannon VS Ashely Suzanne Griffith has been added to the following Motions Roster:

133 - Motions Roster for Week of November 18, 2019

This hearing of this motion has been scheduled for 11/19/2019 at 11:00 AM.

The Common Pleas motion roster for the week of November 18, 2019 has been published to the web. Please check the web for a copy of the roster at www.lex-co.sc.gov under Clerk of Court tab.

All requests for continuances must be filed by Wednesday, November 13, 2019 @ 5pm.

If this motion is resolved before the scheduled date and time, please notify the following: Krystle Woodlief at kwoodlief@lex-co.com.

Mail Notice To:

James John Todd Kincannon
216 Jones Avenue

Simpsonville, SC 29681

Court Info:

Common Pleas
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072-9072

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(803)785-8212

Respectfully,

Lisa M. Comer
Clerk of Court

Certificate of Electronic Notification

Recipients

James Bradley - Notification transmitted on 12-13-2019 08:36:56 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP3202268

Official File Stamp: 12-13-2019 08:36:46 AM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith

Document(s) Submitted: Order/Summary Judgment Order/Summary Judgment

Filed by or on behalf of: William P. Keesley

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

James Edward Bradley for Ashely Suzanne Griffith et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

James John Todd Kincannon for James John Todd Kincannon

James John Todd Kincannon for James John Todd Kincannon

Certificate of Electronic Notification

Recipients

James Bradley - Notification transmitted on 01-02-2020 12:31:45 PM.

Steve Matthews - Notification transmitted on 01-02-2020 12:31:45 PM.

Rebecca Laffitte - Notification transmitted on 01-02-2020 12:31:45 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP3202268

Official File Stamp: 01-02-2020 12:31:30 PM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith

Document(s) Submitted: ADR/Notice of ADR ADR/Notice of ADR

Filed by or on behalf of: June Mccartha

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Steve A. Matthews

Rebecca Laffitte

James Edward Bradley for Ashely Suzanne Griffith et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

James John Todd Kincannon for James John Todd Kincannon

James John Todd Kincannon for James John Todd Kincannon

NOTICE OF ADR

James John Todd Kincannon

2019CP3202268

PLAINTIFF(S)

Filing Date: May 30, 2019

Vs

Ashely Suzanne Griffith
Ashely Griffith
Ashley Griffith

DEFENDANT(S)

Pursuant to the South Carolina Alternative Dispute Resolution Rules (SCADR), you are required to participate in the following methods of Alternative Dispute Resolution (ADR): mediation or arbitration (binding or non-binding); on or before 300 days from the date of filing of this action. The parties have a right to mutually agree upon the form of ADR and a neutral person(s) to conduct that ADR process. In the event the parties are unable to agree upon the form of ADR, the court hereby designates mediation as the default process of ADR. In the event the parties are unable to agree upon a mediator, the court hereby appoints

Rebecca Laffitte, PO Box 11449, , Columbia, SC 29211, Phone (803) 231-7831

to serve as mediator. In the event the aforementioned mediator has a conflict of interest or is unable to serve, the alternate mediator is

Steve A. Matthews, PO Box 11889, , Columbia, SC 29211-1889, Phone (803) 540-7827

The parties and/or their lawyers shall contact the court-appointed mediator directly regarding scheduling and payment of the court-mandated fee.

A Rule to Show Cause why sanctions should not be imposed may be issued in all cases that fail to file a Proof of ADR or Exemption form indicating evidence of participation in or exemption from an ADR process within 300 days from the date of filing of the action or 90 days from the date of this notice (**April 1, 2020**).

Date: January 2, 2020

Notice of this Order was given by First Class Mail, E-mail, Fax or by the E-Filing Notice of Electronic Filing (NEF). Pro-Se parties were notified by first class mail on 01/02/2020

Plaintiff Pro Se:

James John Todd Kincannon
216 Jones Avenue
Simpsonville, SC 29681

Defendant Attorney:

James Edward Bradley
PO Box 5709
West Columbia, SC 29171

ADR Coordinator

June McCartha
(803) 785-2804
jmccartha@lex-co.com

Certificate of Electronic Notification

Recipients

James Bradley - Notification transmitted on 04-14-2020 09:48:57 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP3202268

Official File Stamp: 04-14-2020 09:48:45 AM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith , defendant, et al

Document(s) Submitted: ADR/Sanctions Letter ADR/Sanctions Letter

Filed by or on behalf of: June Mccartha

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

James Edward Bradley for Ashely Suzanne Griffith et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

James John Todd Kincannon for James John Todd Kincannon

James John Todd Kincannon for James John Todd Kincannon

STATE OF SOUTH CAROLINA
LEXINGTON COUNTY

James John Todd Kincannon

2019CP3202268

PLAINTIFF(S)

VS

Alternative Dispute Resolution Rule To Show Cause

Ashely Suzanne Griffith

Ashely Griffith

Ashley Griffith

DEFENDANTS

04/14/2020

According to court records, you have not submitted the Proof of ADR or Exemption form required by the Standing Order for Alternative Dispute Resolution. We are now required to issue a Rule to Show Cause why sanctions should not be imposed in this case.

Please contact June McCartha immediately at (803) 785-2804, or by email at jmccartha@lex-co.com, if my records are incorrect.

Sincerely,

June McCartha
ADR Coordinator

Letter to:

James John Todd Kincannon
James Edward Bradley

NOTICE OF CASE SCHEDULING

October 22, 2020



Case 2019CP3202268 - James John Todd Kincannon VS Ashely Suzanne Griffith , defendant, et al has been added to the following Court Roster:

Roster ID: 152 - Jury Trial Roster for Week of November 30, 2020

This case has been assigned as priority 42 of 71 cases scheduled for the court period of 11/30/2020 through 12/4/2020

A jury roster has been published to the web for the week of November 30, 2020. Please check for the roster under the Clerk of Court tab at www.lex-co.sc.gov for your case. Please email an update as to the status of your case before November 25, 2020 to mhuggins@lex-co.com. If you need a status conference, please email your request to Judge McLeod at wjmcleodj@sccourts.org and wjmcleodlc@sccourts.org. If you have any questions, please feel free to contact our office.

Mail Notice To:	Court Info:
James John Todd Kincannon 216 Jones Avenue Simpsonville, SC 29681	Common Pleas Lexington County Judicial Center 205 East Main Street Lexington, SC 29072-9072

If you have any questions regarding the scheduling of this case, please contact the courts at:

(803) 785-8212

Respectfully,

Lisa M. Comer
Clerk of Court

James John Todd Kincannon
216 Jones Avenue
Simpsonville, SC 29681
ToddKincannon@gmail.com

December 3, 2020

By postal mail and electronic mail

Hon. William P. Keesley

P.O. Box 10

Edgefield, SC 29824-0010

Re: James Kincannon v. Ashely Griffith, Case No. 2019-CP-32-2268
Americans with Disabilities Act Accommodation Request re
Proceedings on Motion for Reconsideration

Dear Judge Keesley:

This is a request for accommodation pursuant to the Americans with Disabilities Act related to the motion for reconsideration that I submitted regarding your order granting summary judgment in the above case. I'm not aware of any requirement that an ADA disability accommodation request be submitted by way of a formal motion but if you would like me to do that, I certainly will do so.

The specific accommodation I am requesting is that you refrain from ruling on the unfinalized motion for reconsideration I have already submitted until I have had time to prepare, serve, and file an amended motion for reconsideration together with a supporting memorandum plus a motion to permit the amendment of the motion for reconsideration and a supporting memorandum applicable to that procedural motion as well. Given the nature of my disabilities and the number and complexity of issues in the case, I believe it will take me approximately 30-40 days to prepare those materials.¹ I would therefore ask that you give me until January 11th, 2021 to finalize and serve: (1) a proposed amended motion for reconsideration; (2) a memorandum in support of the amended motion for reconsideration; (3) a motion to permit the amendment; and (4) a memorandum in support of the motion to permit the amendment.

The medical basis for my disability accommodation request is that I suffer from severe bipolar disorder, for which I take medication, and severe attention deficit disorder, which is untreated because no ADD medication is safe to take with my bipolar disorder. The combined effect of these illnesses, the medication I take for bipolar disorder, and the uncontrollable nature of my attention deficit disorder is that I simply cannot prepare well-written, well-researched, polished legal filings in the usual time frames required by court rules. After substantial therapy, I

¹ I was unable to work on any of those materials from until December 1st. Immediately after serving the unfinalized motion for reconsideration, I had to prepare a reply to Defendant's counterclaims which was due November 30th. I required the entire time allowed to prepare that filing and immediately turned my attention back to the motion for reconsideration once I finished the reply.

am now capable of preparing legal filings of that nature² but only with additional time, the amount of which depends on the number and complexity of the legal issues involved.

I believe this is a reasonable accommodation request because if I was not severely impaired by the disabilities referenced, I would have prepared a fully “polished” and finalized motion for reconsideration together with a fully “polished” and finalized supporting memorandum within the ten day motion deadline established by Rule 59(e), SCRCP.³ I am asking for nothing other than to be placed in the same position that I would have been in were I not disabled. The accommodation I am seeking does not unreasonably interfere with the operation of the courts or prejudice Defendant. All I am seeking is time to fully prepare and submit all the things I would have submitted within the ten day deadline were I not encumbered by the psychiatric disabilities mentioned above.

Please understand that by way of this ADA accommodation request, I am certainly not asking you to rule in a particular way on any issue now before you or that will be before you once I have submitted the additional filings referenced above. All I am asking is that you refrain from taking any action on my motion for reconsideration until I have had time to prepare and file the materials mentioned above. I believe it is undisputed that I suffer from the psychiatric disabilities referenced,⁴ but if you need any additional information regarding my disabilities or their effect on my ability to represent myself in this matter, please let me know. And please let me know if you have any additional questions.

With kindest personal regards, I remain,

Very truly yours,
s/James John Todd Kincannon⁵
James John Todd Kincannon

cc: Ward Bradley (opposing counsel)
Lexington County Clerk of Court (for inclusion in the casefile referenced above)

² When my bipolar disorder was undiagnosed (and therefore uncontrolled) and for a period of time thereafter while I was still in the early stages of treatment, I was completely incapable of preparing a legal filing that I would consider “competently drafted.” With substantial therapy, I have fortunately regained the ability to prepare competent legal documents provided I am given a sufficient amount of time to do so.

³ Obviously there is no particular deadline for a supporting memorandum, but in the motion for reconsideration context, submitting the memorandum with the motion is a practical requirement since motions for reconsideration are often decided in a summary fashion without a hearing in South Carolina circuit courts.

⁴ I have made a number of ADA accommodations requests in unrelated litigation involving the same defendant before the Court of Appeals and all of my requests have been uncontested and granted by the Court of Appeals.

⁵ The paper copies sent by postal mail will be signed in the traditional fashion.

Certificate of Electronic Notification

Recipients

James Bradley - Notification transmitted on 12-10-2020 08:55:04 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP3202268

Official File Stamp: 12-10-2020 08:54:51 AM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith , defendant, et al

Document(s) Submitted: Letter/Letter Letter/Letter

Filed by or on behalf of: Mona Huggins

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

James Edward Bradley for Ashely Suzanne Griffith et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

James John Todd Kincannon for James John Todd Kincannon

James John Todd Kincannon for James John Todd Kincannon

James John Todd Kincannon

216 Jones Avenue
Simpsonville, SC 29681
ToddKincannon@gmail.com

February 1, 2021

By postal mail and electronic mail

Hon. William P. Keesley
P.O. Box 10
Edgefield, SC 29824-0010

FILED
2021 FEB -8 PM 3:33
CLERK OF COURT
LEXINGTON, SC

- Re: James Kincannon v. Ashely Griffith, Case No. 2019-CP-32-2268
Update to Americans with Disabilities Act Accommodation Request re
Proceedings on Motion for Reconsideration

Dear Judge Keesley:

Although I have done my best to finalize everything I intended to submit to you in connection with my motion for reconsideration by today (February 1), I have fallen slightly short. I am approximately 90% complete and am requesting one additional week plus one day (to February 9, 2021). I have been in a depressive phase due to bipolar disorder until a few days ago and that combined with the medication I have been taking in the aftermath of my uncle's passing due to adjustment disorder, I have simply been unable to finish everything by today.

I am absolutely certain that I will need no additional time beyond February 9, 2021. I have been working at a good pace since exiting my depressive phase last week and am certain I will be finished by then. Please accept this as one final amendment to my ADA request regarding these matters, and I am certain there will be no more time needed. And I wish I hadn't had to send you so many requests regarding this matter but I am still learning how to adapt to both bipolar disorder and adjustment disorder and this is the healthiest way to handle these situations per my therapist.

Thank you again.

With kindest personal regards, I remain,

Very truly yours,
s/James John Todd Kincannon¹
James John Todd Kincannon

cc: Ward Bradley (opposing counsel)
Lexington County Clerk of Court (for inclusion in the casefile referenced above)

¹ The paper copies sent by postal mail will be signed in the traditional fashion.

NOTICE OF CASE SCHEDULINGSTATE OF
SOUTH CAROLINA

March 02, 2021



Case 2019CP3202268 - James John Todd Kincannon VS Ashely Suzanne Griffith , defendant, et al has been added to the following Court Roster:

Roster ID: 150 - Non Jury Trial Roster Week of March 15, 2021

This case has been assigned as priority 10 of 16 cases scheduled for the court period of 3/15/2021 through 3/19/2021

The Non Jury trial roster for the week of March 15, 2021 has been published to the web. You can access the roster at <https://lex-co.sc.gov/departments/clerk-court>. Please email the status of your case to Mona Huggins mhuggins@lex-co.com by March 10, 2021. We will not be holding a roster meeting.

Mail Notice To:

James John Todd Kincannon
216 Jones Avenue

Simpsonville, SC 29681

Court Info:

Common Pleas
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072-9072

If you have any questions regarding the scheduling of this case, please contact the courts at:

(803) 785-8212

Respectfully,

Lisa M. Comer
Clerk of Court

**COUNTY OF LEXINGTON
ELEVENTH JUDICIAL CIRCUIT**



**LEXINGTON COUNTY JUDICIAL CENTER
205 EAST MAIN STREET-SUITE 128
LEXINGTON, S.C. 29072**

**LISA M COMER
Clerk of Court**

March 2, 2021

To Whom It May Concern:

Attached is a Notice of Hearing in regards to the above referenced case to which you are a party. Please contact our office to confirm your participation in the hearing, and to also verify contact information to include address, phone number and email. You can reach our office at 803-785-8398 or via email at mhuggins@lex-co.com.

To reach the link, go to the Judicial Branch's website, sccourts.org. Click on the Calendar link, then choose the Monthly View, and click on the date. Each date will have court options (e.g., Circuit, Family, Appeals). After clicking on Circuit, an alphabetical list of all the judges will appear, there is a link below Judge McLeod's name that will give access to any virtual court the Judge is conducting at that time. Once Judge McLeod opens the court session, you may join, but you will be muted. At the appropriate time, the Judge or her law clerk will move you from an "attendee" to a "panelist," and you will be able to participate in the hearing.

Please be advised that taking still photographs, recording (visual or audio), or streaming of any live, virtual, or subsequently broadcasted court proceeding is strictly prohibited unless specifically authorized by the presiding judge pursuant to Rule 605, SCACR.

Thanks,
Lexington County
Court of Common Pleas

Certificate of Electronic Notification

Recipients

James Bradley - Notification transmitted on 03-02-2021 04:45:30 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP3202268

Official File Stamp: 03-02-2021 04:45:17 PM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith , defendant, et al

Document(s) Submitted: Notice/Notice of Hearing Notice/Notice of Hearing

Filed by or on behalf of: Mona Huggins

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

James Edward Bradley for Ashely Suzanne Griffith et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

James John Todd Kincannon for James John Todd Kincannon

James John Todd Kincannon for James John Todd Kincannon

March 3, 2021

The Honorable William P. Keesley
P O Box 10
Edgefield, SC 29824-0010
VIA Email: WKeesleySC@sccourts.org

Mona Huggins
Deputy Clerk
Court of Common Pleas
205 East Main Street
Lexington SC 29072
VIA Email: MHuggins@lex-co.com

Re: James John Todd Kincannon vs. Ashely Suzanne Griffith
C/A No.: 2019-CP-32-02268

Dear Judge Keesley and Ms. Huggins:

This matter is on the March 15, 2021, Non-Jury Roster. Mr. Kincannon has appeared in this lawsuit and several other lawsuits he has filed Pro Se. He has been a member of the South Carolina Bar, but I understand his license has either been suspended or revoked.

In December 2019 Judge Keesley granted summary judgment on behalf of the Defendants in this matter dismissing Mr. Kincannon's claims in full. Mr. Kincannon filed a motion for reconsideration on December 3, 2020. There is some indication in his motion that he never received notice of the 2019 order granting summary judgment.

The motion for reconsideration is pending. It is my understanding it should be heard by Judge Keesley. I do not know whether or not he is currently hearing motions.

In addition, we submitted a counterclaim requesting that the court impose a pre-filing injunction on Mr. Kincannon requiring that he receive the court's permission before suing our law firm or Ms. Griffith in the future as this is not the only lawsuit he has brought against Ms. Griffith or our law firm. As the motion for reconsideration is pending, we do not believe the matter can be tried at this point. While the decision is ultimately up to Judge Keesley and to Ms. Huggins, we believe the case should be continued over until Mr. Kincannon's motion for reconsideration can be considered and ruled upon.

S. Jahue Moore
James Edward Bradley
Sheila McNair Robinson
Christian G. Spradley
William H. Edwards
Stanley L. Myer
Jane H. Down
S. Jahue Moore
John C. Bradley
Melissa K. Moore
William B. Fortin
Ralph Nichols Riley
Lester McGill Bell
Bryan C. Lett
Sierra D. Carr
Nicole E. Jackson
J. Mark Taylor
Robert D. Hazel
C. David Sawyer
Billy C. Coleman
1916-20

The Honorable William P. Keesley
Mona Huggins
March 3, 2021
Page 2

Please have your office contact me if you would like us to file a formal motion requesting that the matter be continued or if some other action is required on our behalf.

Thank you for your consideration.

Sincerely,



James Edward Bradley

/lgi

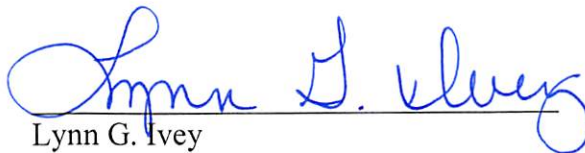
cc: James Kincannon (via First Class mail and email: toddkincannon@gmail.com)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
James John Todd Kincannon,	)	C/A No. 2019-CP-32-02268
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
Ashley Suzanne Griffith	)	
	)	
Defendant.	)	
_____	)	

I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, P.A., certify that I have on this day effected service of the below listed document(s) to James John Todd Kincannon in this action by transmitting by way of electronic mail (email) and by placing a copy of the same in the United States mail in an envelope with sufficient postage affixed thereto addressed as follows:

James John Todd Kincannon
 216 Jones Avenue
 Simpsonville, South Carolina 29681
toddkincannon@gmail.com

DOCUMENT(S): 1. Copy of letter dated March 3, 2021 to The Honorable William P. Keesley and Mona Huggins


 Lynn G. Ivey

West Columbia, South Carolina

March 3, 2021

Certificate of Electronic Notification

Recipients

James Bradley - Notification transmitted on 09-23-2022 03:20:26 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP3202268

Official File Stamp: 09-23-2022 03:19:43 PM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith , defendant, et al

Document(s) Submitted: Motion/Other

Filed by or on behalf of: James Edward Bradley

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

James Edward Bradley for Ashely Suzanne Griffith et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

James John Todd Kincannon for James John Todd Kincannon

James John Todd Kincannon for James John Todd Kincannon

NOTICE OF MOTION SCHEDULING

October 28, 2022



Motion "MOFREE - Motion/Other" for Case: 2019CP3202268 - James John Todd Kincannon VS Ashely Suzanne Griffith , defendant, et al has been added to the following Motions Roster:

146 - CP Motions via Web Ex

This hearing of this motion has been scheduled for 11/28/2022 at 11:00 AM.

The motions roster for the week of November 28, 2022 with Judge Grace Knie has been published to the web. Please check the online roster at sccourts.org for the date and time of your hearing. If this hearing is no longer needed please contact Krystle Willingham at kwillingham@lex-co.com.

To reach the link for your hearing, go the Judicial Branch's website at sccourts.org. Click on the Calendar link, then choose Monthly View, and click on the date. Each date will have court options (e.g., Circuit, Family, Appeals). After clicking on Circuit, an alphabetical list of all the judges will appear, there will be a link below the judge's name that will give access to any virtual court that judge is conducting at that time. Once the judge opens the court session, you may join, but you will be muted. At the appropriate time, the Judge or his/her law clerk will move you from an "attendee" to a "panelist," and you will be able to participate in the hearing.

Mail Notice To:

James John Todd Kincannon
216 Jones Avenue

Simpsonville, SC 29681

Court Info:

Common Pleas
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072-9072

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(803) 785-8212

Respectfully,

Lisa M. Comer
Clerk of Court

Certificate of Electronic Notification

Recipients

James Bradley - Notification transmitted on 10-31-2022 09:47:26 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP3202268

Official File Stamp: 10-31-2022 09:46:48 AM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith , defendant, et al

Document(s) Submitted: Order/Scheduling Order Order/Scheduling Order

Filed by or on behalf of: William P. Keesley

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

James Edward Bradley for Ashely Suzanne Griffith et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

James John Todd Kincannon for James John Todd Kincannon

James John Todd Kincannon for James John Todd Kincannon

Certificate of Electronic Notification

Recipients

James Bradley - Notification transmitted on 11-17-2022 09:18:45 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP3202268

Official File Stamp: 11-17-2022 09:18:31 AM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith , defendant, et al

Document(s) Submitted: Order/Denying Motion to Alter or Amend
Order/Amend

Filed by or on behalf of: William P. Keesley

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

James Edward Bradley for Ashely Suzanne Griffith et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

James John Todd Kincannon for James John Todd Kincannon

James John Todd Kincannon for James John Todd Kincannon

James John Todd Kincannon

216 Jones Avenue
Simpsonville, SC 29681
ToddKincannon@gmail.com

November 9, 2022

By postal mail

Hon. William P. Keesley
P.O. Box 10
Edgefield, SC 29824-0010

Re: James Kincannon v. Ashely Griffith, Appellate Case No. 2019-32-2268
Proceedings on Motion for Reconsideration

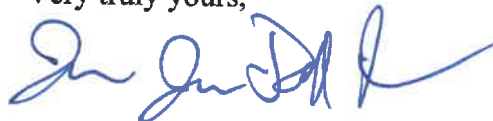
Dear Judge Keesley:

I am in receipt of your order regarding written submissions as to the motion for reconsideration in the above case. The only initial written submission I wish to make is the motion for reconsideration itself, which has already been filed and submitted to your office. I am likely to file a reply to any response to the motion submitted by opposing counsel.

Thank you!

With kindest regards, I remain,

Very truly yours,



James John Todd Kincannon

cc: Ward Bradley (opposing counsel)
Lexington County Clerk of Court (for inclusion in the casefile referenced above)

Certificate of Electronic Notification

Recipients

James Bradley - Notification transmitted on 11-23-2022 09:43:55 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP3202268

Official File Stamp: 11-23-2022 09:43:42 AM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith , defendant, et al

Document(s) Submitted: Letter/Letter Letter/Letter

Filed by or on behalf of: Mona Huggins

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

James Edward Bradley for Ashely Suzanne Griffith et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

James John Todd Kincannon for James John Todd Kincannon

James John Todd Kincannon for James John Todd Kincannon

Certificate of Electronic Notification

Recipients

James Bradley - Notification transmitted on 11-29-2022 08:24:31 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP3202268

Official File Stamp: 11-29-2022 08:24:24 AM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith , defendant, et al

Document(s) Submitted: Order/Electronic Form 4 Order/Electronic Form 4

Filed by or on behalf of: Grace G. Knie

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

James Edward Bradley for Ashely Suzanne Griffith et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

James John Todd Kincannon for James John Todd Kincannon

James John Todd Kincannon for James John Todd Kincannon

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Hon. William P. Keesley, Circuit Court Judge

Civil Case No. 2019-CP-32-2268

Appellate Case No. 2022-_____

James John Todd Kincannon,

Appellant,

v.

Ashely Suzanne Griffith,

Respondent.

NOTICE OF APPEAL

Appellant James John Todd Kincannon respectfully appeals the portions of the Order entered December 13, 2019 which adjudicate the causes of action asserted by Appellant—Plaintiff below—against Respondent—Defendant below—in the Complaint in Kincannon v. Griffith, Civil Case No. 2019-CP-32-2268. Appellant does not presently appeal the portions of the Order of December 13, 2019 which deny Appellant's motion to dismiss Respondent's counterclaims, though Appellant reserves the right to raise those issues in a future appeal once Respondent's counterclaims have been fully adjudicated below.

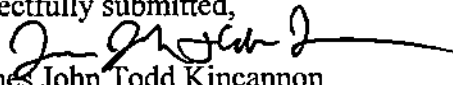
Appellant timely served and filed a Motion for Reconsideration of the Order entered

December 13, 2019, which was denied by an Order entered November 17, 2022. Appellant has never been provided with notice, written or otherwise, that the Order prepared November 17, 2022 has been entered or filed or even finalized, but Appellant recently discovered its filing entry on his own while reviewing the casefile materials available online through the sccourts.org court records system. Appellant respectfully appeals this Order entered November 17, 2022 as well.

The orders at issue are attached as Exhibits 1 and 2 to this Notice of Appeal.

December 13, 2022

Respectfully submitted,


s/James John Todd Kincannon

Other Counsel of Record:

Ward Bradley
Moore Bradley Myers
1700 Sunset Blvd.
West Columbia, SC 29169
Attorney for Respondent

James John Todd Kincannon
216 Jones Avenue
Simpsonville, SC 29681
864-963-4374
ToddKincannon@gmail.com
Appellant Pro Se

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Hon. William P. Keesley, Circuit Court Judge

Civil Case No. 2019-CP-32-2268
Appellate Case No. 2022-_____

James John Todd Kincannon,

Appellant,

v.

Ashely Suzanne Griffith,

Respondent.

CERTIFICATE OF SERVICE

The undersigned Appellant hereby certifies that he has, on the date below, properly served the foregoing on opposing counsel.

December 13, 2022


s/James John Todd Kincannon
James John Todd Kincannon
ToddKincannon@gmail.com

Exhibit 1

Order dated December 13, 2019
in Kincannon v. Griffith,
Civil Case No. 2019-CP-32-2268

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
 JAMES JOHN TODD KINCANNON,	)	
	)	
Plaintiff,	)	ORDER ON DEFENDANT'S
	)	MOTION FOR SUMMARY
vs.	)	JUDGMENT AND PLAINTIFF'S
	)	MOTION TO DISMISS
ASHELY SUZANNE GRIFFITH,	)	
	)	Case No.: 2019-CP-32-02268
Defendant.	)	

Heard: November 19, 2019, at Westbrook/Lexington County Judicial Center
 Plaintiff: Pro Se
 Attorneys for the Defendant: James Edward (Ward) Bradley, Esquire
 Court Reporter: Patricia A. Szoke

This lawsuit is an attempt by the plaintiff to obtain some type of recovery arising from ownership of a residence, an automobile, and perhaps other unspecified property. Effectively, this is an ongoing dispute related to his divorce from the defendant. There are two motions before the court: (1) The defendant moves for dismissal or for summary judgment based on the prior order of the Family Court; and (2) The plaintiff seeks an order dismissing the counterclaim. The motion for dismissal of the Complaint is granted. The motion to dismiss the counterclaim is denied. The Clerk of Court shall docket this case in non-jury court before the Chief Judge for Administrative Purposes to determine the Counterclaim's request for injunctive relief.

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. Summary judgment is not appropriate where further inquiry into the facts of the case is

desired to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusion to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000). South Carolina follows the scintilla of evidence standard.

Dismissal on the pleadings is an especially drastic remedy. It is generally limited to the four corners of the pleadings themselves. Here, the court agrees to look at matters beyond the pleadings, as seemingly requested by both parties.

BACKGROUND

On February 13, 2017, a Family Court judge signed an order of divorce which incorporated a settlement and property division reached by the parties.¹ The parties were married in February 2013, and separated on or about August 26, 2015. Both sides point to the following language in the order:

C. Husband agrees the residence where Wife resides at 306 Springwalk [Spring Walk] Lane, West Columbia, South Carolina 29169 is Wife's separate non-marital property. Husband agrees that Wife has legal title to this residence.

This case may present the most convoluted status of any this court has ever considered, and the Complaint is a hodgepodge of references to various potential legal theories of recovery. The ones specifically mentioned are contract, rescission of contract, and declaratory judgment, though there also vague references to unnamed equitable remedies. In his Complaint, the plaintiff asserts that he is unable to specify all the causes of action that he might be using to seek recovery because he needs to know what the

¹ The wife was represented by counsel. The defendant appeared pro se, but is trained in the law, currently on inactive status with the South Carolina Bar.

defendant's responses will be. In addition, the Complaint has a significant section where the plaintiff poses a series of questions rather than pleading proper assertions. This is not proper pleading. Normally, the court would allow amendment, but this lawsuit is part of a pattern of repeated legal actions filed by the plaintiff against his former wife. In at least one of those actions, a judge has determined that the plaintiff is engaging in misuse of legal process. The court is determining these motions based on matters that are facially apparent.

The Complaint filed May 30, 2019, states:

1. This is an action principally for breach or, alternatively, for rescission of a contract or otherwise enforceable agreement between Plaintiff and Defendant, who were at the time married but separated at the instance of Defendant, entered into an apparently enforceable contract calling for Plaintiff to purchase approximately \$300,000 of property out of his separate non-marital assets and transfer that property to Defendant's possession whereupon the property would become Defendant's separate non-marital property upon Defendant's performance of a marital reconciliation sought by Plaintiff provided the reconciliation occurred within one year of the agreement. Defendant took possession of the property but failed to perform the marital reconciliation within one year of the agreement (or thereafter) and subsequently divorced Plaintiff. Accordingly, Plaintiff maintains this action for breach of contract and related claims such as rescission.² [sic]

In other places in the Complaint, the plaintiff refers to equitable recovery. Initially, the court will address the claim involving real estate.

CLAIMS RELATED TO REAL PROPERTY

The Complaint references that the property was conveyed to the defendant by McGuinn Homes, LLC through deed dated August 29, 2015, recorded September 9,

² The Complaint also makes a claim related to a BMW automobile that was discussed in the divorce decree and considered by this court later in this order.

2015. As indicated above, this would fall immediately around the August 26, 2015 (on or about) date that the Family Court found that the parties separated.³

So, the plaintiff is claiming that there is an enforceable agreement, entered during the separation, while the parties were still married, whereby he agreed to use his non-marital assets of approximately \$300,000 to purchase "property," and that this property, including this residence, would be placed in the defendant's name, subject to the agreement.⁴ He claims that he agreed to give her possession of this residence and that it would become her separate marital property, if she reconciled with him within one year of that alleged agreement. No date has been provided as to when the agreement was entered, but, logically, it had to have been on or before the date of the execution of the deed or, at the very latest, the date the deed was filed on September 9, 2015. Therefore, based on the plaintiff's allegations and the documents in this file, any such agreement had to have been entered within a two-week period in late August or early September of 2015.

According to the Complaint, the plaintiff did more than allow the defendant to have possession during the separation. The property was transferred directly from McGuinn Homes, Inc. to the defendant.

The parties did not reconcile. They were separated for more than a year, and when these parties appeared for their divorce hearing on January 24, 2017, the division of property was still in dispute. At that time, the plaintiff knew that an essential term of this purported contract had not been met: there was no reconciliation within a year. He knew that part of the representation to the Family Court as a settlement enabled the plaintiff to

³ The public record shows that this is a general warranty deed conveying fee simple title, and that it was made in consideration of \$190,153.00 paid to McGuinn Homes.

⁴ The reference to \$300,000 apparently relates to a large number of unspecified expenditures.

obtain a divorce without further delay. Nothing in the divorce decree indicates that the plaintiff specifically reserved any right to seek either this real estate itself or the right to maintain a claim for it. The plaintiff's argument is that such rights were protected by the declaration that the residence is the defendant's non-marital property. As discussed below, this argument ignores his inconsistent act of changing the non-marital status from his own to that of his wife.

South Carolina Code §20-3-630 deals with marital and non-marital property. It reads, in part:

(A) The term "marital property" as used in this article means all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation as provided in Section 20-3-620 regardless of how legal title is held, except the following, which constitute nonmarital property:

(1) property acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse;

(2) property acquired by either party before the marriage and property acquired after the happening of the earliest of:

(a) entry of a pendente lite order in a divorce or separate maintenance action [the court has not been advised of any temporary order];

(b) formal signing of a written property or marital settlement agreement; or

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(3) property acquired by either party in exchange for property described in items (1) and (2) of this section;

(4) property excluded by written contract of the parties. "Written contract" includes any antenuptial agreement of the parties which must be considered presumptively fair and equitable so long as it was voluntarily executed with both parties separately represented by counsel and pursuant to the full financial disclosure to each other that is mandated by the rules of the family court as to income, debts, and assets;

(5) any increase in value in nonmarital property, except to the extent that the increase resulted directly or indirectly from efforts of the other spouse during marriage.

Interspousal gifts of property, including gifts of property from one spouse to the other made indirectly by way of a third party, are marital property which is subject to division.

(B) The court does not have jurisdiction or authority to apportion nonmarital property.

Viewing the evidence in the light most favorable to the plaintiff, there could have been an issue as to whether the house was acquired using non-marital assets that the plaintiff had before the marriage. [See §20-3-630(A)(3) property is non-marital if acquired "by either party in exchange for [non-marital] property described in items (1) and (2) of this section."] The plaintiff anchors his Complaint on §20-3-630(B) and cases that have interpreted jurisdictional requirements establishing that the Family Court lacks jurisdiction to apportion non-marital property. Apportioning or dividing a particular asset is different than considering all the assets of the parties, marital and non-marital, as the Family Court is required to do in evaluating the propriety of the property settlement.

Concerning marital property, §20-3-620 provides, in subsection (B), that "In making apportionment through equitable division, the court must give weight in such proportion as it finds appropriate to all of the following factors: . . . (13) "liens and any other encumbrances upon . . . the separate property of either of the parties, and any other existing debts incurred by the parties or either of them during the course of the marriage . . .[.]" [Emphasis added]. So, the Code appears to require that an encumbrance of any type upon the separate property of either of the parties or any debt incurred during the marriage should be called to the attention of the Family Court in evaluating the propriety of the division of property contained in the decree. There is no indication that the Family Court was apprised of the purported agreement that the plaintiff is advancing in this lawsuit.

The only reasonable construction that the court can determine regarding the plaintiff's position is as follows: 1) he agreed with his wife that he would convert his non-marital assets into a residence, which would become her non-marital property, if she reconciled with him within one year of their separation; 2) she breached the contract by not reconciling; 3) after one year, the parties divorced and entered into a settlement related to their property, which was incorporated into a binding Family Court order; 4) pursuant to the Family Court settlement, the subject residence is established to be the defendant's non-marital property, which is the status that she would have occupied had she reconciled; and, 5) this declaration that the residence is the defendant's non-marital property allows him to bring this action in circuit court to obtain relief based on the original, unfulfilled contract.

The agreement was not in writing. The Statute of Frauds, §32-3-10, provides, in part:

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.

To the extent that the deed might be considered a writing or memorandum, deeds are not signed by the grantee, so there is nothing supplied to the court indicating a writing signed by the defendant. This action concerns an interest in real estate. In addition, it is

an agreement made upon condition of marriage in that it is based entirely on a condition that the defendant reconcile and remain married to the plaintiff, though no term has been advanced as to how long she would be required to remain married to him after the initial reconciliation. Viewing all evidence and all reasonable inferences therefrom in the light most favorable to the plaintiff, the purported agreement cannot be enforced through Common Pleas court because it does not comply with the Statute of Frauds. There is no evidence of a valid cause of action based on breach of contract.⁵

RESCISSION

As for any claim for rescission of contract, the remedy for rescission is to return the parties to the same position they occupied before the contract was entered (the *status quo ante*). The relief in this instance would presumably be some form of restitution, including a cause of action for unjust enrichment, though no such cause of action is specifically pleaded here.

Am Jur 2d – Contracts §513 reads, in part:

V. Modification, Extinguishment, and Renewal, C. Rescission, Termination, or Discharge, 1. Nature of Contractual Rescission, Termination, or Discharge, § 513 - Methods of discharge or termination of contracts

Generally, a contract may be canceled only under its own terms or through mutual agreement. Contracts have the effect of law for the parties and may be dissolved only through the consent of the parties or on grounds provided by law. A contract may be discharged by performance in accordance with its terms, or by the expiration of the time during which it

⁵ To the extent that this claim can be considered by further post-divorce action related to property over which the Family Court lacked jurisdiction, §20-3-620(A) provides:

In a proceeding for . . . disposition of property following a prior decree of dissolution of a marriage by a court which . . . lacked jurisdiction to dispose of the property, and in other marital litigation between the parties, the court shall make a final equitable apportionment between the parties of the parties' marital property upon request by either party in the pleadings.

is to remain operative. In addition, there are several other methods of discharging contracts, including rescission by agreement or by virtue of a contractual provision, rescission for original invalidity, and rescission for failure of consideration or a material breach or default. Parties to a valid contract may rescind or abandon it, or substitute another in its place, or by conduct inconsistent with the continued existence of the original contract estop themselves from asserting any right thereunder.

Definition:

To "rescind" a contract is to abrogate or cancel the contract, unilaterally or by agreement, or to make void; to repeal or annul.

Rescission is an equitable remedy that invalidates an agreement, not a cause of action, which rests on the equitable principle that a person shall not be allowed to enrich him- or herself unjustly at the expense of another.

[Emphasis added]. The effect of the remedy of rescission is generally to extinguish a rescinded contract so effectively that in contemplation of law it has never had existence, and to put or restore the parties to status quo.

The remedy of rescission and restitution is an alternative to damages in an action for breach of contract.

It is difficult to understand how rescinding this alleged contract could result in any benefit in this lawsuit for the plaintiff. In the light most favorable to the plaintiff, if the purported contract were considered never to have existed, the *status quo ante* would be to place the parties in a situation where the defendant would not have the residence and the plaintiff would have the assets that he alleges to have been non-marital. However, that status is one where there would have been no determination by the Family Court that the assets were non-marital. The wife would be able to claim that various assets were marital property, subject to equitable division, and/or that they were separate property of the plaintiff that the Family Court was required to consider under the equitable division standards, which may affect the division of the marital property. As discussed below, what the plaintiff did in Family Court is inconsistent with the granting of relief in this court on the equitable grounds presumably alleged here.

OTHER EQUITABLE RELIEF

If the plaintiff wants to assert some quasi-contract or equitable relief in circuit court, he is precluded because he engaged in an intervening action, inconsistent with preservation of his rights. If he wanted to maintain his right to bring this lawsuit, he was required to have maintained the position in Family Court that the residence is his non-marital property, not convert it to be the wife's non-marital property through the Family Court case. As mentioned previously, §20-3-630(A)(3) declares that property is non-marital if acquired "by either party in exchange for [non-marital] property described in items (1) and (2) of this section." His argument now is that he used his non-marital assets to acquire this residence. He may have prevailed on that issue had he pursued it, but he abandoned that position in the Family Court by converting his purportedly non-marital property into becoming his wife's non-marital property. The mere reference to the property being non-marital, thus outside the jurisdiction of the Family Court to apportion, ignores the distinction between whose non-marital property it is.⁶

Promissory Estoppel:

To the extent that the plaintiff seeks recovery under promissory estoppel, that also fails. In *Satcher v. Satcher*, 351 S.E.2d 477, 570 S.C. 535 (Ct. App. 2002), the court stated:

I. Promissory Estoppel

A contract and promissory estoppel are two separate and distinct legal theories. They "are two different creatures of the law; they are not legally synonymous; the birth of one does not spawn the other." *Duke Power Co. v. S.C. Pub. Serv. Comm'n*, 284 S.C. 81, 100, 326 S.E.2d 395, 406 (1985). Our courts recognize a remedy in equity if the claimant can prove:

- (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3)

⁶ The mere designation of property as non-marital also does not prevent the Family Court from considering that fact and any claim of liens or encumbrances upon the couple's separate property, as cited in the statutes above.

the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.

Woods v. State, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct.App.1993).

The applicability of the doctrine depends on whether the refusal to apply it "would be virtually to sanction the perpetration of a fraud or would result in other injustice." *Citizens Bank v. Gregory's Warehouse, Inc.*, 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct.App.1988). Unlike a contract which requires a meeting of the minds and consideration, promissory estoppel looks at a promise, its subsequent effect on the promisee, and in certain cases bars the promisor from making an inconsistent disposition of the property.

The Complaint alleges no promise on the part of the defendant. To the degree that one might extrapolate from the argument a promise by the defendant to convey the residence to the plaintiff, if the parties did not reconcile within one year, the parties went through a divorce and property division months after the year had expired, and the plaintiff agreed to have the residence determined to be the non-marital property of the defendant, titled in her name.

Equitable Trusts:

- A. Resulting Trust: Equity can enforce through a resulting trust the rights of a person who pays for property that is titled in the name of another person.
- B. Constructive Trusts: Equity can impose a trust upon and enforce rights related to property based on an agreement, understanding, promise, or similar arrangement between parties related to that property.

If the plaintiff desired to proceed by claiming equitable trust, those claims must also fail. Resulting and constructive trusts allow a court in equity to determine whether someone has an interest in property titled in another person's name. But, there are at least a couple of equitable maxims that preclude the plaintiff's relief in circuit court in this instance: 1) Equity aids the vigilant, not those who sleep on their rights; and, 2) Equity

considers as done what ought to have been done. The plaintiff had the ability to maintain his position related to this property when he was in Family Court and, if the court determined the issue in his favor and declared this residence to be his non-marital property, any dispute as to its division would be appropriate in circuit court. If the Family Court determined the residence to be marital property, he could have appealed. Instead, he converted the non-marital property status from himself to his wife, and he now seeks to undo that through this action.

To the extent that case law or §20-3-620(A) may be read to allow the Court of Common Pleas to resolve this dispute, the court finds that it is patently inequitable for the plaintiff to circumvent the Family Court process through this lawsuit.

PERSONAL PROPERTY

The Complaint also seeks relief concerning personal property. The following paragraphs outline those allegations.

6. Plaintiff and Defendant each claim equitable title to an automobile purchased with Plaintiff's funds presently in Defendant's possession.
7. Plaintiff and Defendant each claim equitable title to various other items of tangible personal property purchased with Plaintiff's funds presently in Defendant's possession
8. Plaintiff and Defendant dispute whether Defendant has a contractual, legal, or equitable obligation to reimburse Plaintiff for various payments Plaintiff made for Defendant's benefit for personal property that is either intangible or unreturnable, such as utilities payments, college tuition payments, etc.

These assertions are in direct contravention of the Family Court decree. With the exception of specific provisions concerning a pet and a BMW automobile, the decree makes it clear that the parties agreed that each party would keep the personal property in his or her possession, including any financial accounts, and be responsible for any debts

in their respective names. As for the pet dog, there is an agreement about possession of the pet and what happens in the event that one party is unable to care for the dog. As for the BMW, the decree indicates that the parties knew that the BMW was no longer in the possession of the wife, who had acquired a different vehicle, and each party was given sole ownership of the vehicles in their respective possession. For reasons similar to those discussed above concerning legal and equitable remedies related to the real estate, and based on res judicata and principles of collateral estoppel, the court finds that these portions of the lawsuit concerning personal property, on their face, are things that have been decided by the Family Court and cannot be litigated or re-litigated here.

MENTAL HEALTH

The plaintiff alleges that the agreements that he entered were made at a time when he lacked mental capacity. If he wishes to set aside the Family Court's order, Rule 2 of the SCRFC adopts Rule 60, SCRCP, and the plaintiff must make any application to set aside the Family Court order in that court. This court has no authority to deal with that issue.

PLAINTIFF'S MOTION TO DISMISS THE COUNTERCLAIM

The plaintiff moves to dismiss the defendant's counterclaim which seeks to have the court enjoin the plaintiff from filing lawsuits against the defendant, unless they are pre-cleared for filing by a circuit judge. The plaintiff believes that there is no precedent for such and that it would require the court to adopt a new set of special rules.

Respectfully, he is mistaken. Though it is a drastic remedy, numerous courts, including circuit courts in South Carolina and the South Carolina Supreme Court have taken this

action. [See for example the Supreme Court's rulings related to Dr. Marie-Therese Assa'ad-Faltas.]

Section 15-36-10, et seq., Code of Laws of South Carolina, which is known as the South Carolina Frivolous Civil Proceedings Act, includes in subsection (G)(3) a provision for injunctive relief. There is both precedent and statutory authority for issuing an injunction related to abusive filing. However, before any such injunction can be entered, a hearing would need to be held, preferably before the Chief Judge for Administrative Purposes, to determine the appropriate relief, if any. The motion to dismiss the counterclaim is denied.

THEREFORE, IT IS ORDERED that this Complaint is dismissed and the motion to dismiss the Counterclaim is denied.

[Electronic signature follows on separate page.]



Lexington Common Pleas

Case Caption: James John Todd Kincannon VS Ashely Suzanne Griffith

Case Number: 2019CP3202268

Type: Order/Summary Judgment

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2019-12-12 17:35:37 page 15 of 15

Exhibit 2

Order dated November 17, 2022
in Kincannon v. Griffith,
Civil Case No. 2019-CP-32-2268

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
JAMES JOHN TODD KINCANNON,	)	
	)	
Plaintiff,	)	ORDER ON PLAINTIFF'S
	)	MOTION TO ALTER OR AMEND
vs.	)	DISMISSAL OF COMPLAINT
	)	
ASHELY SUZANNE GRIFFITH,	)	
	)	Case No.: 2019CP3202268
Defendant.	)	

The plaintiff filed a motion for reconsideration and to alter or amend an order entered on December 13, 2019. Having reconsidered the issues raised and the arguments advanced in the motion, it is respectfully denied.

This motion was filed on December 3, 2020, nearly a year after the order. There is an explanation contained in a lengthy footnote in the motion that the plaintiff claims that he did not receive the order and that his filing was timely. Unless the present motion was overlooked, the court learned of it when the Clerk of Court sent a notice on Friday, October 28, 2022. Accepting the assertion that the motion was filed and served in a timely fashion, the parties were notified that the motion will be decided on written submissions, and deadlines for submissions were established in a scheduling order.

The plaintiff has responded that he relies upon what he has previously submitted, and the defense indicated that it will not be providing additional documentation, either. Since the case has a defense motion pending on an upcoming roster, this order is being expedited in an attempt to avoid further delay.

It is the court's opinion that the lengthy order issued on December 13, 2019, explained the basis of each ruling, properly recited the history of the case, and addressed everything that was raised. The court does not feel that any modifications to the order are appropriate.

AND IT IS SO ORDERED.

[Electronic signature follows on separate page.]

**COUNTY OF LEXINGTON
ELEVENTH JUDICIAL CIRCUIT**



**LEXINGTON COUNTY JUDICIAL CENTER
205 EAST MAIN STREET-SUITE 128
LEXINGTON, S.C. 29072**

**Lisa M Comer
Clerk of Court**

December 16, 2022

James John Todd Kincannon
216 Jones Avenue
Simpsonville, SC 29681

Ref: 2019CP3202268 James Todd Kincannon vs Ashley S Griffith

Dear Mr. Kincannon:

Enclosed is a court notice for your case. There is a motion outstanding in your case that needs to be heard. We are planning on scheduling this motion for your case and others during the week of January 3, 2023.

However, we need to hold a meeting beforehand to work out a day and time that is good for all parties. We will be holding an online roster meeting on Friday, December 30, 2022 at 9am to schedule hearings and trials for the following week.

There are two ways for you to participate in the roster meeting. You can appear at the Lexington County Courthouse on Friday, December 30, 2022 at 8:45 am and I will have a computer set up for you to appear for the roster meeting.

Otherwise, you can call in and participate by phone at 1-408-418-9388 toll free- Access code: 2344 393 9258/ Password for Call In Users: 7252.

Please feel free to contact me with any questions.

Thanks,

Mona Huggins
Deputy Clerk
Court of Common Pleas
803-785-8398
mhuggins@lex-co.com

NOTICE OF CASE SCHEDULING

December 06, 2022



Case 2019CP3202268 - James John Todd Kincannon VS Ashely Suzanne Griffith , defendant, et al has been added to the following Court Roster:

Roster ID: 215 - Non Jury Roster Week of Jan 3 2023 Judge Keesley & Judge McLeod

This case has been assigned as priority 2 of 19 cases scheduled for the court period of 1/3/2023 through 1/6/2023

The Non Jury trial roster for the week of January 3, 2023 has been published to the web. You can access this roster at <https://publicindex.sccourts.org/lexington/courtrosters/>. The roster meeting will be held on Friday December 30, 2023 at 9am through the virtual courtroom with Judge Walton J McLeod.

Please provide any updates on the status of this case to Mona Huggins mhuggins@lex-co.com and Judge McLeod at wjmcleodj@sccourts.org and wjmcleodlc@sccourts.org.

Mail Notice To:
James John Todd Kincannon 216 Jones Avenue Simpsonville, SC 29681

Court Info:
Common Pleas Lexington County Judicial Center 205 East Main Street Lexington, SC 29072-9072

If you have any questions regarding the scheduling of this case, please contact the courts at:

(803) 785-8212

Respectfully,

Lisa M. Comer
Clerk of Court

RECEIVED

Jan 08 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Hon. William P. Keesley, Circuit Court Judge

Appellate Case No. 2022-001749

James John Todd Kincannon,

Appellant,

v.

Ashely Suzanne Griffith,

Respondent.

**APPELLANT'S RULE 210(g) CERTIFICATION
AND CERTIFICATE OF SERVICE**

Appellant hereby certifies that the foregoing contains all material proposed to be included by any party and not any other material. Appellant further certifies that the foregoing has been properly served on counsel for Respondent.

Other Counsel of Record:
Ward Bradley
Moore Taylor Law Firm
1700 Sunset Blvd.
West Columbia, SC
Attorney for Respondent

James John Todd Kincannon
216 Jones Avenue
Simpsonville, SC 29681
864-963-4374
ToddKincannon@gmail.com
Appellant Pro Se