

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Ninth Circuit Court Judge

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

J. K. Holmes,

Respondent,

v.

C. E. Holmes,

Petitioner.

Motion to Reconsider and Petition for Rehearing on the Motion for Clarification and Amended Motion to Reconstruct the Record Where No Recording of the Trial Court Hearing can be Located by SCCA, in Stark Contrast to Recordings for all Other Hearings on the Same Day

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Pursuant to the South Carolina Constitution including but not limited to, Article V, § 4 and Article I, § 9, petitioner respectfully requests reconsideration and rehearing. Significantly and materially, the record reflects no opposition to the requested relief including sealing the record in this Honorable Court. It is respectfully submitted that the opinion is based on error of material fact and law and/or is internally inconsistent. Accordingly, under these facts and in the interest of transparency, even-handedness, and fundamental fairness, petitioner requests the October 3, 2023, opinion be altered or amended.

As a threshold matter, the opinion is based on error of material fact in that the false defamatory statements occurred in this Court not in the Court of Appeals: The petitioner requests sealing the matter in this Court. Further, the opinion overlooks petitioner's identification of opposing counsel's wrongdoing and false defamatory statements throughout this appeal, including but not limited to, the first sentence of the Argument on page two (2) of opposing counsel's return herein dated June 7, 2023. Pursuant to the South Carolina Constitution including Article V, § 4, this Honorable Court has the duty to regulate the practice of law in South Carolina as well as to determine who practices in this state. It is fair to say opposing counsel's false defamatory statements were made without an independent investigation of the facts: Opposing counsel impugned the petitioner and petitioner's professional integrity by publishing false defamatory statements with callous disregard over the internet in order to inflict ongoing injury to the petitioner and to prejudice the case while co-opting this Honorable Court as an unwitting accomplice in his wrongdoing. Under the facts and in an analogous setting, such libel is actionable per se with presumed damages. Opposing counsel should and would object if he were the target of such false defamatory statements. Under these facts, it is respectfully submitted the Court has an interest in confirming good standing, in routinely issuing Certificates of Good Standing, and in sealing the record to mitigate ongoing injury with dissemination of false defamatory statements to the

contrary. The totality of circumstances and the record support the petitioner's respectful request to seal the record in this Honorable Court.

Moreover, pursuant to the South Carolina Constitution including Article V, § 4 and statutory law including S.C. Code §§ 63-3-510 to 63-3-510 (2010 and Supp. 2014) and S.C. Code § 20-3-690 (2014), this matter involves marital property subject to equitable distribution in the exclusive and original jurisdiction of the Family Court. The petitioner is an intended beneficiary of that law as a former spouse and owner of undivided interests in marital property. The proper forum is the Family Court. This Family Court matter is subject to the same confidentiality as all other Family Court cases, which is hereby requested. To the extent there is ambiguity, the rule of lenity supports petitioner's request to seal the record in this Honorable Court.

With regard to *In re Capital U-Drive-It, Inc.*, 630 S.E.2d 464, 470 (2006), that case is inapposite: The *U-Drive-It* case, *supra*, involves unsealing a record which overlapped with a criminal case involving that party's guilty plea to employee embezzlement. That case is an appeal which applies an abuse of discretion standard on review of an order unsealing the record. In the instant case, the totality of circumstances and the record herein support sealing the record. Further, the SCACR, not the SCRCR, are the applicable rules. Even assuming, Rule 41.1, SCRCR, applied, that Rule provides, "However, the Court recognizes that as technology advances, court records will be more readily available and this Rule seeks to balance the right of public access to court records with the need for parties to protect truly private or proprietary information from public view and to insure that rules of court are fairly applied." Rule 41.1, SCRCR. Proprietary interest refers to property, that is, things which are owned by individuals or businesses. In this case, the petitioner's proprietary interests include petitioner's professional reputation and license owned by the petitioner. Opposing counsel's false defamatory statements should be sealed to mitigate ongoing injury to petitioner's proprietary interests. It is respectfully submitted there is no State or federal Constitutional right of opposing

counsel to use this Honorable Court to publish and disseminate over the internet in perpetuity false defamatory statements injuring the petitioner.

With respect to reconstructing the record in the trial court, time is of the essence in order to provide adequate record for meaningful review on future appeal, if any. New case law, previously unavailable, supports petitioner's position:

Article V, § 5 of the South Carolina Constitution and section 14-3-310 of the South Carolina Code provide, "The Supreme Court shall have power to issue writs or orders of . . . certiorari . . ." Pursuant to this authority, we may use a common-law writ of certiorari to correct errors of law, particularly where a trial court exceeded its authority. See *City of Columbia v. S.C. Pub. Serv. Comm'n*, 242 S.C. 528, 532, 131 S.E.2d 705, 707 (1963) ("A writ of certiorari is used to keep an inferior tribunal within the scope of its powers." (citing *Ex parte Schmidt*, 24 S.C. 363, 364 (1886); *State ex rel. Martin v. Moore*, 54 S.C. 556, 560, 32 S.E. 700, 701 (1899))); *State v. Ansel*, 76 S.C. 395, 412, 57 S.E. 185, 191 (1907) ("The writ of certiorari is issued by a superior Court to an inferior judicial or quasi-judicial tribunal or officer to certify the record of trial to the superior Court for its review to ascertain whether the inferior tribunal . . . exceeded its powers, or committed substantial errors of law, but not to review the facts." (citing *Ex parte Riggs*, 52 S.C. 298, 302, 29 S.E. 645, 646 (1898))).

State v. Jeroid J. Price, S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023.

In addition, Footnote 5 of that case provides, "We recently stated we may issue a common-law writ of certiorari whenever we find 'exceptional circumstances exist' to warrant our doing so." *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 471, 674 S.E.2d 154, 160 (2009) (internal citation omitted). *Id.*, fn.5.

As in the *Price* case, *supra*, a common law writ of certiorari provides for review of the trial court in this matter. As in the *Price* case, *supra*, there is no record of the impermissible *ex parte* proceeding in the trial court, therefore, no statutory authority which renders the trial court order void/voidable.


“Section 14-5-10 of the South Carolina Code (2017) provides, ‘The circuit courts herein established shall be courts of record’ The circuit court’s hearing ... must be recorded.” *State v. Jeroid J. Price*, S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023. *See Orpiano v. Johnson*, 687 F.2d 44 (4th Cir. 1982) (“(F)ailure even to have a transcript filed ... was reversible error.”).

Moreover, petitioner’s constitutional right to meaningful review is denied where the passage of time prevents adequate reconstruction of the hearing in the trial court for meaningful review. Reconstruction of that hearing in the trial court is even more urgent for future appeal, if any, in this matter given opposing counsel’s pattern and practice of false defamatory statements in this Court. Likely, the same or similar wrongdoing occurred in the trial court: Curiously, no recording of the hearing in question can be located, in stark contrast to recordings for all other hearings on the same day. Denying timely reconstruction of the trial court record denies meaningful appellate review and escapes judicial review which is capable of repetition and incapable of vindication on appeal.

In addition, pursuant to Constitutional and statutory law, including Article V, § 5 of the South Carolina Constitution and section 14-3-310 of the South Carolina Code, the *Laffitte* case found that this Court may issue a writ of certiorari including common law writ of certiorari when exceptional circumstances exist despite an order not being directly appealable. *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 471, 674 S.E.2d 154, 160 (2009); *State v. Jeroid J. Price*, S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023. The remittitur was returned in error and should be recalled. The record reflects the petitioner timely filed the Motion to Reconsider and Petition for Rehearing on Matters Not Governed by Rule 242, SCACR. To the extent a staff member of the state court of last resort exceeded his scope of ministerial duties by interpreting the law and/or refusing to file, petitioner objects. Accordingly, the timely Motion to Reconsider and Petition for Rehearing on Matters Not Governed by Rule 242, SCACR. Is incorporated in full by reference and should be heard on the merits.

For substantial justice affecting substantial rights and given the totality of circumstances, the petitioner seeks a comprehensive resolution. This involves immediate reconstruction of the trial court record. The absence of a transcript or record impedes the prospects of meaningful review on future appeal, if any, rendering the petitioner unfairly prejudiced. Accordingly, the petitioner prays for sealing the record herein, remand to the trial court for reconstruction of the record, consideration of the timely Motion to Reconsider and Petition for Rehearing on Matters Not Governed by Rule 242, SCACR. and/or common law writ of certiorari.

Respectfully submitted,


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