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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2023-001497

Ronald Carl Cox, III Appellant

v.

Michael John DiMaggio Respondent.

**APPELLANT’S RETURN TO RESPONDENT’S MOTION TO EXCLUDE
CERTAIN MATTER DESIGNATED BY APPELLANT FROM THE RECORD OF
APPEAL**

The Appellant hereby responds to Respondent’s Motion to Exclude Certain Matter Designated by Appellant from the Record of Appeal. The Appellant shows unto this Honorable Court that such items were properly submitted to the Court for consideration.

Specifically, the Appellant shows that these items had been previously filed with the trial Court, argued by counsel during Respondent’s Motion to Dismiss, and referenced on multiple occasions in both arguments and supplemental submissions by the parties to the Trial Court

- 4. Email correspondence between the Appellant’s counsel’s staff and Judge Letitia Verdin and her staff regarding Motion for Publication from September 15, 2022 with five (5) attachments.***

1. Affidavit of Lauren Lipscomb produce on September 14, 2022

22. Order of Protection granted by the Thirteenth Judicial Circuit Judge on September 7, 2023.

The Appellant shows unto this Honorable Court that the Affidavit of Lauren Lipscomb was filed with the Court of Common Pleas via electronic filing on September 30, 2022 at 16:03 EST, attached to the Petition for Order on Publication. Ms. Lipscomb's Affidavit was also referenced throughout the Defendant's Motion to Dismiss heard on July 23, 2023.

Additionally, the Appellant argues that his Order of Protection while Appellant's counsel was out recovering from major cervical fusion surgery, which was granted by the Thirteenth Judicial Circuit on September 14, 2022, as well as correspondence with Judge Letitia Verdin, is in the Court's file and was referenced and argued at multiple points during the Defendant's Motion to Dismiss heard on July 23, 2023. As on Order of this trial Court, both General Sessions and Common Pleas, said Order of Protection would have been a part of the Court's filing and entered upon its issuance by the trial Court.

The Appellant shows that the correspondence with Judge Letitia Verdin shows diligent efforts by the Appellant. For an Order of Publication to be granted, one must show diligent effort that attempt(s) at service were made. Diligent effort was made to serve the Respondent, Michael John DiMaggio, as he avoided service at all costs. After multiple service attempts, Appellant's staff was directed by Mr. DiMaggio to send the Summons and Complaint to an attorney who previously represented him in the past, C. Austin McDaniel of Anderson, South Carolina. Mr. Wilson quickly advised Appellant that he was not authorized to accept service, which does not abide by the rules set forth of the South Carolina Rules of Civil Procedure. Once Appellant

received correspondence from Mr. McDaniel, a Motion for Order of Publication within one (1) week.

For the reasons shown above, the Appellant requests that this Honorable Court denies the relief sought by the Respondent, and that Items 4 (*and sub-part 1*) and 22, should be accepted by this Honorable Court as properly included.

Dated this 5th day of April, 2024.

BY: **PETTUS | FARNSWORTH, LLC**

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