

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G, Benjamin, Circuit Court Judge

RECEIVED
JUN 13 2012

Case No. 2010-CP-40-5018 SC Court of Appeals

Maureen Blackwell and
Walter L. Blackwell, III,

Appellants,

v.

Janis Birket, Jeromy Birket

Respondents

NOTICE OF APPEAL

Walter L. Blackwell, III, and Maureen Blackwell appeal the Order and Judgment of the Honorable DeAndrea G, Benjamin, dated February 1, 2012, and May 29, 2012. Appellants received written notice of entry of the Court's Order denying such motion on June 6, 2012.

6/14/2012


Walter L. Blackwell III


Maureen Blackwell

840 S. Rancho, Dr. 4-428
Las Vegas, Nv. 89106
(803)381-2654
Appellants pro se

Other Counsel of Record
Desa Ballard
226 State St
West Columbia, South Carolina 169
(803) 796-1066
Attorney for Respondents

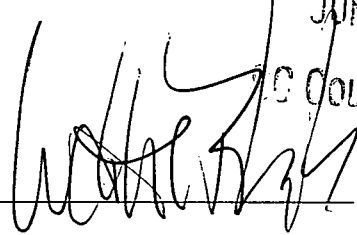
CERTIFICATE OF SERVICE

I CERTIFY THAT, ON THE BELOW DATE, I SERVED A COPY OF THE
NOTICE OF APPEAL IN A CIVIL CASE

in this action on the parties and counsel of record by placing a copy thereof in the
United States Mail, postage prepaid to the following address:

Desa Ballard
226 State St
West Columbia, SC 29169

DATED: 6/14/2012

RECEIVED
JUN 13 2012
Court of Appeals


64608

Walter L. Blackwell III
840 S. Rancho Dr.
4-428
Las Vegas, Nv. 89106
(803) 381-2654

6/14/12

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Jeanette McBride
Clerk of the Court
Richland County Judicial Center
P.O.Box 2766
Columbia, S.C. 29202

RECEIVED
JUN 18 2012
SC COURT OF APPEALS

RE: Janis and Jeromy Birket, Respondents, v. Walter and Maureen Blackwell,
Appellants Case No. 2010-CP-40-5018

Dear Ms. Kitchings and Ms. McBride:

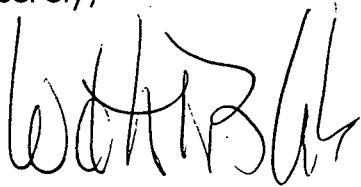
Enclosed for filing is a Notice of Appeal in the above case. Also enclosed
are the following:

- (1) Proof of service of the notice of appeal on the respondents.
- (2) A copy of the Orders and Judgments of February 12, 2012 and May 29,
2012, which are to be challenged on appeal.
- (3) With Ms. Kitchings copy, a filing fee of \$100.

I have also enclosed a copy of this letter with each letter. Please stamp the
copies with a date stamp that will indicate this items have been received and

filed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Walter L. Blackwell', written in a cursive style.

Walter L. Blackwell
840 S. Rancho Dr.
4-428
Las Vegas, Nv. 89106
Appellant pro se

cc: Desa Ballard
226 State St
West Columbia, South Carolina ~~169~~ 29169
(803) 796-1066
Attorney for Respondents

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER **2010CP4005018**

Janis Birket
Jeromy Birket
PLAINTIFF(S)

Walter L Blackwell III
Maureen Blackwell
DEFENDANT(S)

JUN 13 2012

SC Court of Appeals

Submitted by: _____ Attorney for : Plaintiff Defendant or Self-Represented Litigant

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. No. Suit); 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 _____
- 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

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 1 February 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Desa Ballard
Stephanie Nichole Weissenstein

Walter L Blackwell III
Maureen Blackwell

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Janis Birket and)
Jeromy Birket,)
Plaintiffs,)
vs.)
Walter L. Blackwell III and)
Maureen Blackwell,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-5018

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT, DISMISSAL AND
FOR SANCTIONS**

RICHLAND COUNTY
FILED
2012 FEB - 1 AM 10:07
JANETTE W. MCBRIDE
C.C.P. & G.S.

**MOTION TO DISMISS AND
MOTION FOR SUMMARY JUDGMENT**

THIS MATTER CAME BEFORE ME for hearing on January 17, 2012, on motions for summary judgment and to dismiss filed by Plaintiffs, and on a motion for sanction filed by counsels for Plaintiff. Memoranda of law were submitted to the Court by Defendants Walter and Maureen Blackwell in opposition to these motions both on December 9, 2011 and on or around January 10, 2012. Defendants stated, in the January 10 *Supplement to Opposition to Motion for Summary Judgment, Opposition to Motion for Sanctions and Request for Dismissal* that “Defendants waive oral argument and submit on the previously filed opposition and this supplement thereto.” I find that Defendants had notice of this hearing.

Therefore, having reviewed Plaintiff’s *Motion for Summary Judgment and Motion to Dismiss Without Prejudice*, the *Motion for Sanctions* submitted by counsels for Plaintiff with the documents filed therewith, including orders of this Court, orders of the Richland County Family Court, orders of the South Carolina Court of Appeals and orders of the Supreme Court of South Carolina, and the Defendants’ memoranda in opposition as set forth, I hereby conclude that the following undisputed facts support the relief ordered herein:



Plaintiff Janis Birket is the daughter of Defendants Blackwell. She and her husband, plaintiff Jeromy Birket, filed their complaint in this matter on July 28, 2010, seeking against the Blackwells damages arising out of the multitude of litigation and appellate procedures enacted against them by the Blackwells. At the time of filing, the Plaintiffs alleged abuse of process, malicious prosecution, intentional infliction of emotional distress and statutory claims. By their motion, pursuant to Rule 41(A)(2), SCRCP, the plaintiffs Birket seek to dismiss, without prejudice, certain causes of action to enable this matter to be concluded on the first and sixth causes of action. Their motion to dismiss is GRANTED. Therefore, the second, third, fourth and fifth causes of action set forth in the complaint hereto are dismissed, without prejudice.

As to their first and sixth causes of action, for abuse of process and intentional infliction of emotional distress, the Plaintiffs' motion for summary judgment is GRANTED. Based on the materials I reviewed in this matter and on the law of this case, as set forth in the orders of other courts of competent jurisdiction, I find there are no material questions of fact as to those causes of action.

The Plaintiffs' counsel announced to the Court that damages in this case are unliquidated and requested that this Court address the damages to be awarded to them under the first and sixth causes of action at a bifurcated hearing, to be scheduled for a date after the court's ruling on this motion for summary judgment. The request is GRANTED, and this matter shall be placed on the first available non-jury motions docket for a hearing on the damages. Defendants shall be given written notice of the hearing, despite their written waiver of the right to appear at the merits hearing. Additional notice via email is optional.

MOTION FOR SANCTIONS

Former third-party defendants, who are or have been the counsel for Plaintiffs in this or the various cases involving the Blackwells, Desa Ballard, Kathy Schillaci and Stephanie Weissenstein, The Law Offices of Desa Ballard (e.g. Ballard Watson Weissenstein) and The Law Offices of Joseph M. McCulloch, Jr. (sic) (herein “the moving parties”), move this Court for an order imposing sanctions upon the defendant Walter Blackwell pursuant to S.C. Code §15-36-10 (Supp. 2010), and Rule 11, SCRPC.

During the course of litigation of this matter, Defendant Walter Blackwell¹ filed third party complaints against the moving parties in this action arising from mediation. That matter came before me on or around August 30, 2011 for hearing the moving parties’ motion to dismiss the third party complaint. By order dated September 26, 2011, I granted the moving parties’ motions to dismiss Walter Blackwell’s claims against them.

Unbeknownst to this Court at the time of the prior order, on September 22, 2011, in a collateral proceeding, the Supreme Court of South Carolina determined both that the claims filed in this action against the moving parties, as well as other claims filed by Mr. Blackwell, were frivolous. The Supreme Court granted injunctive relief preventing Mr. and Mrs. Blackwell from making further claims, as defined by the Court in its order.

I conclude now that Defendant Mr. Blackwell lacked a good faith basis for alleging the matters set forth in the causes of action asserted against these parties and he filed claims against these parties and others maliciously, in bad faith, and for ulterior purposes. The moving parties have incurred costs and expenses in connection with the defense of this action, which was frivolous, malicious, and otherwise unwarranted. The pleadings filed against the moving parties by Mr. Blackwell violated Rule 11, SCRPC, so as to entitle these parties an award of costs and

¹ Defendant Mrs. Blackwell did not join her husband in asserting a claim against the moving parties.


expenses as permitted by law, as a result of having to respond to this proceeding. The moving parties are further entitled to recover costs and sanctions against Mr. Blackwell pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act.

THEREFORE, the *Motion for Sanctions*, is granted. This matter shall be placed on the first available non-jury motions docket for a hearing on damages and sanction amount.

For the reasons set forth above, I find and ORDER the following:

- A. The Motion for Summary Judgment by Plaintiffs is GRANTED.
- B. The Motion to Dismiss the second, third, fourth and fifth causes of action is GRANTED, without prejudice.
- C. The Motion for Sanctions against Defendant Walter Blackwell is GRANTED.
- D. The Non-jury docketing clerk shall calendar this case on the next available motions roster for a hearing to ascertain the amount of damages and sanctions awarded hereby.

IT IS SO ORDERED.



DeAndrea G. Benjamin
Circuit Court Judge
Fifth Judicial Circuit

This 30 day of January, 2012
Columbia, South Carolina

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

CASE NUMBER: **2010CP4005018**

Janis Birket

Walter L Blackwell III

Jeromy Birket

Maureen Blackwell

PLAINTIFF(S)

DEFENDANT(S)

RECEIVED
JUN 13 2012

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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- 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.
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 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 _____
- 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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		\$
		\$

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Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on 29 day of May, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

Desa Ballard

Stephanie Nichole Weissenstein

Walter L Blackwell III

Maureen Blackwell

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Walter L Blackwell III

Jeanette W McBride
Clerk of Court, Jeanette McBride

Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Janis Birket and)
 Jeromy Birket,)
) Plaintiffs,)
 vs.)
)
 Walter L. Blackwell III and)
 Maureen Blackwell,)
) Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 CASE NO.: 2010-CP-40-5018

ORDER AND JUDGMENT

JEANETTE W. McBRIDE
 C.C.P. & G.S.
 2012 MAY 29 PM 2:58
 RICHLAND COUNTY
 FILED

By order dated February 12, 2012, this Court granted summary judgment to plaintiffs, Janis and Jeromy Birket, against Walter L. Blackwell III and Maureen Blackwell, on the first and sixth causes of action. The matter was bifurcated for a hearing on damages at a later date. The Birkets dismissed their remaining causes of action¹. There has been no appeal from the February 23, 2012, order.

By the same order (dated February 12, 2012), this Court granted a motion by the Birkets' counsel, Kathy Schillaci, Desa Ballard, Stephanie Weissenstein, and Law Offices of Desa Ballard (hereafter "the Birkets' counsel), to award sanctions against Walter Blackwell. By order dated September 26, 2011, the court had dismissed Mr. Blackwell's claims against the Birkets' counsel in this action for conspiracy to file a frivolous lawsuit, conspiracy to commit abuse of process, and abuse of process.

At a hearing on March 1, 2012, the Court took testimony for the purpose of determining the amount of damages to be awarded to the Birkets on their first and sixth causes of action, and the amount of sanctions against Walter Blackwell for his frivolous filings against the Birkets'

¹ The Blackwells had filed memoranda in opposition to the motion for summary judgment, and were given notice of the hearing, but did not appear at the hearing.

counsel². Additional evidence was submitted by affidavit on the issue of damages after the hearing, without objection. The Birkets withdrew their request for an award of punitive damages.

AWARD OF SANCTIONS AGAINST WALTER BLACKWELL

At the hearing, the Birkets' counsel submitted affidavits of attorney fees which included the time they had spent in defending themselves from Mr. Blackwell's claims against them, as well as the costs they had incurred. I find that the affidavits represent an accurate accounting of time spent, the amount of fees requested are reasonable, and represent time lost by the Birkets' counsel in defending themselves from the frivolous claims asserted by Mr. Blackwell. Had the Birkets' counsel not had to defend themselves in the action brought by Walter Blackwell, they could have spent that time working for other clients at their regular hourly rates.

The affidavits of attorney fees include both time spent by the Birkets' counsel in defending themselves, as well as the time spent presenting and pursuing this case. In reviewing these affidavits and the record in this matter, I conclude that that an amount of \$15,000.00 is an appropriate amount of attorney fees to be awarded to Desa Ballard as sanctions against Walter Blackwell. I further find that Stephanie Weissenstein and Kathy Schillaci should be awarded an amount of \$10,000 each for their defense of the claims asserted against them by Walter Blackwell. In so doing, the court has considered the factors set forth in Rule 1.5 and in applicable case law regarding the reasonableness of attorney fees, the standing of counsel, the novelty of the issues presented, the contingency of compensation, and all relevant factors.

² The clerk's file reflects proof of service of notice of the damages hearing served on Walter and Maureen Blackwell on February 22, 2012 and February 23, 2012, by United States mail and electronic mail. It also contains an email from Walter Blackwell to Desa Ballard dated February 22, 2012 advising that he and his wife were "unable to attend this hearing and present evidence," citing to a Supreme Court order. It is undisputed that the Blackwells had notice of the March 1, 2012 hearing and elected not to attend.

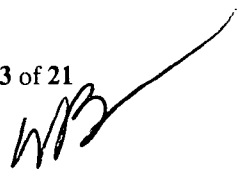
For the reasons set forth above, the court enters judgment in favor of Kathy Schillaci against Walter Blackwell in the amount of \$10,000.00, in favor of Desa Ballard against Walter Blackwell in the amount of \$15,000.00, and in favor of Stephanie Weissenstein against Walter Blackwell in the amount of \$10,000.00. These awards represent reasonable attorneys' fees and costs to the Birkets' counsel for having to defend themselves from the frivolous claims by Mr. Blackwell.

While the court has authority to award additional sanctions, including a fine payable to the court, and the circumstances of the filings against the Birkets counsel would support it, in light of the other relief granted herein, no additional sanctions will be imposed against either of the Blackwells at this time.

JUDGMENT IN FAVOR OF JANIS AND JEROMY BIRKET
AGAINST WALTER AND MAUREEN BLACKWELL

In addition to the materials already before the Court as a result of the Plaintiffs' Motion for Summary Judgment, the court took testimony from plaintiffs Janis Birket and Jeromy Birket, and received exhibits introduced by the Birkets. That testimony, the records of this and other courts (of which this court takes judicial notice), together with the facts already established of record, supports, and the court so finds, the following findings of fact:

1. Plaintiff Janis Birket and her husband, plaintiff Jeromy Birket, filed their complaint in this matter on July 28, 2010, seeking against the Blackwells damages arising out of the multitude of litigation and appellate procedures enacted against them by the Blackwells.
2. Defendant Walter L. Blackwell III is a retired state court judge from the State of California.
3. Defendant Maureen Blackwell is Walter Blackwell's wife.

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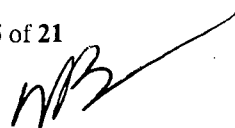
4. The Blackwells are the natural parents of Petitioner Janis Birket. Janis Birket is married to Jeromy Birket. The Birkets have two (2) minor children: a daughter aged 10 and a son aged 4. The daughter is referred to herein as "Jane Doe."
5. The Blackwells are apparently quite wealthy, but as the litigation described herein has escalated, it appears they have secreted many of their assets behind shell corporations and otherwise hidden them to make legal redress by the Birkets difficult, if not impossible, as set forth in the statement of defendants' assets submitted by Plaintiffs, with exhibits.
6. Mr. Blackwell suffered a serious illness in February 2002, when Jane Doe was an infant. As he recovered physically, Mr. Blackwell developed an obsession with Jane Doe.
7. After trying less restrictive means to curb his visitation requirements, the Birkets moved to South Carolina in 2005 to distance themselves from the Blackwells. They determined that Mr. Blackwell's obsession with their minor daughter was detrimental to Jane Doe's well-being. Mr. Blackwell has only recently acknowledged the existence of the Birket's younger child.
8. Soon after the Birkets' move to South Carolina, the Blackwells decided to remove their own ties in California and moved to South Carolina too. Faced with the Blackwells in their (new) backyard, the Birkets attempted to allow the Blackwells some presence in their lives and in the lives of their children in effort to achieve some form of normalcy for all involved.
9. On March 28, 2008, four days after they celebrated Easter together, the Birkets were served with a summons and complaint filed in the circuit court for Richland County,



filed *pro se*³ by the Blackwells, which sought to enforce a “contract” under which the Blackwells claimed to be entitled to unfettered access to Jane Doe. Case No. 2008-CP-40-2260. This action is referred to herein as “the contract action.” In conjunction with the contract action, the Blackwells, *pro se*, also filed a *lis pendens* against property owned by the Birkets in Richland and Kershaw Counties, including the Birkets’ home.

10. The Birkets were required to obtain a restraining order from a magistrate after the Blackwells showed up unannounced at Jane Doe’s school soon after the Birkets were served with the pleadings in the contract action. This followed a series of events in which one or both of the Blackwells were stalking the Birkets at their home at various hours of the day and night, and included the Blackwells’ use of a truck without license tags. This action is referred to as “the restraining order action.” The restraining order was upheld by the Honorable John M. Milling in Case No. 2008-CP-40-04169. The Blackwells’ *pro se* appeal to the Court of Appeals was dismissed by order dated June 30, 2010.
11. In the midst of the civil litigation, Walter Blackwell attempted to initiate criminal proceedings against Jeromy Birket after the two encountered each other on a public highway. The State declined prosecution.
12. The contract action was dismissed by the circuit court. The Blackwells filed numerous *pro se* appeals and continued to try to file additional *lis pendens* against the Birkets’ home, causing the Birkets to eventually to lose their home after attempted sales were thwarted by the repeated filings of *lis pendens*. The Birkets were also kept

³ Maureen Blackwell is not a lawyer. It appears that Mr. Blackwell prepares all pleadings, and then has his wife execute her own signature as a “pro se” litigant.



from building a home, pursuant to a contract with Schumacher Homes, on land they had purchased for that purpose. The South Carolina Supreme Court finally intervened in November 2009, when it denied the Blackwells' two petitions for writ of mandamus seeking to require the Clerk of Court of Appeals to accept their motion for filing of and to file a *lis pendens*. In the order, the Supreme Court reminded the Blackwells of the court's power to impose sanctions for frivolous filings.

13. The Court of Appeals affirmed the order of the circuit court in the contract action in an unpublished order dated June 28, 2010, re-filed November 15, 2010. *Blackwell v. Birket*, 2010-UP-33. The Blackwells filed a Petition for Writ of Certiorari before the Supreme Court, which was denied by order dated September 22, 2011.
14. On or about October 15, 2008, the Blackwells filed, again *pro se*, a second circuit court action against the Birkets for declaratory relief in which they sought an order allowing the Blackwells to send gifts to Jane Doe and allowing them to post billboards throughout the county proclaiming their love for Jane Doe. That action was assigned Case No. 2008-CP-40-07431. The second circuit court action is referred to as "the billboard action."
15. The circuit court dismissed the billboard action. That order was not appealed.
16. On or about November 7, 2008, the Blackwells filed a family court action in Richland County both against the Birkets and 20 unnamed defendants seeking to obtain a court order mandating the Birkets to permit them access to Jane Doe, and for other relief. That action is referred to herein as "the family court action" and was assigned Case No. 2008-DR-40-4167.

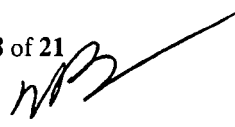


17. The family court action was dismissed and an award of sanctions in the amount of \$2500.00 was entered against the Blackwells. The South Carolina Court of Appeals issued an order affirming the dismissal of the action and the lower court's award of sanctions. The judgment remains unpaid. A collection action is pending. *Janis and Jeromy Birket v. Blackwell et al.*, Case No. 2011-CP-42-7530.
18. On or about July 21, 2009, Walter Blackwell filed a new civil action against Jeromy Birket, individually, as well as 20 unnamed John Doe defendants, Circuit Court Judge L. Casey Manning (who has issued a prior order in the contract action), and the Birkets' lawyers, Joseph M. McCulloch and Kathy Schillaci⁴. This action was assigned Case No. 2009-CP-40-5161 and is referred to herein as "the Manning action."
19. The Attorney General's office was retained to represent Judge Manning. Mr. McCulloch and Ms. Schillaci were required to put their professional liability carriers on notice and counsel was retained by the carrier to defend Mr. McCulloch and Ms. Schillaci. Because of concern for conflict between them created by Blackwell's filing of suit against the Birkets' counsel, Mr. McCulloch and Ms. Schillaci felt it was their client's best interest that they step aside as counsel while the claim against them was pending.
20. The Birkets therefore retained Desa Ballard and Stephanie Weissenstein to serve as their counsel. Mr. McCulloch was required to pay a deductible to his professional liability insurance company in the amount of \$3,500. The Birkets incurred additional

⁴ The served documents also included Interrogatories, Requests to Produce, Requests to Admit, and a Motion for Summary Judgment, all executed by Mr. Blackwell *pro se*. The total package served on each, twice, was 69 pages.

attorney fees for Ms. Ballard and Ms. Weissenstein to learn the cases and to assume their representation.

21. Mr. Blackwell voluntarily dismissed the Manning action without prejudice, by order dated August 7, 2009. None of the defendants had yet filed responsive pleadings, but a considerable amount of work and expense was spent preparing for filing responses.
22. In or around May 2010, Mr. Blackwell is believed to have made a report to the Department of Social Services alleging neglect of Jane Doe. The Department dismissed the investigation as “unfounded” with a notation that it was filed maliciously.
23. The Birkets filed this action against the Blackwells, *inter alia*, to seek to recover for some of the damages they had sustained at the hands of the endless Blackwell litigations, including attorney fees. The Blackwells are representing themselves *pro se* in this abuse of process action.
24. Mediation of the abuse of process action was held in on or about April 7, 2011. Mediation was unsuccessful.
25. Shortly after mediation concluded, Mr. Blackwell filed a motion to amend his counterclaims in this action to add the Birkets’ counsel Kathy Schillaci, Stephanie Weissenstein and Desa Ballard as “counter-defendants”. He alleged that, by requesting attorney fees as part of the damages in the abuse of process action, the Birkets and their counsel had engaged in barratry and conspiracy.
26. Mr. Blackwell’s motion to amend was heard by Honorable J. Ernest Kinard on June 9, 2011. Judge Kinard granted the motion and executed a form order. During the hearing, Judge Kinard stated that he could not prevent Mr. Blackwell from filing suit

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against the Birkets' attorneys, but he expressed his doubts as to the validity of the action.

27. Within days, Mr. Blackwell filed pleadings and served them on the Birkets personally (not through their counsel), as well as on Schillaci, Weissenstein and Ballard. He also named as "counter defendants" and served The Law Offices of Joseph M. McCulloch Jr. and The Law Offices of Desa Ballard.
28. All attorneys, McCulloch, Schillaci, Weissenstein and Ballard, have been required to put their professional liability carriers on notice of this claim. Mr. Blackwell communicated directly with the Birkets, advising that they no longer had counsel and were required to deal with him personally.
29. On July 27, 2011, Mr. Blackwell filed a motion seeking an order holding Ballard and Weissenstein in contempt, purportedly for continuing to represent the Birkets in violation of Kinard's order, *supra*. He later verbally advised at a hearing that he was simply bringing their misconduct to the attention of the court for whatever action the court deemed appropriate.
30. During the course of the litigations, Mr. Blackwell purchased the real estate and mobile home next door to the Birkets' current home, and placed a sign on the property indicating it is owned by "Hammy and Poppy," which are apparently nicknames by which he and Mrs. Blackwell wish to be addressed by Jane Doe. Through a corporate entity, Mr. Blackwell also purchased a house, which he named after Jane Doe. There is a website, presumably created by the Blackwells, that indicates a continuing pattern of efforts to influence Jane Doe to mistrust her parents and to lure her from them to the Blackwells with promises of moneys and riches.



31. Throughout the litigation, Mr. Blackwell has asserted that he is physically infirm and disabled to such a degree that he is disadvantaged in advancing his positions in this and other courts⁵. However, as exhibited by photographs of him leaving the courthouse after hearings and retrieving mail from the post office, the evidence of his infirmity seems to appear only when in court. Photos taken at various times show that he has no trouble ambulating, entering and exiting a low-riding vehicle, and otherwise physically caring for himself.
32. The filings by Mr. Blackwell against the Birkets' counsel were unwarranted and improper attempts to force contact upon the Birkets and isolate the Birkets from their counsel. The Birkets have lost their house to foreclosure, lost their chance to build the home for which they had already purchased property, incurred substantial attorney fees, suffered embarrassment and distress by DSS investigations, and have otherwise suffered tremendously at the hands of the Blackwells, who *pro se*, filed repeated, frivolous, harassing lawsuits and actions against the Birkets. It is only because their counsels have stood by them that they have been able to withstand the onslaught of the Blackwells' attacks.
33. In late July, 2011, after the latest filings against their counsel, the Birkets sought extraordinary relief from the South Carolina Supreme Court, including a requirement the Blackwells have licensed South Carolina counsel certify that any future filings were not frivolous and there was a good faith basis in law and fact to support the filings.

⁵ In October, 2006, Mr. Blackwell filed pleadings in a California civil case, seeking to be relieved from appearing in court, in which he described himself as "totally disabled as determined by numerous doctors" and completely dependent upon Mrs. Blackwell for his daily care. If that were true, he has made a miraculous recovery, having initiated this litigation in early 2007 and continuing it with an aggressive and intense litigation style. While he appears in court using a cane, photographic evidence suggests this "infirmity" is created for the purpose of soliciting sympathy for the court.

34. The Blackwells filed an opposition to the relief sought by the Birkets in the Supreme Court and asserted yet another claim for sanctions against the Birkets' counsel, specifically Ms. Ballard, "for her outrageous behavior" in filing for relief in the Supreme Court.
35. The Supreme Court issued an order dated September 22, 2011, in which it found "respondents [the Blackwells] have engaged in conduct which is both frivolous and filed with the intent to harass petitioners, petitioners' counsels, and members of the judiciary. We further find respondents' behavior continues to impact petitioners' lives and the life of petitioners' child, and substantially interferes with the efficiency of the judicial system. Because we have previously warned respondents against frivolous filings and such warning did not curb respondents' conduct, we hereby enjoin respondents from filing or continuing with any action in any court of this State concerning or relating to visitation with petitioners' child."
36. On September 29, 2011, the Blackwells filed a Motion for Rehearing with the Supreme Court in which they stated: "Respondents request, no Respondents challenge this Court to at least read this motion."
37. In response to the Blackwells' Motion for Rehearing, the Supreme Court issued an order dated October 20, 2011, in which it made clear that, despite the injunction of September 22, 2011, the Blackwells can defend themselves in this action. The Supreme Court's order makes clear that the Blackwells have a right to notice of this hearing and the opportunity to participate in this hearing for damages.
38. The Blackwells had been given notice of this hearing and have knowingly chosen not to attend.



39. The Birkets have the right to choose who can, and cannot, be a part of their children's lives.
40. The Blackwells have advised the Court and the parties that they have left South Carolina. However, one or both of them continue to post communications intended to reach Janis Birket and Jane Doe to continue their efforts to alienate Janis and Jane from their family, particularly from Jeromy Birket. Most recently, in February, 2012 the internet site apparently used by the Blackwells posted a Valentine wish for Janis, Jane Doe and her brother, with a picture of a broken heart. Evidence submitted after the hearing by affidavit indicates that Walter Blackwell is attempting to lure Jane Doe to move to Nevada, where he apparently now lives, and that he has threatened more litigation against the Birkets, so that they and their attorneys get nothing. They also send gifts and packages to the Birkets' children.
41. Jeromy Birket has monitored the internet using software that enables him to identify the IP address and approximate physical location of the originating computer, and he is informed and believes that Walter Blackwell has in the past and continues to track him and his family on the internet throughout this litigation. Most recent tracking has originated in the area of Las Vegas, Nevada, where the Blackwells apparently now reside.



DAMAGES FOR ABUSE OF PROCESS AND
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

42. As a direct and proximate result of the actions of the Blackwells, as directed toward the Birkets and Jane Doe, the Birkets have suffered financially and emotionally and will continue to do so for the foreseeable future.
43. The Birkets have incurred substantial attorney fees as a result of having to defend themselves and bring an end to the disruption of their family life and to protect their daughter from the Blackwells. Judge Manning previously awarded attorney fees and costs to the Birkets for their defense of 2008-CP-40-2260, and those fees (due to attorneys Joseph M. McCulloch Jr. and Kathy Schillaci) are not included in the fees awarded here.
44. As a direct and proximate result of the actions of the Blackwells, Janis Birket is terrified for the safety of her children, both physically and through the use of the courts. Mr. Blackwell's superior knowledge of the judicial system, and his pattern of abusing it, causes her to fear future litigation. Mr. Blackwell has posted on his internet site an article that quotes Nevada law as granting grandparents some rights to have access to their grandchildren⁶, and Janis has a real fear that her parents' move to Nevada is for the purpose of establishing residence there to try to force visitation with Jane Doe through the use of Nevada law.
45. Janis keeps the gate at her home locked, having been traumatized by the visit from the Department of Social Services (initiated by Walter Blackwell) and a constant fear that

⁶ The internet site also includes posts that mock the appellate court rulings in South Carolina arising from this series of litigation.



her children will be taken away from her and the stalking of her and her family in which Mr. Blackwell engaged. She fears future litigation of all kinds, and is specifically concerned that her testimony in this case will be used by Mr. Blackwell to try to show that the emotional distress he had his wife have caused somehow impacts on her ability to parent her children.

46. For some years, Janis has refused to leave the house without her husband Jeromy, for fear one or both of the Blackwells would approach her and try to engage her. She agreed to mediation in this case only after arrangements were made for her to arrive and leave so as not to encounter her parents, and for the rooms where the mediation occurred would be geographically located so as to eliminate any risk of encountering them.

47. Janis is fearful of strangers, believing her parents may use third parties to try to communicate with her and her children.

48. She is particularly concerned about the hurtful information that is being posted on the internet by one or both of the Blackwells, and as Jane Doe and her brother grow up and become internet savvy, she fears the effect the damaging information posted by the Blackwells will cause to Jane Doe and her brother. She has tried to keep Jane Doe minimally informed about her grandparents' odd behavior, so the full knowledge of their aggression toward her family will not traumatize Jane Doe as she grows older.

49. A recent online post from the Blackwells reinforces Janis' fear for her daughter. "To [Jane Doe] – we never left you. They took you away from us. We tried to see you but they stopped us. They tried to put us in jail for trying to see you. We have money and things that we want you to have but they are trying to get it for themselves. They do



not want us to give you anything. If you ever get free please call us at . . . [phone number]. . . I do not know what lies they have told you. . .”

50. Janis has had to disclose to potential employers and to school officials that she has been the subject of a DSS report, which has caused embarrassment and will continue to do so. Even her volunteer work with children is hampered by the necessity of disclosing the unfounded DSS investigation that was initiated by Walter Blackwell.
51. She is fearful about leaving either of her children without herself or Jeromy, for fear that the Blackwells may attempt to kidnap one or both of them. She is acutely aware that one or both of the Blackwells are monitoring her children’s activities by some method, because she recently received an internet message from one of them expressing their approval for having moved Jane Doe back into school, after a period of home-schooling. The Birkets had, in fact, enrolled Jane Doe in a school, and the fact that the Blackwells somehow know this is frightening.
52. Both Janis and Jeromy have had to explain to the schools and other organizations in whose activities the children participate about the unhealthy obsession of the Blackwells toward Jane Doe and a general outline of the history of the litigation, to heighten awareness of individuals to be especially vigilant to guard against attempts by the Blackwells to reach the children.
53. The Birkets lost their home to foreclosure, a result of the multiple *lis pendens* filed by the Blackwells in their efforts to initiate visitation with Jane Doe. As a direct result of the loss of their home, Janis has and continues to experience fear of financial ruin. She and her family have, in fact, had to live in a more humble environment because of the loss of their home and the inability of her husband to obtain well-



paying employment. Walter Blackwell mocks their living arrangements in his online posts, most recently in an online post to Janis advising "I looked up your property on Bing maps and it broke my heart. A bird's eye view shows a grim plot of land with nothing but dirt. If you believe the distance key on the map your trailer is less than {sic} 1000 sq.ft. There are no animals visible and nothing growing. There is just empty dirt. This is not a farm, it is a prison." He admonishes her for unnecessarily forcing her children to live like this, when he can provide financially for them.

54. Jeromy has sustained severe emotional distress as result of his concern for Janis and his children, his own harassment in the continuous litigation, and financially as well, including the loss of his home. Prior to the litigation initiated by the Blackwells, Jeromy's credit score was approximately 750. Today it is in the 400 as a result of the foreclosure. Other than the foreclosure and the incessant litigation with the Blackwells, there have been no other events of which Jeromy is aware which should have negatively affected his credit. There is more than sufficient evidence to establish that the Blackwells' actions have caused the Birkets to suffer financially, not only through attorney's fees to defend themselves, but also because of damage to their credit and job opportunities which have substantially decreased their life style.

55. Jeromy has a law degree and was previously employed in law enforcement, but remains underemployed because of the foreclosure of his home and his litigation history, which renders him ineligible for positions of responsibility and management.

56. Jeromy has suffered severe emotional distress as a result of the continuous and harassing actions of the Blackwells, and he continues to be guarded about the future, knowing that the endless litigation the Blackwells have instituted against him and his



family may not yet be over. He is particularly concerned about Janis, whose fear about her father and mother and the risk the Blackwells pose to their children now and in the future, is sometimes paralyzing.

57. Jeromy and Janis are both greatly concerned and suffer emotional distress about having to explain to their children the bizarre nature of the acts of their grandparents, particularly their inability to control the internet postings which portray Jeromy as a sociopath and a cult-like figure that has full and complete control over Janis and the children. They know that because we live in an ever increasingly technologically sophisticated world the children will one day find and read these postings.

58. Despite what they have been through, both children, Jane Doe and John Doe, are very bright, well-adjusted children who participate in a full range of social and cultural activities. Jane Doe is active in church, athletics and the arts, and John Doe goes to preschool and is active in church activities. They both have healthy relationships with friends. The court viewed recent photographs of both children⁷. Both Janis and Jeromy Birket were careful in their testimony not to provide any specific information about the organizations and groups with which the children participate, to eliminate any clues that will enable the Blackwells to track down the children.

59. The years of litigation, abuse of process, and outrageous behavior by the Blackwells was always underpinned by an ulterior motive. Walter Blackwell admitted in a hearing in the circuit court on October 8, 2008 that he and his wife had initiated the first and subsequent litigation to try to scare their daughter into talking to them so they could persuade her to allow them access to Jane Doe. This litigation has never

⁷ The photos were not included as part of this record because the Court wishes to avoid providing a permanent record that could harm or embarrass them in the future.



been about breach of contract or any other legitimate cause of action. It has been about two angry people who did not like the choices their daughter made and set began a scheme of frivolous litigation, using their superior wealth and Mr. Blackwell's knowledge of the legal system to beat her and her family into submission.

60. Walter Blackwell made the following statement at a hearing before Circuit Court Judge John M. Milling in Case No. 2008-CP-40-4169 on October 8, 2008, revealing the real reason for the lengthy litigation he initiated against Janis and Jeromy Birket:

After a great deal of soul searching, we figured that the only way that we could possible force Janice {sic} into, at least, telling us why we – this was all happening was we would file this suit based upon breach of contract. . . We then – so we filed a lawsuit hoping – quite frankly, my hope was that my daughter would become so angry at me, she'd talk to me. She'd say, Dad, you know, you're a jerk. Why are you filing this lawsuit? This is why you can't see her [Jane Doe]. And I would say, you know what, if that's why, I am sorry and I'll fix it. Because I had run out of options.

61. Janis Birket is 38 years old. Under South Carolina law, S.C.Code Ann. Section 19-1-150 (Supp. 2011), she is reasonably expected to live another 43.89 years. Jeromy is also 38, and he is reasonably expected to live another 40.21 years. Both most probably will continue to suffer some degree of emotional distress as a result of the outrageous conduct of the Blackwells for the rest of their lives, especially as they watch their children grow into adulthood and deal with the knowledge that their maternal grandparents caused so much distress in their lives. It is reasonable to assume that some of that distress will be reduced when the Blackwells are no longer living⁸, and the fear of kidnapping or further litigation abates somewhat. But the

⁸ Both Mr. and Mr. Blackwell are 67 years old. Pursuant to S.C. Code Section 19-1-150, Walter Blackwell may reasonably be expected to live another 15.38 years, well after Jane Doe reaches adulthood. Maureen Blackwell

damage that has been done here is permanent and the Birkets are entitled to recover both for the emotional distress they have sustained and that they will most probably sustain in the future.

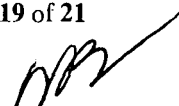
DAMAGES

In recovering damages for abuse of process, the court is permitted to look at the purpose for which the abusive process was initiated. *Huggins v. Winn Dixie Greenville Inc.*, 249 S.C. 206, 153 S.E.2d 693 (Ct.App. 1999). Damages for abuse of process include the attorney fees incurred by the Birkets in defending themselves and in bringing and prosecuting this action to bring an end to the litigation. The court has examined the affidavits of attorney's fees presented by plaintiffs' counsel.

In addition to the damages awarded under the abuse of process claim, the Birkets have incurred an entirely separate category of damages, not duplicative of the damages awarded above. The emotional distress they have sustained is severe and permanent, as indicated by the undisputed testimony. The Birkets are entitled to recover damages for intentional infliction of emotional distress against the Blackwells. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981). Conduct which might ordinarily be forgivable may be deemed severe when there is a special relationship between the plaintiff and the defendant. *Todd v. South Carolina Farm Bureau*, 283 S.C. 155, 321 S.E.2d 610 (Ct.App. 1984).

I find and conclude that, as a direct and proximate cause of the intentional infliction of emotional distress imposed upon them by the outrageous behavior by the Blackwells, which is most probably expected to last for the rest of their lives, Janis and Jeromy Birket are entitled to recover actual damages against Walter and Maureen Blackwell in an amount of \$1,200,000.00

may reasonably be expected to live another 18.60 years, again well after Jane Doe reaches adulthood. The fear the Birkets feel for Jane Doe and John Doe at the hands of the Blackwells is clearly a long-term concern.



dollars⁹. This figure should be added to the judgment awarded for attorney's fees for the abuse of process claim.

Therefore, judgment shall be entered against Walter and Maureen Blackwell, jointly and severally, in favor of Janis and Jeromy Birket for actual damages:

- A. In the amount of \$600,000.00 dollars for damages under the first cause of action for abuse of process; and
- B. In the amount of \$600,000.00 dollars for damages under the sixth cause of action for intentional infliction of emotional distress.
- C. In the amount of \$148,486.15 dollars for attorneys' fees.

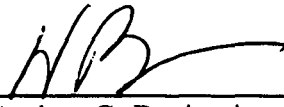
The Clerk of Court is instructed to enter judgment in favor of Janis and Jeromy Birket against Walter and Maureen Blackwell, jointly and severally in the total amount of \$1,348,486.15, actual damages.

In addition, the Clerk of Court is instructed to enter judgment in favor of the Birkets' counsel against Walter Blackwell in the amounts set forth below:

- D. In favor of Kathy Schillaci against Walter Blackwell in the amount of Ten Thousand (\$10,000.00) dollars;
- E. In favor of Stephanie Weissenstein against Walter Blackwell in the amount of Ten Thousand (\$10,000.00) dollars;
- F. In favor of Desa Ballard against Walter Blackwell in the amount of Fifteen Thousand (\$15,000.00) dollars.

IT IS SO ORDERED.

⁹ In calculating actual damages, the court considered the following elements: loss of income, damage to credit and employability, loss of equity in real property, extraordinary moving expenses, website monitoring services through the remainder of Jane Doe's minority, and website scrubbing services for the remainder of Jane Doe's minority.



DeAndrea G. Benjamin
Circuit Court Judge
Fifth Judicial Circuit

This ____ day of April, 2012
Columbia, South Carolina

