

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
Court of Common Pleas

Appellate Case No. 2023-001005

RECEIVED
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SC Court of Appeals

Dennis Galipeau,

Appellant,

v.

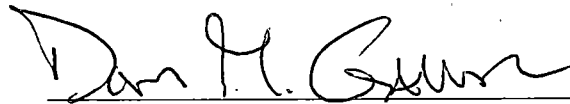
D. Ryan McCabe and Marion J. Smith,

Respondents.

RECORD ON APPEAL

1. Appellant's Circuit Court Complaint
2. § 16-9-10, et seq S.C. Code of Laws
3. Order on Defendant's Motion to Dismiss
4. Supreme Court Administrative Orders 2022-000582 and 2022-000029
5. Transcript of hearing on Respondents' motion to dismiss.

Respectfully submitted,



Dennis M. Gallipeau, pro se
P.O. Box 210134
Columbia, SC 29221
(803) 238-8735

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

2023 JAN 11)

AM 10: 53)

Civil Action Number

Dennis Gallipeau,

Plaintiff,

v.

D. Ryan McCabe; and
Marion J. Smith,

Defendants.

2023 CP 3200091

**COMPLAINT WITH
JURY DEMAND**

Plaintiff complaining of the defendants above named, would respectfully show as follows:

This action is brought pursuant to § 16-9-10, et seq, alleging crimes against public justice.

JURISDICTION

1. The State of residence of plaintiff is South Carolina. Plaintiff has been grieved, hindered, or molested by reason of the offenses alleged herein.
2. D. Ryan McCabe is an attorney licensed to practice law in the State of South Carolina. He is a senior partner and shareholder of the law firm McCabe, Trotter and Beverley. He is also a member of the South Carolina House of Representatives and resides in Lexington County. Marion J. Smith is the owner and sole proprietor of MJS, Inc., a property management company with its principal place of business located in Richland County.
3. This Court has jurisdiction over the parties and subject matter jurisdiction pursuant to S.C. Code § 16-9-50 and venue is proper.

FACTS AND CLAIMS

4. On or about January 8, 2020, plaintiff filed civil action 2020-CP-32-0109 in this court.
5. On or about March 9, 2020, McCabe filed a motion to dismiss in which he made statements he knew were false, misleading and or incomplete in violation of § 16-9-10 S.C. Code.
6. On or about March 20, 2020, McCabe filed an answer in which he made statements he knew were false, misleading and or incomplete in violation of § 16-9-10 S.C. Code.
7. On or about May 11, 2020, McCabe filed a motion for summary judgment in which he made statements he knew were false, misleading and or incomplete in violation of § 16-9-10 S.C. Code.
8. On or about December 7, 2020, an ADR Hearing was held during which McCabe made statements he knew were false, misleading and or incomplete in violation of § 16-9-10.
9. On or about January 19, 2021, a hearing was held before the Honorable Debra R. McCaslin during which McCabe made statements under oath he knew were false, misleading and or incomplete, in violation of § 16-9-10 S.C. Code.
10. On or about May 16, 2021, a hearing was held before the Honorable William P. Keesley during which McCabe made statements under oath he knew were false, misleading and or incomplete, in violation of § 16-9-10 S.C. Code.
11. On or about October 21, 2022, McCabe prepared an affidavit he knew included false, misleading and or incomplete statements, in violation of §§ 16-9-10(C) and 16-9-20(A)(2).

12. On or about October 21, 2022, Smith knowingly signed the false affidavit prepared by McCabe, under oath and McCabe then filed Smith's false affidavit with the court, in violation of §§ 16-9-10, 16-9-20 and 16-9-30, S.C. Code.

13. On or about October 27, 2022, a hearing was held before the Honorable William P. Keesley during which McCabe made statements under oath he knew were false, misleading and or incomplete, in violation of § 16-9-10.

14. On or about November 28, 2022, a hearing was held before the Honorable Grace Gilchrist Knie during which McCabe made statements under oath he knew were false, misleading and or incomplete, in violation of § 16-9-10.

15. Plaintiff has been grieved, hindered and or molested by the actions of defendants McCabe and Smith, which include preparing and filing documents including false, deceptive, misleading and or incomplete statements; giving false testimony during court proceedings and willfully inducing, procuring and or persuading another person to commit perjury and McCabe and Smith did commit perjury while under oath in a civil action or proceeding.

WHEREFORE, the prayer of the Plaintiff, judgment in an amount sufficient to compensate the Plaintiff for actual damages, punitive damages, statutory damages, costs and such other relief as is just and proper. Plaintiff demands a jury trial.



Dennis Gallipeau
1920 Ashford Lane
Columbia, SC 29210
(803) 834-6095

Columbia, SC
January 8, 2023

South Carolina Legislature

South Carolina Law > Code of Laws > Title 16

South Carolina Code of Laws Unannotated

Title 16 - Crimes and Offenses

CHAPTER 9

Offenses Against Public Justice

ARTICLE 1

Perjury

SECTION 16-9-10. Perjury and subornation of perjury.

(A)(1) It is unlawful for a person to wilfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

(2) It is unlawful for a person to wilfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

(B)(1) A person who violates the provisions of subsection (A)(1) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

(2) A person who violates the provisions of subsection (A)(2) is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both.

(C) A person may be convicted under this section if he induces, procures, or persuades another person to commit perjury or if he commits perjury by his own act, consent, or agreement.

HISTORY: 1962 Code Section 16-201; 1952 Code Section 16-201; 1942 Code Section 1397; 1932 Code Section 1397; Cr. C. '22 Section 332; Cr. C. '12 Section 340; Cr. C. '02 Section 253; G. S. 2531; R. S. 217; 1712 (2) 487; 1993 Act No. 184, Section 89.

SECTION 16-9-20. Subornation of perjury in civil actions.

(A) It is unlawful for a person to:

(1) wilfully induce, procure, or persuade another person by any means to commit perjury in initiating a civil action or proceeding; or

(2) wilfully induce, procure, or persuade another person to give false, misleading, or incomplete testimony while under oath in a civil action or proceeding.

(B) A person who violates the provision of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months and fined not less than two hundred dollars.

HISTORY: 1962 Code Section 16-202; 1952 Code Section 16-202; 1942 Code Section 1398; 1932 Code Section 1398; Cr. C. '22 Section 333; Cr. C. '12 Section 341; Cr. C. '02 Section 254; G. S. 2532; R. S. 218; 1712 (2) 487; 1993 Act No. 184, Section 90.

SECTION 16-9-30. False swearing before persons authorized to administer oaths.

It is unlawful for a person to wilfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

HISTORY: 1962 Code Section 16-203; 1952 Code Section 16-203; 1942 Code Section 1400; 1932 Code Section 1400; Cr. C. '22 Section 335; Cr. C. '12 Section 343; Cr. C. '02 Section 256; G. S. 2534; R. S. 220; 1833 (2) 485; 1993 Act No. 184, Section 166.

SECTION 16-9-50. Disposition of fines.

The one moiety of the fines imposed by this article shall be for the State and the other moiety to such person as shall be grieved, hindered or molested by reason of the offense or offenses before mentioned that will sue for the same by action in any court of competent jurisdiction.

HISTORY: 1962 Code Section 16-205; 1952 Code Section 16-205; 1942 Code Section 1399; 1932 Code Section 1399; Cr. C. '22 Section 334; Cr. C. '12 Section 342; Cr. C. '02 Section 255; G. S. 2533; R. S. 219; 1712 (2) 488.

ARTICLE 3

Bribery, Corruption of Jurors and the Like

SECTION 16-9-210. Giving or offering bribes to officers.

Whoever corruptly gives, offers or promises to any executive, legislative or judicial officer, after his election or appointment, either before or after he is qualified or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding which may be pending or may by law come or be brought before him in his official capacity, shall be punished by imprisonment in the State Penitentiary at hard labor not exceeding five years or by a fine not exceeding three thousand dollars and imprisonment in jail not exceeding one year.

HISTORY: 1962 Code Section 16-211; 1952 Code Section 16-211; 1942 Code Section 1402; 1932 Code Section 1402; Cr. C. '22 Section 337; Cr. C. '12 Section 348; Cr. C. '02 Section 261; G. S. 2536; R. S. 225; 1869 (14) 308.

SECTION 16-9-220. Acceptance of bribes by officers.

Every executive, legislative or judicial officer who corruptly accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to such an officer under an agreement or with an understanding that his vote, opinion or judgment shall be given in any particular manner or on any particular side of any question, cause or

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Case No.: 2023CP3200091

DENNIS GALLIPEAU,)
)
Plaintiff,)

vs.)

ORDER ON DEFENDANTS' MOTION
FOR DISMISSAL UNDER RULE 12(B)(6)
FILED MARCH 10, 2023

D. RYAN McCABE and)
MARION J. SMITH,)
)
Defendants.)

Heard: April 24, 2023 via Webex Virtual Courtroom
Plaintiff is self-represented
Defendants' Attorney: Ryan McCabe
Court Reporter: None – Webex Recording by Consent

The plaintiff filed this suit against Marion J. Smith, the owner of MJS, Inc., an opponent in a pending case (Case No. 2020CP3200109), and the attorney for MJS, D. Ryan McCabe, asserting that the plaintiff is entitled to civil remedies under criminal statutes related to perjury, S.C. Code §§ 16-9-10, et seq. The defendants seek dismissal of the present Complaint under Rule 12(b)(6), SCRCF. The motion is granted.¹ There are remaining counterclaims under the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code §§ 15-36-10 et seq. which are not dismissed.

Rule 12(b)(6), SCRCF reads:

Every defense, in law or fact, to a cause of action . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses

¹ This is a difficult issue because of the language in S.C. Code §16-9-50 referenced later in this order. Even if a civil cause of action were to arise under §16-9-50, which the court finds not to be the case, the cause of action should not arise until after there is a determination that the perjury or subornation of perjury resulted in a judgment against the plaintiff. To determine otherwise would open the courts to multiple overlapping lawsuits.

may . . . be made by motion: . . . (6) failure to state facts sufficient to constitute a cause of action[.]

In ruling on a motion under Rule 12(b)(6), the court is limited to reviewing the allegations in the four corners of the Complaint. All averments and reasonable inferences therefrom must be accepted as true and construed in favor of the plaintiff.

The question is whether South Carolina recognizes a civil cause of action based on the criminal statutes regarding perjury and subornation of perjury.² The court finds that the criminal statutes do not give rise to an individual cause of action in Common Pleas court, though no ruling is made as to whether commission of perjury or subornation of perjury may be used as proof of some other recognized civil cause of action. This decision is reached even though South Carolina has enacted § 16-9-50, which reads:

SECTION 16-9-50. Disposition of fines.

The one moiety of the fines imposed by this article shall be for the State and the other moiety to such person as shall be grieved, hindered or molested by reason of the offense or offenses before mentioned that will sue for the same by action in any court of competent jurisdiction.

² **SECTION 16-9-10. Perjury and subornation of perjury.**

(A)(1) It is unlawful for a person to wilfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

(2) It is unlawful for a person to wilfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

(B)(1) A person who violates the provisions of subsection (A)(1) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

(2) A person who violates the provisions of subsection (A)(2) is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both.

(C) A person may be convicted under this section if he induces, procures, or persuades another person to commit perjury or if he commits perjury by his own act, consent, or agreement.

SECTION 16-9-20. Subornation of perjury in civil actions.

(A) It is unlawful for a person to:

(1) wilfully induce, procure, or persuade another person by any means to commit perjury in initiating a civil action or proceeding; or

(2) wilfully induce, procure, or persuade another person to give false, misleading, or incomplete testimony while under oath in a civil action or proceeding.

(B) A person who violates the provision of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months and fined not less than two hundred dollars.

Perjury is defined in Black's Law Dictionary as follows:

In criminal law. The willful assertion as to a matter of fact, opinion, belief, or knowledge, made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in open court, or in an affidavit, or otherwise, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury, or person holding the proceeding. 2 Whart. Crim. Law.

Subornation of perjury is defined as follows:

In criminal law. The offense of procuring another to take such a false oath as would constitute perjury in the principal. See *Stone v. State*, US Ga. 705, 45 S. E. 030, 9S Am. St. Rep. 145; *State v. Falley*, 3 Pennewill (Del.) 504, 54 Atl. 090; *State v. Geer*, 40 Kan. 529, 20 Pac. 1027.

A detailed law review article discusses the status of the law in the United States concerning whether criminal laws against perjury give rise to a private cause of action. See *Lying On The Stand Won't Cost You A Dime: Should Courts Recognize A Civil Action In Tort For Perjury?*, 44 Wash. & Lee L. Rev. 1257 (1987). Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol44/iss4/6> as read on April 28, 2023.

The author of the article advocates expansion of the law so as to allow such a cause of action to exist in tort. It details that Maine has a statute that authorizes a private cause of action and that Oklahoma's courts have recognized that perjury may form the basis for civil damages. However, the article recognizes that a private cause of action did not exist in common law, nor is it recognized in the vast majority of states. The article sets out the reasoning for the failure to allow this cause of action to be pursued.

In *Doe v. Marion*, 373 S.C. 390, 395 S.E.2d 245 (2007), the Supreme Court of South Carolina wrote:

In determining whether a statute creates a private cause of action, the main factor is legislative intent:

The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty, is determined primarily from the language of the statute.... In this respect, the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability. *Dorman v. Aiken Communications, Inc.*, 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990) (quoting *Whitworth v. Fast Fare Markets of South Carolina, Inc.*, 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985)). When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party. *Citizens of Lee County v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992).

Allowing civil actions sounding in perjury or subornation of perjury would likely open a Pandora's Box of litigation. Therefore, this court believes that interpreting the statutes should be especially sensitive to ambiguities and that there is ambiguity because §16-9-50 deals with the disposition of fines. It is true that the language mentions bringing suit in a court of competent jurisdiction, but that language can be read in the context of seeking one-half of any fines imposed under the chapter, if the person aggrieved sues to recover it. Fines in common parlance are those imposed in the discretion of the court or some administrative agency. As the language in *Doe v. Marion* states, there is a general rule, and if the court has to evaluate whether to imply a private cause of action if the statute "was enacted for the special benefit of a private party." As stated above, this is a difficult question which may be interpreted differently that is being decided in this order. The perjury laws were clearly created for the welfare of the public. It is §16-9-50 which can be argued to provide a special benefit to a private party.

The Maine statute clearly creates a private cause of action.³ However, it appears to deal with situations where a judgment has first been obtained against the party aggrieved by the

³ **Title 14: COURT PROCEDURE -- CIVIL
Part 2: PROCEEDINGS BEFORE TRIAL
Chapter 205: LIMITATION OF ACTIONS
Subchapter 3: MISCELLANEOUS ACTIONS**

perjury. That would appear to reduce the concern about multiple lawsuits going on simultaneously concerning the same basic dispute. The law review article cited above mentions collection of damages in terms of post-judgment actions.

While the court is concerned with the language in §16-9-50, it is convinced that South Carolina would follow the overwhelming majority of jurisdictions that do not have a private cause of action for perjury. Earlier in this order, the court stated that no ruling is made on whether anyone affected by perjury could use perjurious misconduct as evidence in a different cause of action recognized in this state. That seems a more plausible interpretation of South Carolina law. Obviously, the admissibility of such evidence would be subject to the immunities

§871

§870. Judgment by perjury; action on case

1. Action; within 3 years. When a judgment has been obtained against a party by the perjury of a witness introduced at the trial by the adverse party, the injured party may, within 3 years after that judgment or after final disposition of any motion for relief from the judgment, bring an action against such adverse party, or any perjured witness or confederate in the perjury, to recover the damages sustained by the injured party by reason of such perjury. The judgment in the former action does not bar an action under this section.

[PL 2009, c. 187, §1 (NEW).]

2. Specificity of claim. A claim under this section must identify the specific testimony alleged to be false at the initial filing of the claim.

[PL 2009, c. 187, §1 (NEW).]

3. Record; evidence. A claim may not be submitted under this section solely on the same record as in the former trial. Evidence discoverable by due diligence before the trial cannot be introduced as new evidence to establish perjury.

[PL 2009, c. 187, §1 (NEW).]

4. Standard of proof. The plaintiff in an action under this section must prove the alleged perjury by clear and convincing evidence.

[PL 2009, c. 187, §1 (NEW).]

5. Affirmative defense. It is an affirmative defense to an action under this section that the plaintiff has no new evidence to present concerning the alleged perjury.

[PL 2009, c. 187, §1 (NEW).]

6. Strictly construed. The pleading and proof requirements of this section must be strictly construed.

[PL 2009, c. 187, §1 (NEW).]

granted in actions related to court. Further, the fact that no cases have been cited to the court that have imposed liability in a private cause of action for perjury bolsters the court's conclusion.

THEREFORE, IT IS ORDERED that the Complaint is dismissed under Rule 12(b)(6).

The counterclaims are not dismissed as that issue is not before the court.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]

2022-05-06-04

The Supreme Court of South Carolina

RE: Service by E-Mail in the Trial Courts

Appellate Case No. 2022-000029

ORDER

a) Purpose. Pursuant to Rule 613 of the South Carolina Appellate Courts Rules (SCACR), the Supreme Court may promulgate an order setting forth permissible methods of electronic service in the trial courts, including by e-mail.¹ The purpose of this order is to provide a uniform rule for service by e-mail in the various trial courts of this state.

(b) E-Mail as Additional Method of Service. In addition to the methods of service that may be provided for in the rules governing service of pleadings and other papers in the circuit, family, probate, and summary courts of this state, pleadings and other papers may be served by e-mail pursuant to the provisions of this order.

(c) E-Mail Service on Lawyers. A lawyer admitted to practice law in this state may serve a pleading or other paper on another lawyer admitted to practice law in this state by e-mail using that lawyer's primary e-mail address listed in the Attorney Information System (AIS). The primary e-mail address for a lawyer admitted in South Carolina can be accessed utilizing the Attorney Information Search at: <https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm>. Lawyers are reminded of their obligation under Rule 410(g) of the South Carolina Appellate Court Rules (SCACR) to ensure their AIS information is current and accurate at all times.

(d) E-Mail Service By and On Self-Represented Litigants. A self-represented litigant who is not a lawyer admitted to practice in this state may consent in writing to be served by e-mail and designate a correct e-mail address for service. A lawyer may consent in writing to accept service by e-mail from a self-represented litigant.

(e) Requirements for Service. In all cases:

(1) E-mail service under this order is intended for the service of pleadings and other papers subsequent to the initiation of a case, and may not be used for the service of a summons and complaint, subpoena, or other pleading or document required to be personally served under any rule of court. However, this provision does not prohibit a party from consenting to accept such service by e-mail or other electronic means.

(2) Pleadings and papers served by e-mail must be sent as an attachment in Adobe Acrobat portable document format (.pdf) unless otherwise agreed by the parties. In the absence of consent, a party serving a document may not utilize another file format or a file-sharing service for e-mail service.

(3) Service by e-mail under this order is complete upon transmission of the e-mail. If the serving party learns the e-mail did not reach the intended recipient(s), the party shall immediately provide a copy of the pleading or paper by other means set forth in the applicable court rule, together with evidence of the prior attempt at service by e-mail.

(4) E-Mail service under this order may not be utilized for documents that are required to be E-Filed in accordance with Section 2 of the South Carolina Electronic Filing Policies and Guidelines, except as to parties that are not authorized E-Filers. Lawyers are reminded that the E-Filing System automatically serves parties that have appeared in a case, and the Notice of Electronic Filing (NEF) indicates which parties have been served.

(5) In any action governed by the South Carolina Rules of Civil Procedure (SCRCP), computation of the time for a response after service by e-mail is governed by Rule 6, SCRCP. In accordance with Rule 6(e), SCRCP, service by e-mail will be treated the same as service by U.S. Mail for purposes of determining the time to respond; therefore, five days shall be added to the prescribed period to respond from the date of transmission of the e-mail serving the document.

(6) For attorneys admitted pro hac vice, service on the associated South Carolina lawyer under this method of service shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney.

(f) Proof of Service. Any proof of service of a document that is served by e-mail shall include a copy of the sent e-mail with the proof of service, affidavit of service, or certificate of service for that document.

s/Donald W. Beatty C.J.

s/John W. Kittredge J.

s/Kaye G. Hearn J.

s/John Cannon Few J.

s/George C. James, Jr. J.

2021-08-27-02

The Supreme Court of South Carolina

RE: Use of Remote Communication Technology by the Trial Courts

Appellate Case No. 2020-000447

Print version

ORDER

(a) Purpose. Pursuant to Rule 612 of the South Carolina Appellate Court Rules (SCACR), this Court may provide for the use of remote communication technology by the courts of this State to conduct proceedings, including, but not limited to trials, hearings, guilty pleas, discovery, grand jury proceedings, and mediation or arbitration under the South Carolina Court-Annexed Alternative Dispute Resolution Rules. The purpose of this order is to provide guidance on the use of remote communication technology by the trial courts, including appellate proceedings before the circuit court.

Since the start of the coronavirus emergency, remote communication technology has been used extensively by the trial courts, and this use has allowed court proceedings to safely occur despite the pandemic. In addition, this recent use of remote communication technology has shown it can, if used appropriately, conserve judicial resources, reduce travel and wait times for court participants, and reduce courtroom security and safety concerns.

While this order addresses some specific types of matters, it is impossible for it to address every type of matter that can possibly come before a trial court. For matters not specifically addressed in this order, judges should consider the general guidance along with how this order deals with similar matters to determine if a particular use of remote communication technology is appropriate.

When this order indicates that a proceeding may be conducted in whole or part using remote communication technology, it means that the use of remote communication technology can range from allowing a single person, such as a witness or other participant in the proceedings, to participate by remote means, to a proceeding in which all of the participants (judge, counsel, parties, witnesses, etc.) are participating by remote means, or anything in between.

This Court recognizes that various trials, pleas or hearings may have already been scheduled to be conducted using remote communication technology under the guidance contained in the order of June 15, 2021.¹ If so, the use of remote communication technology for that trial, plea or hearing may continue to be conducted under the guidance contained in the June 15, 2021 order, notwithstanding any new limitations in this order.

(b) Definitions. For the purpose of this order:

(1) County Grand Jury Proceedings. The Solicitor or the Attorney General is authorized to present an indictment to the grand jury using RCT, and any necessary oath may be administered using RCT (see section (c)(11) above). Consistent with the law regarding the secrecy of county grand jury proceedings,³ any recording feature in the RCT must not be used, and the person presenting testimony by RCT must be warned that no recording of any of the proceedings before the grand jury can be made.

(2) South Carolina Court-Annexed Alternative Dispute Resolution Rules (SCADR). RCT and ERCT may be used for Online Dispute Resolution under Rule 5(h), SCADR.

(3) Discovery in Civil Cases. The parties in a civil case may agree to use RCT to conduct any discovery under the South Carolina Rules of Civil Procedure. Further, in the exercise of discretion, a judge may require discovery in a case to be conducted using RCT, and may direct that ERCT be used.

(4) Arrest and Search Warrants. An officer seeking the issuance of an arrest warrant or search warrant may appear before a judge using RCT.

During this appearance, the judge may administer the oath to the officer (see section (c)(11) above) and, if appropriate, may take sworn testimony to supplement the allegations in the warrant. The judge shall make a notation on the warrant indicating the oath was administered remotely and the officer was not available to sign the warrant in the presence of the judge. If probable cause is found, the judge shall sign the warrant and return the warrant to the officer for execution. While the officer may sign the warrant when it is returned, the failure to do so shall not affect the validity of the warrant. The warrant may be transmitted to the judge and returned to the officer by e-mail, fax or other electronic means. For the purpose of this section, the term "search warrant" shall also include applications under the South Carolina Homeland Security Act, S.C. Code Ann. §§ 17-30-10 to -145.

(5) Determination of Probable Cause Following Warrantless Arrest. If after considering the affidavit submitted to support a warrantless arrest, a judge determines it is appropriate to supplement the affidavit with sworn testimony, a judge may take the testimony using RCT and administer the oath (see section (c)(11) above).

(6) Bail Hearings in Criminal Cases. At the discretion of the judge, a hearing to set bail, modify the terms of bail or to revoke bail for a criminal defendant may be conducted in whole or part using RCT.

(7) Preliminary Hearings. With the consent of the defendant and the representative of the State, a preliminary hearing may be conducted using RCT. Further, even without consent, a judge may allow a witness to testify at a preliminary hearing using RCT if the judge finds there is sufficient justification to do so.

State of South Carolina)	Court of Common Pleas
)	Eleventh Judicial Circuit
County of Lexington)	Case No. 2023-CP-32-00091
)	
Dennis Gallipeau,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
)	
D. Ryan McCabe and)	
Marion J. Smith,)	
)	
Defendants.)	
)	

August 1, 2023
Lexington, South Carolina

B E F O R E:

The Honorable Walton J. McLeod, Judge

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

Stephanie Kellahan, Esquire
Attorney for the Defendants

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter III

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I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Motion for Entry of Default on Counterclaims.....	4
Ruling.....	6
Court Reporter Certification.....	8

1 AUGUST 1, 2023

2 (WHEREUPON, the proceedings began via WebEx virtual
3 courtroom. The plaintiff was not present in the virtual
4 courtroom. Counsel for the defendants was present.)

5 THE COURT: All right. Gallipeau v. McCabe. Ms.
6 Kellahan?

7 MS. KELLAHAN: Good morning, Your Honor, or I guess good
8 afternoon, Your Honor.

9 THE COURT: Yeah. Good afternoon, I know. Bear with me.
10 All right. So this is the case of Dennis Gallipeau
11 versus Ryan McCabe, and we obviously just had a hearing
12 yesterday. I don't see Mr. Gallipeau in the virtual
13 courtroom.

14 MS. KELLAHAN: No, Your Honor. He sent a couple emails
15 this morning saying he objected to this hearing.

16 THE COURT: Oh, okay. This is a motion for entry of
17 default on the counterclaims; is that accurate?

18 MS. KELLAHAN: Yes, Your Honor.

19 THE COURT: Happy to hear from you.

20 MS. KELLAHAN: Thank you. This is actually a different
21 case, Your Honor, than the one heard yesterday. The one heard
22 yesterday was filed in 2020. It was Mr. Gallipeau versus MJS,
23 Inc. The defendant in this case, Marion Judd Smith, is the
24 owner of MJS, Inc., and the other defendant in this case, Ryan
25 McCabe, represented MJS in the 2020 case.

1 Mr. Gallipeau filed this case alleging perjury against
2 the defendants related to the 2020 case. We filed
3 counterclaims alleging frivolous proceedings on behalf --
4 behalf of both defendants, as well as abuse of process on
5 behalf of Mr. Smith. Those were served on Mr. Gallipeau via
6 mail on March the 3rd. We also served him via email or we
7 sent him a copy via email. No answer or other responsive
8 pleading has been filed.

9 In the meantime, Judge Keesley dismissed Mr. Gallipeau's
10 action, his claim for perjury. Mr. Gallipeau has appealed
11 that dismissal. However, the -- the order that he's appealing
12 from clearly states that it has nothing to do with the
13 counterclaims. Because Mr. Gallipeau is in default, he's
14 admitted the allegations of the complaint, which is that this
15 suit was brought for an improper purpose against Mr. Smith,
16 and that his pleadings are frivolous.

17 And so we'd ask the Court to enter default against him.
18 I'd also ask the Court to enter a judgment that Mr. Gallipeau
19 has admitted or that he is liable for the allegations
20 contained in the defendants' counterclaims and hold the issue
21 of damages in abeyance.

22 For so long as Mr. Gallipeau continues this appeal, the
23 damages against my clients are continuing to accrue. So we'd
24 like to go ahead and have it entered into the record that he
25 is in default, that judgment is entered, but hold the

1 determination of damages in abeyance.

2 THE COURT: Okay.

3 MS. KELLAHAN: Just for the Court's record, the emails
4 that Mr. Gallipeau sent this morning were that he contested
5 having a virtual hearing on damages. So if the Court holds
6 the issue of damages in abeyance, it gives Mr. Gallipeau what
7 he requests anyway.

8 THE COURT: Okay. Would you just do me a proposed order
9 on this, please? And just --

10 MS. KELLAHAN: Yes, Your Honor.

11 THE COURT: -- give me the -- please give me the
12 procedural history as well, when you served your counterclaims
13 and --

14 MS. KELLAHAN: I will.

15 THE COURT: I mean, there's a lot in the file here, but
16 we might even -- we're doing default. We might need to do an
17 affidavit of default, which you can file supplementally, if
18 it's not already.

19 MS. KELLAHAN: We have. We have filed an affidavit of
20 default, Your Honor.

21 THE COURT: Okay. All right. I'll tell you what. Just
22 reference the documents, the procedural history.

23 MS. KELLAHAN: I will.

24 THE COURT: All right. I appreciate it. I'll look for
25 your proposed order.

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MS. KELLAHAN: Thank you very much, Your Honor.

THE COURT: All right.

(WHEREUPON, the proceedings ended.)

--- END REQUESTED TRANSCRIPT ---



Dennis Gallipeau <dennismgallipeau@gmail.com>

Re: 2023-CP-32-00091 Today's Hearing on Defendants' Motion for Default Judgment

1 message

Dennis Gallipeau <dennismgallipeau@gmail.com>
To: Stephanie.Kellahan@mccabetrotter.com
Cc: wjmcleodsc@sccourts.org

Tue, Aug 1, 2023 at 10:16 AM

Good Morning again,

In addition to my previous email notification that I cannot and respectfully will not consent to today's hearing, all parties in this matter have demanded a trial by jury and as such, under Rule 55(b)(2), the plaintiff is entitled to a trial by jury and the plaintiff so demands a jury trial be scheduled in this matter.

Respectfully,
Dennis Gallipeau
Plaintiff

On Tue, Aug 1, 2023 at 9:43 AM Dennis Gallipeau <dennismgallipeau@gmail.com> wrote:

Good morning,

This is to let you know that the Plaintiff, Dennis Gallipeau, cannot and respectfully does not consent to a hearing in this forum on a motion for default judgment. An in-person evidentiary hearing will be necessary. Further although a motion for default judgment has been filed, there has been, and there is no Entry of Default and as such the defendants' motion even if the Plaintiff were to consent to today's hearing, is premature. I would ask that an in-person hearing be scheduled for this matter.

Dennis Gallipeau
(803) 238-8735