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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2023-001342

Michael Carwane , Appellant.

v.

South Carolina Department of Juvenile Justice Respondent.

RESPONSE TO RESPONDENT'S MOTION TO DISMISS APPEAL

Appellant Michael Carwane disagrees with the Respondent's Motion to Dismiss his appeal, in both stated content and proposed outcome. The Appellant originally sought the oversight of the Court as lawful means to enforce properly served legal Subpoenas, and subsequent Motion to Compel orders. Respondent chose not to respond appropriately, or fully to those legal requests for Discovery, in violation of their own policy, for Appellant action in the State Human Resource Administration Grievance hearing. Appellant continues to seek opportunity through this Court to gain access to those documents denied him originally.

As a *pro se* litigant, Michael Carwane has at all times sought to not only understand the Court rules and expectations for him, but to comply with those. It has been a hardship for an untrained citizen, who cannot afford legal counsel, to have a perfected understanding of these complex processes that he has never engaged in before. However, in pursuit of the Truth, which should be available for Appellant to present at his grievance hearing, Mr. Carwane continues to petition to the Court to have that opportunity with access through the Court, and to have a voice. Appellant has communicated with the Court assigned case manager throughout to attempt to offset potential misinterpretations of the expectations,

as a *pro se* litigant. Appellant is willing to take additional feedback from the Court, and be responsive to direction from the Court about how to best mitigate any errors it deems remaining in his Court submitted documents. As example, if there are errors named by the Court related to the named documents in Respondent's list in section #8, Appellant would be responsive to that feedback and direction by the Court. Appellant has not received any statement from the Court since his latest submission deadline to the Court, regarding outstanding errors in those documents. By submitting their Motion to Dismiss, the Respondent's have effectively asked the Court to ignore the Respondent's own noncompliance with original Subpoena request, citing compliance standards themselves. This appears to be another disingenuous, hypocritical stance chosen by the Respondent's Attorney as a delaying or dismissive tactic. The results of that tactic are unwanted by the Appellant. Thus, the Appellant again seeks the authority and protection of the Court to support his efforts at Discovery, for the Truth.

Appellant did receive the February 7, 2024 Court Order. Appellant mistakenly conceptualized in Rule 209 that the Appellant and Respondent each were contributing their own Record on Appeal documents, and that collectively they would comprise the Record on Appeal. In fact, the Appellant's request for an Amended Record on Appeal was based upon the lack of opportunity to receive a transcript from the lower court. This problem was listed, and explained as one of the reasons for his appeal to this and the lower Court. Neither was Appellant provided a copy of, by Respondent, any of the items they might choose to present as evidence in the Record on Appeal. Meanwhile, Appellant was responsive and communicative with the Court assigned case manager, about how to best adjust existent page sequencing of documents to comply with the Courts standards for indexing and page numbering, not believing he was also needing to index, sequence and number those of the Respondent. Said plainly, it was confusing to a *pro se* litigant that he would be responsible for seeking out, and presenting, as part of his presentation to the Court, those documents that the Respondent felt could best represent their own position in the case. As Appellant remains confused about how to best meet this standard or expectation, he would again humbly ask for the Court to provide feedback about remaining issues in his submitted Amended Record on Appeal, rather than allow the Respondent to capitalize with his requested blanket dismissal. It is the Appellant's perspective

that the patience and grace a Court might show for any rules misunderstanding of a confused *pro se* litigant should not be less than that given to a purposefully dismissive State agency Respondent to a series of legal Subpoena and Motion to Compel orders, while they are empowered and backed by the funding and greater resources of the State taxpayer's funding.

Respondent's Attorney cites in his Motion to Dismiss Appeal in his section #4 that, "Appellant also failed to truthfully certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material." The Appellant has always only included those materials proposed to be included. Appellant was additionally willing to use the Court Order dated February 7, 2024, as a chance to pair down further those documents to be responsive to that letter where the Court stated, "Moreover, the amended record on appeal must not include any matters which were not presented to the Administrative Law Court". Appellant did this. Appellant also went through the arduous process of reordering, and renumbering (by use of Roman numerals and sequenced traditional numbered exhibits) the exhibits and index to match the original lower Courts format to avoid further confusion by all parties. Appellant further sought clarity from the Court regarding explanation for its denial of the earlier Appellant's motion further reducing his access to the equally sought Subpoena, and Motion to Compel Discovery information from the other agencies involved in the lower court appeal. Appellant was denied his subsequent motion on April 26, 2024 requesting a hearing to receive feedback from the Court. Thus, the Appellant never was given clarity by the Court about either its prior decision, or the current expectations for the current step in the rules process taken by *pro se* Appellant. Lacking this requested forum for discussion of feedback from the Court, Appellant may have remained confused, but still chose to eliminate all documents not provided to the lower Court to be responsive to these Court rules. The claim by Respondent's attorney in #4 is, thus, not accurate. Appellant continues to ask how that expectation can apply, as one of the issues of the lower Court was to dismiss the case prior to a hearing? The net effect here is that Appellant cannot present evidence that he was never given opportunity to present originally. Hence, Appellant was justified in naming this as a problem (identified in the original appeal to the Court of Appeals) for which the Court of Appeals' oversight became necessary. If this Court accepts the current proposed

Respondent Motion To Dismiss Appeal, it will have effectively taken this broken logic to the next level by preventing any presentation on evidence, that was earlier disallowed, because it was never allowed to be fully presented in the lower Court, though that is a merited justification of the need for the Appellant's appeal in this setting. Appellant has also asked the court how this will account for the additional facts and information presentable as evidence and argument in the almost two years that have elapsed during this process. Appellant should not even have to be in a position to explain this, as difficult as it is, if the Courts are designed for a *pro se* litigant to have access to represent "his side of the story". I hold the Respondent Attorney responsible for his false representations and dubious tactics that have had the design of misleading the Courts. His motivation is contrary to a full Discovery of the Truth, by any means, as reproduced here in his latest attempt to be dismissive.

Respondent's attorney attempts in his section #7 to assert that Appellant was non-compliant with the Court deadline. This is not accurate. Appellant had contacted the Court case manager requesting a written notice from the Court regarding the time frames for its expectations for the next step in the Court process at that time. Appellant made this communication a priority in order to meet the Court expectations, and due to the fact that the prior Court order lacked this information, though the case manager stated the order would come with "additional instructions" that Appellant would be asked to follow. The letter dated May 1, 2024 was the result of that communication requested by the Appellant, which Appellant then acted on in a manner to meet the stated deadline. It is false for the Respondent's attorney in his motion to misrepresent the Appellant communication here as noncompliance with the deadlines. Furthermore, he is falsely projecting upon the Appellant that it is his own responses that have now multiple times failed to be submitted by the Court deadlines. It was his own response to the prior Appellant motion that caused this particular delay in the process, and was not beneficial to the Appellant.

Possibly most egregious of the false assertions in the Respondent attorney's Motion to Dismiss Appeal, is contained in section #9. Appellant chose as origin to and motivation for his decision to seek legal remedy, the need from a higher authority to provide safeguards from the bullying and abuses of a State agency, that retaliated against the Appellant while accessing its internal reporting

processes (which it controls). Appellant asked this Court, as well as other review venues available to the Appellant to provide the kind of oversight during its processes to prevent the Respondent from further victimizing of the Appellant. Nevertheless, the Respondent Attorney continues to choose tactics to persuade the Court that the Appellant is acting improperly. This sustained negative portrayal by the Respondent of the Appellant is a tactic devised to confuse the Court, denigrate the merit of the Appellant's claim, delay the timeframe for responsiveness, and to deflect from the topics that should be under review by the Court. In section #8, the language chosen by the Respondent's attorney, "... continuing unwillingness to meet his basic obligations" serves falsely to enhance this tactic again by the attorney. Appellant asks the Court to rebuke the desired outcome (for him) of that statement, and remain vigilant for the continued harms caused to Appellant during these processes.

In response to Respondent attorney's section #11, Appellant will again, as above, challenge that the statement is a dubious tactical projection of his own failure to meet his assigned deadlines onto the Appellant that have resulted in delays. It is also a distraction from the fact that the delays do not benefit the Appellant, and continue to take away from attention on the delay tactic chosen by the Respondent when it withheld Discovery. Neither party would have experienced the delays since August 2022, if the Respondent made the proper choice to not withhold Discovery materials in its attempt to cover up its liability for Appellant reported State agency violations.

May 28, 2024



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**PROOF OF SERVICE: RESPONSE TO
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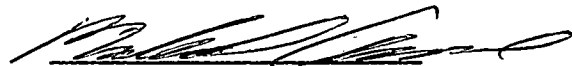
South Carolina Department of Juvenile Justice Respondent.

PROOF OF SERVICE

I certify that I have served the Response to Respondent's Motion to Dismiss Appeal, on The Court of Appeals by depositing a copy of it in the United States Mail, postage prepaid, on May 28, 2024 addressed to SC Court of Appeals, Clerk of Court, Jenny Abbott Kitchings, P.O. Box 11629, Columbia, SC, 29211.

I certify that I have served the Response to Respondent's Motion to Dismiss Appeal, on Respondent's Attorney, Eugene H. Matthews by depositing a copy of it in the United States Mail, postage prepaid, on May 28, 2024 addressed to Attorney Eugene H. Matthews, Richardson, Plowden, Robinson Attorneys, P.O. Drawer 7788, Columbia, SC, 29202.

May 28, 2024



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