

1 STATE OF SOUTH CAROLINA) IN SOUTH CAROLINA CIRCUIT COURT 16
2 COUNTY OF YORK) COURT C.A NO. 2022-CV-46-01509

3
4 Kalishwar Das,)
5 Plaintiff,)
6 Versus)
7 York County,)
8 Defendant.)

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SC Court of Appeals

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10 H E A R I N G

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12 DATE: January 5, 2023

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14 LOCATION: South Carolina Circuit Court 16

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16 JUDGE: William McKinnon

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18 TRANSCRIBED BY: ERIN REILLY

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INDEX

Certificate of Transcriber 23

EXHIBITS

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 PROCEEDINGS

2 THE COURT: All right. So, Mr. Das, you have a
3 motion for entry of default and a motion to -- a motion for
4 expedite. So, let's start with your motion for default. Go
5 ahead.

6 MR. DAS: Yes, Your Honor, actually, I'm here to
7 request you to send this matter to TSA -- SCTSA so that they
8 may compute my compensation amount. The defendant county has -
9 -

10 THE COURT: You want me to do what? To send it where?

11 MR. DAS: S-C-T-C-T-S-A, if I'm not wrong, but you
12 know, the --

13 THE COURT: The TSA, the Transportation Security
14 Administration?

15 MR. DAS: No, no, no. This is a -- Mr. Darwin, you
16 know, the TSA.

17 MR. DARWIN: I may, Your Honor, I believe he may be
18 referring to the Tort Claims Act.

19 MR. DAS: Oh, TCA, I'm sorry. TCA.

20 THE COURT: Well, the -- Mr. Das the Tort Claims Act
21 is a statutory framework for how claims are handled against
22 governmental entities. I -- if you -- I don't understand what
23 you mean by send it to the Tort Claims Act.

24 MR. DAS: No problem. So that --

25 THE COURT: So, let me -- the motion I have in front

1 of me is a motion for entry of default.

2 MR. DAS: Yeah, entry of default because, sir, Mr.
3 Darwin never provided any document kind of thing to prove that
4 he's the attorney, the need defendant in York County and York
5 County defendant is Michael Kendree, and I reported him, I
6 provided him all the documents and he never responded me. So,
7 for that reason, he's defaulting at one place. And another
8 thing is that the -- Mr. Darwin served me the copy through
9 email. An email copy never opened as after seven days; I came
10 to know that he sent me some email. I went to the docket seat
11 to see and I found that -- and I found with the -- you know,
12 it, it was totally wrong thing. He's referring this case is a
13 hundred percent case of discrimination against by Mr. Colton.
14 And he's referring something which is not relating to this case
15 anyway and second thing you know the physical copy, I never is
16 --

17 THE COURT: Mr. Das, let me stop you. Okay. How did
18 you serve? York County is a defendant, right?

19 MR. DAS: York County is a defendant. New defendant,
20 sir.

21 THE COURT: Okay. Well -- but the defendant you're
22 trying to hold in default is York County, correct?

23 MR. DAS: Yes, sir.

24 THE COURT: Okay. How did you serve York County?

25 MR. DAS: York County attorney.

1 THE COURT: You -- so what did you do exactly?

2 MR. DAS: I sent the certified copy of the file and
3 the case.

4 THE COURT: So, you mailed a copy to the attorney?

5 MR. DAS: Yes, sir. And yesterday I met Mr. Mike ---

6 THE COURT: Mr. Das, please don't speak over me.

7 Okay. That's not proper service. I mean, did you review the
8 rules of civil procedure?

9 MR. DAS: Okay. So, what is the rules of civil
10 procedure, sir?

11 THE COURT: Yeah, Mr. Das, I can't coach you on a --
12 the rules of civil procedure, Rule 4, governs service to
13 process. So let me hear from Mr. Darwin on this, but if that's
14 how you serve the county, I don't think that's proper service.
15 Let me hear from Mr. Darwin.

16 MR. DARWIN: Thank you, Your Honor. May I please the
17 Court. Mr. Das originally filed his complaint and named
18 magistrate Judge Colton, a couple of her constables and other
19 courtroom staff with the magistrate's court. I filed a motion
20 to dismiss them individually based on the Tort Claims Act that
21 was granted. And Mr. Das was granted leave to file an amended
22 complaint naming only York County as to defendant, Your Honor.
23 He did so and within the proper time, I filed and served an
24 answer to the amended complaint on October the 18th and a
25 motion to dismiss on October.

1 THE COURT: So, the alleged default is an amended
2 complaint, not the original complaint?

3 MR. DARWIN: That is correct, Your Honor. And also,
4 I served Mr. Das by mail. I sent him the answer to the amended
5 complaint and motion to dismiss you'll see the certificate of
6 service I filed on October the 18th, 2022. And then because
7 Mr. Das and I have been exchanging emails throughout this case,
8 Your Honor. I did the next day as a courtesy also send him an
9 email attaching those. But I did serve them by mail as well on
10 the day I filed them, the very following day is when I sent
11 them the email with them just as a courtesy,

12 THE COURT: Your Honor, Mr. Das, I'm looking at an
13 answer filed October the 18th.

14 MR. DAS: Yes, Your Honor. Let me speak on this
15 matter because this is little bit --

16 THE COURT: Mr. Das, please do not cut me off. Okay?

17 MR. DAS: I'm so sorry, sir.

18 THE COURT: I'll call on you when it's time for you
19 to speak, okay?

20 MR. DAS: Okay.

21 THE COURT: You understand? So, let's see -- so the
22 amended complaint was -- the answer wasn't even -- was filed 15
23 days after the amended complaint was filed with, so what's your
24 basis for arguing your --- did you receive the answer?

25 MR. DAS: It's me to answer?

1 THE COURT: Yes, sir. I'm asking, did you receive
2 the answer that York County filed and served?

3 MR. DAS: I received not a single answer from the
4 York County.

5 THE COURT: You didn't?

6 MR. DAS: Yeah.

7 THE COURT: Did you receive the electronic filing
8 notice that told you that there -- that it had been filed
9 electronically?

10 MR. DAS: Not from York County.

11 THE COURT: From the clerk of court?

12 MR. DAS: No, sir. Which you notice you're talking
13 about? Can you specify the notice, sir?

14 THE COURT: I'm talking about the answer to the
15 amended complaint

16 MR. DAS: Answer from the amended complaint it came
17 only from Mr. Darwin in email, an email never got opened that
18 was an error in email it was never opened. So, I got the
19 answer from the docket. I printed it and I told him, because
20 of the technical reason, I'm not going to consent your answer.
21 And also, you are not the declared attorney of the York County
22 new defendant, so please take care of this part and he never
23 provided any kind of document.

24 THE COURT: Sorry, you said he's not the attorney?

25 MR. DAS: Yeah, he's not because Court told me, sir.

1 I went to the Court and I asked them like, you know, who is the
2 attorney for the York County? And I went to the website also, I
3 saw clearly that York County attorney is Mr. Michael Kendree.
4 And yesterday I met him, I meet Mr. Michael Kendree, I met him
5 personally. I handed over the supplementary document and he
6 told me this, yes, I am the York County attorney. It was very
7 clear to me, I did no mistake anywhere. And he -- I was
8 requesting him to provide the, you know, document that York
9 County hired you or you were retained by the York County, so
10 that I will consent your email or whatever he sent me I will
11 consent it. But he never provided me anything and they passed
12 so I claimed for the default judgment, but my problem was
13 something else also but it was totally ignored by the Court and
14 the -- by Mr. Darwin.

15 THE COURT: Mr. Das, my turn. Okay. I have a
16 certificate of service dated October 18th, where Rhonda
17 Mitchell, who's a paralegal at Holcombe Bomar says she's swear
18 the answer to amend -- amended complaint. It's filed with the
19 Court, so I found that sufficient evidence that there was an
20 answer and motion for default is denied.

21 MR. DAS: But sir, I never received that from -- what
22 do you call? The mail -- in my mail in my home, and also
23 because [indiscernible].

24 THE COURT: Okay, did -- okay. I've ruled. Okay,

25 MR. DAS: This is not -- I'm not -- I'm sorry,

1 | because I'm not a good speaker but I'm trying to specify one
2 | thing that Mr. Darwin never cleared it that he's hired or
3 | retained by the York County, so that I will guess it. He's the
4 | attorney of the York County and I will respond it. He never
5 | did that and I was requesting him from Dave Hust and he's not
6 | telling me. Rather -- two days ago he told me -- he wrote me
7 | an email that says that I was retained to represent York County
8 | in this case by the South Carolina Insurance Fund, the
9 | insurance carrier for York County. Therefore, I am the
10 | attorney of the -- of record in this case of York County. That
11 | makes no sense.

12 | THE COURT: Mr. Das, stop. Okay. Mr. Darwin, are
13 | you the counsel of record in this matter for York County?

14 | MR. DARWIN: Yes, I'm Your Honor. I have been since
15 | --.

16 | THE COURT: Okay. Mr. Das, Mr. Darwin is an officer
17 | of the Court. He has filed pleadings on behalf of York County.
18 | He's affirmed, he's a counsel of record. So, we're going to
19 | move on, the motion for default is denied.

20 | MR. DAS: No, sir. Let me speak I'm not done here,
21 | so please do not --

22 | THE COURT: Mr. Das, you are done on that issue.

23 | MR. DAS: One more thing I need to say here.

24 | THE COURT: Mr. Das, if you speak over me again, you
25 | -- I will consider holding you in contempt. Do you understand?

1 Stop speaking over me. I will tell you when you may speak, do
2 you understand? Do you understand?

3 MR. DAS: Okay, sir.

4 THE COURT: Okay. I don't want to have to send the
5 Sheriff's deputy to arrest you for contempt. Okay? This is a
6 court proceeding, all the rules of court apply as if we were in
7 actual court do not speak over me. Right? Motion for default
8 is denied, your motion to dismiss. Go ahead, Mr. Darwin.

9 MR. DARWIN: Thank you, Your Honor. May I please the
10 Court. And Your Honor, I'm not going to belabor what's in just
11 the two-page motion to dismiss the amended complaint, but I do
12 want to go into the fact that all of the allegations and the
13 amended complaint stemmed from the rulings that Mr. Das
14 disagrees with that Judge Colton made in a commercial eviction
15 in which he was a defendant, she found in favor of the landlord
16 and ruled for the eviction. Mr. Das then filed an appeal as I
17 set forth in my motion, Your Honor and that appeal was to the
18 Circuit Court. He filed that on May 2nd, 2022. He then would
19 filed a notice of withdrawal of that appeal on May 12th, 2022,
20 and then filed his lawsuit initially on May 16th, 2022, and
21 then amended it at -- on October the 3rd, 2022 based on the
22 ruling of the Court that he needed to amend to add York County
23 as the proper defendant.

24 But all of the allegations that amended complaint,
25 Your Honor, are challenging what Judge Colton's actions in that

1 underlying commercial eviction. And the only property remedy
2 for Mr. Das would've been to have appealed and prosecuted that
3 appeal. So, any errors that he claims she made, anything he
4 says she didn't allow him to file any pleadings, counterclaims,
5 those sorts of things all arose out of that litigation on the
6 commercial eviction, and the remedy should have been an appeal.
7 Furthermore, Your Honor, if you look at what he asserts as or
8 sets forth as causes of action, which are discrimination and
9 corrupt court practices, personal loss of livelihood and other
10 losses, procurement of hearing transcript slash video footage
11 issue and cost of this action. None of those are viable causes
12 of action, not only under the Tort Claims Act but under the
13 common law or statutory laws of South Carolina, as far as I can
14 tell from the best reading, I can make of that amended
15 complaint, Your Honor.

16 Furthermore, and I put these in my answer and base
17 that on the motion to dismiss. Pursuant to the Tort Claims
18 Act, Your Honor set forth 157860 Paragraph 1 that a
19 governmental entity is not liable for loss resulting from
20 legislative judicial -- quasi-judicial action or in inaction.
21 Again, it stems from Judge Colton's ruling and an underlying
22 commercial eviction and Your Honor, again, not to belabor the
23 point, but just for the record also set forth under Court
24 Claims Act 157860 Subsection 2, Subsection 3, and Subsection 5,
25 Your Honor, for all of those, and even if you liberally

1 | construe the complaint -- the amended complaint, excuse me.
2 | There's just no cause of action set forth in this case and he
3 | should be precluded from asserting any causes of action because
4 | he dismissed or withdrew his appeal, which would've been the
5 | property avenue for any relief he sought, Your Honor.

6 | THE COURT: Okay, Mr. Das, I need you to listen
7 | carefully. Okay? The defendant, York County, their attorney is
8 | arguing that everything in your complaint is your -- about you
9 | being unhappy with the rulings by Magistrate Judge Colton in an
10 | eviction action, okay? And those actions are not -- cannot
11 | support a tort action under the Tort Claims Act. So, my
12 | question to you is, do you have any claims against York County
13 | that are not based on what Judge Colton did in your eviction
14 | lawsuit? Okay? That's my question.

15 | MR. DAS: Do I have right to put my opinion in the
16 | statement?

17 | THE COURT: Yes, sir. I'm asking you to tell me, do
18 | you have any claims in your lawsuit that are not based on what
19 | Judge Colton did as a judge in your eviction case?

20 | MR. DAS: Okay, sir. Ms. Colton did an eviction case
21 | and that was fine, gone and forgotten. The main thing is that
22 | she threw me out of the court lobby, that was the case of
23 | discrimination. Plus, in her rehearing case in -- on 14th of
24 | April, she talked about a case which FBI case she discussed
25 | about that involves the name of Mohamed Atta. He was the

1 | mastermind behind the 911 attack and I was reporting to FBI and
2 | they are not giving me the video recording

3 | THE COURT: Mr. Das, I -- you have completely lost
4 | me, I'm afraid. I don't understand the connection between Mr.
5 | Atta or any of that in your case?

6 | MR. DAS: I also don't understand why she talked
7 | about that in the Court. And I wanted a video copy so that I
8 | will give that to FBI. I asked to FBI did -- why he tell her -
9 | - told her and they told me no, I never told them. So how
10 | she's talking about FBI case and Mohamed Atta where my former
11 | employer pondered him for anything. Why she was talking in the
12 | court and what Mr. Darwin is talking about is totally
13 | forgotten. That is not the case, actually. Amended case is
14 | about my 100% discrimination. On 18th of April, 2022, when I
15 | was attempting to file a motion in the court, she threw me out
16 | of the court premise. And next day she sent me an email
17 | confirming that what she did, she did in mistake or whatever,
18 | she is declining my two motions on phone via her personal
19 | iPhone not involving any kind of conduct or hearing. She did
20 | that and that is truthful, that is provided to the Court.

21 | THE COURT: Mr. Das --

22 | MR. DAS: And during that, Mr. Darwin is claiming --

23 | THE COURT: Mr. Das, let me speak, please. Okay? But
24 | again, these are the actions of Judge Colton as a judge. If
25 | you don't like what a judge does in your case, the way you

1 challenge that is you appeal to the higher court. So my
2 question to you is, again, is there anything in your lawsuit
3 that does not involve Judge Colton's actions as a judge?

4 MR. DAS: Anything Judge Colton did in the court sir,
5 that is forgotten. Gone. I lost my store, I lost my business
6 but my question of my dignity loss is here. This is what my
7 16th of May petition is done. I did not charge anything about
8 my loss in business, I charge only because she discriminated
9 me.

10 THE COURT: How did she discriminate against you? I'm
11 still not understanding your claim.

12 MR. DAS: Okay. Let me explain. Thank you, sir for
13 giving me this option to tell you. I went on 18th of April
14 after case was ended, everything was done. I went on April
15 18th to the Court and I was trying to file an old motion, not
16 the new motion, old motion to just let her see what happened in
17 that case. And she ordered the Court constable to throw me out
18 of the Court premise. This is what the complaint is all about.
19 And Mr. Darwin is wrongly referring that, no, no this is the
20 case of Judge Colton is wrong. No, no, no, I'm not disputing
21 that at all. I'm not disputing what judge did that day to
22 evict me. I'm disputing only one thing that she discriminated,
23 threw me out, no human rights. Where is my human rights? Why
24 she threw me out of the court premise?

25 THE COURT: Mr. Das, your claim is that Judge Colton

1 removed you from the courtroom for a discriminatory reason?

2 MR. DAS: No from the courtroom, sir. From the court
3 lobby.

4 THE COURT: From the lobby?

5 MR. DAS: Yes. So, Judge Colton ordered security to
6 remove you from the lobby?

7 MR. DAS: Court lobby. She interrupted me filing the
8 motion and she threw me out of the court permit. Next day, she
9 put a sign outside that I cannot come inside the court, and I
10 was not allowed to go inside the court to collect my own order.
11 And why Mr. Darwin is lying, just giving you the deceptive like
12 information to the court that this case is relating to that
13 eviction suit. No, there is no eviction suit remaining here,
14 there is not. So read the case properly. It is not relating
15 to anything about the -- like a eviction thing. This is 100%
16 discrimination case. She threw me out, she asked me some
17 derogatory questions. She talked about Mohamed Atta, and she
18 was talking about to like it should just to distract me from
19 reading the book. The petition, which was given to me five
20 minutes peaceful to read it through.

21 I was reading and she was trying to distract me and
22 she talked about those things. I say, give me the video to
23 verify what she was talking about, why she talked about that?
24 This case is not relating to Mohamed Atta. This case is not
25 relating to my employer, whether he provided the point to

1 | Mohamed Atta or not. Why she's talking about that is
2 | endangering my life. And they're not taking this seriously,
3 | they're trying to drive the case in two different direction
4 | that oh, yeah, this is the eviction case. This is not the
5 | eviction case at all. This is a discrimination case. She's
6 | racist -- she has a racist feeling. She don't have any kind of
7 | respect for the Indians. I had the red spot -- okay, let me
8 | turn my video on.

9 | I had a red spot on my forehead, and she asked me,
10 | what is on your forehead? I said, this is the symbol of my like
11 | I -- when I pray, I put the red symbol on here. And she told
12 | me, oh, I thought like your women wear that. I don't care
13 | about that. What you all do that and she just ignored it. So,
14 | I say, please take the video off of 14th of April and just go
15 | through the video. Truth is truth you can see what happened.
16 | You can see what happened. Don't believe me, I say maybe I'm a
17 | liar. Maybe I'm not giving you right information, but video
18 | can tell you everything. Take the video of 18th, take the
19 | video of 14th and see the fact what happened.

20 | THE COURT: Mr. Das, let me stop you, so what you
21 | want is to be -- see the courthouse security video?

22 | MR. DAS: Yes, sir.

23 | THE COURT: Have you made a foyer request for that
24 | video?

25 | MR. DAS: I did that. Mr. Darwin also told me and he

1 wrote me an email that he's going to provide me that. This is
2 why I was providing he said, no, I can give you the video.

3 THE COURT: Mr. Das that's okay. Do you understand
4 there's a Freedom of Information Act process, and if the county
5 doesn't respond in a way you think is appropriate, you can file
6 a civil action. But let me hear Mr. Darwin what about -- was
7 Mr. Das excluded from the courthouse?

8 MR. DARWIN: Your Honor? Yes. Judge Colton has --
9 I'm advised that because of his behavior in the waiting area,
10 he was removed because he was disturbing other patrons from
11 trying to file documents with the Court. So, he was instructed
12 to leave that --

13 THE COURT: As a -- she -- as a judicial officer, she
14 instructed --

15 MR. DARWIN: Absolutely, Your Honor. That's my
16 argument. Everything she did, she did as her role as a
17 magistrate judge for York County, every collection that she
18 did.

19 MR. DAS: Your Honor, I request prove it.

20 THE COURT: You're the plaintiff, sir. You have to
21 prove the case.

22 MR. DAS: Okay. So, I have my video. So should have
23 --

24 THE COURT: Mr. Das, let me speak. Okay? My -- that
25 Mr. Darwin is telling me that -- and I'm beginning to believe

1 that he's correct, that everything in your complaint relates to
2 actions that Ms. Colton took as a magistrate judge within her
3 judicial authority, which would include telling someone they
4 have to leave the courthouse lobby. She's a judge, she can do
5 that

6 MR. DAS: She told the Court Constable to throw him
7 out. He hold my hand tight and threw -- dragged me out of the
8 Court. What? And, and -- okay. And if he's saying that I was
9 disturbing anybody? Okay. Saw the video. I have my own video,
10 you saw your video, okay? Saw your video come to the proof,
11 come to the proof and come to the truth. Truth must prevail,
12 she is discriminating person she doesn't deserve this kind of
13 post. I request you, please verify this. If I'm lying this,
14 please verify

15 THE COURT: Mr. Das my jo --. I'm not a roving
16 inspector of the judicial department. Okay? If you believe
17 you're mistreated by a judge, there are ways for you to make
18 that complaint. But I'm a civil judge hearing a civil
19 complaint, okay? I'm not -- I don't go around and evaluate
20 other judges and decide whether someone's doing something wrong
21 or right. That's not my role. So, based on this, I'm going to
22 grant the motion to dismiss the complaint. So, Mr. Das, I'm
23 going to give you one more chance to come up with a complaint
24 that states a cause of action. Okay? That means a some kind of
25 law or right, that has been violated, okay? You can't just say

1 discrimination, you need to say something like I don't know you
2 applied for a job and you didn't get it or something. I mean,
3 that you -- a specific allegation there's some law that's being
4 violated. Okay? So, I'm going to grant a motion to dismiss,
5 but I'm going to give you 30 days. I'm going to give you one
6 more chance to come up with a complaint that states a cause of
7 action. All right? You understand?

8 MR. DAS: I completely understand, sir.

9 THE COURT: Okay. So, motion to dismiss is granted
10 with leave to file an amended complaint within 30 days.

11 MR. DAS: Okay. Your Honor, can I request one thing,
12 sir?

13 THE COURT: I don't know if I can grant it but you
14 can request. Yes, sir.

15 MR. DAS: Yes. because of the 14th of April she was
16 discussing about, you know, some case where I was engaged with
17 the FBI, and I wanted that video to be provided so that, you
18 know, there will be a case filed with the FBI. I spoke with
19 the FBI fellow and they told me, you know, they need that
20 evidence. So, either I will have to file against -- the case
21 against her or I need the video footage. So, can you pass the
22 order to provide me with the video of 14th of April?

23 THE COURT: No, sir. I cannot. The case is
24 dismissed, you can refile, you can ask for it as part of the
25 discovery process. You can use them for your process, but I

1 | can't just do a -- you know, understanding order. That video
2 | needs to be provided to you. So, no I cannot do that.

3 | MR. DAS: Your Honor, that case was that the request
4 | for the procurement of transcript and the video footage was
5 | kept in on September 4th -- 20 and kept was --

6 | THE COURT: Was kept where?

7 | MR. DAS: It was kept on evidence. I already
8 | requested to the court and court put that in evidence.

9 | THE COURT: Okay, Mr. Das, again, the case is
10 | dismissed, so I cannot do any discovery orders on your behalf.
11 | Okay? You have 30 days. Your motion to this motion dismiss is
12 | granted, you have 30 days to refile a complaint that states
13 | what we would call a recognizable cause of action, meaning a
14 | specific legal wrong that was done to you, that the law
15 | provides a remedy for and you need to be very specific as to
16 | what happened to you and why a lawsuit is appropriate. Do you
17 | understand?

18 | MR. DAS: Yeah, I understand.

19 | THE COURT: Okay. That'd be the order of the Court.
20 | We'll do a form for Motion to dismiss granted, 30 days to
21 | refile one last time.

22 | MR. DARWIN: Thank you, Your Honor.

23 | THE COURT: Yes, sir.

24 | [End of hearing]

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CERTIFICATE OF TRANSCRIBER

I, ERIN REILY, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 16, South Carolina, on the 5th day of January, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 28th, 2024
ERIN REILLY
TRANSCRIBER