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Sep 09 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Hon. Donald B. Hocker, Circuit Court Judge

C.A. No.: 2020-CP-36-00382 &
C.A. No.: 2020-CP-36-00384
Appellate Case No 2024-002049

Jefferson Davis, Jr.Appellant,

v.

Chad Connelly, Dave Wilson, Steven Kirkland, Tom Persons, Neil Mellen, E3 Software, LLC,
Endurance International Holdings, Inc., John Doe #1, John Doe #2 & John Does 3-40
..... Respondents.

and

Jefferson Davis, Jr.Appellant,

v.

Chad Connelly, Tom Persons, Geoffery Chambers, Esq. & South Carolina Educational Credit for
Exceptional Needs Children Fund Respondents.

**APPELLANT’S MOTION TO VACATE THE LOWER COURT JUDGMENT
AND DISMISS**

NOW COME *Pro Se* Appellant above named, respectfully moves this Court, pursuant to
Rule 240, SCACR, to vacate the judgment of the trial court and dismiss this matter.

TIMELINE

1. On December 2, 2024, Appellant filed appeals in the above-captioned matters challenging the trial court's order of Willful Civil Contempt, which imposed a penalty of ninety (90) days in jail if Appellant did not pay \$39,443.61 within ten (10) days.
2. On December 19, 2024, Appellant filed an Emergency Petition for Writ of Supersedeas to stay enforcement of the ninety-day incarceration.
3. On December 20, 2024, this Honorable Court:
 - (a) issued a temporary stay of the civil contempt order;
 - (b) remanded the matter to the circuit court for an expedited hearing on Appellant's petition for supersedeas; and
 - (c) directed Appellant to provide sufficient medical records to the circuit court to support his sworn affidavit regarding serious health conditions, including Stage IV colon cancer.
4. On May 29, 2025, after extended hearings and the submission of extensive medical documentation by Appellant, the trial court issued an order expressly acknowledging that Appellant did, in fact, have **Stage IV colon cancer**, as he had previously attested.
5. On June 13, 2025, in light of the trial court's concession and findings, and because the trial court's prior ruling had been based on its disbelief of Appellant's sworn affidavit regarding his medical condition, this Court reassumed jurisdiction over the appeal.

REASONS FOR GRANTING MOTION

1. At the direction of this Court of Appeals, it has now been formally conceded by the trial court—and was never disputed by the opposing parties—that Appellant in fact had Stage IV colon cancer during the relevant time period, consistent with Appellant’s sworn affidavit and courtroom testimony.
2. It has also been established, and again not disputed by the opposing parties, that Appellant lacked the financial ability to pay the \$39,443.61 in legal fees as attested in his sworn affidavit and courtroom testimony.
3. South Carolina law is clear that civil contempt may only be found where the contemnor has the **present ability to comply** with the court’s order. *Henderson v. Henderson*, 298 S.C. 190, 379 S.E.2d 125 (1989); *Curlee v. Howle*, 277 S.C. 377, 287 S.E.2d 915 (1982). A party may not be held in contempt where noncompliance results from an inability to comply. *Lindsay v. Lindsay*, 328 S.C. 329, 491 S.E.2d 583 (Ct. App. 1997). Civil contempt cannot be used to punish where the contemnor lacks the ability to comply. *Miller v. Miller*, 375 S.C. 443, 652 S.E.2d 754 (Ct. App. 2007). A party cannot be held in contempt for failure to perform an act he is powerless to perform. *State v. Bevilacqua*, 316 S.C. 122, 447 S.E.2d 213 (Ct. App. 1994). Moreover, before one may be held in contempt for violating a court order, the order itself must be clear and specific, and the contemnor must have the ability to comply. *Poston v. Poston*, 331 S.C. 106, 502 S.E.2d 86 (1998); *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611 (1994).

4. Because inability to comply is a complete defense to civil contempt, and the record now establishes both Appellant's medical incapacity and financial inability, it is legally impossible for the trial court's finding of willful civil contempt to stand.

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons, the undersigned Appellant would respectfully request that this Court:

1. Vacate the judgment of Willful Civil Contempt entered by the trial court on November 25th, 2024.
2. Dismiss this matter in its entirety.



Date: September 9th, 2025

Jefferson Davis, Jr., Appellant
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Other Counsel / Parties of Record: See Certificate of Service

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and

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Exceptional Needs Children Fund Respondents.

PROOF OF SERVICE

I certify that I have served **APPELLANT’S MOTION TO VACATE THE LOWER COURT JUDGMENT AND DISMISS** on the below named parties via First Class Mail or email on **September 9th, 2025**.

[CONTINUED ON NEXT PAGE.]

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**Non-Party - Educational Credit For Exceptional Needs
Children Fund (ECENC Fund, aka Exceptional SC)**

[CONTINUED ON NEXT PAGE.]

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APPELLANT

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SC Court of Appeals

September 9th, 2025

VIA Email & US Mail

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Appellate Case No 2024-002049

Dear Ms. Kitchings:

Please find enclosed **APPELLANT'S MOTION TO VACATE THE LOWER COURT JUDGMENT AND DISMISS** filed by email today.

A \$50 Motion Fee is being mailed first class.

Thank you for your assistance. If you have any questions, please feel free to email me at jeff@apogeetax.com or give me a call at 843-901-8036 (cell).

Sincerely,



Jeff Davis, *JD, MBA, CPA(GA)*

Plaintiff / Appellant

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