

POS 7/2/10
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FORM 1
NOTICE OF APPEAL IN A CIVIL CASE

RECEIVED
JUL 02 2010
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

~~APPEAL FROM RICHLAND COUNTY~~
~~Court of Common Pleas~~

~~James Barber, Circuit Court Judge~~

~~Case No. 1997-CP-40-0382-A~~

The South Carolina Dept. Of
Disability and Special Needs
Jim Hill, Phil Massey
individually
Respondent,

v.

SAC
Brenda Bryant individually,
and as mother and guardian of
Madison, a fictitious name
Appellant.

NOTICE OF APPEAL

Brenda Bryant appeals the order of the Honorable James Barber dated March 1, 2010.
Appellant has not received written notice of this order [judgment].

June 30, 2010

s/ Brenda Bryant

Judge James Barber

Brenda Bryant
264 Ashton Circle
Lexington, South Carolina 29073
(803)356-7639
Prose

Brenda Bryant

Counsel of Record:
William Davidson
1611 Devonshire Dr.
Columbia, South Carolina 29204
Attorney for Respondent
(803)806-8222

I Brenda Bryant, hereby certify that I have served William Davidson Attorney for Respondents

Date: July 2, 2010

Name: Brenda Bryant

I Brenda Bryant certify I have served Judge James Barber

Brenda Bryant

RECEIVED

JUL 02 2010

SC Court of Appeals

CC: Mark Whitlark Columbia South Carolina

BOOK SD PAGE 317

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Madison, a fictitious name of a mentally)
disabled person, through her court-)
appointed guardian, Brenda Bryant,)

Civil Action No. 97-CP-40-3082

Plaintiff,)

v.)

South Carolina Department of)
Disabilities and Special Needs,)

Defendant.)

ORDER

JEANETTE N. MCGRICE
2010 MAR -1 PM 3:40
RICHLAND COUNTY
FILED

This matter is before this Court on the Defendant's Motion to Relieve Brenda Bryant as the Guardian ad Litem for Madison, the mentally disabled person who is the Plaintiff in this action. A hearing was held on August 28, 2009. Brenda Bryant was present together with her attorney, William T. Toal. Madison was represented by Marcus Whitlark. William H. Davidson, II appeared as counsel for the Defendant South Carolina Department of Disabilities and Special Needs (SCDDSN). Theresa A. Horton, an attorney from Greenville, also was present. Ms. Horton was serving at that time as the Guardian ad Litem for Madison in a Greenville County Probate Court matters which bear Case Number 2005-GC-23-0046 and 2005-GC-23-0046.¹

#1
2/20/10

¹ Madison is identified in the Greenville County Probate Court proceedings by her actual name. However, the Court will use the fictitious name "Madison" which is how she has been identified in this action.

SD
PAGE 318

The Court is advised that counsel for the Defendant SCDDSN filed this motion after learning of certain proceedings and orders by the Greenville County Probate Court. With its motion, the Defendant has brought these matters of concern to the attention of this Court which appointed Brenda Bryant as Guardian ad Litem for purposes of this litigation. As discussed below, it is proper for this Court to review these issues because they involve an earlier settlement in this case between the Plaintiff and Babcock Center, Inc., a settlement that was approved by Circuit Court Judge G. Thomas Cooper, Jr. on September 28, 2007.²

This Court has been provided with orders and other filings from the Greenville County Probate Court in Case Numbers 2005-GC-23-0045 and 2005-GC-23-0046. The Court also received testimony at the hearing from Theresa Horton, Marcus Whitlark and Brenda Bryant.

#2
Q201

This case arises out of facts which are set forth in detail in the decision of the South Carolina Supreme Court in *Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 638 S.E.2d 650 (2006). Shortly after this case was remanded by the Supreme Court, the Defendant Babcock Center entered into a settlement for \$250,000.00. The settlement was submitted to Judge Cooper for court approval based upon a verified petition of Brenda Bryant as the Guardian ad Litem. The verified petition sought approval of the settlement and requested court approval for the disbursement of \$112,500.00 in attorney's fees and \$17,221.63 for litigation costs. No request was made for the disbursement of any funds to Ms. Bryant personally or as Guardian ad Litem or in any role. On September 28, 2007, after a hearing was held, Judge Cooper approved the settlement (order attached as Exhibit A). He further approved and authorized the payment of

² The Plaintiff's counsel and the attorney for Brenda Bryant both challenged whether the Defendant has standing to seek the removal of Ms. Bryant as the Guardian ad Litem. The Court finds that the Defendant has standing to bring this matter to the attention of the Court and that this Court has the jurisdiction and inherent authority to supervise the guardians ad litem appointed by the Court and to relieve them if warranted.

BOOK SD PAGE 319

\$122,500.00 in attorney's fees and \$17,221.63 for litigation costs. In his Order Approving Settlement of Incapacitated Adult, Judge Cooper stated that the net proceeds of the settlement due to Madison was \$120,278.37. Brenda Bryant was expressly directed to use those "net settlement proceeds to set up a special needs trust set up exclusively for the care and benefit of Madison."

Based upon the information in the record, the Court understands that in March 2008, an action was filed in the Greenville County Probate Court to establish a Special Needs Trust for the settlement proceeds received in this action. During a hearing on the approval of that Special Needs Trust, Associate Probate Judge Edward M. Sauvain "became concerned about whether the proposed disbursements (totaling \$49,169) from the settlement to Mrs. Bryant and the proposed Special Needs Trust as it was structured were appropriate and in [Madison's] best interests." See, Order Replacing Guardian, filed September 16, 2008, Case Number 2005-GC-23-0045, p. 2.

On April 28, 2008, the Probate Court appointed Theresa A. Horton as Guardian ad Litem for Madison to look into various matters which were brought to the attention of the Probate Court, including the handling of the Estate of Madison by her Guardian and Conservator, Brenda Bryant. Ms. Horton ultimately filed an action to remove Ms. Bryant as the Guardian and Conservator. After an evidentiary hearing held on August 28, 2008, Judge Sauvain found that "Mrs. Bryant has used her daughter's situation to benefit herself. I note that she already received \$40,000 from the litigation without written authorization from any Court and is seeking additional money from her daughter's funds." See, Order Replacing Guardian, filed September 16, 2008, Case Number 2005-GC-23-0045, p. 7. (Footnote excluded). Accordingly, Judge Sauvain removed Ms. Bryant as the Guardian for Madison and appointed Tracy C. Parsons.

#3
ALB

BOOK 81 20

Subsequent to this appointment, the Greenville County Probate Court also removed Ms. Bryant as Conservator for Madison and appointed Cheryl Bourn. A review of the Order Removing Conservator and Appointing New Conservator, filed July 9, 2009, also shows that the Probate Court noted the present motion pending before this Court and that the Probate Court "does not have the jurisdiction to determine that Motion but would recommend that the Orders of this Court have no bearing on that determination by the Circuit Court." See, Order Removing Conservator and Appointing New Conservator, filed July 9, 2009, Case Number 2005-GC-23-0046, p. 2.

#4
02/09

Therefore, this Court, in its supervisory role over the Guardian ad Litem appointed in this case, has undertaken an independent review of all these issues, including the fee arrangement between the Plaintiff and her attorneys and the disbursement of funds from the Babcock Center settlement as approved by Judge Cooper in September 2007. The Court is also aware that, as a result of the resignations of Theresa A. Horton, Tracy Parson and Cheryl Bourn, the Greenville County Probate Court has reappointed Brenda Bryant as the Guardian and Conservator for Madison. Specifically, at a hearing held in Probate Court on September 3, 2009, a settlement of all pending motions was reached among the parties to that litigation, and the Probate Court accepted that settlement. Orders filed September 14, 2009, memorialize that settlement and reappoints Brenda Bryant as the Guardian and Conservator for Madison. Those Orders also resulted in the vacating of the Order Replacing Guardian, filed September 16, 2008, and the Order Removing Conservator and Appointing New Conservator, filed July 9, 2009.

However, the actions of the Greenville County Probate Court do not obviate this Court's obligations or independent review of the issues presented to this Court. It is well settled that "[t]he guardian ad litem functions as a representative of the court which appointed her to assist

COOK SD PAGE 321

the court in properly protecting the interests of an incompetent person." *Fleming v. Asbill*, 326 S.C. 49, 483 S.E.2d 751, 753 (1997). The Court has the authority to appoint the guardian ad litem and maintains the authority to remove or relieve a guardian ad litem of his or her responsibilities if warranted. Thus, it is within the inherent authority of this Court to review the actions of Brenda Bryant as the Guardian ad Litem for Madison in this litigation and to make an assessment as to whether she remains fit and suitable for that important role.

#5
Order

The Court has reviewed and scrutinized the evidence presented by the parties to this motion. Based thereon, this Court finds and concludes that Brenda Bryant should be removed as Guardian ad Litem and that a new Guardian ad Litem be appointed to protect the interests of Madison with respect to this litigation. The Court has not taken this matter and its gravity lightly. The Court is mindful of the desire of Ms. Bryant to remain involved in her daughter's case, but the Court cannot ignore the actions taken with regard to the proceeds from the Babcock Center settlement. As stated previously, by Order dated September 28, 2007, Judge Cooper approved the Babcock Center's settlement in the amount of \$250,000.00. As Guardian ad Litem and Conservator, Ms Bryant filed a verified petition seeking approval of attorney's fees and litigation costs. In her petition, Ms. Bryant requested that attorney's fees in the amount of \$112,500.00 be paid to the attorneys in this matter and that \$17,221.63 be paid as costs associated with this litigation. No request was made for the disbursement of any funds to Ms. Bryant personally or as the parent, guardian or conservator.

After reviewing the trust account documents from the Gibbs Law Firm (attached as Exhibit B), which was appointed pro hac vice in this case, and the trust account from the Whitlark & Ballou law firm, in addition to hearing the testimony of the witnesses, it is clear to this Court that funds which were to be allocated to Madison's benefit have not been so allocated.

BOOK SD PAGE 222

Further, at the conclusion of the August 28, 2009 hearing, this Court requested from Ms. Bryant, Mr. Toal, and Mr. Whitlark, that the fee agreement between Ms. Bryant, as Guardian ad Litem for Madison, and her attorneys be presented to the Court. The Court also requested that documentation of the expenditures to Ms. Bryant be presented to justify transfer of funds to Ms. Bryant personally from her daughter's account. In response to this request, the Court only received a copy of a fee agreement. The Court received no information explaining or justifying the monies that have been paid to Ms. Bryant, other than a document apparently prepared by Ms. Bryant that stated she should be paid \$5,000.00 a year for serving as Guardian ad Litem (attached as Exhibit C).

Therefore, based on the evidence in this record, this Court finds that the attorneys received a total of \$89,331.00 in fees from the settlement, and that such was not the amount approved by Judge Cooper. Based on these expenditures, the settlement proceeds of \$120,279.37 due to Madison from the Babcock Center settlement as approved by Judge Cooper have been depleted to \$87,856.41 without the authority or approval of any court.

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02/07
Given the misuse and misappropriation of assets belonging to Madison for personal use without court approval, this Court concludes in its discretion that Brenda Bryant is no longer fit to serve as the Guardian ad Litem in this litigation. This Court therefore is relieving Ms. Bryant of her position as the Guardian ad Litem for Madison. A new Guardian Ad Litem shall be duly appointed.

IT IS, THEREFORE, ORDERED that Brenda Bryant is hereby removed as Guardian ad Litem for Madison, and counsel for Madison shall submit to the Court the name of a new proposed Guardian ad Litem within thirty days of the filing date of this Order. This Court will then consider the fitness of the individual proposed to serve as Guardian ad Litem, and if that

DOCK SD AGC 323

person is deemed suitable to serve, the Court will appoint him/her as the Guardian ad Litem for Madison for purposes of this litigation. If the Court does not receive any nomination from counsel for Madison within this time frame, or if the Court is not satisfied with the suitability of the individual proposed, the Court shall appoint an appropriate individual to serve as Guardian ad Litem for Madison.

AND IT IS SO ORDERED.

James R. Barber, III

JAMES R. BARBER, III
Circuit Court Judge,
Fifth Judicial Circuit

Columbia, South Carolina

February 23, 2010

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jessie W. M. Bude
C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA
25 MAY 2010

RECEIVED

JUL 06 2010

SC Court of Appeals

FAX TRANSMISSION

from

**JOHNSON, TOAL & BATTISTE, P.A.
ATTORNEYS AT LAW
WEBSITE: WWW.JTBLAWFIRM.COM**

**I.S. LEEVY JOHNSON
WILLIAM T. TOAL
LUTHER J. BATTISTE, III
GEORGE C. JOHNSON
BYRON E. GIPSON
YVONNE R. MURRAY-BOYLES**

**Columbia Office:
1615 BARNWELL STREET
P.O. BOX 1431
COLUMBIA, SC 29202
OFFICE (803) 252-9700
FAX (803) 252-9102**

To:	<i>BRENDA BRYANT</i>	From:	<i>Melisa</i>
Fax:	<i>734-1496</i>	Pages:	<i>8</i> (including coversheet)
Phone:		Date:	<i>7-2-10</i>
Re:		CC:	

Urgent
 For Review
 Please Comment
 Please Reply
 Please Recycle

FAX CONFIDENTIALITY NOTICE

The pages comprising this facsimile transmission contain confidential information from _____ . This information is intended solely for use by the individual entity named as the recipient thereof. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this transmission is prohibited. If you have received this transmission in error, please notify us by telephone immediately so we may arrange to retrieve this transmission at no cost to you.

MESSAGE: *Order*

Our machine is a Multifax Imagemate FAX machine. If you have any problems with the transmission, please call _____ at (803) 252-9700.

The Supreme Court of South Carolina

RE: Interim Guidance Regarding Personal Data Identifiers and
Other Sensitive Information in Appellate Court Filings

ORDER

Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006); Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991). Therefore, with some few exceptions,¹ documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

Several commercial vendors have recently requested copies of briefs filed with the appellate courts, and it is anticipated that these and other appellate filings will be available electronically from both private and public sources in the future. The ready availability of these documents raises significant privacy concerns. While this problem is currently under review by the Chief Justice's Task Force on Public Access to Court Records, we adopt the following interim guidance regarding personal data identifiers and other sensitive information in documents filed in the appellate courts.

Parties shall not include, or will partially redact where inclusion is necessary, the following personal data identifiers from documents filed with an appellate court:²

1. Social Security Numbers. If a social security number must be included, only the last four digits of that number should be used.
2. Names of Minor Children. If a minor is the victim of a sexual assault or is involved in an abuse or neglect case, the minor's name will be completely redacted and a term such as "victim" or "child" should be used. In all other cases, only the minor's first name and first initial of the last name (i.e., John S.) should be used.
3. Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.
4. Home Addresses. If a home address must be included, only the city and state should be used.

Parties wishing to file documents containing the personal data identifiers listed above may file unredacted documents under seal, together with redacted versions for the public file. The sealed unredacted documents shall be filed in a separate Appendix and the bottom of each page of the Appendix shall be marked "Sealed." No order of the appellate court will be required to file this sealed Appendix. The number of copies of the Appendix to be served and filed shall

be the same as that required for the brief, record on appeal, motion or other filing that includes the redacted documents.

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend the caption to redact the identifier. This should be done contemporaneously with the filing of the notice of appeal or the commencement of the case with the appellate court. Without a motion to the appellate court, the caption of a juvenile delinquency matter from the family court shall be redacted to only use the juvenile's first name and first letter of the juvenile's last name (i.e., In the Interest of John S., a Juvenile.)

A party seeking to seal material beyond those personal identifiers listed above, must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed. Parties and counsel are reminded that the standard established in Ex parte Capital U-Drive-It, Inc. and Davis v. Jennings, supra, must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The appellate courts and their staff will not review filings for redaction or to determine if materials should be sealed; the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.

IT IS SO ORDERED.

s/Jean H. Toal _____ C.J.

s/James E. Moore _____ J.

s/John H. Waller, Jr. _____ J.

s/E.C. Burnett, III _____ J.

s/Costa M. Pleicones _____ J.

Columbia, South Carolina

August 13, 2007

1 See, e.g., Rule 12 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR; Rule 12 of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR; Rule 402(n), SCACR; and Rule 403(l), SCACR.

2 This restriction shall not apply when this information is required or requested by the appellate court. For example, the application for admission to practice law under Rule 402, SCACR, requires many of these personal identifiers to be disclosed.



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

July 8, 2010

Brenda Bryant
264 Ashton Circle
Lexington, SC 29073

Re: Madison (Brenda Bryant) v. SCDDSN
2010165546

Dear Ms. Bryant:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

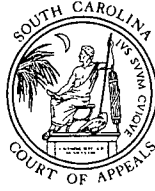
I wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/mpm

cc: William H. Davidson, II, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 8, 2010

Brenda Bryant
264 Ashton Circle
Lexington, SC 29073

Re: Madison (Brenda Bryant) v. SCDDSN
2010165546

Dear Ms. Bryant:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Upon review, it has come to the Court's attention that the caption should read as follows:

Madison, a fictitious name of a mentally disabled person, through her court-appointed guardian, Brenda Bryant,

Appellant,

v.

South Carolina Department of Disabilities and Special Needs,

Respondent.

Any future filings by any party to this appeal must feature the above caption.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court

Administration with all correspondence regarding the transcript. It is the Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,

V. Claire Allen, Deputy

Tanya A. Gee
CLERK

TAG/mpm

cc: William H. Davidson, II, Esquire

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JUL 09 2010

SC Court of Appeals

Madison, a fictitious name
of a mentally disabled person
through her court appointed
Guardian Brenda Bryant
Plaintiff

South Carolina Dept. of
Disabilities and Special Needs
Defendant

B Brenda W. Bryant will be ordering
the transcript from the hearing
that led to this order,

Sincerely,
Brenda W. Bryant
July 9, 2010

BOOK SD PAGE 317

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Madison, a fictitious name of a mentally)
disabled person, through her court-)
appointed guardian, Brenda Bryant,)

Civil Action No. 97-CP-40-908

Plaintiff,)

v.)

ORDER

South Carolina Department of)
Disabilities and Special Needs,)

Defendant.)

RICHLAND COUNTY
FILED
2010 MAR - 1 PM 3:40
JENNIFER M. MCBRIDE
CLERK

This matter is before this Court on the Defendant's Motion to Relieve Brenda Bryant as the Guardian ad Litem for Madison, the mentally disabled person who is the Plaintiff in this action. A hearing was held on August 28, 2009. Brenda Bryant was present together with her attorney, William T. Toal. Madison was represented by Marcus Whitlark. William H. Davidson, II appeared as counsel for the Defendant South Carolina Department of Disabilities and Special Needs (SCDDSN). Theresa A. Horton, an attorney from Greenville, also was present. Ms. Horton was serving at that time as the Guardian ad Litem for Madison in a Greenville County Probate Court matters which bear Case Number 2005-GC-23-0046 and 2005-GC-23-0046.¹

#1
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¹ Madison is identified in the Greenville County Probate Court proceedings by her actual name. However, the Court will use the fictitious name "Madison" which is how she has been identified in this action.

RECEIVED
JUL 09 2010
SC Court of Appeals

The Court is advised that counsel for the Defendant SCDDSN filed this motion after learning of certain proceedings and orders by the Greenville County Probate Court. With its motion, the Defendant has brought these matters of concern to the attention of this Court which appointed Brenda Bryant as Guardian ad Litem for purposes of this litigation. As discussed below, it is proper for this Court to review these issues because they involve an earlier settlement in this case between the Plaintiff and Babcock Center, Inc., a settlement that was approved by Circuit Court Judge G. Thomas Cooper, Jr. on September 28, 2007.²

This Court has been provided with orders and other filings from the Greenville County Probate Court in Case Numbers 2005-GC-23-0045 and 2005-GC-23-0046. The Court also received testimony at the hearing from Theresa Horton, Marcus Whitlark and Brenda Bryant.

This case arises out of facts which are set forth in detail in the decision of the South Carolina Supreme Court in *Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 638 S.E.2d 650 (2006). Shortly after this case was remanded by the Supreme Court, the Defendant Babcock Center entered into a settlement for \$250,000.00. The settlement was submitted to Judge Cooper for court approval based upon a verified petition of Brenda Bryant as the Guardian ad Litem. The verified petition sought approval of the settlement and requested court approval for the disbursement of \$112,500.00 in attorney's fees and \$17,221.63 for litigation costs. No request was made for the disbursement of any funds to Ms. Bryant personally or as Guardian ad Litem or in any role. On September 28, 2007, after a hearing was held, Judge Cooper approved the settlement (order attached as Exhibit A). He further approved and authorized the payment of

#2
QB

² The Plaintiff's counsel and the attorney for Brenda Bryant both challenged whether the Defendant has standing to seek the removal of Ms. Bryant as the Guardian ad Litem. The Court finds that the Defendant has standing to bring this matter to the attention of the Court and that this Court has the jurisdiction and inherent authority to supervise the guardians ad litem appointed by the Court and to relieve them if warranted.

\$122,500.00 in attorney's fees and \$17,221.63 for litigation costs. In his Order Approving Settlement of Incapacitated Adult, Judge Cooper stated that the net proceeds of the settlement due to Madison was \$120,278.37. Brenda Bryant was expressly directed to use those "net settlement proceeds to set up a special needs trust set up exclusively for the care and benefit of Madison."

Based upon the information in the record, the Court understands that in March 2008, an action was filed in the Greenville County Probate Court to establish a Special Needs Trust for the settlement proceeds received in this action. During a hearing on the approval of that Special Needs Trust, Associate Probate Judge Edward M. Sauvain "became concerned about whether the proposed disbursements (totaling \$49,169) from the settlement to Mrs. Bryant and the proposed Special Needs Trust as it was structured were appropriate and in [Madison's] best interests." See, Order Replacing Guardian, filed September 16, 2008, Case Number 2005-GC-23-0045, p. 2.

On April 28, 2008, the Probate Court appointed Theresa A. Horton as Guardian ad Litem for Madison to look into various matters which were brought to the attention of the Probate Court, including the handling of the Estate of Madison by her Guardian and Conservator, Brenda Bryant. Ms. Horton ultimately filed an action to remove Ms. Bryant as the Guardian and Conservator. After an evidentiary hearing held on August 28, 2008, Judge Sauvain found that "Mrs. Bryant has used her daughter's situation to benefit herself. I note that she already received \$40,000 from the litigation without written authorization from any Court and is seeking additional money from her daughter's funds." See, Order Replacing Guardian, filed September 16, 2008, Case Number 2005-GC-23-0045, p. 7. (Footnote excluded). Accordingly, Judge Sauvain removed Ms. Bryant as the Guardian for Madison and appointed Tracy C. Parsons.

#3
ALB

Subsequent to this appointment, the Greenville County Probate Court also removed Ms. Bryant as Conservator for Madison and appointed Cheryl Bourn. A review of the Order Removing Conservator and Appointing New Conservator, filed July 9, 2009, also shows that the Probate Court noted the present motion pending before this Court and that the Probate Court "does not have the jurisdiction to determine that Motion but would recommend that the Orders of this Court have no bearing on that determination by the Circuit Court." *See*, Order Removing Conservator and Appointing New Conservator, filed July 9, 2009, Case Number 2005-GC-23-0046, p. 2.

#4
Ola

Therefore, this Court, in its supervisory role over the Guardian ad Litem appointed in this case, has undertaken an independent review of all these issues, including the fee arrangement between the Plaintiff and her attorneys and the disbursement of funds from the Babcock Center settlement as approved by Judge Cooper in September 2007. The Court is also aware that, as a result of the resignations of Theresa A. Horton, Tracy Parson and Cheryl Bourn, the Greenville County Probate Court has reappointed Brenda Bryant as the Guardian and Conservator for Madison. Specifically, at a hearing held in Probate Court on September 3, 2009, a settlement of all pending motions was reached among the parties to that litigation, and the Probate Court accepted that settlement. Orders filed September 14, 2009, memorialize that settlement and reappoints Brenda Bryant as the Guardian and Conservator for Madison. Those Orders also resulted in the vacating of the Order Replacing Guardian, filed September 16, 2008, and the Order Removing Conservator and Appointing New Conservator, filed July 9, 2009.

However, the actions of the Greenville County Probate Court do not obviate this Court's obligations or independent review of the issues presented to this Court. It is well settled that "[t]he guardian ad litem functions as a representative of the court which appointed her to assist

BOOK SD PAGE 21

the court in properly protecting the interests of an incompetent person." *Fleming v. Asbill*, 326 S.C. 49, 483 S.E.2d 751, 753 (1997). The Court has the authority to appoint the guardian ad litem and maintains the authority to remove or relieve a guardian ad litem of his or her responsibilities if warranted. Thus, it is within the inherent authority of this Court to review the actions of Brenda Bryant as the Guardian ad Litem for Madison in this litigation and to make an assessment as to whether she remains fit and suitable for that important role.

The Court has reviewed and scrutinized the evidence presented by the parties to this motion. Based thereon, this Court finds and concludes that Brenda Bryant should be removed as Guardian ad Litem and that a new Guardian ad Litem be appointed to protect the interests of Madison with respect to this litigation. The Court has not taken this matter and its gravity lightly. The Court is mindful of the desire of Ms. Bryant to remain involved in her daughter's case, but the Court cannot ignore the actions taken with regard to the proceeds from the Babcock Center settlement. As stated previously, by Order dated September 28, 2007, Judge Cooper approved the Babcock Center's settlement in the amount of \$250,000.00. As Guardian ad Litem and Conservator, Ms Bryant filed a verified petition seeking approval of attorney's fees and litigation costs. In her petition, Ms. Bryant requested that attorney's fees in the amount of \$112,500.00 be paid to the attorneys in this matter and that \$17,221.63 be paid as costs associated with this litigation. No request was made for the disbursement of any funds to Ms. Bryant personally or as the parent, guardian or conservator.

#5
Q2M

After reviewing the trust account documents from the Gibbs Law Firm (attached as Exhibit B), which was appointed pro hac vice in this case, and the trust account from the Whitlark & Ballou law firm, in addition to hearing the testimony of the witnesses, it is clear to this Court that funds which were to be allocated to Madison's benefit have not been so allocated.

Further, at the conclusion of the August 28, 2009 hearing, this Court requested from Ms. Bryant, Mr. Toal, and Mr. Whitlark, that the fee agreement between Ms. Bryant, as Guardian ad Litem for Madison, and her attorneys be presented to the Court. The Court also requested that documentation of the expenditures to Ms. Bryant be presented to justify transfer of funds to Ms. Bryant personally from her daughter's account. In response to this request, the Court only received a copy of a fee agreement. The Court received no information explaining or justifying the monies that have been paid to Ms. Bryant, other than a document apparently prepared by Ms. Bryant that stated she should be paid \$5,000.00 a year for serving as Guardian ad Litem (attached as Exhibit C).

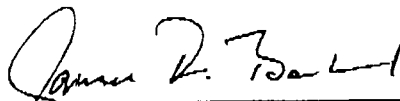
Therefore, based on the evidence in this record, this Court finds that the attorneys received a total of \$89,331.00 in fees from the settlement, and that such was not the amount approved by Judge Cooper. Based on these expenditures, the settlement proceeds of \$120,279.37 due to Madison from the Babcock Center settlement as approved by Judge Cooper have been depleted to \$87,856.41 without the authority or approval of any court.

#6
02/07
Given the misuse and misappropriation of assets belonging to Madison for personal use without court approval, this Court concludes in its discretion that Brenda Bryant is no longer fit to serve as the Guardian ad Litem in this litigation. This Court therefore is relieving Ms. Bryant of her position as the Guardian ad Litem for Madison. A new Guardian Ad Litem shall be duly appointed.

IT IS, THEREFORE, ORDERED that Brenda Bryant is hereby removed as Guardian ad Litem for Madison, and counsel for Madison shall submit to the Court the name of a new proposed Guardian ad Litem within thirty days of the filing date of this Order. This Court will then consider the fitness of the individual proposed to serve as Guardian ad Litem, and if that

person is deemed suitable to serve, the Court will appoint him/her as the Guardian ad Litem for Madison for purposes of this litigation. If the Court does not receive any nomination from counsel for Madison within this time frame, or if the Court is not satisfied with the suitability of the individual proposed, the Court shall appoint an appropriate individual to serve as Guardian ad Litem for Madison.

AND IT IS SO ORDERED.



JAMES R. BARBER, III
Circuit Court Judge,
Fifth Judicial Circuit

Columbia, South Carolina

February 25, 2010

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Janet W. Bruden
C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA
25 MAY 2010



The South Carolina Court of Appeals

TANYA A. GEE
CLERK
V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

July 12, 2010

Brenda Bryant
264 Ashton Circle
Lexington, SC 29073

Re: Madison (Brenda Bryant) v. SCDDSN
2010165546

Dear Ms. Bryant:

We have received your letter of July 9, 2010 in the above matter. According to Rule 207 of the South Carolina Appellate Court Rules and our letter of July 8, 2010, the transcript must be ordered within ten (10) days after the date of service of the Notice of Appeal and all correspondence with the court reporter must be copied on all parties, the Court of Appeals and the Office of Court Administration.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/mpm

cc: William H. Davidson, II, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

July 29, 2010

Brenda Bryant
264 Ashton Circle
Lexington, SC 29073

Re: Madison (Brenda Bryant) v. SCDDSN
2010165546

Dear Ms. Bryant:

The Court must receive written notice that you have properly ordered the transcript. You may have fifteen (15) days to properly order the transcript under Rule 207 of the South Carolina Appellate Court Rules. If we do not receive the written notice within that time, your appeal may be dismissed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/mpm

cc: William H. Davidson, II, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Case No. 1997-CP-40-3082A

RECEIVED

AUG 03 2010

SC Court of Appeals

Madison, a fictitious name of a mentally disabled person,
through her court-appointed guardian, Brenda Bryant, Appellant,

v.

South Carolina Department of Disabilities
and Special Needs, Respondent.


MOTION TO DISMISS APPEAL

The Respondent South Carolina Department of Disabilities and Special Needs ("SCDDSN") moves this Court to dismiss the Appellant Brenda Bryant's appeal for lack of appellate jurisdiction as a result of her failure to timely serve the Notice of Appeal.

The grounds for this motion are set forth in more detail in the supporting

memorandum filed herewith.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
WILLIAM H. DAVIDSON, II
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Respondent South Carolina
Department of Disabilities and Special
Needs*

Columbia, South Carolina

July 30, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Case No. 1997-CP-40-3082A

RECEIVED

AUG 03 2010

SC Court of Appeals

Madison, a fictitious name of a mentally disabled person,
through her court-appointed guardian, Brenda Bryant, Appellant,

v.

South Carolina Department of Disabilities
and Special Needs, Respondent.

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS APPEAL**

The Respondent South Carolina Department of Disabilities and Special Needs ("SCDDSN") has moved this Court for a dismissal of Brenda Bryant's appeal for lack of appellate jurisdiction as a result of her failure to timely serve a Notice of Appeal.

This is a Tort Claims Act suit for gross negligence brought by "Madison," which is a fictitious name for the mentally infirm adult plaintiff, against SCDDSN.¹ The action was originally commenced by Brenda Bryant as the court-appointed Guardian ad Litem for Madison.²

On March 1, 2010, Circuit Judge James R. Barber, III issued an order removing Brenda Bryant as the Guardian ad Litem as a result of "the misuse and misappropriation of assets belonging to Madison for personal use without court approval." *See*, Order filed March 1, 2010, p. 6. Judge Barber found that monies had been transferred to Bryant without court approval. He further concluded that "the settlement proceeds of \$120,279.37 due to Madison from the Babcock Center settlement as approved by Judge Cooper have been depleted to \$87,856.41 without the authority or approval of any court." *See*, Order filed March 1, 2010, p. 6. As a result, Judge Barber relieved Bryant as the Guardian ad Litem finding that she was no longer fit to serve in that capacity. By later order, Judge Barber appointed John D. Elliott as the new Guardian ad Litem.

At the time of the hearing before Judge Barber and when the order was issued on March 1, 2010, Brenda Bryant was represented by William T. Toal. The March 1,

¹ Babcock Center, Inc. and its employee, Michelle Batchelor, were formerly Defendants, but those parties settled with the Plaintiff in September 2007.

² This action has been the subject of a prior appeal. The Court is referred to the Supreme Court's opinion for further background on this litigation. *See, Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 638 S.E.2d 650 (2006).

2010 order specifically identifies Toal as Bryant's counsel and states that Toal was present with his client at the August 28, 2009 motion hearing. In addition, on April 21, 2009, Toal had filed a Notice of Limited Appearance stating that he represented Bryant "on the motion to have her removed as Guardian ad Litem." (Exhibit A).

On July 2, 2010, Brenda Bryant, proceeding *pro se*, served a Notice of Appeal on counsel for SCDDSN.³ In the Notice of Appeal, Bryant claims not to have received written notice of the March 1, 2010 order which she is appealing. That is blatantly untrue. By letter dated May 25, 2010, Bryant's counsel specifically informs Bryant that he received a copy of the March 1, 2010 order on May 25, 2010. (Exhibit B). Furthermore, Toal forwarded a copy of that order to Bryant at that time and gives her very clear and specific directions regarding her appeal rights. Toal wrote as follows:

Accordingly, you have 30 days from May 25, 2010, to file and serve a Notice of Appeal. If you desire me to file a Notice of Appeal, I will do so upon the payment of the filing fee of \$100.00. I will then move to be relieved as your counsel, if you have not substituted counsel.

(Exhibit B). (Emphasis added). Thus, Bryant is fully aware that her counsel received written notice of the March 1, 2010 order on May 25, 2010, and she was advised that the Notice of Appeal had to be served within thirty days (i.e., by June

³ SCDDSN is not aware of any court order relieving William Toal as counsel of record for Bryant.

24, 2010). Bryant did not serve her *pro se* Notice of Appeal, however, until July 2, 2010, which was eight days late.⁴

Rule 203(b)(1), SCACR, provides in mandatory terms as follows: "A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." Rule 203(b)(1), SCACR. This Court recognizes and has held consistently that "[t]he failure to timely serve a notice of appeal divests this court of subject matter jurisdiction and results in dismissal of the appeal." *Holroyd v. Requa*, 361 S.C. 43, 603 S.E.2d 417 (Ct. App. 2004). The Supreme Court has, in fact, held as follows: "The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772, 775 (2004). *See also, USAA Property & Casualty Ins. Co. v. Clegg*, 377 S.C. 643, 661 S.E.2d 791 (2008) (same).

Consequently, Brenda Bryant's failure to serve the Notice on Appeal within thirty days of the date that her counsel states that he received a copy of March 1,

⁴ On June 24, 2010, the new Guardian ad Litem, John D. Elliott, acting for the benefit of Madison, reached a settlement at mediation with SCDDSN resolving all remaining claims. This untimely appeal is preventing the parties from obtaining court approval of that settlement. The Court is therefore respectfully requested to expedite a decision on this motion so as to allow the settlement to be completed and this protracted litigation to finally be brought to a close.

2010 order renders her appeal untimely. Because there was not timely service of the Notice of Appeal on SCDDSN, this Court lacks appellate jurisdiction over this appeal. As a result, this appeal should be dismissed and jurisdiction should be returned to the Circuit Court to allow the settlement reached by the parties to receive court approval.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
WILLIAM H. DAVIDSON, II
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Respondent South Carolina
Department of Disabilities and Special
Needs*

Columbia, South Carolina

July 30, 2010

Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

C/A NO.: 97-CP-40-3082

Madison, a fictitious name of a mentally
disabled person, through her court-
appointed guardian, Brenda Bryant,

Plaintiff,

v.

Department of Disabilities and Special
Needs,

Defendant.

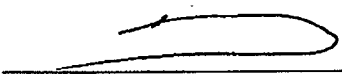
**RETURN TO MOTION
TO REMOVE
GUARDIAN AD LITEM
AND
NOTICE OF
LIMITED APPEARANCE**

LEANETTE M. MORRIS
Clerk P. & U.S.
2009 APR 21 PM 3:34

RICHLAND COUNTY
Clerk

William T. Toal makes his appearance in the above-captioned case for the sole purpose of representing Brenda Bryant, individually, on the motion to have her removed as Guardian ad Litem. Brenda Bryant opposes the motion. She craves reference to the Affidavits attached, to the transcript of her removal petition, to her notice of appeal.

JOHNSON, TOAL & BATTISTE, P.A.

By: 
William T. Toal
Attorney for Plaintiff - Brenda Bryant
1615 Barnwell Street
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

Columbia, South Carolina
April 21, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 97-CP-40-3082

Madison, a fictitious name of a mentally
disabled person, through her court-
appointed guardian, Brenda Bryant,

Plaintiff,

v.

Department of Disabilities and Special
Needs,

Defendant.

CERTIFICATE OF SERVICE

JEANETTE W. McBRIDE
C.C.P. & G.S.
2009 APR 21 PM 3:34

RICHLAND COUNTY
FILED

I, Melisa Y. McClurkin, employee of Johnson, Toal & Battiste, P.A., Attorneys
for Plaintiff – Brenda Bryant, in the above-captioned matter, hereby certify that I have
served the **Return To Motion To Remove GAL and Notice of Limited Appearance** on
William H. Davidson, II, Esquire, Attorney for the Defendant, by hand delivering a copy
of same on April 21, 2009, at the following address:

William H. Davidson, II, Esquire
1611 Devonshire Drive, 2nd Floor
Columbia, SC 29201

JOHNSON, TOAL & BATTISTE, P.A.

BY: 
Melisa Y. McClurkin

Columbia, South Carolina
April 21, 2009

Exhibit B

JOHNSON, TOAL & BATTISTE, P.A.

ATTORNEYS AT LAW

I.S. LEEVY JOHNSON
WILLIAM T. TOAL
LUTHER J. BATTISTE, III
GEORGE C. JOHNSON
BYRON E. GIPSON
YVONNE R. MURRAY-BOYLES

May 25, 2010

COLUMBIA OFFICE:
1615 BARNWELL STREET
P.O. BOX 1431
COLUMBIA, S.C. 29202
(803) 252-9700
TOLL FREE 1-866-216-9700
FAX (803) 252-9102

ORANGEBURG OFFICE:
130 CENTRE STREET
P.O. BOX 1825
ORANGEBURG, S.C. 29115
(803) 536-9610
TOLL FREE 1-866-617-9610
FAX (803) 536-3926

Mrs. Brenda Bryant
264 Ashton Circle
Lexington, SC 29073

PLEASE REPLY:

Columbia Office

RE: Our File Number: 09-94

Dear Mrs. Bryant:

Enclosed is a copy of the Order in your case which I obtained today May 25, 2010. I asked for a certificate of service and was informed that I was not on the list as counsel in this action. Accordingly, you have 30 days from May 25, 2010, to file and serve a Notice of Appeal. If you desire me to file a Notice of Appeal, I will do so upon the payment of the filing fee of \$100.00. I will then move to be relieved as your counsel, if you have not substituted counsel.

I am copying Mr. Davidson and Mr. Whitlark with this letter, along with Judge Barber so that they can be aware of the situation.

Yours very truly,

JOHNSON, TOAL & BATTISTE, P.A.

BY: 

William T. Toal

WTT/mym
Enclosure

Cc: Hon. James R. Barber, III
Marcus Whitlark, Esquire
William H. Davidson, II, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Case No. 1997-CP-40-3082A

RECEIVED

AUG 03 2010

SC Court of Appeals

Madison, a fictitious name of a mentally disabled person,
through her court-appointed guardian, Brenda Bryant, Appellant,

v.

South Carolina Department of Disabilities
and Special Needs, Respondent.

CERTIFICATE OF SERVICE

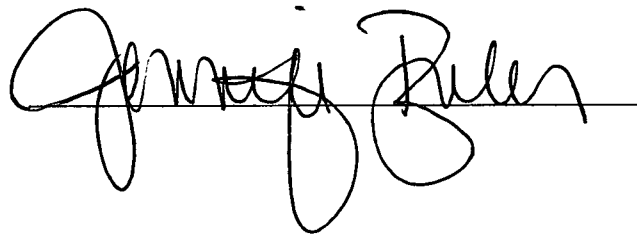
The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent, does hereby certify that service of the **Motion to Dismiss Appeal and Memorandum in Support of Motion to Dismiss Appeal** in the above-captioned matter was made upon the *Pro Se* Appellant and all other counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 30th day of July 2010, addressed as follows:

Certificate of Service
July 30, 2010
Page Two

Ms. Brenda Bryant
264 Ashton Circle
Lexington, South Carolina 29073

J. Marcus Whitlark, Esquire
Paul C. Ballou, Esquire
Whitlark & Ballou
Post Office Box 7702
Columbia, South Carolina 29202

William T. Toal, Esquire
Johnson Toal & Battiste, P.A.
Post Office Box 1431
Columbia, South Carolina 29202

A handwritten signature in black ink, appearing to read "James Buler", written over a horizontal line.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Michael B. Wren
Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

July 30, 2010

* Also admitted in North Carolina
† Certified Mediator

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
AUG 03 2010
SC Court of Appeals

RE: Madison, a fictitious name of a mentally disabled person, through her court-appointed guardian, Brenda Bryant v. South Carolina Department of Disabilities and Special Needs
South Carolina Court of Appeals Tracking Number: 2010165546
Civil Action Number: 1997-CP-40-3082A
Our File Number: 103.4394

Dear Ms. Gee:

Please find enclosed for filing the originals and seven copies each of the **Motion to Dismiss Appeal** and **Memorandum in Support of Motion to Dismiss Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope. I have not enclosed the \$25.00 filing since the movant is an agency of the State of South Carolina.

By copy of this letter, I am serving a copy on the *Pro Se* Appellant and all other counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Tanya A. Gee
July 30, 2010
Page Two

cc: (w/ Enclosures)

Ms. Brenda Bryant
264 Ashton Circle
Lexington, South Carolina 29073

J. Marcus Whitlark, Esquire
Paul C. Ballou, Esquire
Whitlark & Ballou
Post Office Box 7702
Columbia, South Carolina 29202

William T. Toal, Esquire
Johnson Toal & Battiste, P.A.
Post Office Box 1431
Columbia, South Carolina 29202

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

AUG 10 2010

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Case No. 1997-CP-40-3082A

Madison, a fictitious name of a mentally disabled person,
through her court-appointed guardian, Brenda Bryant, Appellant,

v.

South Carolina Department of Disabilities
and Special Needs, Respondent.

SUPPLEMENTAL MOTION TO DISMISS APPEAL

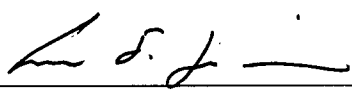
The Respondent South Carolina Department of Disabilities and Special Needs ("SCDDSN") moves this Court to dismiss the Appellant Brenda Bryant's appeal on the additional basis that the Notice of Appeal filed by Bryant as a *pro se* litigant should not have been accepted for filing by this Court and is a nullity.

The grounds for this motion are set forth in more detail in the supporting

memorandum filed herewith.

This motion supplements and is not intended to supersede or waive the other grounds for dismissal asserted in the Motion to Dismiss Appeal filed on or about July 30, 2010.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
WILLIAM H. DAVIDSON, II
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Respondent South Carolina
Department of Disabilities and Special
Needs*

Columbia, South Carolina

August 10, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

AUG 10 2010

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Case No. 1997-CP-40-3082A

Madison, a fictitious name of a mentally disabled person,
through her court-appointed guardian, Brenda Bryant, Appellant,

v.

South Carolina Department of Disabilities
and Special Needs, Respondent.

**MEMORANDUM IN SUPPORT OF
SUPPLEMENTAL MOTION TO DISMISS APPEAL**

The Respondent South Carolina Department of Disabilities and Special Needs ("SCDDSN") has previously filed a motion seeking the dismissal of Brenda Bryant's *pro se* appeal for lack of appellate jurisdiction as a result of her failure to timely serve a Notice of Appeal. That motion remains pending. SCDDSN has now filed a supplemental motion to dismiss based upon the additional ground that the

Notice of Appeal filed by Brenda Bryant as a *pro se* litigant should not have been accepted for filing by this Court and is a nullity.

In its recent order in *Miller v. State*, ___ S.C. ___, ___ S.E.2d ___, 2010 WL 2991049 (2010), the Supreme Court reaffirmed that a litigant has no right to "hybrid representation." The Court specifically ruled that "substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel." The Court vacated a ruling on a motion filed *pro se* by a litigant represented by counsel and dismissed the appeal. *See also, Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998).

The same result should occur in the present case. The March 1, 2010 order on appeal specifically identifies William T. Toal as Bryant's counsel and states that Toal was present with his client at the August 28, 2009 motion hearing. In addition, on April 21, 2009, Toal had filed a Notice of Limited Appearance stating that he represented Bryant "on the motion to have her removed as Guardian ad Litem." (Exhibit A).

Toal also wrote Bryant a letter dated May 25, 2010, which was copied to Judge Barber and all counsel, agreeing to file a Notice of Appeal for Bryant as her counsel. (Exhibit B). The Notice of Appeal, however, was served and filed by Bryant as a *pro se* litigant and not by Toal as he had instructed and agreed to do.

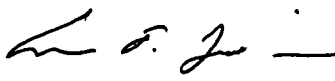
In addition, SCDDSN is not aware of any court order relieving Toal as counsel of record for Bryant. There has been no motion filed by either Toal or Bryant to relieve him as her counsel.

Consequently, Bryant was still represented by counsel when she served the untimely Notice of Appeal on July 2, 2010. Under the reasoning from the *Miller*, *Foster*, and *Stuckey* cases, the Clerk of Court was required not to accept for filing the Notice of Appeal filed *pro se* by Bryant who was still represented by counsel. The Notice of Appeal therefore should be dismissed as a nullity.

On this additional basis, the Respondent SCDDSN respectfully requests that this Court dismiss Brenda Bryant's *pro se* appeal.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
WILLIAM H. DAVIDSON, II
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Respondent South Carolina
Department of Disabilities and Special
Needs*

Columbia, South Carolina

August 10, 2010

Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

C/A NO.: 97-CP-40-3082

Madison, a fictitious name of a mentally
disabled person, through her court-
appointed guardian, Brenda Bryant,

Plaintiff,

v.

Department of Disabilities and Special
Needs,

Defendant.

RETURN TO MOTION
TO REMOVE
GUARDIAN AD LITEM
AND
NOTICE OF
LIMITED APPEARANCE

JEANETTE W. MERRID
C.P. & C.S.

2009 APR 21 PM 3:34

RICHLAND COUNTY
CLERK

William T. Toal makes his appearance in the above-captioned case for the sole purpose of representing Brenda Bryant, individually, on the motion to have her removed as Guardian ad Litem. Brenda Bryant opposes the motion. She craves reference to the Affidavits attached, to the transcript of her removal petition, to her notice of appeal.

JOHNSON, TOAL & BATTISTE, P.A.

By: _____

William T. Toal
Attorney for Plaintiff - Brenda Bryant
1615 Barnwell Street
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

Columbia, South Carolina
April 21, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 97-CP-40-3082

Madison, a fictitious name of a mentally
disabled person, through her court-
appointed guardian, Brenda Bryant,

Plaintiff,

v.

Department of Disabilities and Special
Needs,

Defendant.

CERTIFICATE OF SERVICE

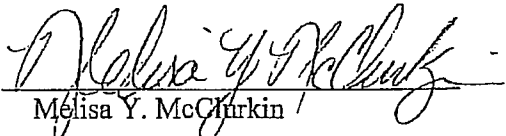
2009 APR 21 PM 3:34
JEANETTE W. McBRIDE
C.S.P. & G.S.

RICHLAND COUNTY
FILED

I, Melisa Y. McClurkin, employee of Johnson, Toal & Battiste, P.A., Attorneys
for Plaintiff – Brenda Bryant, in the above-captioned matter, hereby certify that I have
served the **Return To Motion To Remove GAL and Notice of Limited Appearance** on
William H. Davidson, II, Esquire, Attorney for the Defendant, by hand delivering a copy
of same on April 21, 2009, at the following address:

William H. Davidson, II, Esquire
1611 Devonshire Drive, 2nd Floor
Columbia, SC 29201

JOHNSON, TOAL & BATTISTE, P.A.

BY: 
Melisa Y. McClurkin

Columbia, South Carolina
April 21, 2009

Exhibit B

JOHNSON, TOAL & BATTISTE, P.A.
ATTORNEYS AT LAW

I.S. LEEVY JOHNSON
WILLIAM T. TOAL
LUTHER J. BATTISTE, III
GEORGE C. JOHNSON
BYRON E. GIPSON
YVONNE R. MURRAY-BOYLES

May 25, 2010

COLUMBIA OFFICE:
1615 BARNWELL STREET
P.O. BOX 1431
COLUMBIA, S.C. 29202
(803) 252-9700
TOLL FREE 1-866-216-9700
FAX (803) 252-9102

ORANGEBURG OFFICE:
130 CENTRE STREET
P.O. BOX 1825
ORANGEBURG, S.C. 29115
(803) 536-9610
TOLL FREE 1-866-617-9610
FAX (803) 536-3926

PLEASE REPLY:

Mrs. Brenda Bryant
264 Ashton Circle
Lexington, SC 29073

Columbia Office

RE: Our File Number: 09-94

Dear Mrs. Bryant:

Enclosed is a copy of the Order in your case which I obtained today May 25, 2010. I asked for a certificate of service and was informed that I was not on the list as counsel in this action. Accordingly, you have 30 days from May 25, 2010, to file and serve a Notice of Appeal. If you desire me to file a Notice of Appeal, I will do so upon the payment of the filing fee of \$100.00. I will then move to be relieved as your counsel, if you have not substituted counsel.

I am copying Mr. Davidson and Mr. Whitlark with this letter, along with Judge Barber so that they can be aware of the situation.

Yours very truly,

JOHNSON, TOAL & BATTISTE, P.A.

BY: 

William T. Toal

WTT/mym
Enclosure

Cc: Hon. James R. Barber, III
Marcus Whitlark, Esquire
William H. Davidson, II, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

AUG 10 2010

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Case No. 1997-CP-40-3082A

Madison, a fictitious name of a mentally disabled person,
through her court-appointed guardian, Brenda Bryant, Appellant,

v.

South Carolina Department of Disabilities
and Special Needs, Respondent.

CERTIFICATE OF SERVICE

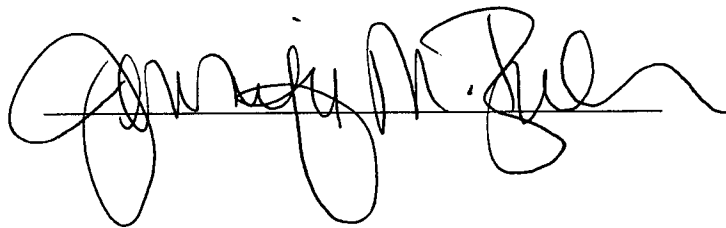
The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent, does hereby certify that service of the **Supplemental Motion to Dismiss Appeal** and **Memorandum in Support of Supplemental Motion to Dismiss Appeal** in the above-captioned matter was made upon the *Pro Se* Appellant and all other counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 10th day of August 2010, addressed as follows:

Certificate of Service
August 10, 2010
Page Two

Ms. Brenda Bryant
264 Ashton Circle
Lexington, South Carolina 29073

J. Marcus Whitlark, Esquire
Paul C. Ballou, Esquire
Whitlark & Ballou
Post Office Box 7702
Columbia, South Carolina 29202

William T. Toal, Esquire
Johnson Toal & Battiste, P.A.
Post Office Box 1431
Columbia, South Carolina 29202

A handwritten signature in black ink, appearing to read "William T. Toal", written over a horizontal line. The signature is highly stylized and cursive.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Michael B. Wren
Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

August 10, 2010

* Also admitted in North Carolina
† Certified Mediator

Hand Delivered

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED

AUG 10 2010

SC Court of Appeals

RE: Madison, a fictitious name of a mentally disabled person, through her court-appointed guardian, Brenda Bryant v. South Carolina Department of Disabilities and Special Needs
South Carolina Court of Appeals Tracking Number: 2010165546
Civil Action Number: 1997-CP-40-3082A
Our File Number: 103.4394

Dear Ms. Gee:

Please find enclosed for filing the originals and seven copies each of the **Supplemental Motion to Dismiss Appeal** and **Memorandum in Support of Supplemental Motion to Dismiss Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope. I have not enclosed the \$25.00 filing since the movant is an agency of the State of South Carolina.

By copy of this letter, I am serving a copy on the *Pro Se* Appellant and all other counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Tanya A. Gee
August 10, 2010
Page Two

cc: (w/ Enclosures)

Ms. Brenda Bryant
264 Ashton Circle
Lexington, South Carolina 29073

J. Marcus Whitlark, Esquire
Paul C. Ballou, Esquire
Whitlark & Ballou
Post Office Box 7702
Columbia, South Carolina 29202

William T. Toal, Esquire
Johnson Toal & Battiste, P.A.
Post Office Box 1431
Columbia, South Carolina 29202

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

CIVIL ACTION NO.: 97-CP-40-3082

RECEIVED

AUG 10 2010

SC Court of Appeals

Madison, a fictitious name of a mentally
disabled person, through her court-
appointed guardian, Brenda Bryant,

Plaintiff-Appellant,

v.

South Carolina Department of Disabilities
and Special Needs,

Defendant-Respondent.

MOTION TO BE RELIEVED
AS COUNSEL

William T. Toal moves to be relieved as counsel for Brenda Bryant on the ground that he was retained for the sole purpose of representing Ms. Bryant on the motion to have her removed as Guardian ad Litem. Attached as Exhibit A is a copy of the Return to Motion to Remove Guardian ad Litem and Notice of Limited Appearance filed by me in Circuit Court.


JOHNSON, TOAL & BATTISTE, P.A.

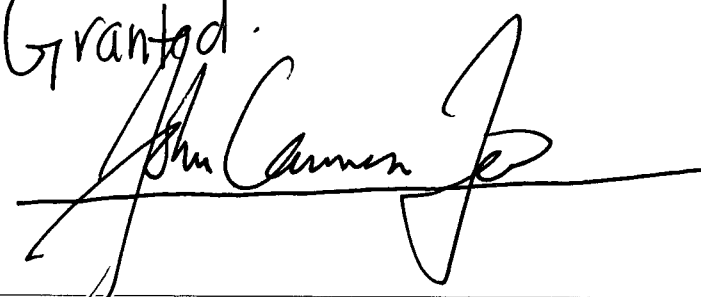
By: 

William T. Toal
1615 Barnwell Street
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

Columbia, South Carolina
August 5, 2010

FILED

10/7/10 

Granted.


STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

C/A NO.: 97-CP-40-3082

Madison, a fictitious name of a mentally
disabled person, through her court-
appointed guardian, Brenda Bryant,

Plaintiff,

v.

Department of Disabilities and Special
Needs,

Defendant.

RETURN TO MOTION
TO REMOVE
GUARDIAN AD LITEM
AND
NOTICE OF
LIMITED APPEARANCE

LEANE E. W. MORRIS
C. P. & A. S.

2009 APR 21 PM 3:34

RICHLAND COUNTY
CLERK

William T. Toal makes his appearance in the above-captioned case for the sole purpose of representing Brenda Bryant, individually, on the motion to have her removed as Guardian ad Litem. Brenda Bryant opposes the motion. She craves reference to the Affidavits attached, to the transcript of her removal petition, to her notice of appeal.

JOHNSON, TOAL & BATTISTE, P.A.

By: _____

William T. Toal
Attorney for Plaintiff - Brenda Bryant
1615 Barnwell Street
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

Columbia, South Carolina
April 21, 2009

EXHIBIT A

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

CIVIL ACTION NO.: 97-CP-40-3082

RECEIVED

AUG 10 2010

SC Court of Appeals

Madison, a fictitious name of a mentally)
disabled person, through her court-)
appointed guardian, Brenda Bryant,)
)
Plaintiff-Appellant,)
v.)
)
South Carolina Department of Disabilities)
and Special Needs,)
Defendant-Respondent.)

CERTIFICATE OF SERVICE
BY MAIL


I, Melisa Y. McClurkin, employee of Johnson, Toal & Battiste, P.A., Attorneys for Plaintiff – Brenda Bryant, in the above-captioned matter, hereby certify that I have served the **Motion To Be Relieved As Counsel** on the persons listed below, by mailing a copy of same on August 10, 2010, at the following addresses:

Ms. Brenda Bryant
264 Ashton Circle
Lexington, SC 29073

Andrew F. Lindemann, Esquire
William H. Davidson, II, Esquire
1611 Devonshire Drive, 2nd Floor
Columbia, SC 29201

J. Marcus Whitlark, Esquire
Paul c. Ballou, Esquire
P. O. Box 7702
Columbia, SC 29202

JOHNSON, TOAL & BATTISTE, P.A.

BY: 
Melisa Y. McClurkin

Columbia, South Carolina
August 10, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

AUG 23 2010

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Case No. 1997-CP-40-3082A

Madison, a fictitious name of a mentally disabled person,
through her court-appointed guardian, Brenda Bryant, Appellant,

v.


South Carolina Department of Disabilities
and Special Needs, Respondent.

**RETURN TO MOTION OF WILLIAM T. TOAL
TO BE RELIEVED AS COUNSEL**

William T. Toal, counsel of record for the Appellant Brenda Bryant, has filed a motion to be relieved as counsel for the Appellant. The Respondent South Carolina Department of Disabilities and Special Needs (SCDDSN) does not oppose Mr. Toal being relieved as counsel. SCDDSN does not, however, waive

the jurisdictional arguments raised in its Motion to Dismiss Appeal and Supplemental Motion to Dismiss Appeal, which are currently pending.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
WILLIAM H. DAVIDSON, II
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Respondent South Carolina
Department of Disabilities and Special
Needs*

Columbia, South Carolina

August 19, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
AUG 23 2010
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Case No. 1997-CP-40-3082A

Madison, a fictitious name of a mentally disabled person,
through her court-appointed guardian, Brenda Bryant, Appellant,

v.

South Carolina Department of Disabilities
and Special Needs, Respondent.

CERTIFICATE OF SERVICE

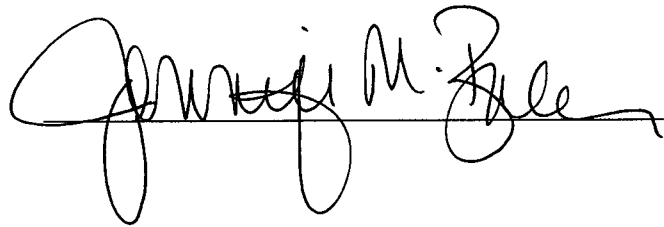
The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent, does hereby certify that service of the **Return to Motion of William T. Toal to be Relieved as Counsel** in the above-captioned matter was made upon the *Pro Se* Appellant and all other counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 19th day of August 2010, addressed as follows:

Certificate of Service
August 19, 2010
Page Two

Ms. Brenda Bryant
264 Ashton Circle
Lexington, South Carolina 29073

J. Marcus Whitlark, Esquire
Paul C. Ballou, Esquire
Whitlark & Ballou
Post Office Box 7702
Columbia, South Carolina 29202

William T. Toal, Esquire
Johnson Toal & Battiste, P.A.
Post Office Box 1431
Columbia, South Carolina 29202

A handwritten signature in black ink, appearing to read "William T. Toal". The signature is written in a cursive style with a horizontal line extending from the end of the name.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Michael B. Wren
Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

August 19, 2010

* Also admitted in North Carolina
† Certified Mediator

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Madison, a fictitious name of a mentally disabled person, through her court-appointed guardian, Brenda Bryant v. South Carolina Department of Disabilities and Special Needs
Court of Appeals Tracking Number: 2010165546
Civil Action Number: 1997-CP-40-3082A
Our File Number: 103.4394

Dear Ms. Gee:

Please find enclosed for filing the original and seven copies of the **Return to Motion of William T. Toal to be Relieved as Counsel** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving a copy on the *Pro Se* Appellant and all other counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

RECEIVED
AUG 23 2010
SC Court of Appeals

The Honorable Tanya A. Gee
August 19, 2010
Page Two

cc: (w/ Enclosures)

Ms. Brenda Bryant
264 Ashton Circle
Lexington, South Carolina 29073

J. Marcus Whitlark, Esquire
Paul C. Ballou, Esquire
Whitlark & Ballou
Post Office Box 7702
Columbia, South Carolina 29202

William T. Toal, Esquire
Johnson Toal & Battiste, P.A.
Post Office Box 1431
Columbia, South Carolina 29202

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
SEP 03 2010
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

CIVIL ACTION NUMBER: 97-CP-40-3082

Madison, a fictitious name of a mentally)
disabled person, through her court-)
appointed guardian, Brenda Bryant,)
)
Plaintiff-Appellant,)
)
vs.)
)
South Carolina Department of)
Disabilities and Special Needs,)
)
Defendant-Respondent,)
)

**RETURN TO DEFENDANT-
RESPONDENT'S MOTION TO
DISMISS AND SUPPLEMENTAL
MOTION TO DISMISS**

BRENDA BRYANT, Plaintiff-Appellant, in response to the Defendant-Respondent's Motion to Dismiss filed in the Court of Appeals on August 3, 2010, and Supplemental Motion to Dismiss filed in this Court August 10, 2010, would allege as follows:

1. Brenda Bryant is the *pro se* Plaintiff-Appellant in this matter, on behalf of her mentally disabled daughter, Madison. Defendant is an agency of the State of South Carolina.
2. Ms. Bryant was formerly represented by Attorney Mark Whitlark in the Circuit Court matter. She provided Whitlark with the case file at the outset of his representation. At some point during this thirteen-year case, Judge Barber determined that the interests of Madison and Ms. Bryant were in conflict, and

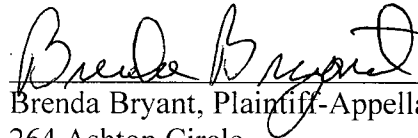
ordered that Whitlark represented the interests of Madison and not those of Ms. Bryant. Ms. Bryant has tried for months to get her original file from Mr. Whitlark, and has actually sought the assistance of the Office of Disciplinary Counsel in retrieving her file, but Ms. Bryant has still not been allowed even a copy of the file she provided to Whitlark. Whitlark and Attorney Jay Elliot (who was appointed GAL by the appealed Order) insist that the original file now belongs to attorney Elliot. While several attorneys have expressed an interest in representing Ms. Bryant in this appeal, each has asked to review the case file prior to accepting representation. As she has been unable to provide the case file, Ms. Bryant has been unable to retain the assistance of an attorney for this appeal.

3. Attorney William Toal represented Ms. Bryant on the Motion to have her removed as guardian *ad litem* in the Circuit Court. Mr. Toal ceased his representation of Ms. Bryant in the case below and refused to file the Notice of Intent to Appeal in this matter. Ms. Bryant, who was unaware that the Appellate Court Rules may require Mr. Toal to continue to represent her in the appeal, filed the Notice *pro se* to assure compliance with the time deadline.
4. The records in the lower court reveal that while the Defendant-Respondent received a copy of the appealed Order only days after its execution, neither Ms. Bryant nor Mr. Toal was given notice of the appealed Order until several weeks after that order was issued. The filing of the Notice of Intent to Appeal was filed within thirty (30) days after Ms. Bryant received notice of that

Order. Therefore, the filing of Plaintiff-Appellant's Notice of Intent to Appeal was timely.

5. Ms. Bryant has been out of state for much of the month of August 2010. Due to her absence, she did not actually receive copies of Defendant-Respondent's Motions or have any idea the motions had been filed until last week, August 24, 2010. While she understands that this Return is late based upon the mailing dates of service upon her of the Motions, she would allege that justice requires that her Return be considered in determining whether to grant or deny Defendant-Respondent's motions.

Respectfully Submitted,



Brenda Bryant, Plaintiff-Appellant, *Pro Se*
264 Ashton Circle
Lexington, South Carolina 29073
Telephone (803) 586-1635

September 3, 2010

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

SEP 03 2010

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

CIVIL ACTION NUMBER: 97-CP-40-3082

Madison, a fictitious name of a mentally)
disabled person, through her court-)
appointed guardian, Brenda Bryant,)
)
Plaintiff-Appellant,)
)
vs.)
)
South Carolina Department of)
Disabilities and Special Needs,)
)
Defendant-Respondent,)
)

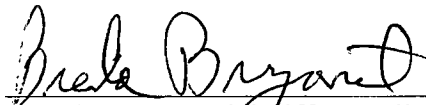
**CERTIFICATE OF SERVICE OF
RETURNS TO DEFENDANT-
RESPONDENT'S MOTION TO
DISMISS AND SUPPLEMENTAL
MOTION TO DISMISS
AND OF WILLIAM TOAL'S
MOTION TO BE RELIEVED**

BRENDA BRYANT, *pro se* Plaintiff-Appellant, hereby certifies that she has served the persons/parties listed below, at the respective addresses shown, with the Return to Defendant-Respondent's Motion to Dismiss and Supplemental Motion to Dismiss, and Return to William Toal's Motion to Be Relieved, by depositing on this day, September 3, 2010, into First Class Mail, with the proper postage affixed thereto and the Plaintiff-Appellant's return address clearly shown on the envelopes.

SC Department of Disabilities and Special Needs
William H. Davidson, II, Esquire
Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202

James R. Barber, III
SC Circuit Court Judge
P.O. Box 2766
Columbia, SC 29202

William Toal, Esquire
P.O. Box 1431
Columbia, SC 29202



Brenda Bryant, Plaintiff-Appellant, *Pro Se*
264 Ashton Circle, Lexington, SC 29073
Telephone (803) 586-1635

September 3, 2010

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

SEP 03 2010

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

CIVIL ACTION NUMBER: 97-CP-40-3082

Madison, a fictitious name of a mentally)
disabled person, through her court-)
appointed guardian, Brenda Bryant,)
)
Plaintiff-Appellant,)

vs.)

South Carolina Department of)
Disabilities and Special Needs,)
)
Defendant-Respondent,)

RETURN TO WILLIAM TOAL'S
MOTION TO BE RELIEVED

BRENDA BRYANT, Plaintiff-Appellant, in response to the William Toal's Motion to Be Relieved filed in this Court August 10, 2010, would allege as follows:


1. Brenda Bryant is the *pro se* Plaintiff-Appellant in this matter, on behalf of her mentally disabled daughter, Madison. Defendant is an agency of the State of South Carolina.
2. Ms. Bryant was formerly represented by Attorney Mark Whitlark in the Circuit Court matter. She provided Whitlark with the case file at the outset of his representation. At some point during this thirteen-year case, Judge Barber determined that the interests of Madison and Ms. Bryant were in conflict, and ordered that Whitlark represented the interests of Madison and not those of

Ms. Bryant. Ms. Bryant has tried for months to get her original file from Mr. Whitlark, and has actually sought the assistance of the Office of Disciplinary Counsel in retrieving her file, but Ms. Bryant has still not been allowed even a copy of the file she provided to Whitlark. Whitlark and Attorney Jay Elliot (who was appointed GAL by the appealed Order) insist that the original file now belongs to attorney Elliot. While several attorneys have expressed an interest in representing Ms. Bryant in this appeal, each has asked to review the case file prior to accepting representation. As she has been unable to provide the case file, Ms. Bryant has been unable to retain the assistance of an attorney for this appeal.

3. Attorney William Toal represented Ms. Bryant on the Motion to have her removed as guardian *ad litem* in the Circuit Court. Mr. Toal ceased his representation of Ms. Bryant in the case below and did not wish to file the Notice of Intent to Appeal in this matter. Ms. Bryant was unaware that the Appellate Court Rules may require Mr. Toal to continue to represent her in the appeal. Ms. Bryant objects to the Court relieving Mr. Toal as her counsel; she has been unable to obtain alternate counsel, and the rules do require him to remain in the case. Allowing Mr. Toal to be relieved as her counsel would therefore cause great prejudice to Ms. Bryant in her appeal.
4. Ms. Bryant has been out of state for much of the month of August 2010. Due to her absence, she did not actually receive copies of Mr. Toal's Motion or have any idea the motion had been filed until last week, August 24, 2010. While she understands that this Return is late based upon the mailing dates of

service upon her of the Motion, she would allege that justice requires that her Return be considered in determining whether to grant or deny Mr. Toal's motion.

Respectfully Submitted,


Brenda Bryant, Plaintiff-Appellant, *Pro Se*
264 Ashton Circle
Lexington, South Carolina 29073
Telephone (803) 586-1635

September 3, 2010

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

SEP 03 2010

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

CIVIL ACTION NUMBER: 97-CP-40-3082

Madison, a fictitious name of a mentally)
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appointed guardian, Brenda Bryant,)
)
Plaintiff-Appellant,)
)
vs.)
)
South Carolina Department of)
Disabilities and Special Needs,)
)
Defendant-Respondent,)
)

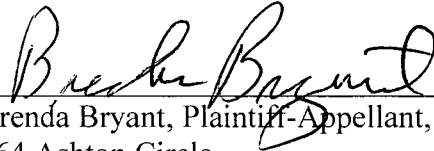
**MOTION TO ALLOW
LATE FILING OF
RETURN TO MOTIONS**

BRENDA BRYANT, Plaintiff-Appellant, would allege as follows:

1. Brenda Bryant is the *pro se* Plaintiff-Appellant in this matter, on behalf of her mentally disabled daughter, Madison. Defendant is an agency of the State of South Carolina.
2. Defendant-Respondent has filed a Motion to Dismiss and and Supplemental Motion to Dismiss in this matter. The Motion was filed August 3, 2010, and the Supplemental Motion was filed August 10, 2010. William Toal filed his Motion to Be Relieved on August 10, 2010.
3. Ms. Bryant has been out of state for much of the month of August 2010. Due to her absence, she did not actually receive copies of these Motions or have any idea

the motions had been filed until last week, August 24, 2010. While she understands that these Returns are late based upon the mailing dates of service upon her of the Motions, she would also suggest that service by mailing upon a *pro se* party is somewhat different from service upon an attorney in that mailing to a law office can reasonably be expected to provide actual notice to the attorney, whereas service made to the street address of a *pro se* litigant can only provide notice if the litigant is home to receive the notice. Ms. Bryant therefore urges the Court to consider her Return in determining whether to grant or deny the motions of William Toal and Defendant-Respondent.

Respectfully Submitted,



Brenda Bryant, Plaintiff-Appellant, *Pro Se*
264 Ashton Circle
Lexington, South Carolina 29073
Telephone (803) 586-1635

September 3, 2010

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
SEP 03 2010
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

CIVIL ACTION NUMBER: 97-CP-40-3082

Madison, a fictitious name of a mentally)
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appointed guardian, Brenda Bryant,)
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Plaintiff-Appellant,)
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vs.)
)
South Carolina Department of)
Disabilities and Special Needs,)
)
Defendant-Respondent,)
)

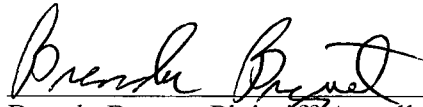
**CERTIFICATE OF SERVICE OF
MOTION TO ALLOW
LATE FILING OF
RETURN TO MOTIONS**

BRENDA BRYANT, *pro se* Plaintiff-Appellant, hereby certifies that she has served the persons/parties listed below, at the respective addresses shown, with the Motion to Allow Late Filing of Return to Motions by depositing on this day, September 3, 2010, into First Class Mail, with the proper postage affixed thereto and the Plaintiff-Appellant's return address clearly shown on the envelopes.

SC Department of Disabilities and Special Needs
William H. Davidson, II, Esquire
Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202

James R. Barber, III
SC Circuit Court Judge
P.O. Box 2766
Columbia, SC 29202

William Toal, Esquire
P.O. Box 1431
Columbia, SC 29202



Brenda Bryant, Plaintiff-Appellant, *Pro Se*
264 Ashton Circle, Lexington, SC 29073
Telephone (803) 586-1635

September 3, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
SEP 15 2010
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Case No. 1997-CP-40-3082A

Madison, a fictitious name of a mentally disabled person,
through her court-appointed guardian, Brenda Bryant, Appellant,

v.

South Carolina Department of Disabilities
and Special Needs, Respondent.

**REPLY TO APPELLANT'S RETURN TO
MOTION TO DISMISS APPEAL AND
SUPPLEMENTAL MOTION TO DISMISS APPEAL**

The Respondent South Carolina Department of Disabilities and Special Needs ("SCDDSN") has moved this Court for a dismissal of Brenda Bryant's appeal for lack of appellate jurisdiction as a result of her failure to timely serve a Notice of

Appeal and because the filing of a *pro se* Notice of Appeal violates the rule against "hybrid representation." The Appellant Brenda Bryant has now filed an untimely return to SCDDSN's motion and supplemental motion.

In her return, Bryant does not address the merits of SCDDSN's position. She only states in a conclusory manner that the Notice of Appeal was filed within thirty days after she received notice. This bald statement is not credible for three principal reasons. First, Bryant has still not provided the Court with the date that she allegedly received written notice of entry of the March 1, 2010 order. Second, in her Notice of Appeal, Bryant claims not to have received written notice of the March 1, 2010 order, which is inconsistent with what she now claims. And third, Bryant wholly disregards the letter of William T. Toal dated May 25, 2010, wherein her own counsel specifically informs Bryant that he received a copy of the March 1, 2010 order on May 25, 2010. (Exhibit B attached to Motion to Dismiss Appeal). Furthermore, Toal forwarded a copy of that order to Bryant at that time and gives her very clear and specific directions regarding her appeal rights. Toal wrote as follows:

Accordingly, you have 30 days from May 25, 2010, to file and serve a Notice of Appeal. If you desire me to file a Notice of Appeal, I will do so upon the payment of the filing fee of \$100.00. I will then move to be relieved as your counsel, if you have not substituted counsel.

(Exhibit B). (Emphasis added).

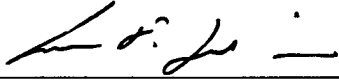
Bryant makes no attempt to discredit or refute Toal's letter. She does not even deny receiving that letter. Thus, Bryant was fully aware that her counsel received written notice of the March 1, 2010 order on May 25, 2010, and she was advised that the Notice of Appeal had to be served within thirty days (i.e., by June 24, 2010). Bryant did not serve her *pro se* Notice of Appeal, however, until July 2, 2010, which was eight days late. In sum, the Notice of Appeal was not timely filed, and as a result, this Court lacks appellate jurisdiction over this appeal.

Bryant has likewise failed to even address the "hybrid representation" issue raised in the supplemental motion to dismiss appeal. In her return to Toal's pending motion to be relieved, Bryant agrees that Toal had not been relieved when she served the untimely Notice of Appeal on July 2, 2010. Under the reasoning from *Miller v. State*, ___ S.C. ___, ___ S.E.2d ___, 2010 WL 2991049 (2010), the Clerk of Court was required not to accept for filing the Notice of Appeal filed *pro se* by Bryant who was still represented by counsel. The Notice of Appeal therefore should be dismissed as a nullity. It should be noted that Toal offered in his May 25, 2010 letter to serve a Notice of Appeal, but ultimately Bryant filed a Notice of Appeal *pro se* and untimely.

On each of the bases addressed herein, the Respondent SCDDSN respectfully requests that this Court dismiss Brenda Bryant's *pro se* appeal.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
WILLIAM H. DAVIDSON, II
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Respondent South Carolina
Department of Disabilities and Special
Needs*

Columbia, South Carolina

September 13, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Case No. 1997-CP-40-3082A

Madison, a fictitious name of a mentally disabled person,
through her court-appointed guardian, Brenda Bryant, Appellant,

v.

South Carolina Department of Disabilities
and Special Needs, Respondent.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent, does hereby certify that service of the **Reply to Appellant's Return to Motion to Dismiss Appeal and Supplemental Motion to Dismiss Appeal** in the above-captioned matter was made upon the *pro se* Appellant and all other counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 13th day of September of 2010:

Ms. Brenda Bryant
264 Ashton Circle
Lexington, South Carolina 29073

J. Marcus Whitlark, Esquire
Paul C. Ballou, Esquire
Whitlark & Ballou
Post Office Box 7702
Columbia, South Carolina 29202

William T. Toal, Esquire
Johnson Toal & Battiste, P.A.
Post Office Box 1431
Columbia, South Carolina 29202



DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Michael B. Wren
Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

September 13, 2010

* Also admitted in North Carolina
† Certified Mediator

RECEIVED

SEP 15 2010

SC Court of Appeals

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Madison, a fictitious name of a mentally disabled person, through her court-appointed guardian, Brenda Bryant v. South Carolina Department of Disabilities and Special Needs
Court of Appeals Tracking Number: 2010165546
Civil Action Number: 1997-CP-40-3082A
Our File Number: 103.4394

Dear Ms. Gee:

Please find enclosed for filing the original and seven copies of the **Reply to Appellant's Return to Motion to Dismiss Appeal and Supplemental Motion to Dismiss Appeal** with regard to the above referenced appeal. Please file the original and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving copies on the *pro se* Appellant and all other counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Tanya A. Gee
September 13, 2010
Page Two

cc: (w/ Enclosure)

Ms. Brenda Bryant
264 Ashton Circle
Lexington, South Carolina 29073

J. Marcus Whitlark, Esquire
Paul C. Ballou, Esquire
Whitlark & Ballou
Post Office Box 7702
Columbia, South Carolina 29202

William T. Toal, Esquire
Johnson Toal & Battiste, P.A.
Post Office Box 1431
Columbia, South Carolina 29202



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 7, 2010

William T. Toal, Esquire
Johnson Toal & Battiste, PA
P.O. Box 1431
Columbia, SC 29202

Brenda Bryant
264 Ashton Circle
Lexington, SC 29073

Re: Madison (Brenda Bryant) v. SCDDSN
2010165546

Dear Counsel and Ms. Bryant:

The following Order has been endorsed on Mr. Toal's Motion to be Relieved as Counsel in the above entitled case on appeal.

"Granted.

s/ John Cannon Few C. J.

October 07, 2010."

Please be advised that Appellant must inform the Court if she will be proceeding pro se or if she will seek representation within fifteen (15) days of the date of this letter.

As of today's date, we have not received from Appellant the \$25.00 filing fee for the Motion to Allow Late Filing of Return to Motions. Appellant must provide this Court with a \$25.00 filing fee within fifteen (15) days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/mpm

cc: William H. Davidson, II, Esquire
Andrew F. Lindemann, Esquire

The South Carolina Court of Appeals

Madison, a fictitious name of a
mentally disabled person, through her
court-appointed guardian, Brenda
Bryant,

Appellant,

v.

South Carolina Department of
Disabilities and Special Needs,

Respondent.

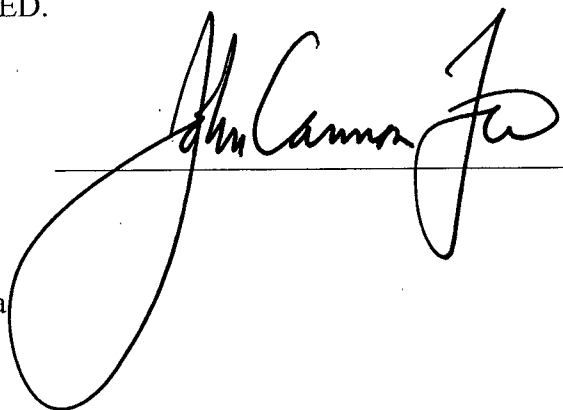
The Honorable James R. Barber
Richland County
Trial Court Case No. 1997-CP-40-3082A

ORDER

Respondent filed a motion to dismiss the appeal arguing Appellant's appeal is untimely. Respondent maintains Appellant received written notice of the order being challenged on appeal on May 25, 2010, and therefore service of the notice of appeal on July 2, 2010 was untimely. Respondent also maintains because Appellant was represented by counsel at the time she served and filed her notice of appeal, this Court should not accept her filings. See Miller v. State, ___ S.C. ___, 697 S.E.2d 527 (2010) (providing a person has no right to hybrid representation and because petitioner was represented by counsel, substantive documents filed by pro se petitioner should not be accepted by court).

We find Miller inapplicable because Appellant's return to the motion to dismiss provides she believed her attorney no longer represented her. Appellant's belief she was not represented by counsel is also supported by counsel's May 25, 2010 letter. Therefore, although Appellant filed a proof of service indicating Respondent was served on July 2, 2010, the proof of service does not indicate when Appellant received written notice of the trial court's March 1, 2010 order. Appellant has fifteen days to provide this Court with a proof of service indicating when she received written notice of the trial court's March 1, 2010 order. The motion to dismiss remains pending.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "John Cannon Jr.", is written over a horizontal line. The signature is stylized and cursive.

Columbia, South Carolina

cc: Brenda Bryant
William T. Toal, Esquire
William H. Davidson, II, Esquire
Andrew F. Lindemann, Esquire

FILED
10/2/10



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
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October 7, 2010

Brenda Bryant
264 Ashton Circle
Lexington, SC 29073

William H. Davidson, II, Esquire
Andrew F. Lindemann, Esquire
Davidson & Lindemann
P O Box 8568
Columbia, SC 29202

Re: Madison (Brenda Bryant) v. SCDDSN
2010165546

Dear Counsel:

Enclosed is a copy of an Order of the Court regarding Respondent's Motion in the above case.

Appellant is to provide this Court with the date of receipt of the written court order within fifteen (15) days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

TAG/mpm

cc: William T. Toal, Esquire

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

CIVIL ACTION NUMBER: 97-CP-40-3082

RECEIVED

OCT 22 2010

SC Court of Appeals

Madison, a fictitious name of a mentally)
disabled person, through her court-)
appointed guardian, Brenda Bryant,)
)
Plaintiff-Appellant,)
)
vs.)
)
South Carolina Department of)
Disabilities and Special Needs,)
)
Defendant-Respondent,)
)

AFFIDAVIT OF APPELLANT
IN RESPONSE TO ORDER
DATED OCTOBER 7, 2010

PLAINTIFF BRENDA BRYANT, being first duly sworn, deposes and says as follows.

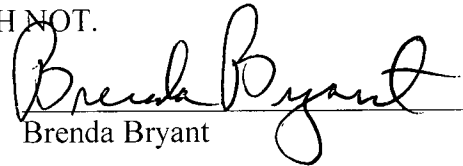
1. I am the Plaintiff and Mother of Madison, a thirty-seven-year-old mentally disabled adult formerly in the care of the South Carolina Department of Disabilities and Special Needs. I filed this appeal *pro se*.
2. In the October 7, 2010 Order of The Honorable Judge Few, the Court requested that I provide "proof of service" indicating when I was served with the lower court's March 1, 2010 Order. There is no such proof of service because I was never served with the March 1 Order.

3. The Order of March 1 was the result of a hearing in Richland County Court of Common Pleas on January 12, 2010. I was not aware of this hearing and did not attend. I was represented at that hearing by William Toal, Esquire. Mr. Toal was judicially relieved as my counsel shortly thereafter.
4. The records from the Richland County file indicate that the March 1 Order of Judge Barber was served upon Orin Briggs for the Plaintiff, and William H. Davidson and Danny C. Crowe for Defendants. William Toal was not listed on the court's Form 4 (see enclosed Form 4 dated March 2, 2010).
5. Also in the court file was an envelope ostensibly sent to me, which had been returned. The envelope was attached to an undelivered copy of the Form 4 and the Order in question. However, the address to which the Order was allegedly sent is a Union City, New Jersey address I have never heard of. I have lived in Lexington County, South Carolina for 54 years, at the same address for the last 20 years. I have no idea where the New Jersey address came from. I have obviously never given the lower court a New Jersey address for service upon me.
6. It appears from the lower court's own file that neither I nor my attorney at the time, William Toal, has been served with the March 1, 2010 Order.
7. I telephoned the courthouse in mid-May to find out whether or not an Order had been filed from the January 12 hearing. I was told at that time that an Order had been mailed to Briggs, and mailed to me in New Jersey.

I corrected my address with the court at that time, and told the non-jury clerk (Paul Gunter) that Briggs was not my attorney and had not been for over a year, and that Mr. Toal was my attorney at this hearing. He stated that Toal was not listed as an attorney of record in the case. I have still not been served with the Order, though I did finally ask Mr. Toal to fax me a copy in the middle of June. That was my first time seeing the order.

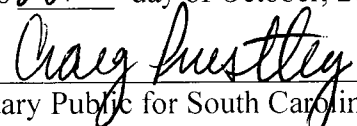
8. While I have never been served with the March 1, 2010 Order, I did file my Notice of Intent to Appeal within thirty (30) days of my first seeing the Order. The Appeal should therefore be allowed to go forward.

AND FURTHER THE AFFIANT SAYETH NOT.


Brenda Bryant

SWORN TO AND SUBSCRIBED BEFORE ME .

This 22ND day of October, 2010.


Notary Public for South Carolina

My commission expires: 6/4/12

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Madison, a fictitious name of a mentally)
disabled person, through her court-)
appointed guardian, Brenda Bryant,)

Civil Action No. 97-CP-40-3082

Plaintiff,)

v.)

South Carolina Department of)
Disabilities and Special Needs,)

Defendant.)

JEANETTE E. W. McBRIDE
2010 MAR - 1 PM 3:40
RICHLAND COUNTY
FILED

ORDER

RECEIVED

OCT 22 2010

SC Court of Appeals

#1
2010

This matter is before this Court on the Defendant's Motion to Relieve Brenda Bryant as the Guardian ad Litem for Madison, the mentally disabled person who is the Plaintiff in this action. A hearing was held on August 28, 2009. Brenda Bryant was present together with her attorney, William T. Toal. Madison was represented by Marcus Whitlark. William H. Davidson, II appeared as counsel for the Defendant South Carolina Department of Disabilities and Special Needs (SCDDSN). Theresa A. Horton, an attorney from Greenville, also was present. Ms. Horton was serving at that time as the Guardian ad Litem for Madison in a Greenville County Probate Court matters which bear Case Number 2005-GC-23-0046 and 2005-GC-23-0046.¹

¹ Madison is identified in the Greenville County Probate Court proceedings by her actual name. However, the Court will use the fictitious name "Madison" which is how she has been identified in this action.

The Court is advised that counsel for the Defendant SCDDSN filed this motion after learning of certain proceedings and orders by the Greenville County Probate Court. With its motion, the Defendant has brought these matters of concern to the attention of this Court which appointed Brenda Bryant as Guardian ad Litem for purposes of this litigation. As discussed below, it is proper for this Court to review these issues because they involve an earlier settlement in this case between the Plaintiff and Babcock Center, Inc.; a settlement that was approved by Circuit Court Judge G. Thomas Cooper, Jr. on September 28, 2007.²

This Court has been provided with orders and other filings from the Greenville County Probate Court in Case Numbers 2005-GC-23-0045 and 2005-GC-23-0046. The Court also received testimony at the hearing from Theresa Horton, Marcus Whitlark and Brenda Bryant.

#2
QB

This case arises out of facts which are set forth in detail in the decision of the South Carolina Supreme Court in *Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 638 S.E.2d 650 (2006). Shortly after this case was remanded by the Supreme Court, the Defendant Babcock Center entered into a settlement for \$250,000.00. The settlement was submitted to Judge Cooper for court approval based upon a verified petition of Brenda Bryant as the Guardian ad Litem. The verified petition sought approval of the settlement and requested court approval for the disbursement of \$112,500.00 in attorney's fees and \$17,221.63 for litigation costs. No request was made for the disbursement of any funds to Ms. Bryant personally or as Guardian ad Litem or in any role. On September 28, 2007, after a hearing was held, Judge Cooper approved the settlement (order attached as Exhibit A). He further approved and authorized the payment of

² The Plaintiff's counsel and the attorney for Brenda Bryant both challenged whether the Defendant has standing to seek the removal of Ms. Bryant as the Guardian ad Litem. The Court finds that the Defendant has standing to bring this matter to the attention of the Court and that this Court has the jurisdiction and inherent authority to supervise the guardians ad litem appointed by the Court and to relieve them if warranted.

\$122,500.00 in attorney's fees and \$17,221.63 for litigation costs. In his Order Approving Settlement of Incapacitated Adult, Judge Cooper stated that the net proceeds of the settlement due to Madison was \$120,278.37. Brenda Bryant was expressly directed to use those "net settlement proceeds to set up a special needs trust set up exclusively for the care and benefit of Madison."

Based upon the information in the record, the Court understands that in March 2008, an action was filed in the Greenville County Probate Court to establish a Special Needs Trust for the settlement proceeds received in this action. During a hearing on the approval of that Special Needs Trust, Associate Probate Judge Edward M. Sauvain "became concerned about whether the proposed disbursements (totaling \$49,169) from the settlement to Mrs. Bryant and the proposed Special Needs Trust as it was structured were appropriate and in [Madison's] best interests." *See*, Order Replacing Guardian, filed September 16, 2008, Case Number 2005-GC-23-0045, p. 2.

#3
P/B
On April 28, 2008, the Probate Court appointed Theresa A. Horton as Guardian ad Litem for Madison to look into various matters which were brought to the attention of the Probate Court, including the handling of the Estate of Madison by her Guardian and Conservator, Brenda Bryant. Ms. Horton ultimately filed an action to remove Ms. Bryant as the Guardian and Conservator. After an evidentiary hearing held on August 28, 2008, Judge Sauvain found that "Mrs. Bryant has used her daughter's situation to benefit herself. I note that she already received \$40,000 from the litigation without written authorization from any Court and is seeking additional money from her daughter's funds." *See*, Order Replacing Guardian, filed September 16, 2008, Case Number 2005-GC-23-0045, p. 7. (Footnote excluded). Accordingly, Judge Sauvain removed Ms. Bryant as the Guardian for Madison and appointed Tracy C. Parsons.

Subsequent to this appointment, the Greenville County Probate Court also removed Ms. Bryant as Conservator for Madison and appointed Cheryl Bourn. A review of the Order Removing Conservator and Appointing New Conservator, filed July 9, 2009, also shows that the Probate Court noted the present motion pending before this Court and that the Probate Court "does not have the jurisdiction to determine that Motion but would recommend that the Orders of this Court have no bearing on that determination by the Circuit Court." See, Order Removing Conservator and Appointing New Conservator, filed July 9, 2009, Case Number 2005-GC-23-0046, p. 2.

Therefore, this Court, in its supervisory role over the Guardian ad Litem appointed in this case, has undertaken an independent review of all these issues, including the fee arrangement between the Plaintiff and her attorneys and the disbursement of funds from the Babcock Center settlement as approved by Judge Cooper in September 2007. The Court is also aware that, as a result of the resignations of Theresa A. Horton, Tracy Parson and Cheryl Bourn, the Greenville County Probate Court has reappointed Brenda Bryant as the Guardian and Conservator for Madison. Specifically, at a hearing held in Probate Court on September 3, 2009, a settlement of all pending motions was reached among the parties to that litigation, and the Probate Court accepted that settlement. Orders filed September 14, 2009, memorialize that settlement and reappoints Brenda Bryant as the Guardian and Conservator for Madison. Those Orders also resulted in the vacating of the Order Replacing Guardian, filed September 16, 2008, and the Order Removing Conservator and Appointing New Conservator, filed July 9, 2009.

However, the actions of the Greenville County Probate Court do not obviate this Court's obligations or independent review of the issues presented to this Court. It is well settled that "[t]he guardian ad litem functions as a representative of the court which appointed her to assist

the court in properly protecting the interests of an incompetent person." *Fleming v. Asbill*, 326 S.C. 49, 483 S.E.2d 751, 753 (1997). The Court has the authority to appoint the guardian ad litem and maintains the authority to remove or relieve a guardian ad litem of his or her responsibilities if warranted. Thus, it is within the inherent authority of this Court to review the actions of Brenda Bryant as the Guardian ad Litem for Madison in this litigation and to make an assessment as to whether she remains fit and suitable for that important role.

The Court has reviewed and scrutinized the evidence presented by the parties to this motion. Based thereon, this Court finds and concludes that Brenda Bryant should be removed as Guardian ad Litem and that a new Guardian ad Litem be appointed to protect the interests of Madison with respect to this litigation. The Court has not taken this matter and its gravity lightly. The Court is mindful of the desire of Ms. Bryant to remain involved in her daughter's case, but the Court cannot ignore the actions taken with regard to the proceeds from the Babcock Center settlement. As stated previously, by Order dated September 28, 2007, Judge Cooper approved the Babcock Center's settlement in the amount of \$250,000.00. As Guardian ad Litem and Conservator, Ms Bryant filed a verified petition seeking approval of attorney's fees and litigation costs. In her petition, Ms. Bryant requested that attorney's fees in the amount of \$112,500.00 be paid to the attorneys in this matter and that \$17,221.63 be paid as costs associated with this litigation. No request was made for the disbursement of any funds to Ms. Bryant personally or as the parent, guardian or conservator.

#5
Order

After reviewing the trust account documents from the Gibbs Law Firm (attached as Exhibit B), which was appointed pro hac vice in this case, and the trust account from the Whitlark & Ballou law firm, in addition to hearing the testimony of the witnesses, it is clear to this Court that funds which were to be allocated to Madison's benefit have not been so allocated.

Further, at the conclusion of the August 28, 2009 hearing, this Court requested from Ms. Bryant, Mr. Toal, and Mr. Whitlark, that the fee agreement between Ms. Bryant, as Guardian ad Litem for Madison, and her attorneys be presented to the Court. The Court also requested that documentation of the expenditures to Ms. Bryant be presented to justify transfer of funds to Ms. Bryant personally from her daughter's account. In response to this request, the Court only received a copy of a fee agreement. The Court received no information explaining or justifying the monies that have been paid to Ms. Bryant, other than a document apparently prepared by Ms. Bryant that stated she should be paid \$5,000.00 a year for serving as Guardian ad Litem (attached as Exhibit C).

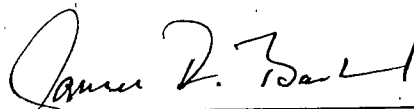
Therefore, based on the evidence in this record, this Court finds that the attorneys received a total of \$89,331.00 in fees from the settlement, and that such was not the amount approved by Judge Cooper. Based on these expenditures, the settlement proceeds of \$120,279.37 due to Madison from the Babcock Center settlement as approved by Judge Cooper have been depleted to \$87,856.41 without the authority or approval of any court.

#6
02/07
Given the misuse and misappropriation of assets belonging to Madison for personal use without court approval, this Court concludes in its discretion that Brenda Bryant is no longer fit to serve as the Guardian ad Litem in this litigation. This Court therefore is relieving Ms. Bryant of her position as the Guardian ad Litem for Madison. A new Guardian Ad Litem shall be duly appointed.

IT IS, THEREFORE, ORDERED that Brenda Bryant is hereby removed as Guardian ad Litem for Madison, and counsel for Madison shall submit to the Court the name of a new proposed Guardian ad Litem within thirty days of the filing date of this Order. This Court will then consider the fitness of the individual proposed to serve as Guardian ad Litem, and if that

person is deemed suitable to serve, the Court will appoint him/her as the Guardian ad Litem for Madison for purposes of this litigation. If the Court does not receive any nomination from counsel for Madison within this time frame, or if the Court is not satisfied with the suitability of the individual proposed, the Court shall appoint an appropriate individual to serve as Guardian ad Litem for Madison.

AND IT IS SO ORDERED.



JAMES R. BARBER, III
Circuit Court Judge,
Fifth Judicial Circuit

Columbia, South Carolina

February 25, 2010

Brenda Bryant
516 19th St
Union City, NJ

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

CIVIL ACTION NUMBER: 97-CP-40-3082

RECEIVED

OCT 22 2010

SC Court of Appeals

Madison, a fictitious name of a mentally)
disabled person, through her court-)
appointed guardian, Brenda Bryant,)
)
Plaintiff-Appellant,)
)
vs.)
)
South Carolina Department of)
Disabilities and Special Needs,)
)
Defendant-Respondent,)
)

CERTIFICATE OF SERVICE

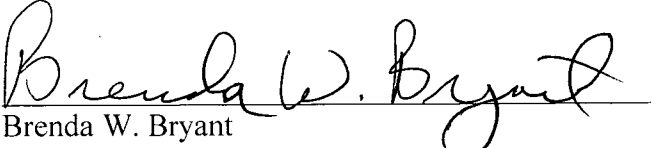
TO: THE DEFENDANT ABOVE-NAMED AND ITS ATTORNEY; and JOHN D. ELLIOT, GUARDIAN *AD LITEM* FOR MADISON

This is to certify that I served the attached Affidavit and its attachments upon the following parties and/or counsel by mailing to each at his or her address as listed below, by placing said motion in individual envelopes and with sufficient postage attached thereto and return address clearly shown thereon, into the United States mail.

William H. Davidson, III, Esq.
Post Office Box 8568
Columbia, SC 29204

The Honorable James Barber
Richland County Circuit Court
1701 Main Street
Columbia, SC 29201

John D. Elliot, Esq.
Post Office Box 607
Columbia, SC 29202


Brenda W. Bryant
Individual Plaintiff and Guardian for Madison
264 Ashton Circle
Lexington, South Carolina 29073
(803) 356-7639

October 02, 2010

**Brenda W. Bryant
264 Ashton Circle
Lexington, SC 29073
Telephone (803) 356-7639**

October 22, 2010

Tanya Gee, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29201

RECEIVED

OCT 22 2010

SC Court of Appeals

RE: Madison v. DDSN, et al., 1997-CP-40-3082-A

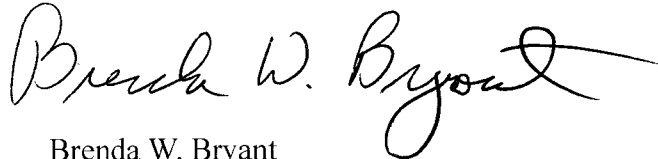
Dear Ms. Gee:

Please find enclosed the documentation requested by Judge Few in his Order of October 7, 2010, regarding Respondent's Motion to Dismiss.

By copy of this letter, I am hereby serving the Respondent with these documents.

If His Honor should require anything further from me, please contact me directly.

Sincerely,



Brenda W. Bryant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Case No. 1997-CP-40-3082A

RECEIVED

OCT 27 2010

SC Court of Appeals

Madison, a fictitious name of a mentally disabled person,
through her court-appointed guardian, Brenda Bryant, Appellant,

v.

South Carolina Department of Disabilities
and Special Needs, Respondent.

**RESPONDENT'S RETURN TO
AFFIDAVIT OF APPELLANT IN RESPONSE
TO ORDER DATED OCTOBER 7, 2010**

By Order filed October 7, 2010, the Court gave the Appellant fifteen days to provide the Court "with a proof of service indicating when she received written notice of the trial court's March 1, 2010 order." In response, the Appellant filed an affidavit on October 22, 2010, in which she still fails to provide the Court with the

actual date that she claims to have first received written notice of the March 21, 2010 order. Instead, the Appellant provides an explanation that the Richland County Clerk of Court did not provide her with written notice of the Order. However, that is not the only means by which she could receive notice.

The Respondent has previously submitted evidence that the Appellant's counsel, William T. Toal, received written entry of the March 1, 2010 Order on May 25, 2010. The Respondent submitted into the record a letter dated May 25, 2010, that Mr. Toal sent to the Appellant enclosing a copy of the Order. In that same letter, Mr. Toal correctly advises the Appellant that she had thirty days from May 25, 2010, to file a Notice of Appeal. Mr. Toal also offers to file the Notice of Appeal for her, after which he stated his intent to be relieved as her counsel. Mr. Toal was not relieved as the Appellant's counsel until October 7, 2010, when this Court granted his Motion to be Relieved as Counsel. Thus, the evidence establishes that the Appellant – through her counsel – received notice of written entry of the Order on May 25, 2010, a fact Mr. Toal admits in his letter and a fact that he fully advised the Appellant of in that same letter.

Yet, in her affidavit submitted to the Court, the Appellant makes no mention of the May 25, 2010 letter. Importantly, she does not deny having received the letter nor does she inform the Court of the date it was received. The reason for that is the letter was received within a few days of mailing, thereby making her service


of the *pro se* Notice of Appeal on July 2, 2010 out of time. She has also not provided any evidence from Mr. Toal or his law firm to suggest that the May 25, 2010 letter was returned to sender by the U.S. Postal Service.

Significantly, the Appellant does state in her affidavit that she first received a copy of the March 21, 2010 Order *by facsimile* from Mr. Toal "in the middle of June." The actual date of receipt is unspecified. However, the copy of the Order that is attached to her affidavit as an exhibit was not received by facsimile. If it had been received by a fax machine, the document would contain a TSID header which includes the sender's identity, phone number, and the transmission date and time. If the Appellant claims to have received the Order for the first time by facsimile from Mr. Toal's office, the Court should hold her to specific proof. Namely, the Court should require the Appellant to produce the facsimile copy of the Order and/or a fax confirmation page or printout from Mr. Toal's office confirming that a copy of the Order was indeed faxed to the Appellant after June 2, 2010. Absent such proof, the Court should place no weight on the unsubstantiated claim that the Appellant did not receive a copy of the Order until "the middle of June."

On the grounds previously raised, the Respondent again respectfully requests that this Court dismiss Brenda Bryant's *pro se* appeal for lack of appellate jurisdiction.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
WILLIAM H. DAVIDSON, II
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Respondent South Carolina
Department of Disabilities and Special
Needs*

Columbia, South Carolina

October 27, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
James R. Barber, III, Circuit Court Judge

Case No. 1997-CP-40-3082A

RECEIVED

OCT 27 2010

SC Court of Appeals

Madison, a fictitious name of a mentally disabled person,
through her court-appointed guardian, Brenda Bryant, Appellant,

v.

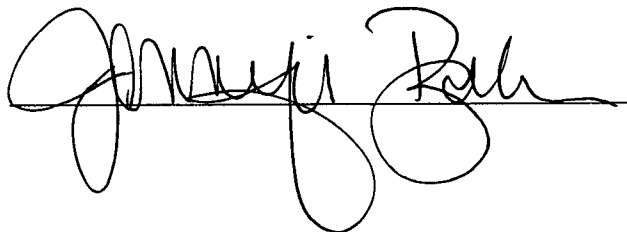
South Carolina Department of Disabilities
and Special Needs, Respondent.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent, does hereby certify that service of **Respondent's Return to Affidavit of Appellant in Response to Order Dated October 7, 2010** in the above-captioned matter was made upon the *pro se* Appellant and all other counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 27th day of October of 2010:

Ms. Brenda Bryant
264 Ashton Circle
Lexington, South Carolina 29073

J. Marcus Whitlark, Esquire
Paul C. Ballou, Esquire
Whitlark & Ballou
Post Office Box 7702
Columbia, South Carolina 29202

A handwritten signature in black ink, appearing to read "Paul C. Ballou". The signature is written in a cursive style with large, sweeping loops and a horizontal line extending from the end of the name.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Michael B. Wren
Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

October 27, 2010

* Also admitted in North Carolina
† Certified Mediator

Hand Delivered

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: Madison, a fictitious name of a mentally disabled person, through her court-appointed guardian, Brenda Bryant v. South Carolina Department of Disabilities and Special Needs
Court of Appeals Tracking Number: 2010165546
Civil Action Number: 1997-CP-40-3082A
Our File Number: 103.4394

Dear Ms. Gee:

Please find enclosed for filing the original and seven copies of **Respondent's Return to Affidavit of Appellant in Response to Order Dated October 7, 2010** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier.

By copy of this letter, I am serving copies on the *pro se* Appellant and all other counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

RECEIVED

OCT 27 2010

SC Court of Appeals

AFL/jmb
Enclosures

The Honorable Tanya A. Gee
October 27, 2010
Page Two

cc: (w/ Enclosure)

Ms. Brenda Bryant
264 Ashton Circle
Lexington, South Carolina 29073

J. Marcus Whitlark, Esquire
Paul C. Ballou, Esquire
Whitlark & Ballou
Post Office Box 7702
Columbia, South Carolina 29202

The South Carolina Court of Appeals

Madison, a fictitious name of a
mentally disabled person, through her
court-appointed guardian, Brenda
Bryant,

Appellant,

v.

South Carolina Department of
Disabilities and Special Needs,

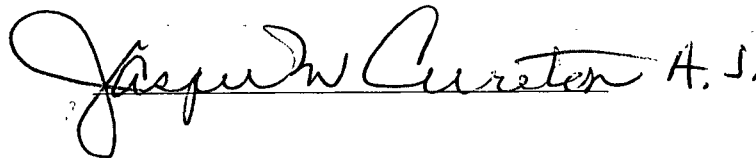
Respondent.

The Honorable James R. Barber
Richland County
Trial Court Case No. 1997-CP-40-3082A

ORDER

On October 7, 2010, this Court issued an order requiring Appellant to provide this Court with a proof of service indicating when she received written notice of the trial court's March 1, 2010 order. Although Appellant did provide an affidavit, she did not provide a proof of service nor did the affidavit specify when she received written notice. Accordingly, the motion to dismiss is granted.

AND IT IS SO ORDERED.

 James R. Barber A. J.

Columbia, South Carolina

FILED

 12/10

cc: Brenda Bryant
William H. Davidson, II, Esquire
Andrew F. Lindemann, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 2, 2010

William H. Davidson, II, Esquire
Andrew F. Lindemann, Esquire
Davidson & Lindemann
P O Box 8568
Columbia, SC 29202

Brenda Bryant
264 Ashton Circle
Lexington, SC 29073

Re: Madison (Brenda Bryant) v. SCDDSN
2010165546

Dear Counsel and Ms. Bryant:

Enclosed is a copy of an Order of the Court regarding Mr. Davidson's Motion in the above case. The remittitur will be sent to the Clerk of Court for Richland in accordance with the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/mpm

Madison, a fictitious name of a
mentally disabled person, through her
court-appointed guardian, Brenda Bryant, Appellant,

v.

South Carolina Department of
Disabilities and Special Needs, Respondent.

The Honorable James R. Barber, III
Richland County
Trial Court Case No. 1997-CD-40-3082A

RECEIVED
DEC 17 2010
SC Court of Appeals

CERTIFICATE OF SERVICE

I, the undersigned Appellant do hereby certify that I served the stated pleadings upon the below-named Respondents individually or by and through such Respondent's counsel of record, depositing the same in the United States Mail, with sufficient postage affixed and addressed as follows on **December 16, 2010**:

PLEADINGS SERVED:

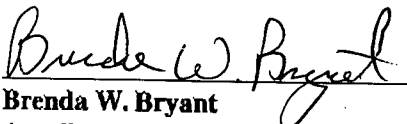
Petition for Re-Hearing dated December 16, 2010.
Letter to Court dated December 16, 2010.

PERSONS/PARTIES SERVED:

Honorable James R. Barber, III P.O. Box 2766, Columbia, SC 29202 Respondent

William H. Davidson, II, Esquire P.O. Box 8568, Columbia, SC 29202 Atty/SCDDSN

Sworn to before me this
_____ day of _____, 2010.


Brenda W. Bryant

Appellant - pro se

267 Ashton Circle S.E., S.C. 29073

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: _____

THE SOUTH CAROLINA COURT OF APPEALS
Madison, a fictitious name of a
mentally disabled person, through her
court-appointed guardian, Brenda Bryant, Appellant,

v.

South Carolina Department of
Disabilities and Special Needs, Respondent.

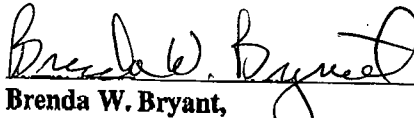
The Honorable James R. Barber, III
Richland County
Trial Court Case No. 1997-CD-40-3082A

PETITION FOR RE-HEARING

The Appellant would respectfully request the South Carolina Court of Appeals to Re-Consider and reverse the dismissal of her appeal for the following reason. The appellant did comply with the October 7, 2010 Order by filing an Affidavit that she had not been served the Trial Court's March 1, 2010 Order signed by Judge James R. Barber, III. The Appellant cannot provide this Court with Proof of Service nor date of service because she has never been served. The Appellant did learn from Paul Gunter, the Richland County Clerk, a copy of the Order was mailed to Brenda Bryant in Union City, New Jersey where Brenda Bryant has never lived. The Appellant has spoken with Court Administration and has requested the South Carolina Court Administration to review the defective Service of Hearings and Orders in this case. The Appellant has also spoken with Ann Kelly, Deputy Clerk for Richland County Court, who has verified that a Union City, New Jersey address was listed on the Court Docket as the address for the Appellant.

The travesty of this judicial error is that Madison who was gang-raped in 1996 has never been afforded a trial. In 2006, The South Carolina Supreme Court remanded this case for trial, and issued a published opinion regarding duty of care to the disabled. The Appellant would request that the appeal go forward because it is in the best interest of the victim, Madison.

December 16, 2010


Brenda W. Bryant,
Guardian for Madison, *pro se*

RECEIVED
DEC 17 2010
SC Court of Appeals

57099
\$25.00

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

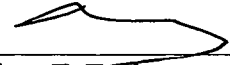
CIVIL ACTION NO.: 97-CP-40-3082

Madison, a fictitious name of a mentally)
disabled person, through her court-)
appointed guardian, Brenda Bryant,)
)
Plaintiff-Appellant,)
v.)
)
South Carolina Department of Disabilities)
and Special Needs,)
)
Defendant-Respondent.)
_____)

**MOTION TO BE RELIEVED
AS COUNSEL**

William T. Toal moves to be relieved as counsel for Brenda Bryant in this case. Counsel was hired only for the hearing on whether she should remain as guardian ad litem for the plaintiff in this case. That alone would not keep me from continuing to represent Ms. Bryant. Unfortunately, the candor required in representing a client in a civil matter would be in direct and irreconcilable conflict with the wishes of my client. Additionally, I believe that my duties as counsel ended after I sent Exhibit A to Ms. Bryant and was not contacted by her in the prescribed period.

JOHNSON, TOAL & BATTISTE, P.A.

By: 
William T. Toal
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

Columbia, South Carolina
December 20, 2010

RECEIVED
DEC 20 2010
SC Court of Appeals

JOHNSON, TOAL & BATTISTE, P.A.
ATTORNEYS AT LAW

I.S. LEEVY JOHNSON
WILLIAM T. TOAL
LUTHER J. BATTISTE, III
GEORGE C. JOHNSON
BYRON E. GIPSON
YVONNE R. MURRAY-BOYLES

May 25, 2010

COLUMBIA OFFICE:
1615 BARNWELL STREET
P.O. BOX 1431
COLUMBIA, S.C. 29202
(803) 252-9700
TOLL FREE 1-866-216-9700
FAX (803) 252-9102

ORANGEBURG OFFICE:
130 CENTRE STREET
P.O. BOX 1825
ORANGEBURG, S.C. 29115
(803) 536-9610
TOLL FREE 1-866-617-9610
FAX (803) 536-3926

PLEASE REPLY:

Mrs. Brenda Bryant
264 Ashton Circle
Lexington, SC 29073

Columbia Office

RE: Our File Number: 09-94

Dear Mrs. Bryant:

Enclosed is a copy of the Order in your case which I obtained today May 25, 2010. I asked for a certificate of service and was informed that I was not on the list as counsel in this action. Accordingly, you have 30 days from May 25, 2010, to file and serve a Notice of Appeal. If you desire me to file a Notice of Appeal, I will do so upon the payment of the filing fee of \$100.00. I will then move to be relieved as your counsel, if you have not substituted counsel.

I am copying Mr. Davidson and Mr. Whitlark with this letter, along with Judge Barber so that they can be aware of the situation.

Yours very truly,

JOHNSON, TOAL & BATTISTE, P.A.

BY: 

William T. Toal

WTT/mym
Enclosure

Cc: Hon. James R. Barber, III
Marcus Whitlark, Esquire
William H. Davidson, II, Esquire

EXHIBIT A

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

CIVIL ACTION NO.: 97-CP-40-3082


Madison, a fictitious name of a mentally)
disabled person, through her court-)
appointed guardian, Brenda Bryant,)
)
Plaintiff-Appellant,)
v.)
)
South Carolina Department of Disabilities)
and Special Needs,)
Defendant-Respondent.)

**CERTIFICATE OF SERVICE
BY MAIL**

I, Melisa Y. McClurkin, employee of Johnson, Toal & Battiste, P.A., Attorneys for Plaintiff – Brenda Bryant, in the above-captioned matter, hereby certify that I have served the **Motion To Be Relieved As Counsel** on the Plaintiff – Brenda Bryant listed below, by mailing a copy of same on December 20, 2010, at the following address:

Ms. Brenda Bryant
264 Ashton Circle
Lexington, SC 29073

JOHNSON, TOAL & BATTISTE, P.A.

BY: 
Melisa Y. McClurkin

Columbia, South Carolina

December 20, 2010

RECEIVED

DEC 20 2010

SC Court of Appeals

The South Carolina Court of Appeals

Madison, a fictitious name of a
mentally disabled person, through her
court-appointed guardian, Brenda
Bryant, Appellant,

v.

South Carolina Department of
Disabilities and Special Needs, Respondent.

The Honorable James R. Barber
Richland County
Trial Court Case No. 1997-CP-40-3082A

ORDER

Appellant petitions our Court to rehear the dismissal of the above-captioned appeal. After a careful consideration, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing or reinstating the appeal.

AND IT IS SO ORDERED.

Paul G. Short, Jr.
H. B. Sain
James W. Currier A.J.

FILED

3/2/11 ~~11/11~~

Columbia, South Carolina

cc: Brenda Bryant
William H. Davidson, II, Esquire
Andrew F. Lindemann, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 2, 2011

Brenda Bryant
264 Ashton Circle
Lexington, SC 29073

Re: Madison (Brenda Bryant) v. SCDDSN
2010165546

Dear Ms. Bryant:

Enclosed is a copy of an Order of the Court regarding your Motion in the above case. The remittitur will be sent to the Clerk of Richland County in accordance with the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/mpm

cc: William H. Davidson, II, Esquire
Andrew F. Lindemann, Esquire
The Honorable Jeanette W. McBride

The South Carolina Court of Appeals

Madison, a fictitious name of a
mentally disabled person, through her
court-appointed guardian, Brenda
Bryant,

Appellant,

v.

South Carolina Department of
Disabilities and Special Needs,

Respondent.

The Honorable James R. Barber
Richland County
Trial Court Case No. 1997-CP-40-3082A

REMITTITUR

No Petition for Certiorari having been filed in the above matter since issuance of this Court's
Order dated March 2, 3011,

IT IS SO ORDERED that the above appeal be and hereby is remitted.

V. Claire Allen, Deputy CLERK
For the Court

Columbia, South Carolina
Original to: The Honorable Jeanette W. McBride
cc: Brenda Bryant
William H. Davidson, II, Esquire
Andrew F. Lindemann, Esquire

FILED

4/4/11

The South Carolina Court of Appeals

Madison, a fictitious name of a
mentally disabled person, through her
court-appointed guardian, Brenda
Bryant,

Appellant,

v.

South Carolina Department of
Disabilities and Special Needs,

Respondent.

The Honorable James R. Barber
Richland County
Trial Court Case No. 1997-CP-40-3082A

ORDER

The Petition for Certiorari was filed with the Supreme Court and the original Remittitur is hereby recalled from the Clerk of Court for Richland County.

IT IS SO ORDERED.

V. Claire Allen, Deputy CLERK
For the Court

Columbia, South Carolina
cc: Brenda Bryant
William H. Davidson, II, Esquire
Andrew F. Lindemann, Esquire
The Honorable Jeanette W. McBride

FILED

4/2/11

The Supreme Court of South Carolina

Madison, a fictitious name of a
mentally disabled person,
through her court-appointed
guardian, Brenda Bryant, Petitioner,

v.

South Carolina Department of
Disabilities and Special Needs, Respondent.

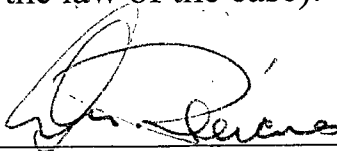
RECEIVED

JUN 01 2011

SC Court of Appeals

ORDER

Petitioner has filed a motion for an extension of time to serve respondent with the petition for a writ of certiorari filed in this matter. Respondent opposes the motion for an extension of time. We grant the motion for an extension of time and accept the amended proof of service. However, we deny the petition for a writ of certiorari. Rule 242(d)(2), SCACR ("Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court."); ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 489 S.E.2d 470 (1997)(an unchallenged ruling, right or wrong, is the law of the case).



J.

FOR THE COURT

Columbia, South Carolina

Columbia, South Carolina

May 26, 2011

cc: Ms. Brenda W. Bryant
John D. Elliott, Esquire
William H. Davidson, II, Esquire
The Honorable Jeanette W. McBride
The Honorable Tanya Gee

The South Carolina Court of Appeals

Madison, a fictitious name of a
mentally disabled person, through her
court-appointed guardian, Brenda
Bryant,

Appellant,

v.

South Carolina Department of
Disabilities and Special Needs,

Respondent.

The Honorable James R. Barber
Richland County
Trial Court Case No. 1997-CP-40-3082A

REMITTITUR

Upon the Supreme Court's Order ruling on the Appellant's Petition for a Writ of Certiorari
dated May 26, 2011,

IT IS SO ORDERED that the above appeal be and hereby is remitted.

V. Cleve Allen, Deputy
For the Court

CLERK

Columbia, South Carolina
Original to: The Honorable Jeanette W. McBride
cc: Brenda Bryant
William H. Davidson, II, Esquire
Andrew F. Lindemann, Esquire

FILED

Cartee 6/3/11