

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM CHEROKEE COUNTY  
COURT OF COMMON PLEAS

J. MARK HAYES, II CIRCUIT COURT JUDGE

CASE NO: 2011-CP-11-123

RECEIVED  
FEB 24 2014  
SC Court of Appeals

SARAH U, SHIFLETT, ATTORNEY FOR DEFENDANT....  
USHA J. BRIDGES

...RESPONDENT

v.

RUSSELL D. MOORE....

...APPELLANT

INITIAL BRIEF OF APPELLANT

RUSSELL D. MOORE  
200 PRISON RD.  
ENOREE, SC 29335

PRO-SE APPELLANT

LEGAL MAIL

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QUESTIONS PRESENTED

- (1). DID LOWER COURT ERR BY ABUSING IT'S DISCRETION BY PREMATURELY GRANTING DEFENDANT SUMMARY JUDGMENT AFTER PLAINTIFF OFFICIALLY MOTIONED THE COURT FOR A STAY AND/OR CONTINUANCE IN ORDER TO COMPLETE DISCOVERY SO THAT PLAINTIFF COULD PROPERLY RESPOND TO DEFENDANTS "MOTION FOR SUMMARY JUDGMENT"?
  
- (2). DID LOWER COURT ERR IN ABUSEING IT'S DISCRETION BY DENYING PLAINTIFF'S TIMELY FILED MOTION AND/OR REQUEST TO HAVE FORMER CLERK OF COURT, A POTENTIAL NON-PARTY WITNESS, DEPOSED WITH WRITTEN DEPOSITIONS, WHERE THE DEPOSITION OF FORMER CLERK OF COURT "INVOLVED KEY FACTUAL ELEMENTS OF THE PLAINTIFFS CAUSES OF ACTION AND ESTABLISHMENT OF A FUDICIARY DUTY AND MISREPRESENTATION CLAIMS?"
  
- (3). DID LOWER COURT ERR BY PREJUDICING PLAINTIFF AND/OR ABUSING IT'S DISCRETION BY THE COURTS' REFUSAL TO ALLOW PLAINTIFFS REQUEST FOR WRITTEN DEPOSITION OF FORMER CLERK OF COURT TO BE TAKEN AND DEVELOPED FOR THE RECORD AND CONSIDERATION IN LIGHT OF THE FACT THAT THE DEFENDANT QUALIFIED ASAN ANWER TO ADMISSIONS THAT THE FORMER CLERK OF COURT DID NOT PROPERLY SERVE NOTICE REQUIREMENT, WHEN CLERKS REFUTED DEPOSITION COULD AND WOULD CREATE A DISPUTED GENUINE ISSUE OF MATERIAL FACT?
  
- (4). DID LOWER COURT ERR WITH PREJUDICE AND / OR ABUSE OF DISCRETION BY NOT RECOGNIZING THAT IN THE CASE BEFORE THE BAR, A RECUSAL WAS NECCESARY FOR PRESIDING HON. J. MARK HAYES DUE TO THE FACT THAT JUDGE HAYES PREVIOUSLY RENDERED JUDGMENT AGAINST APPELLANT WITH A POST CONVICTION PROCEEDING CONCERNING PARALLEL ISSUES INVOLVING THE DEFENDANT AND THE FORMER CLERK OF COURT?

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PRELIMINARY STATEMENT

THIS MATTER ON APPEAL COMES BEFORE THIS HONORABLE COURT BY THE PRO SE PLAINTIFF RUSSELL MOORE APPEALING A JUDGMENT ENTERED BY THE HONORABLE J. MARK HAYES, II ON NOVEMBER 5, 2013 GRANTING SUMMARY JUDGMENT TO DEFENDANT USHA J. BRIDGES. PLAINTIFF MOORE BROUGHT A VERIFIED COMPLAINT AND CLAIMS AGAINST THE DEFENDANT USHA J. BRIDGES ON MARCH 1, 2011 IN THE CHEROKEE COUNTY COURT OF COMMON PLEAS ALLEGING THAT DEFENDANT BRIDGES WAS APPOINTED BY THE CHEROKEE COUNTY CLERK OF COURT AS LEGAL COUNSEL TO THE PLAINTIFF MR. MOORE, THEREFORE OWED PLAINTIFF MOORE A FUDICIARY DUTY, AND THAT THE DEFENDANT BREACHED THAT DUTY BY ABANDONING THE PLAINTIFF CONCERNING A CRIMINAL MATTER, WHICH RESULTED IN THREE (3) CAUSES OF ACTION CONSISTING OF LEGAL MALPRACTICE, NEGLIGENCE AND FRUAD.

THE DEFENDANT SUBMITTED A TIMELY ANSWER, THE PLAINTIFF MADE MOTIONS FOR DISCOVERY, TO COMPEL, SUFFICIENCY OF ANSWERS AND APPOINTMENT OF COUNSEL.

ON JUNE 3, 2013 THE DEFENDANT MOVED UPON THE COURT FOR SUMMARY JUDGMENT.

ON JULY 25, 2013 THE PLAINTIFF RESPONDED WITH A VERIFIED AFFIDAVIT AND MEMORANDUM OF LAW IN OPPOSITION TO THE DEFENDANTS MOTION FOR SUMMARY JUDGMENT.

ON SEPTEMBER 9, 2013 A HEARING WAS HELD BEFORE HON. J. MARK HAYES, II.

ON OCTOBER 4, 2013 THE COURT ENTERED A DECISION IN FAVOR OF THE DEFENDANT GRANTING SUMMARY JUDGMENT.

ON NOVEMBER 13, 2013 PLAINTIFF MOORE SUBMITTED A MOTION TO RE-OPEN THE JUDGMENT, TO ALTER AND AMEND FINDINGS AND CONCLUSIONS PURSUANT TO SCRCP RULE 59 (a)(2) & 59 (e).

ON NOVEMBER 26, 2013 THE DEFENDANT FILED A RETURN TO PLAINTIFFS RULE 59 MOTION REQUESTING THAT THE COURT UPHOLD IT'S PREVIOUS ORDER. ON DECEMBER 4, 2013 THE COURT ISSUED AN ORDER DENYING PLAINTIFFS SCRCP 59 MOTION.

ON JANUARY 6, 2013 PLAINTIFF SUBMITTED HIS NOTICE OF APPEAL ALONG WITH A CERTIFICATE OF SERVICE TO THE S.C. COURT OF APPEALS PURSUANT TO SCACR 203 AND ALL PARTIES OF RECORD.

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STATEMENT OF FACTS

ON APRIL 1, 1995 PLAINTIFF RUSSELL MOORE WAS ARRESTED IN CHEROKEE COUNTY IN RELATION TO A COMMON LAW ROBBERY WARRANT ISSUED ON MARCH 31, 1995. ON MAY 2, 1995 PLAINTIFF MOORE PERSONALLY APPEARED BEFORE THE HONORABLE CLERK OF COURT, MRS. KATIE BAINES AND EXERCISED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO EQUAL PROTECTION, COUNSEL AND DUE PROCESS IN ACCORDANCE TO ARTICLE ONE SECTION THREE AND SCACR RULE 602 & 608. THE CLERK, IN ACCORDANCE TO THESE PROVISIONS, EXECUTED AN AFFIDAVIT OF INDIGENCE AND ORDER FOR THE APPOINTMENT OF LEGAL COUNSEL DECLARATION WHEREAS MRS. USHA J. BRIDGES, ATTORNEY AT LAW WAS APPOINTED BY THE CLERK AS LEGAL COUNSEL TO MR. RUSSELL MOORE AFTER TENDERING A \$25.00 FEE.

AT THIS POINT, A LEGAL BINDING CONTRACT CAME INTO EXISTENCE, COUNSEL BECAME ATTACHED WHICH CAN ONLY BE NULLIFIED BY AN ORDER OF THE COURT AND SHOULD A WAIVER BE REQUESTED, BY MOTION TO WITHDRAW, TO BE RELIEVED OR TO TRANSFER THE CASE, GOOD CAUSE MUST BE PRESENTED TO THE COURT.

IN ANY EVENT, THE RECORD MUST ESTABLISH THAT A WAIVER TO THE ORDER WAS REQUESTED AND GRANTED. ON SEPTEMBER 4, 1996 WHILE THE INITIAL CHARGE WAS STILL PENDING, (3) THREE SEPARATE AND DISTINCT ADDITIONAL CHARGES WERE LEVIED AGAINST MR. MOORE AND ON SEPTEMBER 18, 1996, TWO DAYS BEFORE MR. MOORE WAIVED PRESENTMENT, THE COURT APPOINTED AN ADDITIONAL COUNSEL WITH THE ADDITIONAL CHARGES AND ON SEPTEMBER 20, 1996 MR. MOORE PLED GUILTY TO FOUR ROBBERIES WITH THE SECOND APPOINTED COUNSEL, MR. LETTEER PRESENT, THE INITIAL APPOINTED COUNSEL MRS. BRIDGES WAS NOT AND THE COURT NOR THE RECORD WAS APPRAISED OF THIS ATTORNEY'S ABSENCE, THE DEFENDANT MOORE WAS NOT ADVISED OF HIS CONSTITUTIONAL RIGHT TO THE ASSISTANCE OF MRS. BRIDGES OR THAT HE COULD WAIVE THE APPOINTMENT AND TO WHETHER OR NOT THERE WAS A WAIVER WITHIN THE RECORD.

MR. MOORE WAS NOT ABLE TO CHALLENGE THIS UPON SUBSEQUENT APPEALS BECAUSE THE RECORD WAS SILENT AS TO THE APPOINTMENT AND ABSENCE OF THIS COUNSEL OF RECORD.

(96-gs-11-1097-1100)(97-UP-623)(PCR-98-CP-11-453)

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IN 2008, PLAINTIFF MOORE FILED A PCR (08-cp-11-783) TO ATTACK HIS 96 CONVICTIONS ALLEGING THAT HIS PLEA WAS NOT IN ACCORDANCE TO §17-23-130, DURING DISCOVERY, THE CLERK OF COURT RESPONDED TO MR. MOORE'S REQUEST BY PROVIDING EXCERPTS OF THE RECORD AND ON MAY 12, 2009 THE CLERK SENT TO PLAINTIFF A COPY OF THE AFFIDAVIT OF INDIGENCE AND ORDER FOR THE APPOINTMENT OF LEGAL COUNSEL, OFFICIAL RECORD THAT WAS PERFECTED AND FILED ON MAY 2, 1995 APPOINTING USHA BRIDGES AS LEGAL COUNSEL TO RUSSELL MOORE WITH HIS 95' ROBBERY CHARGES. SEE EXHIBIT A

PLAINTIFF MOORE AMENDED HIS PCR APPLICATION AND ON DECEMBER 3, 2009 THE HON. JUDGE HAYES, II DISMISSED MR. MOORE'S PCR ACTION DUE TO PROCEDURAL DEFAULT. THE S.C. SUPREME COURT UPHELD THE DECISION.

MR. MOORE, THE PLAINTIFF IN THIS CASE BEFORE THE BAR, WROTE TO MRS. BRIDGES, ASKING THAT SHE LOOK INTO MR. MOORE'S CLAIMS AND THAT SHE, ACT AS COUNSEL AND MAKE A DETERMINATION AS TO WHETHER OR NOT SHE COULD ASSIST MR. MOORE WITH HAVING THE ISSUE ADJUDICATED IN THE COURTS. MRS. BRIDGES REQUESTED OF MR. MOORE ADDITIONAL INFORMATION AND THEN STOPPED RESPONDING TO MR. MOORE'S LETTERS.

MR. MOORE, THE PLAINTIFF IN THIS CASE FILED THIS COMPLAINT IN THE CHEROKEE COUNTY COURT OF COMMON PLEAS ALLEGING THAT MRS. BRIDGES HAD ABANDONED MR. MOORE AND HAD A TOTAL DISREGARD FOR THE SCACR 602, 608 & 407 RESULTING IN LEGAL MAL PRACTICE, NEGLIGENCE AND FRAUDULENT INTENT.

THE DEFENDANT FILED AN ANSWER ON MARCH 31, 2011 DENYING THE ALLEGATIONS AND DEMANDING STRICT PROOF. ON FEBRUARY 2, 2012 THE PLAINTIFF SERVED UPON THE DEFENDANT A SET OF ADMISSIONS, THE DEFENDANTS' RESPONSES WERE EVASIVE, INCOMPLETE AND INCONSISTENT WITH THE RULES OF CIVIL PROCEDURE BY WAY OF CALLING INTO QUESTION THE GENUINENESS OF OFFICIAL RECORD. MR. MOORE MOTIONED THE COURT ON MARCH 16, 2012 FOR SUFFICIENCY OF ANSWERS AND A HEARING WAS HELD ON JULY 30, 2012 BEFORE HON. JUDGE D. COLE. THE DEFENDANT REQUESTED TIME FROM THE COURT TO AMEND THEIR ANSWERS AND THIRTY (30) DAYS WAS GIVEN.

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THE PLAINTIFF RECEIVED THE DEFENDANTS AMENDED ANSWERS (SEE EXHIBIT L) AND THE DEFENDANT HAS GIVEN RESPONSES AND ANSWERS THAT CONTINUE TO BE EVASIVE AND INCOMPLETE AND ALSO CALLING INTO QUESTION THE INTEGRITY AND PERFORMANCE OF THE FORMER CLERK OF COURT MRS. KATIE BAINES.

THE PLAINTIFF ASKED OF THE DEFENDANT MRS. BRIDGES TO ADMIT OR TO DENY THAT SHE HAD BEEN APPOINTED AS LEGAL COUNSEL TO THE PLAINTIFF MR. MOORE ON MAY 2, 1995, THE DEFENDANT MRS. BRIDGES ANSWERED "THE DEFENDANT DOES NOT ADMIT REQUEST FOR ADMISSION #2, HOWEVER, THE DEFENDANT QUALIFIES THIS RESPONSE BY ADMITTING THAT THE CLERK OF COURT ISSUED A FORM APPOINTMENT PURPORTEDLY APPOINTING DEFENDANT TO REPRESENT PLAINTIFF, HOWEVER, DEFENDANT NEVER RECEIVED SAID APPOINTMENT FROM THE CLERK OF COURT".

THE DEFENDANT ALSO RESPONDED TO ADMISSION #5 BY GIVING AN ADDITIONAL QUALIFICATION THAT DEFENDANT WAS "NEVER INFORMED OF THE APPOINTMENT".

THE DEFENDANT "QUALIFIED THESE ANSWERS TO TWENTY (20) ADMISSIONS REQUEST MADE BY THE PLAINTIFF MR. MOORE.

ON SEPTEMBER 24, 2012 THE PLAINTIFF MOTIONED THE COURT FOR THE APPOINTMENT OF COUNSEL CONCERNING THIS CASE AND AT A HEARING HELD ON MAY 20, 2013 BEFORE HON. JUDGE COUCH, THE PLAINTIFF CONTENDED HE NEEDED COUNSEL TO INSURE THAT HIS REQUEST FOR DISCOVERY WOULD BE MET DUE TO THE FACT THAT THE PLAINTIFF WAS ABOUT TO CALL UPON WITNESSES THAT WERE CURRENT AND FORMER COUNTY EMPLOYEES THAT ISSUED AND SERVED WARRANTS AGAINST PLAINTIFF DISCLOSING PLAINTIFFS HIV DIAGNOSIS AND THAT THERE WAS ADDITIONAL INFORMATION WITHIN THE CLERK OF COURTS OFFICE THAT PLAINTIFF WOULD BE REQUESTING WITHIN DISCOVERY AND SPECIFICALLY BECAUSE PLAINTIFF INTENDED TO DEPOSE THE FORMER CLERK OF COURT TO RESPOND TO THE ALLEGATIONS MADE BY THE DEFENDANT IN THE RESPONSES TO ADMISSION REQUEST WHEREAS THE DEFENDANT ALLEGED THAT THE FORMER CLERK OF COURT, MRS. KATIE BAINES DID NOT PROPERLY SERVE NOTICE REQUIREMENT THAT MRS. BRIDGES HAD BEEN APPOINTED BY THE CLERKS OFFICE AS LEGAL COUNSEL TO AN INDIGENT DEFENDANT IN A GENERAL SESSIONS CRIMINAL MATTER.

THE PLAINTIFF INFORMED THE COURT THAT THESE ALLEGATIONS INVOLVED KEY ELEMENTS OF

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PLAINTIFFS CAUSES OF ACTION, CREATED A GENUINE ISSUE OF MATERIAL FACT IN DISPUTE, AND THAT DUE TO THE FORMER CLERK AND CURRENT CLERK OF COURT BEING COLLEAGUES OF MRS. BRIDGES, THE DEFENDANT IN THIS CASE, PLAINTIFF MOORE FELT HIS QUEST FOR DISCOVERY, HIS REQUEST FOR DISCOVERY WOULD BE PREJUDICED AND MET WITH OPPOSITION FROM THOSE UPON WHOM THE REQUEST WERE MADE. THE COURT INFORMED MR. MOORE THAT ALL REQUEST WOULD BE MET EVEN IF THE COURT HAD TO COMPEL THEM AND DENIED THE PLAINTIFFS REQUEST FOR COUNSEL.

AS A MEANS TO UNDERMINE THE PLAINTIFFS INTENTIONS TO FILE AND PURSUE DISCOVERY REQUEST AND DEPOSITION OF THE FORMER CLERK OF COURT, THE DEFENDANT IMMEDIATELY MOVED UPON THE COURT FOR SUMMARY JUDGMENT.

ON ~~JUNE~~<sup>JUNE</sup> 2, 2013 THE DEFENDANT FILED A MOTION AND NOTICE OF MOTION FOR SUMMARY JUDGMENT. ON JULY 8, 2013 THE PLAINTIFF FILED IN THE COURT PURSUANT TO SCRPC RULE 45 "A MOTION FOR AN ORDER OF SUBPOENA" FOR A NON-PARTY WITNESS FOR "WRITTEN DEPOSITIONS", THIS MOTION WAS ACCOMPANIED WITH A SET OF ADMISSIONS TO BE DEPOSED PURSUANT TO SCRPC RULE 31 WHEREAS THE PLAINTIFF WAS REQUESTING OF THE COURT TO DEPOSE THE FORMER CLERK OF COURT MRS. KATIE BAINES AS TO WHETHER OR NOT SHE SERVED THE DEFENDANT MRS. BRIDGES WITH THE NOTICE OF THE ORDER THAT SHE MRS. BAINES HAD PERFECTED AND EXECUTED, SIGNED AND NOTORIZED AND FILED ON MAY 2, 1995.

ON JULY 25, 2013 THE PLAINTIFF FILED A SWORN VERIFIED AFFIDAVIT AND MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT PURSUANT TO SCRPC RULE 56 (e).

THE PLAINTIFF REQUESTED OF THE COURT TO CONSIDER THAT.....

1. THE PLAINTIFF WAS PURSUING A VALID REQUEST FOR DISCOVERY OF WRITTEN DEPOSITIONS OF A NON-PARTY WITNESS MATERIAL TO PLAINTIFFS CLAIMS.
2. THE PLAINTIFF RESPECTFULLY REQUESTED A STAY AND/OR CONTINUANCE SO THAT PLAINTIFF COULD ADEQUATELY RESPOND TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT.
3. THAT DEFENDANTS MOTION WAS PREMATURE, INSUFFICIENT AND NOT SUPPORTED WITH ANY MEMORANDUM OR CASE LAW.
4. THAT DEFENDANTS MERE ASSERTION THAT SHE WAS NOT NOTIFIED OF AN APPOINTMENT DID NOT QUALIFY DEFENDANT FOR SUMMARY JUDGMENT WHEN OFFICIAL RECORD INDICATED OTHERWISE.

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5. THAT PLAINTIFF WAS ENTITLED TO DISCOVERY REQUEST IN ORDER TO ESTABLISH EVIDENCE THAT WAS CONTRADICTORY AND IMPEACHING OF DEFENDANTS RESPONSE TO ADMISSIONS AND OPEN COURT TESTIMONY.

6. THAT DEFENDANTS MOTION WAS PREMATURE DUE TO ON-GOING DISCOVERY.

7. FOR THE COURT TO GRANT SUMMARY JUDGMENT TO DEFENDANT BEFORE PLAINTIFF HAD A FULL AND FAIR OPPORTUNITY TO COMPLETE DISCOVERY WAS INAPPROPRIATE.

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ON SEPTEMBER 9, 2013 A HEARING WAS HELD BEFORE HON. J. MARK HAYES, II. THE DEFENDANT ARGUED THAT THE PLAINTIFF WAS CLAIMING THAT HE WAS ENTITLED TO COUNSEL OF CHOICE APPOINTED BY THE COURT CONCERNING HIS ROBBERY CHARGES, THAT PLAINTIFF WAS SEEKING A MONETARY REWARD FROM DEFENDANT, THAT PLAINTIFF HAD COMPETENT COUNSEL FROM ANOTHER ATTORNEY. THE DEFENDANT IMPRESSED UPON THE COURT THAT MRS. BRIDGES NEVER RECEIVED THE "ORDER OF APPOINTMENT" THEREFORE WAS NOT AWARE OF ANY FUDICIARY OR OTHERWISE DUTY TO PLAINTIFF IN REGARDS TO HIS CHARGES. THEREFORE DEFENDANT WAS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW.

THE PLAINTIFF, MR. MOORE BEGIN HIS PRESENTATION TO THE COURT IN THIS MATTER AT THE HEARING HELD ON SEPTEMBER 9, 2013 BY REQUESTING OF THE COURT A CONTINUANCE, PLAINTIFF BASED THAT REQUEST UPON THE FOLLOWING...

1. PLAINTIFF INFORMED THE COURT THAT HE HAD "PENDING DISCOVERY REQUEST THAT WERE FILED WITH THE COURT THAT HAD NOT BEEN RULED UPON, REQUEST FOR WRITTEN DEPOSITION OF A NON-PARTY WITNESS THAT REQUIRED A SUBPOENA ORDER".
2. THAT PLAINTIFF COULD NOT PROPERLY RESPOND TO THE DEFENDANTS MOTION FOR SUMMARY JUDGMENT OR ANSWER THE COURTS QUESTIONS AT THE HEARING WITHOUT THE INFORMATION THAT PLAINTIFF EXPECTED TO OBTAIN FROM THE DEPOSITION.
3. PLAINTIFF REQUESTED THAT THE COURT GRANT THE CONTINUANCE AND/OR STAY SO THAT PLAINTIFFS ONGOING DISCOVERY REQUEST, A DEPOSITION OF THE FORMER CLERK OF COURT COULD BE MET, BECAUSE THE CLERKS TESTIMONY IN A SWORN DEPOSITION WOULD EITHER SUPPORT THE PLAINTIFF OR THE DEFENDANTS CONTENTIONS IN THE MATTER, AND SHOULD THE DEPOSITION SUPPORT THE PLAINTIFF, THE DEPOSITION INVOLVED "KEY FACTUAL ELEMENTS OF PLAINTIFFS CAUSES OF ACTION WHICH ESTABLISHES A FUDICIARY DUTY AND THAT IT ALSO CREATES A GENUINE ISSUE OF MATERIAL FACT IN DISPUTE THAT PRECLUDES SUMMARY JUDGMENT".

THE PLAINTIFF FURTHER URGED THE COURT TO TAKE INTO CONSIDERATION THAT THE DEFENDANTS MOTION AND NOTICE OF MOTION WAS NO MORE THAN A NOTICE WITHIN ITSELF. PLAINTIFF ASKED THE COURT TO TAKE NOTICE THAT THE MOTION WAS INSUFFICIENT, VAGUE AND AMBIGUOUS AND AMOUNTED TO NO MORE THAN A NOTICE AND THAT THE MOTION WAS NOT SUPPORTED WITH ANY FACTUAL EVIDENCE OR CASE LAW, ADDITIONALLY, THAT THE MOTION INDICATED THAT THERE WAS TO BE A MEMORANDUM OF LAW IN SUPPORT OF THE MOTION BUT THE DEFENDANT HAD NOT SUBMITTED SUCH FOR THE RECORD.

THE PLAINTIFF ALSO ADVISED THE COURT THAT THE DEFENDANTS CONTENTION THAT PLAINTIFF CLAIMED TO BE ENTITLED TO COUNSEL OF CHOICE WAS NOT AN ALLEGATION OR CLAIM WITHIN PLAINTIFFS COMPLAINT.

THE PLAINTIFF POINTED OUT TO THE COURT THAT PLAINTIFFS CONTENTION WAS THAT HE WAS APPOINTED COUNSEL IN ACCORDANCE TO THE MANDATES SET BY LAW, AND THAT THE LAW MANDATED THAT THE COUNSEL SO APPOINTED MUST FULFILL THAT OBLIGATION TO MR. MOORE AND THE COURT, IF FOR SOME REASON THAT DUTY AND OBLIGATION COULD NOT BE MET, IT

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WAS WELL ESTABLISHED WITHIN THE RULES OF CIVIL AND CRIMINAL PROCEDURE THAT A WAIVER MUST BE GRANTED BY THE COURT AND ONLY IF GOOD CAUSE IS SHOWN, AND IN THIS CASE, A MOTION TO BE RELIEVED AS COUNSEL, A MOTION TO WITHDRAW OR TO TRANSFER THE CASE TO ANOTHER ATTORNEY WAS NOT SUBMITTED BY MRS. BRIDGES NOR GRANTED BY THE COURT. PLAINTIFF URGED THE COURT TO GRANT HIS REQUEST FOR A CONTINUANCE SO THAT THE FORMER CLERK OF COURT COULD RESPOND TO THE DEPOSITION REQUEST TO DETERMINE WHETHER OR NOT THE COURT PROPERLY SERVED UPON THE DEFENDANT THE NOTICE REQUIREMENT WHICH WOULD EITHER SUPPORT THE PLAINTIFF OR THE DEFENDANT, THAT THE ENTIRE CASSE HINGED UPON THE FORMER CLERK OF COURTS DEPOSITION.

THE PLAINTIFF REPEATEDLY ASKED THE COURT FOR A CONTINUANCE IN LIGHT OF ONGOING DISCOVERY AND ASKED THE COURT SEVERAL TIMES TO ALLOW THE DEPOSITION OF THE FORMER CLERK OF COURT MRS. KATIE BAINES WHO ISSUED THE ORDER OF APPOINTMENT.

THE COURT GAVE THE DEFENSE A BENCH DIRECTIVE TO SUBMIT A "PROPOSED ORDER" AND INFORMED THE PLAINTIFF THAT HE WOULD BE GIVEN AN OPPORTUNITY TO RESPOND AND THAT THE COURT WOULD RENDER A DECISION AND GIVE BOTH PARTIES AN OPPORTUNTIY FOR A REQUEST TO RECONSIDERE.

NO PROPOSED ORDER WAS SUBMITTED BY THE DEFENSE, ON OCTOBER 4, 2013 HON. J. MARK HAYES, ISSUED AN ORDER GRANTING DEFENDANT SUMMARY JUDGMENT. THE ORDER STATED THAT WHETHER THE DEFENDANT RECEIVED THE ORDER FROM THE CLERK OF COURT OR NOT, THAT THIS WAS IMMATERIAL SINCE MR. MOORE RECEIVED COMPETENT ASSISTANCE OF COUNSEL FROM ANOTHER ATTORNEY.

ON NOVEMBER 8, 2013 THE PLAINTIFF FILED A MOTION TO RE-OPEN THE JUDGMENT AND TO ALTER AND AMEND FINDINGS AND CONCLUSIONS PURSUANT TO SCRCP 59 (a)(2) & 59 (e).

THE PLAINTIFF ARGUED THAT THE COURT FAILED TO ADDRESS THE PLAINTIFFS BREACH OF FUDICIARY DUTY AND MISREPRESENTATION CLAIMS ASSERTED AND ALLEGED IN PLAINTIFFS VERIFIED COMPLAINT AND AFFIDAVITS.

ADDITIONALLY PLAINTIFF URGED THE COURT TO RE-CONSIDER AND ALLOW THE PLAINTIFFS REQUEST FOR DEPOSITION OF THE FORMER CLERK OF COURT, A VALID DISCOVERY REQUEST WHICH IS MATERIAL TO PLAINTIFFS CLAIMS AND MADE MATERIAL BY THE DEFENDANT ASSERTING AND ALLEGING THAT THE ISSUING CLERK DID NOT PERFORM HER DUTIES AS MANDATED BY LAW.

ON NOVEMBER 26, 2013 THE DEFENDANT SUBMITTED A RESPONSE TO PLAINTIFFS RULE 59 MOTION ASSERTING THAT SHE DID NOT OWE THE PLAINTIFF A FUDICIARY DUTY BECAUSE SHE WAS NOT INFORMED OF THE ORDER OF APPOINTMENT FROM THE CLERK OF COURT, PLAINTIFF HAD RECEIVED COUNSEL FROM ANOTHER ATTORNEY AND THAT THE COURT HAD RULED THAT THE ISSUE OF WHETHER THE DEFENDANT RECEIVED THE ORDER FROM THE CLERK WAS IMMATERIAL AND DEPOSITION NOT NECESSARY.

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BY ORDER DATED DECEMBER 4, 2013 HON. J. MARK HAYES DENIED PLAINTIFFS RULE 59 MOTION AND AFFIRMED PRIOR ORDER.

ON JANUARY 6, 2014 PLAINTIFF SUBMITTED HIS NOTICE OF APPEAL TO THE SOUTH CAROLINA COURT OF APPEALS AND SERVED NOTICE REQUIREMENT UPON THE DEFENDANT AND LOWER COURT.

ARGUMENT

THE PLAINTIFF RESPECTFULLY REQUEST OF THIS HONORABLE COURT TO REVIEW THE TRANSCRIPT OF THE HEARINGS THAT WERE HELD IN REGARDS TO PLAINTIFFS MOTION FOR THE APPOINTMENT OF COUNSEL ON MAY 20, 2013 AND THE SUMMARY JUDGMENT HEARING HELD ON SEPTEMBER 9, 2013.

THE PLAINTIFF IN THIS CASE IS INDIGENT AND PRO-SE AND CAN NOT PROVIDE THIS COURT WITH EXCERPTS FROM THESE HEARINGS OR AFFORD TO ORDER THE TRANSCRIPTS. PLAINTIFF DOES HOWEVER SUBMIT HIS VERIFIED COMPLAINT, THE DEFENDANTS RESPONSE AND ANSWERS TO ADMISSIONS AND THE AFFIDAVIT AND ORDER FOR THE APPOINTMENT OF LEGAL COUNSEL DECLARATION PERFECTED AND EXECUTED BY THE FORMER CHEROKEE COUNTY CLERK OF COURT THE HON. MRS. KATIE BAINES. ALSO THE PLAINTIFF SUBMITS THE DEFENDANTS MOTION AND NOTICE OF MOTION FOR SUMMARY JUDGMENT, PLAINTIFFS AFFIDAVIT AND MEMORANDUM OF LAW IN OPPOSITION, THE COURTS ORDER GRANTING SUMMARY JUDGMENT, PLAINTIFFS SCRPC RULE 59(e) MOTION, THE DEFENDANTS RESPONSE AND THE COURTS DENIAL OF PLAINTIFFS RULE 59 MOTION.

THE PLAINTIFF DOES NOT BRING A FRIVOLOUS COMPLAINT IN BAD FAITH BEFORE THIS HONORABLE COURT. PLAINTIFF BROUGHT THIS COMPLAINT AFTER REQUESTING AND BEING DENIED AN EVIDENTIARY HEARING WITH THE POST CONVICTION COURTS WHERE PLAINTIFF SOUGHT TO HAVE THE ISSUES ADJUDICATED, JUDGE HAYES DENIED THE REQUEST BASED SOLELY UPON A PROCEDURAL DEFAULT CLAIM, RATHER THAN THE MERITS. THE PLAINTIFF PURSUED A CORRESPONDENCE WITH THE DEFENDANT IN AN ATTEMPT TO HAVE MRS. BRIDGES DETERMINE WHAT HAPPENED AND WHETHER OR NOT SHE COULD AND WOULD ASSIST PLAINTIFF IN PRESENTING THIS TO THE APPELLATE COURTS. ONCE MRS. BRIDGES RECEIVED THE INFORMATION FROM THE PLAINTIFF REGARDING THE ISSUE, MRS. BRIDGES WOULD NOT CONTINUE CORRESPONDENCE. THEREFORE PLAINTIFF BROUGHT THIS COMPLAINT.

THE PLAINTIFF, WHILE IN PRETRIAL DETENTION WAS SUFFERING FROM HIV & HEP-C, WITHDRAWS AND AFTER ATTEMPTING SUICIDE SIXTEEN DAYS PRIOR TO HIS GUILTY PLEA, PLAINTIFF WAS HELD IN COMPLETE SECLUSION. THE SHERIFFS DEPARTMENT HAD ISSUED WARRANTS AND WANTED POSTERS DISCLOSING PLAINTIFFS HIV+ DIAGNOSIS AND THIS RESULTED IN DELIBERATE INDIFFERENCE FROM INMATES AND JAIL OFFICIALS WHICH COMPELLED

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PLAINTIFF TO ENTER INTO AN UNINFORMED GUILTY PLEA, SIGNED WAIVERS OF PRESENTMENT WITHOUT THE ASSISTANCE OF COUNSEL. ADDITIONALLY, THE HOSPITAL THAT HAD TREATED PLAINTIFF WITH HIS WOUNDS MADE A RECOMMENDATION TO JAIL OFFICIALS FOR A PSYCHIATRIC EVALUATION, THE JAIL OFFICIALS NOTIFIED THE COUNTY MENTAL HEALTH DEPARTMENT WHO FAILED TO FOLLOW UP ON THE RECOMMENDATION, ALL THIS WAS NOT PRESENTED TO THE SENTENCING COURT AS A COMPETENT AND EFFECTIVE COUNSEL WOULD HAVE IN AN OBJECTION TO AN UNINFORMED, UNKNOWING, UNINTELLIGENT AND INVOLUNTARY GUILTY PLEA BEING ENTERED BY MR. MOORE.

MR. MOORE, THE PLAINTIFF CONTENDS THAT MRS. BRIDGES WOULD HAVE PROVIDED EFFECTIVE AND COMPETENT ASSISTANCE OF COUNSEL AND THAT PER ORDER OF THE COURT, SHE OWED THE PLAINTIFF THIS DUTY AND OBLIGATION AS MANDATED BY LAW.

THE PLAINTIFF IN THIS PRESENT CASE BEFORE THIS COURT ARGUES THAT AS A CRIMINAL DEFENDANT HE IS ENTITLED TO EQUAL PROTECTION, COUNSEL AND DUE PROCESS IN ACCORDANCE TO PROVISIONS MANDATED BY LAW. PLAINTIFF CONTENDS THAT ON MAY 2, 1995 HE EXERCISED THESE RIGHTS BY LEGALLY REQUESTING COUNSEL AND COUNSEL WAS LEGALLY APPOINTED BY THE COURT AND THAT THE COURT APPOINTED COUNSEL USHA J. BRIDGES TO PLAINTIFF MOORE AND THAT THIS APPOINTMENT IS A BINDING CONTRACT, COUNSEL BECAME ATTACHED AND IT WOULD AMOUNT TO A FUNDAMENTAL MISCARRIAGE OF JUSTICE FOR THIS COUNSEL TO DENY THIS ORDER WITHOUT A VALID ON THE RECORD WAIVER BY THE COURT.

THE SCACR RULES 407, 602 & 608 REQUIRE THE CLERK OF COURT TO NOTIFY APPOINTED COUNSEL, IN THIS CASE, THE DEFENDANT HAS ASSERTED AND ALLEGED EMPHATICALLY THAT THE CLERK OF COURT FAILED TO DO SO IN THIS CASE.

MR. MOORE WAS NOT GIVEN AN OPPORTUNITY TO CHALLENGE THIS INEFFECTIVE ASSISTANCE OF COUNSEL IN HIS POST TRIAL APPEALS BECAUSE IT WAS NOT PRESERVED FOR THE RECORD AND THAT IS BEYOND THE CONTROL OF MR. MOORE, A PROCEDURAL DEFAULT MR. MOORE ARGUED REQUIRED AN EXEMPTION DUE TO UNCONSTITUTIONAL STATE ACTION THAT PREJUDICED MR. MOORE. MR. MOORE REQUEST OF THIS COURT TO AGREE THAT THE TESTIMONY OF THE FORMER CLERK OF COURT IS MATERIAL BECAUSE IT DETERMINES THE GENUINE ISSUE OF MATERIAL FACT IN DISPUTE.

MRS. BRIDGES, THE DEFENDANT IN THIS CASE BEFORE THIS COURT CONTENDS THAT THE FORMER CLERK OF COURT DID NOT SERVE MRS. BRIDGES WITH THE ORDER OF APPOINTMENT. THEREFORE SHE WAS ENTITLED TO SUMMARY JUDGMENT. MR. MOORE REQUESTED THAT THE COURT ALLOW THE DISCOVERY REQUEST TO BE MET SO THAT THE COURT COULD MAKE A MORE INFORMED DECISION AFTER ADDITIONAL EVIDENCE DEVELOPED FOR THE RECORD, CRUCIAL EVIDENCE. THE PLAINTIFF CONTENDED THAT FOR THE COURT TO GRANT SUMMARY JUDGMENT TO THE DEFENDANT WITHOUT PLAINTIFF BEING ALLOWED TO COMPLETE VALID DISCOVERY REQUEST WAS IMPROPER AND AMOUNTED TO ABUSE OF DISCRETION BY TRIAL COURT.

SEE: HIGGINS V. MEDICAL UNIV. OF S.C. 326 S.C. 592, 486 SE2d 269

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I.

MRS. BRIDGES, THE DEFENDANT ARGUES THAT SHE DID NOT RECEIVE THE ORDER OF APPOINTMENT FROM THE CLERK OF COURT THEREFORE DID NOT OWE THE PLAINTIFF A FUDICIARY DUTY AND MOTIONED THE COURT FOR SUMMARY JUDGMENT.

—  
A:

THE PLAINTIFF PRESENTED TO THE COURT THAT IT WOULD BE IMPROPER FOR THE COURT TO GRANT SUMMARY JUDGMENT TO THE DEFENDANT WHILE ONGOING DISCOVERY REQUEST WERE PENDING AND THAT THE PLAINTIFF HAD REQUESTED A WRITTEN DEPOSITION IN ACCORDANCE TO SCRPC RULE 31 WHERE THE PLAINTIFF WAS DEPOSING THE FORMER CLERK OF COURT TO RESPOND TO THE ALLEGATIONS AND CONTENTIONS MADE BY THE DEFENDANT THAT THE CLERK DID NOT PROPERLY SERVE THE DEFENDANT WITH A NOTICE OF A COURT ORDER MADE ON MAY 2, 1995. THE PLAINTIFF SUBMITTED TO THE COURT THAT TO GRANT SUMMARY JUDGMENT WOULD BE PREMATURE AFTER PLAINTIFF OFFICIALLY REQUESTED OF THE COURT A STAY AND/OR CONTINUANCE SO THAT PLAINTIFF COULD PROPERLY RESPOND TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT.

THE COURT DENIED PLAINTIFFS REQUEST TO ALLOW THE DEPOSITION TO BE DEVELOPED FOR THE RECORD AND GRANTED THE DEFENDANT SUMMARY JUDGMENT AND SUPPORTED THE ORDER WITH THE EXERCISE OF DISCRETION THAT THE PLAINTIFFS REQUEST FOR DISCOVERY, THE DEPOSITION OF THE FORMER CLERK WAS IMMATERIAL TO THE CASE.

THE PLAINTIFF URGES THIS COURT TO AGREE THAT THIS AMOUNTS TO ABUSE OF DISCRETION BY THE TRIAL COURT.

II.

PLAINTIFF ARGUES THAT FOR THE TRIAL COURT TO RULE THAT PLAINTIFFS MOTIONS AND REQUEST FOR DISCOVERY IN WRITTEN DEPOSITION TO BE IMMATERIAL CONSTITUTES ABUSE OF DISCRETION.

THE FORMER CLERK OF COURT MRS. KATIE BAINES SIGNED THE ORDER APPOINTING THE DEFENDANT AS LEGAL COUNSEL, THE ORDER IS CLOCK STAMPED AND FILED IN THE CLERKS OFFICE AND INVOLVES THE DEFENDANT AND THE PLAINTIFF. THE ORDER IS A CONTRACT THAT IS APPROVED BY THE SOUTH CAROLINA ADMINISTRATIVE COURT AND RECOGNIZED BY THE S.C. SUPREME COURT. THE ORDER IS TO BE PERFECTED AND EXECUTED UNDER THE PROVISIONS MANDATED BY LAW, AND A SERVICE REQUIREMENT IS PART OF THE EXECUTION OF SUCH ORDERS, AND FOR THE DEFENDANT TO CONTEND THAT THE CLERK FAILED TO PERFORM HER DUTIES AND OBLIGATIONS TO THE DEFENDANT, THE PLAINTIFF AND THE COURT IS A SERIOUS ALLEGATION OF CONSTITUTIONAL DEMINSIONS THAT REQUIRE A RESPONSE. FOR THE PLAINTIFF TO REQUEST A RESPONSE TO THE ALLEGATION MADE BY THE DEFENDANT AGAINST THE FORMER CLERK OF COURT IN A DEPOSITION FORMAT APPROVED BY THE SCRPC IN ORDER FOR THE RECORD AND EVIDENCE IN THE PLAINTIFFS CASE TO BE MORE FULLY DEVELOPED IS A VALID REQUEST, A VALID DISCOVERY MOTION THAT THE PLAINTIFF IS ENTITLED TO IN ORDER TO

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DEFEND AGAINST DEFENDANTS SUMMARY JUDGMENT MOTION, ADDITIONALLY SO THAT PLAINTIFF COULD PRESENT KEY FACTUAL ELEMENTS OF THE PLAINTIFFS CAUSES OF ACTION AND ESTABLISHMENT OF A FUDICIARY DUTY CLAIMS, ALL OF WHICH WAS TO BE DETERMINED BY THE TESTIMONY MADE WITHIN THE DEPOSITION BY THE FORMER CLERK OF COURT WHO THE PLAINTIFF HAD A RIGHT TO CALL UPON AS A WITNESS.

FOR THE COURT TO DENY PLAINTIFFS MOTION TO HAVE THE FORMER CLERK OF COURT DEPOSED AFTER PLAINTIFF FILED A TIMELY SUBPOENA REQUEST AND DEPOSITION PURSUANT TO SCRPC RULES 45 & 31 AMOUNTS TO ABUSE OF DISCRETION, AND THE PLAINTIFF REQUEST OF THIS COURT TO AGREE.

GUINAN V. TENET HEALTH SYSTEMS OF HILTON HEAD, INC 383 S.C. 48, 677 SE2d 32.

III.

THE PLAINTIFF ARGUES THAT THE TRIAL COURT "NIPPED IN THE BUD" PLAINTIFFS COMPLAINT AT THE CRUCIAL MOMENT WHEN PLAINTIFF WAS ESTABLISHING EVIDENCE TO SUPPORT HIS CLAIMS BY WAY OF DEPOSING PLAINTIFFS WITNESS. THE DEPOSITION REQUEST OF THEE FORMER CLERK OF COURT BECAME MATERIAL TO THE CASE AND IN PARTICULAR TO PLAINTIFFS CLAIMS WHEN THE DEFENDANT MADE THE ALLEGATION THAT THE FORMER CLERK OF COURT FAILED TO PROPERLY SERVE A NOTICE REQUIREMENT AND THE DEFENDANTS SOLE DEFENSE IN THIS CASE IS THAT SHE WAS NOT AWARE OF A FUDICIARY DUTY THAT THIS NOTICE AND ORDER WOULD HAVE CREATED. FOR THE TRIAL COURT TO NOT HAVE RECOGNIZED THAT THE DEFENDANT CREATED THIS GENUINE ISSUE OF MATERIAL FACT IN DISPUTE AND TO NOT ALLOW THE PLAINTIFFS REQUEST AND MOTION TO PURSUE THE MATTER TO REFUTE AND IMPEACH THE DEFENDANTS CONTENTIONS AMOUNTS TO PREJUDICE AND ABUSE OF DISCRETION BECAUSE THE PLAINTIFF IS ENTITLED TO CHALLENGE ALLEGATIONS AND CONTENTIONS MADE IN ADMISSIONS BY DEFENDANT ESPECIALLY WHEN THE CONTENTIONS BRING ABOUT THE ACTIONS AND INACTIONS OF WITNESSES AND GOVERNMENT WITNESSES AND THAT OF OFFICIAL RECORD.

FOR THE COURT TO DISALLOW PLAINTIFFS REQUEST FOR DEPOSITION THAT POTENTIALLY COULD CREATE A GENUINE ISSUE OF MATERIAL FACT THAT PRECLUDES SUMMARY JUDGEMENT IS PREJUDICE AND AMOUNTS TO ABUSE OF DISCRETION.

THE TRIAL COURT DID NOT EVEN CONSIDER THE EVIDENCE WHICH COULD BE DERIVED FROM THE DEPOSITION IN LIGHT MOST FAVORABLE TO THE NON-MOVING PARTY, FURTHERMORE THE DEPOSITION WOULD HAVE BEEN PRESERVED FOR APPEAL AND DUE TO THE PARTIES INVOLVED, THE DEPOSITION WAS MATERIAL TO THE DEFENDANT AND THE PLAINTIFF.

IV.

AT THE SUMMARY JUDGMENT HEARING, THE COURT AND THE PLAINTIFF ENGAGED IN A

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CONVERSATION WITH REGARDS TO THE PROPER VENUE OF PLAINTIFFS CLAIMS BEING THE PCR COURT AND THE STATUTE OF LIMITATIONS. THE PLAINTIFF INFORMED THE COURT THAT HE HIMSELF HAD DENIED THE PLAINTIFF AN EVIDENTIARY HEARING BASED UPON PROCEDURAL DEFAULT IN THE PLAINTIFFS 2008 PCR, PLAINTIFF INFORMED JUDGE HAYES THAT THE ORDER FOR THE APPOINTMENT OF LEGAL COUNSEL WAS NOT PART OF THE OFFICIAL RECORD AT PLAINTIFFS CRIMINAL TRIAL AND SUBSEQUENT APPEALS AND DESERVED AN EVIDENTIARY HEARING THAT HE HIMSELF HAD DENIED, AND ALSO THE PLAINTIFF INFORMED THE COURT THAT THE ORDER DID NOT COME TO LIGHT AS FAR AS THE PHYSICAL EVIDENCE OF THE ORDER UNTIL 2009 AND THAT PLAINTIFF HAD BEEN PURSUING DILIGENTLY SINCE THEN TO ADJUDICATE THE MATTER. PLAINTIFF:

PLAINTIFF BELIEVES THAT FOR THE COURT TO MAKE AN UNBIASED DECISION IN THIS CASE WOULD BE CONTESTED. THE JUDGE IN THIS CASE, THE HONORABLE J. MARK HAYES HAD PREVIOUSLY DENIED THE PLAINTIFF AN EVIDENTIARY HEARING IN A CRIMINAL APPEAL VENUE CONCERNING MATTERS THAT WERE PARALLEL TO THOSE IN THE PRESENT CASE BEFORE HIM IN THE COURT OF COMMON PLEAS BETWEEN THE DEFENDANT MRS. USHA BRIDGES AND PLAINTIFF RUSSELL MOORE.

PLAINTIFF BELIEVES THAT FOR THE TRIAL JUDGE TO DENY PLAINTIFFS PCR ACTION AND TO SUBSEQUENTLY DENY PLAINTIFFS DISCOVERY REQUEST IN A CIVIL MATTER CONCERNING OFFICIALS OF THE COURT CREATES AN ISSUE OF PREJUDICE AND ABUSE OF DISCRETION, IT IS THE PLAINTIFFS BELIEF THAT JUDGE HAYES PERHAPS SHOULD HAVE RECUSED HIMSELF FROM THE CASE BEFORE THIS COURT, ALSO DUE TO THE FACT THAT THE DEFENDANT IS A SITTING CHEROKEE COUNTY MAGISTRATE COURT JUDGE, THE TRIAL JUDGE PERHAPS SHOULD HAVE ORDERED A CHANGE OF VENUE AS WELL.

IN ANY EVENT, PLAINTIFF REQUEST OF THIS COURT TO DETERMINE IF THERE EXISTED PREJUDICE AND ABUSE OF DISCRETION FOR THE TRIAL COURT FAILING TO DO SO AFTER BEING AWARE OF THE CONFLICT OF INTEREST THAT COULD ARISE.

#### FURTHER DISCUSSION

3  
AT THE SUMMARY JUDGMENT HEARING, THE JUDGE MADE A REFERENCE THAT THE ISSUES WERE TIME BARRED, AND THE COURT ALSO ACKNOWLEDGED THAT THE DEFENSES MOTION WAS VAGUE AND INSTRUCTED THE DEFENDANT TO RESUBMIT A PROPOSED ORDER, THE DEFENDANTS ATTORNEY MRS. SARAH SHIFLETT ASKED THE TRIAL JUDGE, IF SHE SHOULD INCLUDE THE ISSUE OF LIMITATIONS WHICH IRRITATED JUDGE HAYES, AND JUDGE HAYES RESPONDED BY ADDRESSING MRS. SHIFFLET THAT "HE MIGHT AS WELL DEPOSE THE CLERK" AND HE ALSO MADE SOME OTHER COMMENTS THAT EXPRESSED HE WAS NOT APPRECIATIVE OF MRS. SHIFFLETTS' ASKING HIM FOR ADVICE IN PRESENTING THE "PROPOSED ORDER".

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YOUR LETTER

THE PLAINTIFF HAS BROUGHT A CLAIM AGAINST AN ATTORNEY WHO IS CURRENTLY A SITTING MAGISTRATE COURT JUDGE IN CHEROKEE COUNTY, THE DEFENDANT HAS MADE ALLEGATIONS THAT THE FORMER CLERK OF COURT FAILED TO PERFORM HER DUTIES IN OFFICE, CALLING INTO QUESTION THE INTEGRITY OF OFFICIAL RECORD AND THE PERFORMANCE OF THE FORMER CLERK. BY THE PLAINTIFF PURSUING A DEPOSITION OF THE CLERK WHICH WOULD ESTABLISH EVIDENCE THAT CONTRADICTS THAT MADE BY THE DEFENDANT, IT CREATES MORE THAN JUST A GENUINE ISSUE OF MATERIAL FACT IN THIS CASE. IT CREATES FRICTION AMONG THE LOCAL ADMINISTRATORS IN CHEROKEE COUNTY, SO TO AVOID THIS POTENTIAL CONFLICT OF "SHE SAID, SHE SAID" MY REQUEST FOR DISCOVERY WAS DENIED, DEFENDANT WAS GRANTED SUMMARY JUDGMENT IN ORDER TO DISMISS MY COMPLAINT BEFORE IT DEVELOPES ANY FURTHER SO AS TO NOT EMBARRASS THE DEFENDANT, THE FORMER CLERK OF COURT OR ANY OF THEIR COLLEAGUES. PLAINTIFF EXPECTS THAT EX-PARTE COMMUNICATIONS HAVE TAKEN PLACE CONCERNING THIS MATTER,

PLAINTIFF INFORMED THE COURT THAT HE INTENDED TO DEPOSE THE FORMER CLERK AND THE DEFENDANT MOVED FOR SUMMARY JUDGMENT AS A WAY TO BLOCK THE PLAINTIFFS QUEST FOR DISCOVERY AND THE COURT HAS GRANTED THE MOTION WHICH RESULTS IN ABUSE OF DISCRETION BY TRIAL COURT. PLAINTIFF INFORMED THE TRIAL COURT THAT THE NOTICE REQUIRMENT COULD BE LOGGED IN THE CLERKS OFFICE AND THAT THIS QUESTION WAS PART OF THE DEPOSITION, AND PLAINTIFF INFORMED THE COURT THAT DEFENDANT WAS NOT ENTITLED TO SUMMARY JUDGMENT BASED UPON MERE ALLEGATIONS THAT SHE DID NOT RECEIVE THE ORDER, THE OFFICIAL RECORD OF THE ORDER ITSELF DEFEATED THAT ASSERTION.

PLAINTIFFS REQUEST FOR DEPOSITION CONSTITUTED EXPERT WITNESS TESTIMONY, AT LEAST IN REGARDS TO THE SERVICE AND NOTICE REQUIREMENT.

THE PLAINTIFFS DISCOVERY REQUEST BY WAY OF DEPOSITION IS MATERIAL TO PLAINTIFFS COMPLAINT, IT CERTAINLY SHOULD HAVE PRECLUDED SUMMARY JUDGMENT UNTIL THE DISCOVERY HAD BEEN MET. THE COURT COULD HAVE THEN TAKEN THE DEPOSITION INTO ACCOUNT TO DETERMINE WHETHER OR NOT A FUDICIARY DUTY EXISTED, WHETHER OR NOT A GENUINE ISSUE OF MATERIAL FACT EXISTED AND WAS IN DISPUTE, BUT FOR THE COURT TO NOT ALLOW PLAINTIFFS EVIDENTIARY REQUEST TO BE MET IS ABUSE OF DISCRETION THAT PREJUDICES THE PLAINTIFF AND UNDERMINES PLAINTIFFS ENTITLEMENT TO PURSUE HIS CLAIMS IN ACCORDANCE TO THE RULES OF CIVIL PROCEDURE.

THE COURT SHOULD HAVE CONSIDERED THE DEPOSITION, ALLOWED THE RECORD TO REFLECT THE CLERKS TESTIMONY SO THAT THE COURT COULD PROPERLY DETERMINE IF THE EVIDENCE PRECLUDED THE DEFENSES SUMMARY JUDGMENT MOTION OR AS TO WHETHER OR NOT THE DEPOSITION ACTUALLY SUPPORTED THE DEFENDANTS CONTENTIONS THAT SHE WAS NOT SERVED THE NOTICE.

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THE PLAINTIFF, RUSSELL MOORE RESPECTFULLY SUBMITS THAT FOR THE TRIAL COURT TO DENY PLAINTIFFS VALID DISCOVERY REQUEST AND TO ORDER THAT SUCH REQUEST WAS IMMATERIAL TO PLAINTIFFS CLAIMS AND THE DEFENDANTS DEFENSES AMOUNTS TO PREJUDICE AND ABUSE OF DISCRETION BY THE TRIAL COURT AND THAT THE TRIAL COURTS GRANTING OF DEFENDANTS MOTION FOR SUMMARY JUDGMENT WAS INAPPROPRIATE WHEN FURTHER INQUIRY INTO THE FACTS OF THE CASE IS DESIRABLE TO CLARIFY THE APPLICATION OF LAW.

MIKELL V. COUNTY OF CHARLESTON, 375 S.C. 552, 654, SE2d 92.

ADDITIONALLY, THE DEFENDANT DID NOT MAKE A FORMAL OBJECTION WITHIN THE PLEADINGS OR MOTIONS TO PLAINTIFFS REQUEST TO DEPOSE THE FORMER CLERK.

PLAINTIFF PRAYS OF THIS COURT TO AGREE THAT THE DISCOVERY REQUEST MADE BY PLAINTIFF TO DEPOSE THE FORMER CLERK IS A VALID REQUEST THAT PLAINTIFF IS ENTITLED TO IN LIGHT OF THE ALLEGATIONS, ASSERTIONS AND CONTENTIONS MADE BY DEFENDANT IN HER RESPONSE AND ANSWERS TO ADMISSIONS.

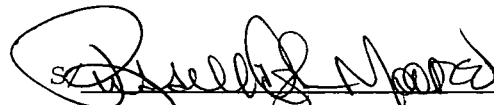
PLAINTIFF PRAYS THAT THIS COURT WILL AGREE THAT THE TRIAL COURT ABUSED ITS DISCRETION BY DISALLOWING THE DISCOVERY REQUEST AND MOTION TO DEPOSE THE FORMER CLERK OF COURT, AND THAT THE TRIAL COURT ABUSED IT'S DISCRETION BY VIEWING THE PLAINTIFFS RREQUEST AS IMMATERIAL AND PRE-MATURELY GRANTING SUMMARY JUDGMENT TO DEFENDANT.

PLAINTIFF PRAYS THAT THIS COURT WILL REVERSE AND ALLOW THE PLAINTIFFS DISCOVERY REQUEST TO BE DEVELOPED FOR THE RECORD.

CONCLUSION

JUDGEMENT FOR THE DEFENDANT WAS THEREFORE ERROR AND SHOULD BE REVERSED.

RESPECTFULLY SUBMITTED,



RUSSELL D. MOORE

200 PRISON ROAD

ENOREE, S.C. 29335

DATE: FEBRUARY 15, 2014

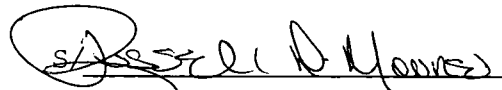
LEGAL MAIL

CERTIFICATE OF SERVICE

I RUSSELL D. MOORE HEREBY CERTIFY THAT THE ORIGINAL AND A TRUE COPY OF PLAINTIFFS INITIAL BRIEF IN THE CASE OF MOORE V. BRIDGES, 2011-cp-11-123 HAS BEEN MAILED TO THE S.C. COURT OF APPEALS AND TO THE PARTIES LISTED AND ADDRESSED BELOW BY DEPOSITING SAID BRIEF IN THE U.S. MAIL, POSTAGE PREPAID FROM THE TIGER RIVER CORR. INST. MAILROOM THIS 19<sup>th</sup> DAY OF February 2014.

ITEMS MAILED:

RUSSELL MOORE, PLAINTIFFS  
INITIAL BRIEF, APPELLATE CASE NO. 2014-000131  
CERTIFICATE OF SERVICE

  
RUSSELL D. MOORE

ADDRESSED TO:

S.C. COURT OF APPEALS  
P.O. BOX 11629  
COLUMBIA, SC 29211

SWORN TO AND SUBSCRIBED BEFORE  
ME THIS 18<sup>th</sup> DAY OF  
FEBRUARY 2014.

CHEROKEE COUNTY CLERK OF COURT  
P.O. DRAWER 2289  
GAFFNEY, SC 29342

  
NOTARY OF SOUTH CAROLINA

SARAH U. SHIFLETT  
ATTORNEY AT LAW  
205 W. MEADOW ST.  
GAFFNEY, SC 29341

June 02, 2015.  
MY COMMISSION EXPIRES

# LEGAL MAIL

10-11-2007 10:01:00

FEBRUARY 15, 2014

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FEB 24 2014

S.C. Court of Appeals

MR. RUSSELL D. MOORE  
#145353 U-8#120  
TIGER RIVER CORR. INST.  
200 PRISON ROAD  
ENOREE, S.C. 29335

HON. V. CLAIRE ALLEN,  
DEPUTY CLERK  
S.C. COURT OF APPEALS  
POST OFFICE BOX 11629  
COLUMBIA, S.C. 29211

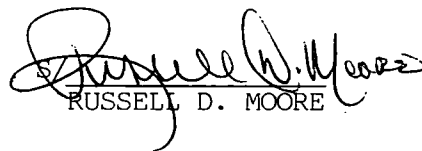
RE: MOORE V. BRIDGES, 2011-CP-11-123  
APPELLATE CASE NO. 2014-000131

DEAR CLERK,

PLEASE FIND ENCLOSED THE ORIGINAL COPIES OF APPELLANTS INITIAL BRIEF AND DESIGNATION OF MATTERS TO BE INCLUDED ON APPEAL IN THE ABOVE CASE.

I HAVE ALSO ENCLOSED THE CERTIFICATE OF SERVICES.

WITH KIND REGARDS,

  
RUSSELL D. MOORE

cc SARAH U. SHIFLETT

LEGAL MAIL

MR. Russell Darragh Moore  
#145353-US #100  
Tupper River Cor. Inst.  
200 Prison Road  
Zeno, SC 29335

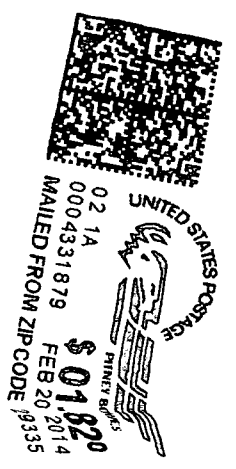
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FEB 20 2014

TYFCl  
Mailroom

Hon. V. Claire Alford  
Deputy Clerk  
S.C. Court of Appeals  
P.O. Box 11029  
Columbia, SC  
29211

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FEB 24 2014  
SC Court of Appeals



LEON MA

