

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case Tracking No 2010154146

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

RECEIVED
DEC 15 2010
SC Court of Appeals

Edward Mims, by and through his legal
Guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
And Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

**RESPONDENTS BABCOCK CENTER, INC
AND DR JUDY JOHNSON'S MOTION FOR EXTENSION OF TIME IN
WHICH TO FILE AND SERVE INITIAL BRIEF OF RESPONDENTS**

TO THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

Respondents Babcock Center, Inc and Dr Judy Johnson (collectively 'the Babcock Center Respondents') respectfully move this Court for an Order granting them an extension of time in which to file and serve their Initial Brief and Designation of Matter

By letter from the Clerk of Court dated November 16, 2010, the Babcock Center Respondents were informed the Court had granted their motion to strike certain matters from the Record on Appeal. The Babcock Center Respondents were further instructed to file and serve

12/16/10 15

their Initial Brief and Designation of Matter by December 16, 2010. The Clerk of Court's letter did not address the request made in the Babcock Center Respondents' motion to strike that Appellant be required to revise her Initial Brief to omit all references to the stricken materials.

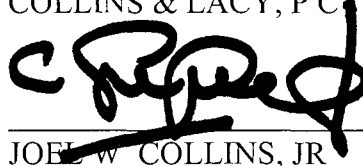
Therefore, by letter to the Clerk of Court dated November 17, 2010, the Babcock Center Respondents requested clarification regarding whether Appellant is required to file an Amended Initial Brief and Amended Designation of Matter omitting references to the items stricken from the Record on Appeal prior to the filing and service of the Initial Brief and Designation of Matter of Respondents Babcock Center and Dr. Judy Johnson. We have not yet received a response from the Court on this Request and, therefore, are unable to prepare our Initial Brief. The Babcock Center Respondents do not wish to unnecessarily delay the instant appeal. However, we believe it is necessary for Appellant to file and serve an Amended Initial Brief and Designation of Matter omitting the stricken items so that Respondents are compelled to address only those matters and arguments properly before the Court in their Initial Briefs. Counsel for Respondents South Carolina Department of Disabilities and Special Needs, Kathi Lacy, and Stanley Butkus made a similar request to the Court via letter dated November 23, 2010.

Accordingly, in the event the Court declines to require Appellant to revise her Initial Brief and Designation of Matter, the Babcock Center Respondents request the deadline for filing and serving their Initial Brief and Designation of Matter be extended until thirty (30) days after issuance of the Court's decision on this request. Alternatively, in the event the Court chooses to require Appellant to revise her Initial Brief, the Babcock Center Respondents request the deadline for filing and serving their Initial Brief and Designation of Matter be extended until thirty (30) days after the deadline set for the submission of Appellant's Amended Initial Brief.

Respondents greatly appreciate the Court's time, attention, and assistance with regard to this request

Respectfully submitted,

COLLINS & LACY, P C



By

JOEL W. COLLINS, JR.
jcollins@collinsandlacy.com
CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com
AMY L. NEUSCHAFER
aneuschafer@collinsandlacy.com
1330 Lady Street, Suite 601 (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (voice)
(803) 771-4484 (facsimile)

ATTORNEYS FOR RESPONDENTS
BABCOCK CENTER, INC. & DR
JUDY JOHNSON

**RESPONDENTS BABCOCK CENTER,
INC. AND DR. JUDY JOHNSON'S
MOTION FOR EXTENSION OF TIME
IN WHICH TO FILE AND SERVE
INITIAL BRIEF OF RESPONDENTS**

Columbia, South Carolina

December 15, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case Tracking No 2010154146

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

Edward Mims, by and through his legal
Guardian, Margaret Mims,

RECEIVED

Appellant,

v DEC 15 2010

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
And Special Needs, Kathi Lacy and
Stanley Butkus,

SC Court of Appeals

Respondents

PROOF OF SERVICE

I hereby certify that I served Respondents Babcock Center, Inc and Judy Johnson's Motion for Extension of Time in which to File and Serve Initial Brief of Respondents upon counsel of record, by placing a copy in the United States mail, postage prepaid, to Patricia L Harrison, Esquire, 611 Holly Street, Columbia, South Carolina 29205, and to William Davidson, Esquire, Davidson & Lindemann, P A, Post Office Box 8568, Columbia, South Carolina 29202, on December 15, 2010

[Signature Page to Follow]

Respectfully submitted,

COLLINS & LACY, P C

By



JOEL W. COLLINS, JR.

jcollins@collinsandlacy.com

CHRISTIAN STEGMAIER

cstegmaier@collinsandlacy.com

AMY L. NEUSCHAFER

aneuschafer@collinsandlacy.com

1330 Lady Street, Suite 601 (29201)

Post Office Box 12487

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(803) 256-2660 (voice)

(803) 771-4484 (facsimile)

ATTORNEYS FOR RESPONDENTS

BABCOCK CENTER, INC. & DR

JUDY JOHNSON

**PROOF OF SERVICE –
RESPONDENTS BABCOCK CENTER,
INC. AND DR JUDY JOHNSON’S
MOTION FOR EXTENSION OF TIME
IN WHICH TO FILE AND SERVE
INITIAL BRIEF OF RESPONDENTS**

Columbia, South Carolina
December 15, 2010



Christian Stegmaier | Direct Dial 803 255 0454 | E Mail cstegmaier@collinsandlacy.com

December 15, 2010

VIA HAND-DELIVERY

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RE *Edward Mims, by and through his legal guardian, Margaret Mims v Babcock Center, Inc , Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus*
Court of Appeals Tracking No 2010154146
C/A No 07-CP-40-3365
C&L File No 969-109

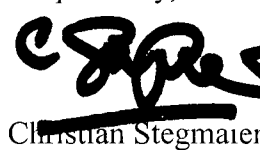
Dear Ms Gee

Please find enclosed for filing the original and eight (8) copies of Respondents Babcock Center, Inc and Dr Judy Johnson's Motion for Extension of Time in which to File and Serve Initial Brief of Respondents in the above-referenced matter. I am also enclosing herewith a check in the amount of \$25.00 for the required filing fee. Please return a filed copy of same to me in the envelope provided herewith.

By copy of this letter, I am serving a copy of same upon all counsel.

Thank you for your time and attention. Should you have any questions, please do not hesitate to contact me.

Respectfully,


Christian Stegmaier

CBS lcc
Enclosures

cc Patricia L. Harrison, Esquire
 William Davidson, Esquire

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DEC 15 2010
SC Court of Appeals

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

November 23, 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
NOV 23 2010
SC Court of Appeals

RE Edward Mims, by and through his legal guardian, Margaret Mims v Babcock Center, Inc ,
Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy
and Stanley Butkus
Court of Appeals Tracking Number 2010154146
Civil Action Number 2007-CP-40-3365
Claim Number 44654
Our File Number 104 7785

Dear Ms Gee

I am writing in connection with the letter submitted by Christian Stegmeier on November 17, 2010, in which he requests that the Appellant be required to submit an Amended Initial Brief and Designation of Matter omitting the items that were stricken by recent Order of the Court I would join in this request, and would ask that the Court permit a revised initial brief of the Respondents whom I represent in this matter, to be served at the same time as that of Mr Stegmeier's clients, the other Respondents This will permit me to revise my already-submitted brief, if necessary, in order to eliminate any passing references that may have been made to matters that were stricken from Appellant's initial brief and designation If a formal motion to this effect is required, I will be happy to submit one

By copy of this letter, I am advising all counsel of record of this communication

Thank you for your assistance in this matter

The Honorable Tanya A Gee
November 23, 2010
Page Two

With highest regards, I am

Sincerely yours,

DAVIDSON & LINDEMANN, P A

A handwritten signature in black ink, appearing to read 'Kenneth P Woodington', written in a cursive style.

Kenneth P Woodington

KPW/jmb
Enclosures

cc Patricia L Harrison, Esquire
611 Holly Street
Columbia, South Carolina 29205

Christian Stegmaier, Esquire
Collins & Lacy, P C
Post Office Box 12487
Columbia, South Carolina 29211



Christian Stegmaier | Direct Dial 803 255 0454 | E Mail cstegmaier@collinsandlacy.com

November 17 2010

VIA UNITED STATES MAIL

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RE *Edward Mims, by and through his legal guardian, Margaret Mims v Babcock Center, Inc , Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus*
Court of Appeals Tracking No 2010154146
C/A No 07-CP-40-3365
C&L File No 969-109

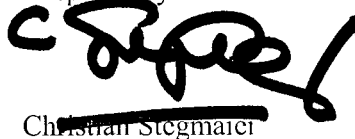
Dear Ms Gee

We are in receipt of your letter dated November 16, 2010, advising the Court has granted Respondent Babcock Center, Inc's Motion to Strike and Hold Deadlines in Abeyance. Your letter further indicates Respondent Babcock Center's Initial Brief and Designation of Matter must be served and filed by December 16, 2010.

In the Motion to Strike Babcock Center additionally requested that Appellant's Initial Brief and Designation of Matter be revised to delete references and arguments referencing the matters stricken from the Record on Appeal in the event the motion was granted. However, the Court's ruling does not address this request. We believe it is necessary for Appellant to file and serve an Amended Initial Brief and Designation of Matter omitting the stricken items so that Respondents are compelled to address only those matters and arguments properly before the Court in their Initial Briefs. Accordingly we respectfully request clarification regarding whether Appellant is required to file an Amended Initial Brief and Amended Designation of Matter omitting references to the items stricken from the Record on Appeal prior to the filing and service of the Initial Brief and Designation of Matter of Respondent Babcock Center.

Thank you for your time and attention. Should you have any questions please do not hesitate to contact me.

Respectfully,



Christian Stegmaier

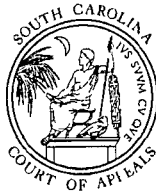
CBS lcc

cc Patricia L Harrison, Esquire
William Davidson, Esquire

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NOV 18 2010

SC Court of Appeals



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

November 18, 2010

Patricia Logan Harrison, Esquire
611 Holly St
Columbia, SC 29205

Re Mims, Edward v Babcock Center
2010154146

Dear Ms Harrison

The following Order has been endorsed on your Motion to serve and file Appellant's Return to Respondent's Motion to Strike Out of Time in the above entitled case on appeal

"Granted

s/ Jasper M Cureton A J

November 18, 2010 "

Please be advised that Appellant's may file and serve an Appellant's Initial Reply Brief within ten (10) days of service of the Respondent's Initial Brief and Designation of Matter

Very truly yours,

V. Claire Allen, Deputy

CLERK

TAG/mpm

cc Christian Stegmaier, Esquire
Joel W Collins, Jr, Esquire
Amy L Neuschafer, Esquire
Kenneth P Woodington, Esquire



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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November 16, 2010

Christian Stegmaier, Esquire
Joel W Collins, Jr, Esquire
Amy L Neuschafer, Esquire
Collins & Lacy
P O Box 12487
Columbia, SC 29211

Re Mims, Edward v Babcock Center
2010154146

Dear Counsel

The following Order has been endorsed on your Motion to Strike and Hold deadlines in Abeyance in the above entitled case on appeal

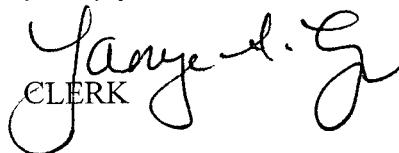
"Granted

s/ Jasper M Cureton A J

November 16, 2010 "

Please be advised that the Respondent's Initial Brief and Designation of Matter of Respondent Babcock Center, Inc must be served and filed no later than December 16, 2010

Very truly yours,


CLERK

TAG/mpm

cc Patricia Logan Harrison, Esquire
Kenneth P Woodington, Esquire

Granted

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

RECEIVED

OCT 25 2010

SC Court of Appeals

FILED

Case No 07-CP-40-3365

Edward Mims,

Appellant,

v

Babcock Center, Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy, Stanley Butkus,

Respondents

MOTION TO SERVE AND FILE APPELLANT'S
RETURN TO RESPONDENT'S MOTION TO STRIKE OUT OF TIME

The undersigned moves to Serve and File Appellant's Return to Respondent's Motion to Strike Out of Time. Grounds for this motion are that Appellant's attorney, a sole practitioner, was out of town when the motion was delivered by mail to her office. Because counsel for Respondents had not contacted Appellant's counsel as required by Rule 11(a) prior to filing and serving the Motion to Strike, the motion was unexpected.

Appellant's counsel also moves to correct the error on the Certificate of Service, which was signed and mailed on October 13, 2010. The body of the certificate erroneously states that it was served on May 3, 2010.

October 22, 2010


Patricia L. Harrison
611 Holly Street
Columbia, South Carolina
(803) 256 2017
Attorney for Edward Mims

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

Edward Mims,

Appellant,

v

Babcock Center, Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy, Stanley Butkus,

Respondents

AMENDED CERTIFICATE OF SERVICE

I, Patricia L Harrison, do certify that on October 13, I served all counsel of record as below listed in this action a copy of *Appellant s Return to Respondent s Motion to Strike* to at the addresses listed below

Also, I do certify that on October 22, I served all counsel of record as below listed in this action a copy of *Motion to Serve and File Appellant s Response to Motion to Strike Out of Time* by

() Hand-Delivering it to his office or,

(x) mailing it to him/her at his her last known address by depositing it in the US Mail, in an envelope with sufficient postage affixed, to

Kenneth P Woodington, Esquire
Davidson and Lindemann
PO Box 8568
1611 Devonshire Dr
Columbia, SC 29202

RECEIVED

OCT 25 2008

SC Court of Appeals

Christian Stegmaier, Esquire
Collins and Lacy
PO Box 12487
Lady Street
Columbia, SC 29211

October  2010



Patricia L. Harrison
611 Holly Street
Columbia, South Carolina
(803) 256 2017
Attorney for Edward Mims

SOUTH CAROLINA COURT OF APPEALS

Case No 2010154146

Appeal from Joseph M. Stickland, Special Circuit Court Judge
Trial Court Case No 2007 CP 4003365

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc., Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

Response to Defendants' Motion to Strike

Patricia L. Harrison
611 Holly Street
Columbia, South Carolina
(803) 256 2017
plh@colawatt.net
Attorney for Appellant

RECEIVED

OCT 25 2010

SC Court of Appeals

Other Counsel of Record
Kenneth P. Woodington
Davidson Morrison & Lindeman
PO Box 8568
Columbia, South Carolina 29202

Christian Stegmaier
Collins & Lacy
PO Box 12487
Columbia, South Carolina 29211

Attorney for S.C. Dept. of
Special Needs, Kathi Lacy,
Stanley Butkus

Attorney for Babcock Center, Inc.
Judy Johnson

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OCT 15 2010

SC Court of Appeals

Rule 11(a) requires the parties to include an affirmation that movant's counsel attempted to communicate with opposing counsel prior to filing a motion. Defendants in this action did not make an attempt to communicate with plaintiff's counsel prior to filing this motion and the motion does not contain an affirmation that such communication was attempted. In addition, defendants Babcock Center (a private corporation) and Judy Johnson failed to pay the motion fee which is required for the filing of a motion. For these reasons, plaintiff requests that the motion to strike be denied.

Plaintiff, a sole practitioner, was out of town when the motion was delivered by mail to her office and the motion was received on October 8, 2010.

Plaintiff has alleged irregularities in the proceedings in the lower court which have prejudiced him and a Court may consider these irregularities relevant in determining whether the dismissal of this action was appropriate and whether pleadings have been construed by the lower court so as to do substantial justice. Rule 8(f) SCRCP. This court could determine that the case was dismissed for improper reasons in order to avoid review of these irregularities.

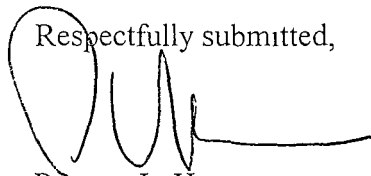
Rule 201 provides that the court may take judicial notice of adjudicative facts at any point in the proceedings. Adjudicative facts are "facts about the particular event which gave rise to the lawsuit and [help] explain who did what, when, where, how and with what motive and intent." C. McCormick, McCormick on Evidence §§ 328 and 331 (4th ed. 1992). The Administrative Law Court brief dated March 21, 2008 was filed in that court by a state agency and it is not subject to reasonable dispute, in that the brief is capable of accurate and ready determination by

resort to sources whose accuracy cannot reasonably be questioned. Likewise, this court may take judicial notice of a final order of the South Carolina Department of Health and Human Services. The March 7, 2006 order of the South Carolina Department of Health and Human Services is not subject to reasonable dispute and its accuracy cannot reasonably be questioned.

~~Plaintiff agrees to strike the sentence located at the bottom of page 11 of his initial brief.~~
Counsel for defendants Babcock Center and Judy Johnson correctly state that the brief dated September 22, 2005 was not cited in plaintiff's brief and it was harmless error to include this document in the designation. A corrected designation omitting this document will be filed with plaintiff's reply brief.

Plaintiff requests that this Court deny the motion to strike. Plaintiff consents to holding all deadlines in abeyance until the Court issues its ruling on the motion to strike.

Respectfully submitted,



Patricia L. Harrison
611 Holly Street
Columbia, South Carolina 29205
(803) 256 2017
plh cola@aatt.net

October 13, 2010

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

EDWARD MIMS,

Appellant,

vs

BABCOCK CENTER, JUDY JOHNSON,

SCDDSN KATHI LACY, STANLEY

BUTKUS,

Respondent

IN THE COURT OF APPEALS

CASE NO 2007 CP 40 03365

CERTIFICATE OF SERVICE

I, Patricia L Harrison, do certify that on this date May 3, 2010, I have served all counsel of record as below listed in this action with copies of the Response to Defendants' Motion to Strikeby

() Hand-Delivering it to his office or,

(x) mailing it to the attorneys listed below at their addresses by depositing it in the US Mail, in an envelope with sufficient postage affixed

Kenneth P Woodington, Esquire
Davidson and Lindemann
PO Box 8568
1611 Devonshire Dr
Columbia, SC 29202

Christian Stegmaier, Esquire
Collins and Lacy
PO Box 12487
Lady Street
Columbia, SC 29211

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OCT 25 2010

SC Court of Appeals

Date

Oct 13, 2010

Patricia Harrison

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

FAX (803) 256 2213

TELEPHONE (803) 256 2017

October 22, 2010

The Honorable Tanya Gee
Clerk of Court
SC Court of Appeals
1015 Sumter Street-2nd Floor
Columbia, SC 29201

Re Edward Mims v Babcock, Inc , et al
07 CP 40 03365
Court of Appeals Tracking No 2010154146

Dear Ms Gee

Please find for filing our *Motion to Serve and File Appellant s Return to Respondent s*,
Motion to Strike Out of Time and an *Amended Certificate of Service* Also enclosed are eight
copies and a check to cover the motion fee in the amount of \$25 00 We apologize for any
inconvenience to the Court Please find enclosed a self-addressed, stamped envelope for your
convenience in returning our clocked copies

Thank you for your consideration of this request

Sincerely,



Patricia L Harrison

RECEIVED
OCT 25 2010
SC Court of Appeals

cc Christian Stegmaier, Esquire
Kenneth P Woodington, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case Tracking No 2010154146

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

Edward Mims, by and through his legal
Guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
And Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

**AMENDED
PROOF OF SERVICE**

RECEIVED

OCT 25 2010

SC Court of Appeals

I hereby certify that I served Respondents Babcock Center, Inc and Judy Johnson's Reply to Appellant's Return to Respondents' Amended Motion to Strike & Hold Deadlines in Abeyance upon counsel of record, by placing a copy in the United States mail, postage prepaid, to Patricia L Harrison, Esquire, 611 Holly Street, Columbia, South Carolina 29205, and to William Davidson, Esquire, Davidson & Lindemann, P A, Post Office Box 8568, Columbia, South Carolina 29202, on October 19, 2010

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P C

By



JOEL W. COLLINS, JR
jcollins@collinsandlacy.com
CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com
AMY L. NEUSCHAFER
aneuschafer@collinsandlacy.com
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Post Office Box 12487
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(803) 256-2660 (voice)
(803) 771-4484 (facsimile)

ATTORNEYS FOR RESPONDENTS
BABCOCK CENTER, INC. & DR
JUDY JOHNSON

AMENDED PROOF OF SERVICE –
RESPONDENTS BABCOCK CENTER, INC
AND DR JUDY JOHNSON’S REPLY TO
APPELLANT’S RETURN TO RESPONDENTS’
AMENDED MOTION TO STRIKE & HOLD
DEADLINES IN ABEYANCE

Columbia, South Carolina
October 22, 2010



Christian Stegmaier | Direct Dial 803 255 0454 | E Mail cstegmaier@collinsandlacy.com

October 22, 2010

VIA UNITED STATES MAIL

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

***RE Edward Mims, by and through his legal guardian, Margaret Mims v Babcock Center, Inc , Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus
Court of Appeals Tracking No 2010154146
C/A No 07-CP-40-3365
C&L File No 969-109***

Dear Ms Gee

Pursuant to the Court's letter of October 20, 2010, please find enclosed for filing the original and eight (8) copies of the Amended Proof of Service regarding Respondents Babcock Center, Inc and Dr Judy Johnson's Reply to Appellant's Return to Respondents' Amended Motion to Strike & Hold Deadlines in Abeyance in the above-referenced matter Please return a filed copy of same to me in the envelope provided herewith

By copy of this letter, I am serving a copy of same upon all counsel

Thank you for your time and attention Should you have any questions, please do not hesitate to contact me

Respectfully,

A handwritten signature in black ink, appearing to read "C. Stegmaier", with a horizontal line drawn underneath.

Christian Stegmaier

CBS lcc
Enclosures
cc Patricia L Harrison, Esquire
William Davidson, Esquire

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OCT 25 2010

SC Court of Appeals



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIR ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
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October 20, 2010

Christian Stegmaier, Esquire
Joel W Collins, Jr , Esquire
Amy L Neuschafer, Esquire
Collins & Lacy
P O Box 12487
Columbia, SC 29211

Re Mims, Edward v Babcock Center
2010154146

Dear Counsel

We have received your Reply to the Return to the Motion to Strike in the above case
However, the Proof of Service states that the Reply was served on May 13, 2010 Please provide
this Court with an Amended Proof of Service showing the correct date this Reply was served
within ten (10) days of the date of this letter

Very truly yours,

V. Claire Allen, Deputy

CLERK

TAG/mpm

cc Patricia Logan Harrison, Esquire
Kenneth P Woodington, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case Tracking No 2010154146

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

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OCT 19 2010

SC Court of Appeals

Edward Mims, by and through his legal
Guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
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Stanley Butkus,

Respondents

**RESPONDENTS BABCOCK CENTER, INC
AND DR JUDY JOHNSON'S REPLY TO APPELLANT'S RETURN TO
RESPONDENTS' AMENDED MOTION TO STRIKE
& HOLD DEADLINES IN ABEYANCE**

TO THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

Pursuant to Rule 209(b) and Rule 210(c), SCACR, Respondents Babcock Center, Inc
and Dr Judy Johnson submit the following in reply to Appellant's Return to Respondents
Amended Motion to Strike and Hold Deadlines in Abeyance

Although Appellant's certificate of service states the return was served October 13, 2010,
Respondents did not receive Appellant's return via the U S Mail until the afternoon of October

18, 2010, which was the deadline to file a reply. Therefore, Respondents respectfully request the Court accept this reply as timely filed. In the alternative, Respondents will file a formal motion seeking leave to file this reply out of time, if the Court so desires.

As an initial matter, Appellant's return was not timely served. Appellant's amended motion to strike was filed and served on September 30, 2010, meaning any return was due by October 11.¹ Counsel for Appellant justifies her tardy reply by stating she did not receive Respondents' motion until October 8 because she was out of the office until that date. The absence of Counsel for Appellant from her office does not excuse her late response, particularly where a motion for protection or extension of time was not filed and where her eventual reply was not served until five (5) days after she returned to the office.

Notwithstanding the lateness of Appellant's reply, Appellant has failed to demonstrate the disputed items are properly included in the Record on Appeal. In his reply, Appellant states he has alleged "irregularities" in the Circuit Court proceedings, which may be considered by this Court in determining whether dismissal was proper and whether the Circuit Court construed the pleadings so as to do substantial justice in accordance with Rule 8(f), SCRCP. However, Appellant does not explain what "irregularities" transpired in the Circuit Court that would justify this Court deviating from well-established principles regarding the contents of the Record on Appeal. Moreover, in his initial brief Appellant has not argued "irregularities" in the Circuit Court resulted in a violation of Rule 8(f), SCRCP.

¹ Respondent's original motion to strike was filed and served September 27, 2010. Respondents paid the filing fee at this time. However, Respondents inadvertently omitted from their original motion a request that all deadlines be held in abeyance during the pendency of the motion. Therefore, Respondent's filed an amended motion three (3) days later incorporating this request. The clerk's office advised counsel for Respondents an additional filing fee was not necessary for this amended motion, as indicated by the correspondence transmitting the amended motion to the Court for filing.

At a basic level, every appeal alleges “irregularities” in the Circuit Court. The requirement imposed by Rule 8(f), SCRCR, that pleadings be construed so as to do substantial justice does not obviate the need for Appellant to comply with the appellate court rules by including in his Designation of Matter only items presented to the Circuit Court **and** relevant to this appeal. Rule 209(b), SCACR, Rule 210(c), SCACR. To the extent the “irregularities” to which Appellant generally refers relate to the motion for recusal,² the items designated for the Record on Appeal pertaining only to the motion for recusal³ are not properly included in the Record on Appeal. Appellant has not appealed the order ruling on her motion for recusal. In addition, at no point in his initial brief does Appellant argue Judge Manning’s ruling on the motion for recusal has any bearing on the issue presented for appeal—whether Judge Strickland properly granted Respondents’ motion to dismiss. Appellant merely discusses Judge Manning’s ruling on the motion for recusal in detail in the factual section of his brief, presumably in an attempt to imply the Circuit Court proceedings were somehow unfairly biased against Appellant.

² Appellant’s return does not specifically reference the items relating solely to his motion for recusal directed to Judge Manning.

³ Appellant has included numerous materials in his Designation of Matter that pertain only to his previous motion requesting Judge Manning be recused from hearing matters related to the instant case:

- September 18, 2008 Notice of Hearing,
- Plaintiff’s Motion to Request Recusal,
- Affidavit of Orin Brigg (Exhibit 9 to Plaintiff’s Rule 59(e) Motion pertaining to the order concerning recusal),
- Affidavit of Amy Davenport (Exhibit 10 to Plaintiff’s Rule 59(e) Motion pertaining to the order concerning recusal),
- Plaintiff’s Rule 59(e) Motion dated March 25, 2009 pertaining to the order concerning recusal,
- Defendant’s October 8, 2008 Letter requesting a continuance,
- Transcript of March 9, 2009 hearing wherein Plaintiff’s counsel requested Judge Manning recuse himself, and
- Circuit Court order dated March 13, 2009

Because these items are irrelevant to the issues encompassed by the orders on appeal, they must be stricken from the Record on Appeal and Appellant's initial brief amended to omit all references to them

Appellant's argument concerning the propriety of including in the Record on Appeal and/or referring in the briefs⁴ to the Order of Health and Human Services Hearing Officer dated March 7, 2006 (Case No 05-misc-034) and the ALC Brief filed March 21, 2008 in Mims v. SCDHHS (Case No 07-ALJ-08-0082) misses the point. Neither of these items was presented to the Circuit Court in ruling on the motion to dismiss. Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal"), Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (ruling appellant was not permitted to supplement record with deposition testimony from another action because the deposition was not presented to trial judge). They appear to concern other cases in which Appellant was involved, but which have no bearing on the instant appeal. To permit Appellant to interject these items into this case through the backdoor by application of the doctrine of judicial notice is patently prejudicial to Respondents, who have not had the opportunity to review these items or argue their inapplicability to the Circuit Court. Therefore, these matters must be excluded from the Record on Appeal and all references to them removed from Appellant's Initial Brief.

Finally, the Budget of Edward Mims must be stricken from the Record on Appeal. In his reply, Appellant states he agrees to strike the sentence on the bottom of page 11 of his brief, which cites to the Budget of Edward Mims. However, Appellant has not indicated he will omit this document from the Record on Appeal. This item was not presented to the Circuit Court and

⁴ It is unclear whether Appellant proposes to include these items in the Record on Appeal, as they are not included in his Designation of Matter, or whether he simply wishes to cite to them in his briefs. Both situations are improper, as they were not presented to the Circuit Court.

is irrelevant to the appeal Therefore, Respondents request the Budget of Edward Mims be excluded from the Record on Appeal

CONCLUSION

Appellant's reply has not shown the disputed matters were presented to the Circuit Court in ruling on Respondents' motion to dismiss—the matter presently on appeal Nor has Appellant demonstrated these items are relevant to this appeal Accordingly, Respondents request the disputed items be stricken from the Record on Appeal and Appellant be ordered to file and serve an amended initial brief omitting all references to these items

Respectfully submitted,

COLLINS & LACY, P C



By

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ATTORNEYS FOR RESPONDENTS
BABCOCK CENTER, INC & DR
JUDY JOHNSON

Columbia, South Carolina
October 19, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case Tracking No 2010154146

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

Edward Mims, by and through his legal
Guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
And Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

PROOF OF SERVICE

I hereby certify that I served Respondents Babcock Center, Inc and Judy Johnson's Reply to Appellant's Return to Respondents' Amended Motion to Strike & Hold Deadlines in Abeyance upon counsel of record, by placing a copy in the United States mail, postage prepaid, to Patricia L Harrison, Esquire, 611 Holly Street, Columbia, South Carolina 29205, and to William Davidson, Esquire, Davidson & Lindemann, P A, Post Office Box 8568, Columbia, South Carolina 29202, on May 13, 2010

[SIGNATURE PAGE TO FOLLOW]

RECEIVED
OCT 19 2010
SC Court of Appeals

Respectfully submitted,

COLLINS & LACY, P C



By

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jcollins@collinsandlacy.com
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ATTORNEYS FOR RESPONDENTS
BABCOCK CENTER, INC & DR
JUDY JOHNSON

Columbia, South Carolina
October 19, 2010



Christian Stegmaier | Direct Dial 803 255 0454 | E Mail cstegmaier@collinsandlacy.com

October 19, 2010

VIA HAND-DELIVERY

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RECEIVED
OCT 19 2010
SC Court of Appeals

RE *Edward Mims, by and through his legal guardian, Margaret Mims v Babcock Center, Inc , Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus*
Court of Appeals Tracking No 2010154146
C/A No 07-CP-40-3365
C&L File No 969-109

Dear Ms Gee

Please find enclosed for filing the original and eight (8) copies of Respondents Babcock Center, Inc and Dr Judy Johnson's Reply to Appellant's Return to Respondents' Amended Motion to Strike & Hold Deadlines in Abeyance in the above-referenced matter Please return a filed copy of same to me via my courier

By copy of this letter, I am serving a copy of same upon all counsel

Thank you for your time and attention Should you have any questions, please do not hesitate to contact me

Respectfully,

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

Christian Stegmaier

CBS lcc

Enclosures

cc Patricia L Harrison, Esquire
 William Davidson, Esquire



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLARE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

October 18, 2010

Patricia Logan Harrison, Esquire
611 Holly St
Columbia, SC 29205

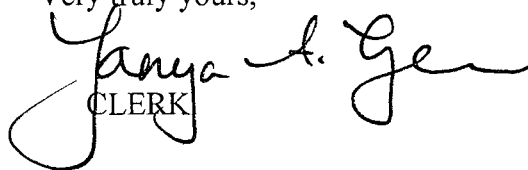
Re Mims, Edward v Babcock Center
2010154146

Dear Ms Harrison

We have received your Response to Defendant's Motion to Strike which we construe as Return to the Respondent's Motion to Strike in the above matter This Return should have been served and filed no later than October 7, 2010

Furthermore, the Proof of Service shows that this Return was served on May 3, 2010 It will be necessary that you file a Motion to serve and file the Return to the Motion to Strike Out of Time and an Amended Proof of Service showing the correct date of service of this Return within ten (10) days of the date of this letter

Very truly yours,


CLERK

TAG/mpm

cc Christian Stegmaier, Esquire
Kenneth P Woodington, Esquire

SOUTH CAROLINA COURT OF APPEALS

Case No 2010154146

Appeal from Joseph M Strickland, Special Circuit Court Judge
Trial Court Case No 2007 CP 4003365

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

Response to Defendants' Motion to Strike

Patricia L Harrison
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(803) 256 2017
plh@colgaatt.net
Attorney for Appellant

Other Counsel of Record
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Davidson Morrison & Lindeman
PO Box 8568
Columbia, South Carolina 29202

Christian Stegmaier
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PO Box 12487
Columbia, South Carolina 29211

Attorney for S C Dept of
Special Needs, Kathi Lacy,
Stanley Butkus

Attorney for Babcock Center, Inc
Judy Johnson

RECEIVED

OCT 15 2010

SC Court of Appeals

Rule 11(a) requires the parties to include an affirmation that movant's counsel attempted to communicate with opposing counsel prior to filing a motion. Defendants in this action did not make an attempt to communicate with plaintiff's counsel prior to filing this motion and the motion does not contain an affirmation that such communication was attempted. In addition, defendants Babcock Center (a private corporation) and Judy Johnson failed to pay the motion fee which is required for the filing of a motion. For these reasons, plaintiff requests that the motion to strike be denied.

Plaintiff, a sole practitioner, was out of town when the motion was delivered by mail to her office and the motion was received on October 8, 2010.

Plaintiff has alleged irregularities in the proceedings in the lower court which have prejudiced him and a Court may consider these irregularities relevant in determining whether the dismissal of this action was appropriate and whether pleadings have been construed by the lower court so as to do substantial justice. Rule 8(f) SCRCP. This court could determine that the case was dismissed for improper reasons in order to avoid review of these irregularities.

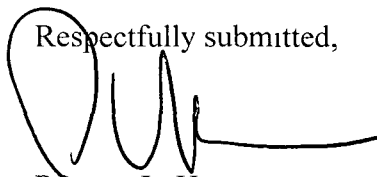
Rule 201 provides that the court may take judicial notice of adjudicative facts at any point in the proceedings. Adjudicative facts are "facts about the particular event which gave rise to the lawsuit and [help] explain who did what, when, where, how and with what motive and intent." C. McCormick, McCormick on Evidence §§ 328 and 331 (4th ed. 1992). The Administrative Law Court brief dated March 21, 2008 was filed in that court by a state agency and it is not subject to reasonable dispute, in that the brief is capable of accurate and ready determination by

resort to sources whose accuracy cannot reasonably be questioned Likewise, this court may take judicial notice of a final order of the South Carolina Department of Health and Human Services The March 7, 2006 order of the South Carolina Department of Health and Human Services is not subject to reasonable dispute and its accuracy cannot reasonably be questioned

Plaintiff agrees to strike the sentence located at the bottom of page 11 of his initial brief Counsel for defendants Babcock Center and Judy Johnson correctly state that the brief dated September 22, 2005 was not cited in plaintiff's brief and it was harmless error to include this document in the designation A corrected designation omitting this document will be filed with plaintiff's reply brief

Plaintiff requests that this Court deny the motion to strike Plaintiff consents to holding all deadlines in abeyance until the Court issues its ruling on the motion to strike

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Patricia L. Harrison', with a large, stylized initial 'P'.

Patricia L. Harrison
611 Holly Street
Columbia, South Carolina 29205
(803) 256 2017
plhcola@att.net

October 13, 2010

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
EDWARD MIMS,)
)
Appellant,)
)
vs)
)
BABCOCK CENTER, JUDY JOHNSON,)
)
SCDDSN, KATHI LACY, STANLEY)
)
BUTKUS,)
)
Respondent)
)

IN THE COURT OF APPEALS

CASE NO 2007 CP 40 03365

CERTIFICATE OF SERVICE

I, Patricia L Harrison, do certify that on this date May 3, 2010, I have served all counsel of record as below listed in this action with copies of the Response to Defendants' Motion to Strikeby

() Hand-Delivering it to his office or,

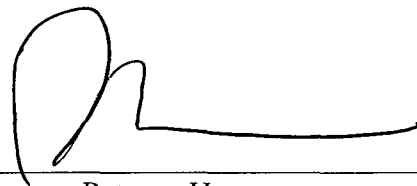
(x) mailing it to the attorneys listed below at their addresses by depositing it in the US Mail, in an envelope with sufficient postage affixed

Kenneth P Woodington, Esquire
Davidson and Lindemann
PO Box 8568
1611 Devonshire Dr
Columbia, SC 29202

Christian Stegmaier, Esquire
Collins and Lacy
PO Box 12487
Lady Street
Columbia, SC 29211

RECEIVED
OCT 15 2010
SC Court of Appeals

Oct 13, 2010
Date


Patricia Harrison

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

October 13, 2010

Honorable Tanya Gee
Clerk of the South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

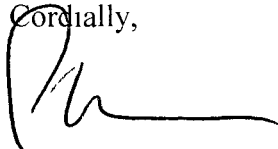
RECEIVED
OCT 15 2010
SC Court of Appeals

RE Edward Mims v Babcock Center et al
Court of Appeals Tracking Number 2010154146
C/A Number 07-CP-40-3365

Dear Ms Gee

Enclosed is plaintiff's response to the motion to strike filed by defendants Babcock Center and Judy Johnson, along with eight copies. Please return the clocked copy in the enclosed stamped envelope. As always, your assistance is greatly appreciated.

Cordially,



Patricia L Harrison

cc William Davidson, Esq
Christian Steigmeir, Esq

1
Granted.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case Tracking No 2010154146

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

OCT 01 2010

SC Court of Appeals

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

Edward Mims, by and through his legal
Guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

**RESPONDENTS BABCOCK CENTER, INC
AND DR JUDY JOHNSON'S AMENDED MOTION TO STRIKE
& HOLD DEADLINES IN ABEYANCE**

TO THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

Pursuant to Rule 209(b) and Rule 210(c), SCACR, Respondents Babcock Center Inc
and Dr Judy Johnson respectfully move this Court for an Order striking from the record on
appeal certain matters designated by Appellant Appellants additionally request that all
deadlines be held in abeyance until the Court issues its ruling on this motion to strike

Appellant Edward Mims, by and through his legal guardian, Margaret Mims, brought this action against, inter alia, Respondents Babcock Center, Inc and Dr Judy Johnson, alleging Mims suffered various personal injuries while he was a resident at Babcock Center from 2000 to 2005. The original Summons and Complaint were filed in May 2007, but were never served on the defendants (Ex A, Summons & Complaint). In May 2008, Appellant filed an Amended Summons and Complaint and served Respondents with these pleadings (Ex B, Amended Summons & Complaint).

The Amended Complaint ultimately was dismissed by the Honorable Joseph M Strickland, sitting as a special circuit court judge, for failure to serve the summons and complaint within 120 days of filing in compliance with Rule 3, SCRPC, and S C Code Ann § 15-3-20. Appellant has appealed the order granting Respondents' motions to dismiss and the order denying Appellant's motion for reconsideration (Ex C, Notice of Appeal). However, in his Designation of Matter, Appellant has included numerous materials that pertain only to his previous motion requesting Judge Manning be recused from hearing matters related to the instant case.

- September 18, 2008 Notice of Hearing,
- Plaintiff's Motion to Request Recusal,
- Affidavit of Orin Brigg (Exhibit 9 to Plaintiff's Rule 59(e) Motion pertaining to the order concerning recusal),
- Affidavit of Amy Davenport (Exhibit 10 to Plaintiff's Rule 59(e) Motion pertaining to the order concerning recusal),
- Plaintiff's Rule 59(e) Motion dated March 25, 2009 pertaining to the order concerning recusal,
- Defendant's October 8, 2008 Letter requesting a continuance,

- Transcript of March 9, 2009 hearing wherein Plaintiff's counsel requested Judge Manning recuse himself, and
- Circuit Court order dated March 13, 2009

The Appellate Court Rules prohibit a party from including any matter in his designation of matter that is irrelevant to the appeal Rule 209(b), SCACR, 15 S C Jur Appeal and Error § 59 ("The Record on Appeal should contain only the information needed to permit the court to decide the issues on appeal, it should contain no irrelevant material"), 15 S C Jur Appeal and Error § 63 ("Matters irrelevant to the question involved in the appeal are also disallowed ")

These matters concerning Appellant's request that Judge Manning recuse himself have no bearing on the issue presented by this appeal—whether Judge Strickland properly granted Respondents' motion to dismiss Appellant has not appealed the order concerning his motion for recusal¹ In fact, although Appellant discusses Judge Manning's alleged bias against parties who sue Respondent Babcock Center and the circumstances surrounding his motion to recuse ad nauseum in the factual recitation section of his initial brief, he never again discusses these issues or cites to the above-listed documents in the substantive sections of his brief

¹ The hearing on Respondents' motions to dismiss was originally scheduled to be heard by Judge Manning At the hearing, Appellant raised the issue of her pending motion requesting Judge Manning be recused from hearing matters concerning this case on the basis of his alleged favoritism to Babcock Center Judge Manning declined to hear Respondents' motions to dismiss and indicated he would recuse himself However, the written order issued subsequent to the hearing stated Appellant's motion for a continuance was granted In her brief, Appellant asserts this order originally stated her motion to recuse was granted, but the reference to recusal was deleted with "white-out" and reference to a continuance was inserted

On March 25, 2009, Appellant filed a Rule 59(e) Motion seeking to alter or amend this order to reference her motion for recusal Contrary to Appellant's contention that a final order was not issued on his request for recusal (see App Br p 3), his Rule 59(e) motion was denied by order dated March 30, 2009 (Ex D, Order Denying Rule 59(e) Motion) Appellant has not appealed the orders concerning her request for recusal

Appellant's brief is devoid of argument demonstrating what impact Judge Manning's perceived bias or his ruling on the motion to recuse had on Judge Strickland's subsequent dismissal of the action. In the absence of such analysis, the inclusion of these items in the Record on Appeal serves only the improper purpose of confusing the issues and sensationalizing the appeal through the intimation that Appellant was treated unfairly by the Circuit Court. In addition, the inclusion of these unnecessary items adds hundreds of pages to the Record on Appeal. In short, these items are irrelevant to the issues encompassed by the orders on appeal. These matters should be stricken from the Record on Appeal and Appellant's initial brief amended to omit all references to them.

Appellant also has designated two items for inclusion in the Record on Appeal that were not presented to the Circuit Court at any time during the pendency of this case:

- Brief of Appellant dated September 22, 2005, and
- Reduction in Edward Mims Budget

The Appellate Court Rules further provide that matters not presented to the trial court are not properly included in the Record on Appeal. Rule 210(c), SCACR, see also Associates Discount Corp v Hiers, 248 S C 430, 150 S E 2d 611 (1966), Sanders v Allis Chalmers Mfg Co, 235 S C 259, 111 S E 2d 201 (1959), State v Johnson, 147 S C 325, 145 S E 194 (1928), Quattlebaum v Black, 22 S C 587 (1884), State v White, 372 S C 364, 642 S E 2d 607 (Ct App 2007), Norris v Ferre, 315 S C 179, 432 S E 2d 491 (Ct App 1993) (appellant was not permitted to supplement record with deposition testimony from another action because the deposition was not presented to trial judge).

Neither the Brief of Appellant dated September 22, 2005 nor the reduction in Edward Mims' budget were presented to the circuit court in deciding any issues involved in this case. Presumably, the Brief of Appellant dated September 22, 2005 was filed in previous case in which Appellant or his counsel was involved. However, Respondents do not have a copy of this brief and it was not a part of the record in this matter. In fact, although Appellant has included this brief in his designation of matter, Respondents are unable to locate a citation to it in his initial brief. Likewise, Edward Mims' Budget was not presented to the circuit court and Respondents do not possess a copy of this item. Accordingly, these items should be stricken from the Record on Appeal and all references to them omitted from Appellant's Initial Brief.

Finally, Appellant cites to two items in his brief that have not been designated for inclusion in the Record on Appeal and also were not presented to the circuit court:

- Order of Health and Human Services Hearing Officer dated March 7, 2006 (Case No 05-misc-034),
- ALC Brief filed March 21, 2008 in Mims v SCDHHS, Case No 07-ALJ-08-0082

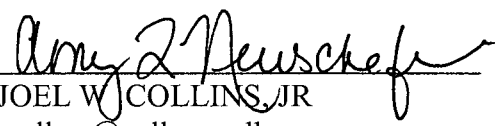
Although Appellant has not listed these materials in his Designation of Matter, he does refer to them in his initial brief. These items relate to other actions filed by Appellant and have no bearing on the instant appeal. They were not submitted to the Circuit Court in connection with this case and have no place in the Record on Appeal. Norris v Ferre, 315 S C 179, 432 S E 2d 491 (Ct App 1993) (ruling appellant was not permitted to supplement record with deposition testimony from another action because the deposition was not presented to trial judge). Therefore, these matters must be excluded from the Record on Appeal and all references to them removed from Appellant's Initial Brief.

CONCLUSION

Appellant has included items in his Designation of Matter and initial brief that were not presented to the Circuit Court and are irrelevant to this appeal. Pursuant to Rules 209(b) and 210(c), SCACR, Respondents respectfully request the above-listed items be stricken from the Record on Appeal and Appellant be ordered to revise his initial brief to omit all references to them. Because the granting of this motion in whole or in part will require substantial revision to Appellant's Initial Brief, Respondents additionally request the Court hold the briefing deadlines in abeyance during the pendency of this motion.

COLLINS & LACY, P C

By


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jcollins@collinsandlacy.com
CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com
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Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (voice)
(803) 771-4484 (facsimile)

ATTORNEYS FOR RESPONDENTS
BABCOCK CENTER, INC. & DR
JUDY JOHNSON

Columbia, South Carolina
September 30, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Edward Mims, through his guardian)
Margaret Mims,)
Plaintiff)
)
vs)
)
Babcock Center, Inc , Judy Johnson,)
Tonya Bradford, Craig Stoxen, Sue Slater,)
Stanley Butkus, Susan Bowling, the)
South Carolina Department of Health)
and Human Services,)
Defendant)
)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

SUMMONS

Barb,
CCC & GS

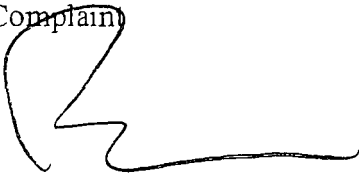
2007 MAY 29 PM 4 54

F-1-1-1

TO THE ABOVE NAMED DEFENDANTS AND THEIR ATTORNEYS

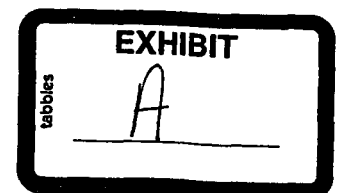
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon subscribers at 611 Holly Street, Columbia, South Carolina, 29205, within thirty days after service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

NOTICE If you fail to appear and defend, judgment by default will be rendered against you for the relief demanded in the Complaint.



Patricia L. Harrison
Attorney for Plaintiff
611 Holly Street
Columbia, South Carolina 29205
(803) 256 2017

May 29, 2007
Columbia, South Carolina



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Edward Mims, through his guardian)
Margaret Mims,)
Plaintiff)
vs)
Babcock Center, Inc , Judy Johnson,)
Tonya Bradford, Craig Stoxen, Sue Slater,)
Stanley Butkus, Susan Bowling, the)
South Carolina Department of Health)
and Human Services,)
Defendant)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

COMPLAINT

(Jury Trial Demanded)

FILED
2007 MAY 29 PM 4 54
CLERK OF COURT

Plaintiff, complaining of the Defendants herein, would show unto the Court as follows

1 Plaintiff brings these actions pursuant to South Carolina Code §§ 15-5-90, 15-15-10, et
seq , 33-56 180, 43-35-5, et seq 42 U S C §§ 1983, 1396a(a)(8), 1396a(a)(23) other
provisions of the Medicaid Act and the Medicare Act and the common law of South
Carolina

THE PARTIES

2 Plaintiff is a person who has profound mental retardation and physical disabilities who is
a resident of Richland County, South Carolina

3 Defendant Babcock Center, Inc (hereafter "Babcock Center"), is a corporation which
does business in Richland County, South Carolina

4 Individual defendant, Judy Johnson, is the director of the Babcock Center

5 Individual defendant, Tonya Bradford, is an employee of the Babcock Center who, upon
information and belief, is the "consumer advocate" for persons served by the Babcock



Center

6 Individual defendants Craig Stoxen and Sue Slater are members of the Board of
Directors of the Babcock Center, Inc

7 Individual defendant, Stanley Butkus is the State Director of the South Carolina
Department of Disabilities and Special Needs (DDSN)

8 The South Carolina Department of Health and Human Services is the state agency which
is responsible for the operation of the Medicaid program pursuant to the Medicaid Act

9 Individual defendant, Susan Bowling is the Director of the South Carolina Department of
Health and Human Services

FACTUAL BACKGROUND

10 Edward Mims is a person who has profound mental retardation and severe physical
disabilities who was admitted to the Babcock Center in 1999

11 Edward was placed at Clusters, Babcock Center's largest residential facility and when his
mother complained that Edward was being beaten by a staff member at Clusters, DDSN
brought an action to terminate the rights of Edward's mother, thereby involuntarily
committing Edward to DDSN custody

12 Edward was repeatedly beaten with a belt by another resident on or about January 25,
2002 after experiencing many "unexplained" injuries which required medical treatment
during the time he was a resident at Clusters

13 In early 2002, Edward was transferred to Kensington ICF/MR, which was also operated
by the Babcock Center

14 While at Kensington, Edward continued to experience unexplained injuries and



- behavioral signs of being fearful of harm
- 15 On or about July 27, 2004, Edward's bed and room at Kensington were found to be infested with ants and he was treated at the emergency room for "ant bites all over "
- 16 On October 13, 2004, Kensington was cited to CMS (the federal Medicaid Agency) for Immediate Jeopardy which threatened the life and health of residents there after Edward's roommate choked to death at the facility
- 17 CMS cited Kensington for posing a threat to the health and safety of clients resulting from inadequate staff training, understaffing, failure to conduct thorough investigations and failure to take appropriate action to ensure client protections
- 18 In October 2004, Clusters was closed after CMS (the federal Medicaid Agency) cited Babcock for Immediate Jeopardy due to inadequate staffing, understaffing, failure to conduct thorough investigations and failure to protect residents from physical harm at that facility
- 19 Edward continued to be subjected to neglect and unexplained injuries while at Kensington and at the Babcock Center workshop he attended and Kensington was cited by the South Carolina Department of Health and Environmental Control for a Violation of Life Safety Code on or about November 23, 2004
- 20 In January of 2005, Kensington was cited by Carolina Medical Review for failure to meet federal standards of participation in the Medicaid program and the Director of SCDHHS notified Judy Johnson, Stanley Butkus and CMS of these deficits
- 21 On March 8, 2005, the South Carolina Department of Health and Environmental Control (SCDHEC) found that the deficiencies cited on November 23, 2004 had not been corrected and Kensington was decertified on April 29, 2005

22 On or about May 27, 2005, Edward was found in his room at Kensington to have a 4 cm
"laceration on the undersurface of his penis" with blood oozing from the wound

23 The injury required six or more stitches to repair and Edward was returned to Kensington
from the hospital instead of being taken to his mother's home as had been planned before
the injury

24 Babcock Center failed to make a timely report of this or other injuries to the Ombudsman
or to law enforcement

25 On June 6, 7 and 8, Babcock Center refused to admit a court-appointed visitor into the
facility to examine Edward and to report back to the Court

26 On June 9, 2007, the Richland County Probate Court issued an emergency temporary
order authorizing Edward's mother to take physical custody of him and to determine his
placement

27 On June 10, 2005, officials at DDSN and Babcock refused to allow Edward's guardian to
remove him from Kensington so that she could provide services for him at home

28 Edward was finally taken into the custody of his mother after law enforcement was called
and the probate judge became involved in securing his release from Kensington

29 Babcock Center and its officials failed to investigate this and other injuries and failed to
protect Edward from harm

30 After Edward was removed from the Babcock Center by his mother, Defendants
conspired to keep Edward's mother from being appointed as his permanent guardian

31 Defendants have subsequently denied services to Edward as a reprisal for his mother
reporting abuse and neglect and removing him from the custody of DDSN

PLAINTIFF'S CLAIMS

FOR A FIRST CAUSE OF ACTION

NEGLIGENCE

- 32 Plaintiff restates and realleges all of the allegations set out above in paragraphs 1 through
31 as if fully set forth herein
- 33 Defendant Babcock Center, Judy Johnson, its director, Craig Stoxen and Sue Slater,
members of the Babcock Center Board of Directors and Tonya Bradford, Babcock
Center's consumer advocate, failed to exercise due care in the provision of services to
Edward and the investigation of injuries after the incident which occurred on or about
May 27, 2007
- 34 All Defendants failed to protect Edward from harm prior to and after the incident which
occurred on May 27, 2007
- 35 All Defendants failed to exercise due care in providing for the training of staff at the
Babcock Center before and after this incident,
- 36 All Defendants failed to exercise due care in protecting Edward from harm and failed to
hold the Babcock Center and its management accountable for protecting the health and
welfare of Edward Mims both before and after this incident
- 37 Defendant the South Carolina Department of Health and Human Services failed to assure
the health and safety of Edward Mims at all times when he was in receiving ICF/MR
services
- 38 All Defendants failed to provide services necessary to maintain the health and safety of a
vulnerable adult, as mandated in the Omnibus Adult Protection Act, S C Code § 43-35 5,
et seq , the Medicaid Act and the common law duty of care of the Babcock Center and
DDSN

39 Plaintiff requests actual and punitive damages in an appropriate amount
40 Plaintiff requests legal fees and costs pursuant to 42 U S C § 1983 for violation of
federal law

FOR A SECOND CAUSE OF ACTION

VIOLATION OF 1396a(a)(8) and 1396a(a)(23) and 1983

41 Plaintiff restates and realleges all of the allegations set out above in paragraphs 1 through
40 as if fully set forth herein
42 Defendants have failed to provide Plaintiff with requested services with reasonable
promptness from a provider chosen by Plaintiff
43 Plaintiff requests an order providing Plaintiff injunctive relief requiring Defendants to
provide Plaintiff with services with reasonable promptness from a qualified Medicaid
provider chosen by Plaintiff
44 Plaintiff requests legal fees and costs as provided by 42 U S C § 1983 for violation of
Plaintiff's rights under the Medicaid Act

FOR A THIRD CAUSE OF ACTION

VIOLATION OF DUE PROCESS RIGHTS OF PLAINTIFF

45 Plaintiff restates and realleges all of the allegations set out above in paragraphs 1 through
44 as if fully set forth herein
46 Defendants have violated Plaintiff's right to a fair hearing and a final decision to be
provided within ninety days, causing Plaintiff to incur legal expenses and costs to
exercise his constitutional right to due process
47 Defendants have violated Plaintiff's due process rights under the United States
Constitution

48 Plaintiff requests injunctive relief and payment of costs and legal fees pursuant to 42
U S C § 1983

FOR A FOURTH CAUSE OF ACTION
VIOLATION OF SOUTH CAROLINA CODE OF LAWS § 44-81-1 et seq AND FEDERAL
LAWS PROTECTING DISABLED PERSONS

49 Plaintiff restates and realleges all of the allegations set out above in paragraphs 1 through
48 as if fully set forth herein

50 Defendants have violated Plaintiff's rights to be free from retaliation as provided in the
South Carolina Bill of Rights of Long Term Care Residents contained at South Carolina
Code of Laws §§ 44 81-10 and 70 as well as federal laws including 42 U S C §§ 13951-
3(c)(1)(A)(vi), 1396r(c)(1)(A)(vi) and 42 C F R 483 10(f)

51 Defendants violated 42 U S C §§ 13951-3(c)(1)(C), 1396r(c)(1)(C) and 42 C F R
483 10(a)(3) which require the Defendants to recognize the rights of a person appointed
by State law to act on the behalf of an incompetent person

52 As a result of the violation of these rights by the Defendant, Plaintiff has suffered
physical and emotional injuries

53 Plaintiff requests actual and punitive damages in an appropriate amount

54 Plaintiff also requests injunctive relief and payment of costs and legal fees pursuant to 42
U S C § 1983

PRAYER FOR RELIEF

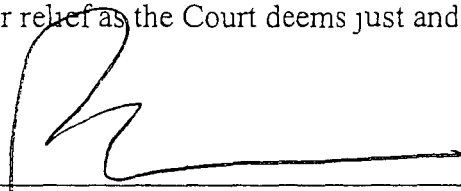
WHEREFORE, Plaintiff prays unto the Court for the following relief

A Actual and punitive damages in an appropriate amount

B Payment of legal fees and costs pursuant to 42 U S C § 1983

C Injunctive relief to provide Plaintiff services with reasonable promptness from providers chosen by Plaintiff

D Such other and further relief as the Court deems just and proper



Patricia L. Harrison
Attorney for Plaintiff
611 Holly Street
Columbia, South Carolina 29205
(803) 256-2017

May 29, 2007
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

Edward Mims by and through his
legal guardian, Margaret Mims,
Plaintiff)

AMENDED COMPLAINT

vs)

2007 CP 4003365

Babcock Center, Inc , Judy Johnson,
the South Carolina Department of
Disabilities and Special Needs,
Kath Lacy and Stanley Butkus,
Defendants)

(Jury Trial Demanded)

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BAPBA77A 4 SC011
CCC & GS

The Plaintiff, complaining of the Defendants, alleges as follows

PARTIES

- 1 Plaintiff, Edward Mims is a resident of Richland County who has severe mental and physical disabilities, including profound mental retardation, which have existed from birth and are lifelong Plaintiff is unable to speak, but he makes squawking sounds when he is in distress He is incontinent and requires close supervision to prevent choking
- 2 This complaint is brought on behalf of Edward Mims by Margaret Mims, who is the natural parent and the duly appointed guardian for Edward Mims
- 3 The South Carolina Department of Disabilities and Special Needs (SCDDSN) is the state agency responsible for the administration and oversight of the MR/RD Medicaid waiver and ICF/MR Medicaid programs

EXHIBIT

B

tabbles

which provide services to persons who have mental retardation and other disabilities

- 4 The Babcock Center, Inc is a private corporation which receives state, federal and private funds to provide services to persons who have mental retardation and related disabilities
- 5 The Babcock Center has provided these services to Plaintiff in Richland County and Lexington County, however the most substantial part of the alleged acts giving rise to the causes of action herein occurred in Richland County
- 6 Individual Defendants Kathi Lacy and Stanley Butkus are employees of the South Carolina Department of Disabilities and Special Needs
- 7 Defendant Judy Johnson is the Director of the Babcock Center, Inc

JURISDICTION AND VENUE

- 8 Plaintiff brings this action pursuant to South Carolina Code §§ 15-15-10, 15-53-20, 15-77-50, 15-78-10, 43-33-530, 42 U S C §§ 1983, 1985, 1988, the South Carolina Constitution, the United States Constitution, the Americans with Disabilities Act, the Rehabilitation Act and the common law of South Carolina
- 9 Venue is in Richland County where the most substantial part of the alleged

acts giving rise to the causes of action occurred

FACTUAL BACKGROUND

- 10 Plaintiff was admitted to a Babcock Center residential facility in 1999 when his mother became ill and was temporarily unable to provide for his care
- 11 In accepting Plaintiff as a patient and resident, Babcock Center and SCDDSN undertook a duty and responsibility of providing care, treatment and services for Plaintiff and had the duty to exercise reasonable care in supervising Plaintiff and providing appropriate oversight, care and treatment to him
- 12 Further, Babcock Center, as the caregiver for a vulnerable adult, had the duty to provide the services necessary to maintain the health and safety of the vulnerable adult
- 13 Soon after Plaintiff was admitted to the Babcock Center, he began to be subjected to physical assaults and batteries which resulted in physical injuries and psychological abuse to Plaintiff
- 14 Employees of the Babcock Center, Kathi Lacy, Stanley Butkus and other employees of the SCDDSN were aware of the systemic abuse, neglect and exploitation of clients living in Babcock Center facilities
- 15 SCDDSN officials failed to report these incidents of abuse, neglect and

exploitation to the appropriate authorities and they have failed to take necessary action to investigate reports of abuse and neglect

- 16 When Plaintiff's mother complained of the treatment Plaintiff was receiving, as a reprisal, Babcock Center employees and employees of SCDDSN accused his mother of neglecting and/or abusing Plaintiff at home
- 17 The Defendants have established a pattern and practice of bringing reprisals against parents who complain about services provided by the Babcock Center
- 18 As a reprisal for making these reports to law enforcement, the Babcock Center and DDSN terminated Plaintiff's week-end home visits and falsely accused his mother of neglect
- 19 Plaintiff was never injured during his week-end visits to his home, but he experienced repeated injuries while living in Babcock Center facilities
- 20 When Plaintiff's mother reported to the Office of the South Carolina Attorney General that Plaintiff was being assaulted at Clusters employees of the Babcock Center and SCDDSN caused Plaintiff to be involuntarily committed to the custody of the Department
- 21 Defendants threatened Plaintiff's mother that she would not be able to see

her son if she contested the involuntary commitment

- 22 Employees of the Babcock Center and SCDDSN falsely informed the Probate Court and the court-appointed guardian ad litem that Plaintiff's mother was neglecting him and that she was unable to care for Plaintiff in her home
- 23 Despite these reprisals, Plaintiff's mother persisted in having this crime investigated and a Babcock Center employee confessed to beating Plaintiff
- 24 After this conviction, the Babcock Center did not advise Plaintiff's mother that her allegations had been substantiated and DDSN continued to refuse the requests of Plaintiff's mother that he be released back into his mother's custody and control
- 25 On or about December 16, 2001, Plaintiff was again beaten at the Babcock Center and his mother attempted to secure his release from the Babcock Center
- 26 SCDDSN sent a letter on December 27, 2001 to Plaintiff's mother stating "We understand that you wish it were possible for him to live at home again. All of us agree that one single person is not enough people to

provide care for Edward. It is impossible because of his conditions and the fact that several different people have to be awake and around him all the time."

27 On or about January 24, 2002, Plaintiff was repeatedly beaten at Clusters by another resident with a belt, suffering abrasions and contusions requiring treatment in the emergency room.

28 In 2002, having assumed custody and control of Plaintiff, SCDDSN transferred him to Kensington ICF/MR, a nursing facility which was also operated by the Babcock Center. Plaintiff continued to experience unexplained injuries and behavioral signs indicating that he was being abused.

29 On or about July 27, 2004, Plaintiff and his bed were found to be infested with ants and he was treated at the emergency room for "ant bites all over," however, his mother was not informed that his room at Kensington had become infested with ants.

30 On October 13, 2004, CMS, the Federal Medicaid Agency, cited the Babcock Center for Immediate Jeopardy at Kensington after finding conditions there that threatened the life and safety of clients residing there.

31 At that time, CMS cited Babcock Center for posing a threat to the health

and safety of clients living at Kensington due to inadequate training, understaffing, failure to conduct thorough investigations and failure to take appropriate actions to assure client protections

- 32 During the last year that Plaintiff was at Kensington, the facility received additional Immediate Jeopardy citations for violation of health and safety standards which placed Plaintiff and other residents at risk of serious harm
- 33 According to SCDDSN, during fiscal year 2004, the rate of substantiated cases of abuse, neglect and exploitation at the Babcock Center was four times the state average
- 34 During this time, CMS and the South Carolina Department of Health and Human Services closed Clusters, the facility where Plaintiff had been forced to live during the first years of his involuntary confinement, for violation of health and safety standards
- 35 Plaintiff continued to be subjected to neglect and unsubstantiated injuries while at Kensington and at the Babcock Center workshop he attended during the daytime hours
- 36 In January of 2005, Carolina Medical Review reported that Babcock Center failed to meet federal standards for participant in the Medicaid program at Kensington and other facilities under its control

- 37 Defendants Johnson, Butkus and Lacy and were advised of these violations
and deficits and failed to take appropriate action to protect the health and
well being of Plaintiff and other residents
- 38 On March 8, 2005, the South Carolina Department of Health and
Environmental Control (SCDHEC) determined that violations previously
cited at Kensington had not been corrected and the facility was decertified
on April 29, 2005
- 39 On or about May 27, 2005 Plaintiff was found in his room at Kensington
with a 4 cm laceration on his penis which was not self inflicted
- 40 This injury required six or more stitches to repair and Plaintiff was returned
to Kensington, a decertified facility, from the hospital instead of being taken
immediately to his mother's home
- 41 Defendant Johnson and the Babcock Center failed to make a timely report to
law enforcement and the State Ombudsman of this sexual assault
- 42 Between the time that SCDDSN assumed responsibility for the involuntary
commitment of Plaintiff to the agency's care and custody and the injury
which occurred on or about May 27, 2005, no one at the agency monitored
the condition of Plaintiff
- 43 Upon information and belief, Defendants Lacy and Butkus were informed of

this assault and they failed to make appropriate reports to law enforcement or to thoroughly investigate the incident

44 On June 6, 7, and 8, 2005, the Babcock Center refused to allow the court-appointed Visitor into Kensington to examine Plaintiff as ordered by the Probate Court

45 Upon information and belief, Defendant Johnson was aware of the attempts made by the court-appointed Visitor to examine the Plaintiff and she instructed Babcock Center staff not to allow the Visitor into the facility

46 On June 9 2007, the Richland County Probate Court issued an emergency order authorizing Plaintiff's mother to take physical custody of Plaintiff

47 On June 10, 2005, officials at SCDDSN and the Babcock Center refused to allow Plaintiff's mother to remove him from the facility

48 The Babcock Center and SCDDSN failed to adequately investigate the report that Plaintiff had been sexually assaulted at Kensington

49 The Babcock Center and SCDDSN and the individual Defendants failed to investigate this and other injuries to Plaintiff and violated their duty of care to protect Plaintiff from harm

50 After Plaintiff's mother finally succeeded in removing him from Kensington, the Defendants attempted to obstruct the proceedings for the

appointment of a guardian

- 51 The individual Defendants entered into a conspiracy to deprive Plaintiff of his civil rights and his right to receive services
- 52 As a reprisal, SCDDSN and Defendant Lacy denied Plaintiff's request for adult health care services, requiring Plaintiff to appeal eligibility for these services
- 53 During the time Plaintiff was denied these services, the Babcock Center was allowed to retain the funding that was allocated to Plaintiff for these services
- 54 Plaintiff's guardian, through her legal representative, repeatedly requested that Plaintiff's Medicaid funding be moved from the Babcock Center but SCDDSN continued to pay the Babcock Center even when services were not being provided by the Babcock Center
- 55 SCDDSN has allowed the Babcock Center to pay inadequate rates to respite caregivers, while requiring higher rates of pay to caregivers working in facilities operated by the Babcock Center
- 56 SCDDSN allows the Babcock Center to retain funds which are provided for these in home services when families are unable to locate caregivers due to inadequate payment for services

- 57 Upon information and belief, SCDDSN and the Babcock Center failed to pay fica taxes of respite and companion caregivers while paying these taxes for caregivers working at facilities operated by the Babcock Center
- 58 Upon information and belief, SCDDSN and the Babcock Center pays in-home caregivers lower wages and requires these caregivers to pay for background checks, driving reports, TB tests and other prerequisites of employment which are paid by the Babcock Center for employees who provide services in more restrictive settings
- 59 Upon information and belief, the Babcock Center pays for employees who work in more restrictive settings to attend mandatory training, but does not pay for hours spent in mandatory training of respite and adult companion caregivers
- 60 Through these practices, Defendants have administered the MR/RD Medicaid waiver program so as to force individuals who have disabilities into more restrictive residential and congregate day programs in violation of the Americans with Disabilities Act
- 61 Defendants have charged Plaintiff for services in excess of the cost of those services
- 62 Defendants have received payments for services which failed to meet

established standards or the needs of Plaintiff to receive treatment in the least restrictive setting

FOR A FIRST CAUSE OF ACTION
VIOLATION OF 42 U S C §§ 1983 and 1988

63 Each and every allegation above, not inconsistent herewith, is realleged in full as if set forth below

64 Individual Defendants Lacy, Butkus and Johnson, in their individual capacities, acted, as alleged herein, under color of South Carolina and federal statutes, ordinances, regulations, customs or usage

65 Defendant SCDDSN failed to monitor Plaintiff's condition and treatment needs after involuntarily committing him to the custody of the State

66 Through their acts, the individual Defendants, in their individual capacities, subjected Plaintiff or caused him to be subjected to deprivation of his rights, privileges or immunities secured by the Constitution and laws of the United States, which include, but are not limited to, the right to liberty and the pursuit of happiness, the right to equal protection of the laws and the right to be secure in one's person and property against unreasonable seizure

67 Through their acts, the individual Defendants, in their individual capacities violated Plaintiff's rights granted under the Americans with Disabilities Act

68 The acts of the individual Defendants that deprived Plaintiff of his rights,
privileges and immunities secured by the Constitution or the laws of the
United States, proximately caused great harm to Plaintiff for which he is
entitled to recover damages

69 In violating Plaintiff's federally-protected rights, individual Defendants
Johnson, Butkus and Lacy were motivated by evil motives and intent and
showed reckless and callous indifference to the federally protected rights of
Plaintiff, therefore the Plaintiff is entitled to recover punitive damages

70 The Plaintiff is entitled to recover reasonable attorney's fees and expenses
of this action in accordance with 42 U S C § 1988

FOR A SECOND CAUSE OF ACTION
VIOLATION UNDER 42 U S C §§ 1985 and 1988

71 Each and every allegation above, not inconsistent herewith, is realleged in
full as if set forth below

72 Individual Defendants, in their individual capacities, entered into a
conspiracy

73 The purpose of this conspiracy was to deprive, either directly or indirectly,
Plaintiff of services in violation of the equal protection of the Constitution
or laws of the United States or of equal privileges and immunities under the
Constitution or laws of the United States

74 The individual Defendants' acts in furtherance of this conspiracy injured
Plaintiff in his person and deprived him of his rights, privileges or
immunities as a citizen of the United States for which the Plaintiff is entitled
to recover actual damages

75 In injuring Plaintiff in his person and in depriving him of his rights,
privileges or immunities as a citizen of the United States, the individual
Defendants were motivated by evil motives and intent and showed reckless
and callous indifference to Plaintiff's federally-protected rights, therefore
the Plaintiff is entitled to recover punitive damages

76 The Plaintiff is entitled to recover the reasonable attorney's fees and
expenses of this action in accordance with 42 U S C § 1988

77 Plaintiff demands a trial by jury

FOR A THIRD CAUSE OF ACTION
NEGLIGENT SUPERVISION

78 Each and every allegation above, not inconsistent herewith, is realleged in
full as if set forth below

79 The Defendants owed Plaintiff a duty of protecting the health and welfare of
Plaintiff

80 The Defendants, through the acts of individual Defendants and the officers, agents and employees of the agency and corporate Defendants, breached their duty to Plaintiff and were negligent, negligent *per se*, grossly negligent, careless, reckless, wilful and wanton in the following particulars, with each subparagraph sufficient to support the relief sought

- a In failing to provide proper supervision to protect Plaintiff from assault, battery and sexual assault,
- b In failing to provide supervision to protect Plaintiff from injury,
- c In failing to properly monitor Plaintiff's condition and treatment needs after initiating involuntary commitment proceedings,
- d In failing to provide adequate staffing needed to assure the health and welfare of Plaintiff and other residents,
- e In failing to thoroughly investigate reports of abuse, neglect and exploitation of Plaintiff and other residents at his facility,
- f In failing to discharge Plaintiff to the care of his mother,
- g In failing to provide services in the least restrictive setting,
- h In obstructing Plaintiff's discharge from the Babcock Center,
- i In failing to report incidents which a reasonable person would suspect might have resulted from abuse or neglect,

j In obstructing the attempts of Plaintiff's guardian to establish the guardianship,

k In providing false and misleading information to the Probate Courts in order to prevent his discharge from the Babcock Center and the enforcement of Plaintiff's civil rights

81 Such negligence, gross negligence carelessness, recklessness, wilful and wanton conduct on the part of the Defendants proximately caused injury to Plaintiff for which the Plaintiff is entitled to recover actual and punitive damages attorney fees, expert witness fees, costs and expenses

FOR A FOURTH CAUSE OF ACTION
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT
AND THE REHABILITATION ACT

82 Each and every allegation above, not inconsistent herewith, is realleged in full as if set forth below

83 Defendants Johnson, Lacy and Butkus and SCDDSN have not provided Plaintiff with needed services in the most integrated setting appropriate to the needs of Plaintiff and have thereby violated the Rehabilitation Act and Americans with Disabilities Act

84 Defendant DDSN has operated its programs in such a way as to prevent Plaintiff and other disabled persons from remaining in their homes by

failing to provide payment to caregivers of home-based services which is commensurate with funding provided for institutional services

85 Defendants' official practices have caused Plaintiff to be unnecessarily segregated and at risk of returning to an institution operated by the Defendants where Plaintiff has suffered serious harm and threats of harm

86 Defendants SCDDSN, the Babcock Center, Johnson, Butkus and Lacy have operated these programs so as to keep its institutions and workshops full

87 Providing needed services to Plaintiff would not fundamentally alter the nature of the services, programs or activities of the State

88 These violations of federal law are subject to repetition yet they have evaded review

89 Plaintiff is entitled to injunctive relief and to recover for damages, including legal fees, expert fees, other litigation and court costs and such other damages including punitive damages, occasioned by such deprivation of services

FOR A FIFTH CAUSE OF ACTION
UNJUST ENRICHMENT

90 Each and every allegation above, not inconsistent herewith, is realleged in full as if set forth below

91 The Defendants have received payment for staffing which was not provided

to Plaintiff

92 These Defendants received payment for treatment which was not provided
in a safe and effective manner

93 The Defendants, Judy Johnson the Babcock Center, Inc and SCDDSN
have realized a benefit from the payments made for these services

94 It would be unjust and inequitable to allow the Defendants Judy Johnson,
the Babcock Center, Inc and SCDDSN to keep the payments which have
been charged to Plaintiff

95 Plaintiff is entitled to recover for damages, including legal fees, expert fees,
other litigation and court costs and such other damages, including punitive
damages, occasioned by Defendants' unjust enrichment

DAMAGES

96 As the direct and proximate result of Defendants acts and omissions set
forth above, Plaintiff has experienced conscious pain and suffering and
severe emotional distress

97 Plaintiff has been deprived of needed services and has been charged with
the costs of services which have not been provided, have been
inappropriately and negligently provided or have been overcharged

98 Plaintiff has been deprived of services in the least restrictive environment

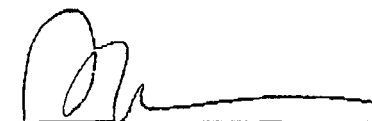
99 Plaintiff has experienced a violation of his civil, constitutional and statutory
rights and is entitled to attorney fees, costs, expenses

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays unto the Court for the following relief

- 100 Actual damages in an appropriate amount
- 101 Punitive damages in an appropriate amount
- 102 An order requiring Defendants to provide services in the least restrictive
environment appropriate to the needs of the Plaintiff
- 103 An order prohibiting the State from charging Plaintiff for services
- 104 Attorney fees, expert witness fees, costs and expenses
- 105 Such other and further relief as the Court deems just and proper

BY



Patricia L. Harrison
S C Bar No 11309
Attorney for Plaintiff
611 Holly Street
Columbia, South Carolina 29205
(803) 256 2017

May 7, 2008

Attorney for Plaintiff

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 2007 CP 4003365

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondent

AMENDED NOTICE OF APPEAL

Edward Mims appeals the order of Honorable Joseph M Strickland dated February 8, 2010, which was filed on February 9, 2010 Appellant received written notice of entry of this order on February 11, 2010

March 15, 2010



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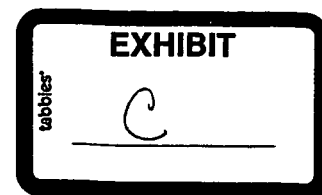
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Attorney for S C Dept of
Special Needs, Kathi Lacy,
Stanley Butkus

Attorney for Babcock Center, Inc
Judy Johnson



APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 2007 CP 4003365

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondent

PROOF OF SERVICE

I, Patricia L Harrison, attorney for Appellant, certify that I have served the *Amended Notice of Appeal* in the above captioned case on the attorneys for the Defendants by US Mail with sufficient postage affixed on Mar 17, 2010

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Richland Co Clerk of Court
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March 15, 2010



Patricia L Harrison
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plh cola@att net
Attorney for Appellant

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO 2007CP4003365

IN THE COURT OF COMMON PLEAS

Margaret Mims

vs

Babcock Center Inc

Plaintiff

Defendant

CHECK ONE

- ☐ JURY VERDICT This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON) ☐ Rule 12(b), SCRPC ☐ Rule 41(a), SCRPC (Vol Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON) ☐ Rule 40(j) SCRPC ☐ Bankruptcy
- ☐ Binding arbitration subject to right to restore to confirm, vacate or modify arbitration award,
☐ Other _____

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED

☒ See attached order,☐ Statement of Judgment by the Court

Dated at Columbia, South Carolina, this _____ day of _____, 2010

PRESIDING JUDGEThis judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this 9th day of February, 2010, to attorneys of record or to parties (when appearing pro se) as follows_____
Patricia Logan HarrisonKenneth P Woodington
Christian Stegmaier
James H Rion Jr
Leslie A. Cotter JrJoel W Collins Jr
Hugh Thomas Arthur II
William H Davidson II_____
ATTORNEY(S) FOR THE PLAINTIFF(S)_____
ATTORNEY(S) FOR THE DEFENDANT(S)Jeanette W McBride_____
Clerk of Court

RICHLAND COUNTY
FILED
2010 FEB - 8 AM 9:46
JEANETTE W MCBRIDE
C CP & GS

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Edward Mims, by and through his legal)
guardian, Margaret Mims,)

Civil Action No 07-CP-40-65

Plaintiff,)

ORDER

v)

Babcock Center, Inc , Judy Johnson, the)
South Carolina Department of)
Disabilities and Special Needs,)
Kathi Lacy and Stanley Butkus,)

Defendants)
_____)

RICHLAND COUNTY
FILED
2010 FEB -8 AM 9 21
JEANETTE W McBRIDE
CCP & CS

THIS MATTER CAME BEFORE THE COURT on Plaintiff's motion to reconsider my
order dated November 23, 2009 dismissing the above-referenced matter without prejudice

After hearing argument of counsel and reviewing this matter, the Plaintiff's motion to
reconsider is denied

AND IT IS SO ORDERED


The Honorable Joseph M Strickland

Columbia, South Carolina

Feb 8, 2010

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 2007 CP 4003365

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondent

PROOF OF SERVICE

I, Patricia L Harrison, attorney for Appellant, certify that I have served the *Notice of Appeal* in the above captioned case on the attorneys for the Defendants by hand delivery on March 10, 2010

Kenneth P Woodington, Esquire
Davidson and Lindemann
PO Box 8568
1611 Devonshire Dr
Columbia, SC 29202

Richland Co Clerk of Court
PO Box 192
Columbia, SC 29202

Christian Stegmaier, Esquire
Collins and Lacy
PO Box 12487
1330 Lady Street
Columbia, SC 29211

March 10, 2010



Patricia L Harrison
611 Holly Street
Columbia, South Carolina
(803) 256 2017
plh cola@att.net
Attorney for Appellant

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

PLEADINGS

Edward Mims, by and through his legal)
guardian, Margaret Mims,)

Civil Action No 07-CP-40-1365

Plaintiff,)

ORDER

v)

Babcock Center, Inc , Judy Johnson, the)
South Carolina Department of)
Disabilities and Special Needs,)
Kathi Lacy and Stanley Butkus,)

Defendants)

RICHLAND COUNTY
FILED
2009 NOV 23 AM 9.03
KATHLEEN W McBRIDE
C C P & G S

THIS MATTER CAME BEFORE THE COURT pursuant to notice of motion and motion to reconsider the Court's previous Order denying the Defendants' motion to dismiss this action. All Defendants have joined in the original motion to dismiss and in this motion to reconsider.

A hearing was held on the original motions on March 30, 2009 with all parties in attendance whereupon the Defendants requested an Order dismissing this action pursuant to Rules (12)(b)(1), (b)(2), (b)(4), and (b)(5) of the South Carolina Rules of Civil Procedure. At this hearing the Honorable Joseph M. Strickland denied the Defendants' motion to dismiss the action, and later signed an order to this effect prepared by Plaintiff's Attorney Patricia Harrison on June 3, 2009. Thereafter, Defendants filed a motion to reconsider on June 15, 2009.

At the August 31 hearing on the Defendants' motion to reconsider, the Court clarified that it had denied the Defendants' request to dismiss the action based on judicial economy, as the Plaintiff may re file his Complaint. At this time the Court heard additional argument by all parties. While a Court decision regarding the applicable statutes of limitations is premature at

this time, the Court did hear argument regarding the possible effect of this motion on the applicable statutes of limitations

After hearing the arguments made by defense counsel and for the reasons discussed below, the Defendants' motion is granted

Plaintiff filed his initial Summons and Complaint in this Court on May 27, 2007, receiving case number 07-CP-40-3365. This Complaint named as Defendants the Babcock Center, Dr. Judy Johnson, Tonya Bradford, Craig Stoxen, Sue Slater, Stanley Butkus, Susan Bowling, and the South Carolina Department of Health and Human Services. The Plaintiff did not serve that Summons and Complaint on any Defendants named in that action. Almost a year later, on May 9, 2008, Plaintiff filed a Summons and Amended Complaint under the same file number. This Amended Complaint changed the named Defendants to include only the Babcock Center, Dr. Judy Johnson and Stanley Butkus and to add Defendants Kathi Lacy and the South Carolina Department of Disabilities and Special Needs. The Plaintiff served the Summons and Amended Complaint bearing the 2007 civil action number on these Defendants on or about May 12, 2008.

Neither the original Complaint nor the Amended Complaint was served within 120 days of the filing of action 07-CP-40-3365 in May 2007. The Plaintiff did not serve any Defendants until almost an entire year after filing in May 2008.

The original version of Rule 3 of the South Carolina Rules of Civil Procedure stated that "a civil action is commenced by filing and service of a summons and complaint." This language was accompanied by section (b), providing for the tolling¹ of a statute of limitations so long as actual service is accomplished with a "reasonable time" after filing. In 2004 this Rule was amended as

¹ Section (b) of the original rule was entitled "Commencement when Defendant Absent." In *Garner v. Houck*, 312 S.C. 481, 435 S.E.2d 847 (1993), the Court held that the title and headings should not be used in interpreting or limiting the meaning of text, and that the Rule was not limited to absent defendants. Based on this Court decision, the heading of section (b) was changed to read "Tolling of Statute of Limitations."

follows “[a] civil action is commenced when the summons and complaint are filed with the clerk of court if” (1) the summons and complaint are served within the statute of limitations, or (2) “if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing” SCRPC Rule 3 (Amended 2004). The official note to this Amendment states these changes were intended to reflect the legislative intent expressed in § 15-3-20. See SCRPC Rule 3, Note to 2004 Amendment. It seems clear that the Rule continues to address a tolling period for a statute of limitations and has adopted the 120 day limit provided in § 15-3-20 as a more specific limit for what a “reasonable time” for service would be for the purposes of tolling.

The legislative intent regarding the commencement of a civil action is unequivocally clarified in South Carolina Code Section 15-3-20. This section provides that

(A) Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute

(B) A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing

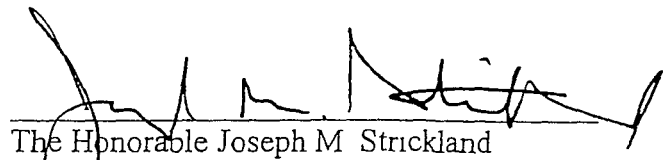
S.C. Code Ann. § 15-3-20 (emphasis added). “If a statute’s language is plain, unambiguous, and conveys a clear meaning ‘the rules of statutory interpretation are not needed and the court has no right to impose another meaning.’” *Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). Actual service was not accomplished on any Defendants within 120 days after filing of the 07 CP-40-3365 action in May, 2007. Therefore, based on the plain, unambiguous language of § 15-3-20, a civil action was not commenced in accordance with the South Carolina Rules of Civil Procedure.

As a result of the Plaintiff's failure to accomplish service within 120 days and commence the civil action, there was no suit in existence in which an Amended Complaint could be filed. Therefore, the filing and service of the Plaintiff's Summons and Amended Complaint in May 2008 bearing case action number 07-CP-40-3365 constituted a legal nullity. Because service of the original Summons and Complaint was never attempted, and because service of the second Summons and Amended Complaint were ineffective, this case must be dismissed for insufficiency of process under Rule 12(b)(4) and insufficiency of service of process under Rule 12(b)(5).

As an additional result of the Plaintiff's failure to accomplish service within 120 days and properly commence a civil action, subject matter and personal jurisdiction have not properly attached, and as such this case is also being dismissed under Rule 12(b)(1) and Rule 12(b)(2). This Court finds that the Plaintiff has failed to comply with the Rules of Civil Procedure in his attempt to commence a civil action. This failure to prosecute the case additionally justifies dismissal of this action. SCRCF Rule 41(b).

Based on the foregoing discussion, this Court **GRANTS** the Defendants' motion to reconsider and dismisses this action without prejudice.

AND IT IS SO ORDERED


The Honorable Joseph M. Strickland
Special Circuit Court Judge

Columbia, South Carolina

~~November~~
~~September~~ 23, 2009

ATTACHMENT

7 name of plaintiff's attorney

- Prepare EDS for transmission to Court Administration by using an "A" or "added" case action code

6 3 4 Case Jackets

As each case is opened a separate jacket should be prepared to hold all original papers associated with that case. The case number should be typed or written on the file tab, and the jackets filed in numerical order by sequential case number. The case name may also be written on the jacket.

As additional papers are filed they should be added to the case jacket, on top of previously filed papers unless local practice calls for adding papers to the end of the file; however, adding papers to the end of a case file can be time consuming.

6 3 5 Procedures for Restoring Common Pleas Cases

The following scenarios may require case restoration:

CF Case Ended by	Procedure
Ended in Error (Use Restore Date Field)	Original Case # Original Filing Date
Granted New Trial Before Appealed (Use Restore Date Field)	Original Case # Original Filing Date
Remanded from Federal Court (Use Restore Date Field)	Original Case # Original Filing Date

In all of the above-referenced situations, the **Restore Date Field** should be used to reinstate the case to the active docket. If you are unable to use the **Restore Date Field**, you must call the Data Entry Supervisor at SCJD (803-734-1800) so that the case can be manually restored. If you are simultaneously restoring and disposing of a previously disposed case, please keep in mind that the **Restore Date Field** must reflect a date that is on or before the **new Disposition Date**; otherwise an error will occur. In all instances of using the Restore Date Field, you must use an "M" (for "modified") action code to successfully retransmit the modified record.

The examples of restored cases listed below are functionally new records, even though they are related to prior cases. These types of records should be transmitted using an "A" (for "added") action code.

CP Case Ended by	Procedure
Remanded from Higher SC Court (New Record) Original Filing Date	Original Case # Suffix 'A'
Bankruptcy [not 40(j)] (New Record) Original Filing Date	Original Case # Suffix 'B'
Rule 40(j) (New Record) New Filing Date	New Case # Suffix 'R'
Ended due to Incomplete Service (New Record)	New Case # New Filing Date
Dismissed without Prejudice (New Record)	New Case # New Filing Date
Dismissed with Prejudice	May not be restored

When a case is restored after it has been in Bankruptcy status , the case will be restored using its original case number and a suffix of 'B' to designate bankruptcy and will retain the original filing date

When a case is restored after an appeal has been granted , the case will be restored using the original case number and a suffix of 'A' to designate appeal and will retain the original filing date

When a case is restored following a dismissal pursuant to Rule 40(j) which allows for a case to be restored within a year , the case receives a new case number with a suffix of 'R' . If the case is restored after a year , the case receives a new case number with no suffix . No suffix is required for those restored after a year because they are treated as a new case since the period to restore has expired

6.4 Case Updating

Between the time a case is filed with the court and the time it is set for trial , additional papers will be filed with the clerk's office . Some will simply be recorded on the EDS and placed in the case jacket . Others will require further action by the clerk , such as

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

Edward Mims

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO 2007 -CP-40- 3365

Babcock Center

DEFENDANT(S)

CHECK ONE

☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (CHECK REASON) ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Vol Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other _____

☐ **ACTION STRICKEN** (CHECK REASON) ☐ Rule 40(j) SCRPC, ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other _____

IT IS ORDERED AND ADJUDGED ☐ See attached order, ☐ Statement of Judgment by the Court

Plaintiff's Rule 59(e) motion is denied

Dated at Columbia South Carolina, this 30th day of March, 2009

[Signature]
PRESIDING JUDGE

This judgment was entered on the 30th day of March, 2009, and a copy mailed first class this 30th day of March, 2009 to attorneys of record or to parties (when appearing pro se) as follows

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]

RICHLAND COUNTY
FILED
2009 MAR 30 PM 3:03
JEANETTE W. McBRIDE
C.C.P. & G.S.

EXHIBIT

tabbies

D

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case Tracking No 2010154146

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

Edward Mims, by and through his legal
Guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
And Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

PROOF OF SERVICE

I hereby certify that I served Respondents Babcock Center, Inc and Dr
Judy Johnson's Amended Motion to Strike & Hold Deadlines in Abeyance
upon counsel of record, by placing a copy in the United States mail, postage
prepaid, to Patricia L Harrison, Esquire, 611 Holly Street, Columbia, South

Carolina 29205, and to William Davidson, Esquire, Davidson & Lindemann,
P A, Post Office Box 8568, Columbia, South Carolina 29202, on September
30, 2010

Respectfully submitted,

COLLINS & LACY, P C

By 
JOEL W COLLINS, JR
jcollins@collinsandlacy com
CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy com
AMY L NEUSCHAFER
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1330 Lady Street, Suite 601 (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (voice)
(803) 771-4484 (facsimile)

ATTORNEYS FOR RESPONDENTS
BABCOCK CENTER, INC & DR
JUDY JOHNSON

Columbia, South Carolina
September 30, 2010



Christian Stegmaier | Direct Dial 803 255 0454 | E Mail cstegmaier@collinsandlacy.com

September 30, 2010

VIA UNITED STATES MAIL

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RECEIVED
OCT 01 2010
SC Court of Appeals

RE *Edward Mims, by and through his legal guardian, Margaret Mims v Babcock Center, Inc , Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus*
Court of Appeals Tracking No 2010154146
C/A No 07-CP-40-3365
C&L File No 969-109

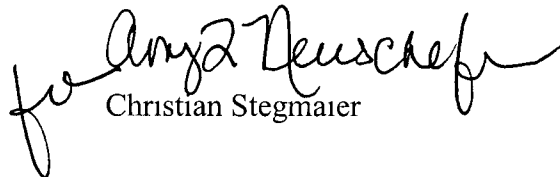
Dear Ms Gee

Please find enclosed for filing the original and eight (8) copies of Respondents Babcock Center, Inc and Dr Judy Johnson's Amended Motion to Strike & Hold Deadlines in Abeyance in the above-referenced matter. It is our understanding that a filing is not required, however, if a filing fee is required, please let us know and we will have a check forwarded immediately. Please return a filed copy of same to me in the envelope provided herewith.

By copy of this letter, I am serving a copy of same upon all counsel.

Thank you for your time and attention. Should you have any questions, please do not hesitate to contact me.

Respectfully,


Christian Stegmaier

CBS lcc
Enclosures

cc Patricia L. Harrison, Esquire
 William Davidson, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case Tracking No 2010154146

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

Edward Mims, by and through his legal
Guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

**RESPONDENTS BABCOCK CENTER, INC
AND DR JUDY JOHNSON'S MOTION TO STRIKE**

TO THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

Pursuant to Rule 209(b) and Rule 210(c), SCACR, Respondents Babcock Center, Inc
and Dr Judy Johnson respectfully move this Court for an Order striking from the record on
appeal certain matters designated by Appellant

Appellant Edward Mims, by and through his legal guardian, Margaret Mims, brought this
action against, inter alia, Respondents Babcock Center, Inc and Dr Judy Johnson, alleging
Mims suffered various personal injuries while he was a resident at Babcock Center from 2000 to

RECEIVED

SEP 28 2010

SC Court of Appeals

2005 The original Summons and Complaint were filed in May 2007, but were never served on the defendants (Ex A, Summons & Complaint) In May 2008, Appellant filed an Amended Summons and Complaint and served Respondents with these pleadings (Ex B, Amended Summons & Complaint)

The Amended Complaint ultimately was dismissed by the Honorable Joseph M Strickland, sitting as a special circuit court judge, for failure to serve the summons and complaint within 120 days of filing in compliance with Rule 3, SCRCP, and S C Code Ann § 15-3-20 Appellant has appealed the order granting Respondents' motions to dismiss and the order denying Appellant's motion for reconsideration (Ex C, Notice of Appeal) However, in his Designation of Matter, Appellant has included numerous materials that pertain only to his previous motion requesting Judge Manning be recused from hearing matters related to the instant case

- September 18, 2008 Notice of Hearing,
- Plaintiff's Motion to Request Recusal,
- Affidavit of Orin Brigg (Exhibit 9 to Plaintiff's Rule 59(e) Motion pertaining to the order concerning recusal),
- Affidavit of Amy Davenport (Exhibit 10 to Plaintiff's Rule 59(e) Motion pertaining to the order concerning recusal),
- Plaintiff's Rule 59(e) Motion dated March 25, 2009 pertaining to the order concerning recusal,
- Defendant's October 8, 2008 Letter requesting a continuance,
- Transcript of March 9, 2009 hearing wherein Plaintiff's counsel requested Judge Manning recuse himself, and
- Circuit Court order dated March 13, 2009

The Appellate Court Rules prohibit a party from including any matter in his designation of matter that is irrelevant to the appeal Rule 209(b), SCACR, 15 S C Jur Appeal and Error § 59 (“The Record on Appeal should contain only the information needed to permit the court to decide the issues on appeal, it should contain no irrelevant material”), 15 S C Jur Appeal and Error § 63 (“Matters irrelevant to the question involved in the appeal are also disallowed ”)

These matters concerning Appellant’s request that Judge Manning recuse himself have no bearing on the issue presented by this appeal—whether Judge Strickland properly granted Respondents’ motion to dismiss Appellant has not appealed the order concerning his motion for recusal ¹ In fact, although Appellant discusses Judge Manning’s alleged bias against parties who sue Respondent Babcock Center and the circumstances surrounding his motion to recuse ad nauseum in the factual recitation section of his initial brief, he never again discusses these issues or cites to the above-listed documents in the substantive sections of his brief

Appellant’s brief is devoid of argument demonstrating what impact Judge Manning’s perceived bias or his ruling on the motion to recuse had on Judge Strickland’s subsequent dismissal of the action In the absence of such analysis, the inclusion of these items in the Record on Appeal serves only the improper purpose of confusing the issues and sensationalizing

¹ The hearing on Respondents’ motions to dismiss was originally scheduled to be heard by Judge Manning At the hearing, Appellant raised the issue of her pending motion requesting Judge Manning be recused from hearing matters concerning this case on the basis of his alleged favoritism to Babcock Center Judge Manning declined to hear Respondents’ motions to dismiss and indicated he would recuse himself However, the written order issued subsequent to the hearing stated Appellant’s motion for a continuance was granted In her brief, Appellant asserts this order originally stated her motion to recuse was granted, but the reference to recusal was deleted with “white-out” and reference to a continuance was inserted

On March 25, 2009, Appellant filed a Rule 59(e) Motion seeking to alter or amend this order to reference her motion for recusal Contrary to Appellant’s contention that a final order was not issued on his request for recusal (see App Br p 3), his Rule 59(e) motion was denied by order dated March 30, 2009 (Ex D, Order Denying Rule 59(e) Motion) Appellant has not appealed the orders concerning her request for recusal

the appeal through the intimation that Appellant was treated unfairly by the Circuit Court. In addition, the inclusion of these unnecessary items adds hundreds of pages to the Record on Appeal. In short, these items are irrelevant to the issues encompassed by the orders on appeal. These matters should be stricken from the Record on Appeal and Appellant's initial brief amended to omit all references to them.

Appellant also has designated two items for inclusion in the Record on Appeal that were not presented to the Circuit Court at any time during the pendency of this case:

- Brief of Appellant dated September 22, 2005, and
- Reduction in Edward Mims Budget

The Appellate Court Rules further provide that matters not presented to the trial court are not properly included in the Record on Appeal. Rule 210(c), SCACR, see also Associates Discount Corp. v. Hiers, 248 S.C. 430, 150 S.E.2d 611 (1966), Sanders v. Allis Chalmers Mfg. Co., 235 S.C. 259, 111 S.E.2d 201 (1959), State v. Johnson, 147 S.C. 325, 145 S.E. 194 (1928), Quattlebaum v. Black, 22 S.C. 587 (1884), State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007), Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (appellant was not permitted to supplement record with deposition testimony from another action because the deposition was not presented to trial judge).

Neither the Brief of Appellant dated September 22, 2005 nor the reduction in Edward Mims' budget were presented to the circuit court in deciding any issues involved in this case. Presumably, the Brief of Appellant dated September 22, 2005 was filed in previous case in which Appellant or his counsel was involved. However, Respondents do not have a copy of this brief and it was not a part of the record in this matter. In fact, although Appellant has included this brief in his designation of matter, Respondents are unable to locate a citation to it in his initial

brief Likewise, Edward Mims' Budget was not presented to the circuit court and Respondents do not possess a copy of this item Accordingly, these items should be stricken from the Record on Appeal and all references to them omitted from Appellant's Initial Brief

Finally, Appellant cites to two items in his brief that have not been designated for inclusion in the Record on Appeal and also were not presented to the circuit court

- Order of Health and Human Services Hearing Officer dated March 7, 2006 (Case No 05-misc-034),
- ALC Brief filed March 21, 2008 in Mims v SCDHHS, Case No 07-ALJ-08-0082

Although Appellant has not listed these materials in his Designation of Matter, he does refer to them in his initial brief These items relate to other actions filed by Appellant and have no bearing on the instant appeal They were not submitted to the Circuit Court in connection with this case and have no place in the Record on Appeal Norris v Ferre, 315 S C 179, 432 S E 2d 491 (Ct App 1993) (ruling appellant was not permitted to supplement record with deposition testimony from another action because the deposition was not presented to trial judge) Therefore, these matters must be excluded from the Record on Appeal and all references to them removed from Appellant's Initial Brief

CONCLUSION

Appellant has included items in his Designation of Matter and initial brief that were not presented to the Circuit Court and are irrelevant to this appeal Pursuant to Rules 209(b) and 210(c), SCACR, Respondents respectfully request the above-listed items be stricken from the Record on Appeal and Appellant be ordered to revise his initial brief to omit all references to them

[SIGNATURE PAGE TO FOLLOW]

COLLINS & LACY, P C



By

JOEL W COLLINS, JR
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ATTORNEYS FOR RESPONDENTS
BABCOCK CENTER, INC & DR
JUDY JOHNSON

**RESPONDENTS BABCOCK CENTER,
INC AND DR JUDY JOHNSON'S
MOTION TO STRIKE**

Columbia, South Carolina
September 27, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Edward Mims, through his guardian)

Margaret Mims,)

Plaintiff)

vs)

Babcock Center, Inc , Judy Johnson,)

Tonya Bradford, Craig Stoxen, Sue Slater,)

Stanley Butkus, Susan Bowling, the)

South Carolina Department of Health)

and Human Services,)

Defendant)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

SUMMONS

BARB, J. SCOTT
CCC & GS

2007 MAY 29 PM 4 54

FILED

TO THE ABOVE NAMED DEFENDANTS AND THEIR ATTORNEYS

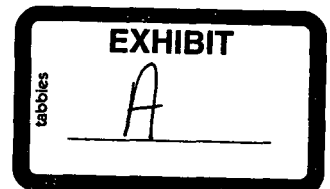
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon subscribers at 611 Holly Street, Columbia, South Carolina, 29205, within thirty days after service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

NOTICE If you fail to appear and defend, judgment by default will be rendered against you for the relief demanded in the Complaint.



Patricia L. Harrison
Attorney for Plaintiff
611 Holly Street
Columbia, South Carolina 29205
(803) 256 2017

May 29, 2007
Columbia, South Carolina



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Edward Mims, through his guardian)
Margaret Mims,)
Plaintiff)

vs)

Babcock Center, Inc , Judy Johnson,)
Tonya Bradford, Craig Stoxen, Sue Slater,)
Stanley Butkus, Susan Bowling, the)
South Carolina Department of Health)
and Human Services,)
Defendant)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

COMPLAINT

(Jury Trial Demanded)

FILED
MAR 29 PM 4 54
CLERK & G.S.

Plaintiff, complaining of the Defendants herein, would show unto the Court as follows

1 Plaintiff brings these actions pursuant to South Carolina Code §§ 15-5-90, 15-15-10, et
seq , 33-56 180, 43-35-5, et seq 42 U S C §§ 1983, 1396a(a)(8), 1396a(a)(23) other
provisions of the Medicaid Act and the Medicare Act and the common law of South
Carolina

THE PARTIES

2 Plaintiff is a person who has profound mental retardation and physical disabilities who is
a resident of Richland County, South Carolina

3 Defendant Babcock Center, Inc (hereafter "Babcock Center"), is a corporation which
does business in Richland County, South Carolina

4 Individual defendant, Judy Johnson, is the director of the Babcock Center

5 Individual defendant, Tonya Bradford, is an employee of the Babcock Center who, upon
information and belief, is the "consumer advocate" for persons served by the Babcock



Center

- 6 Individual defendants Craig Stoxen and Sue Slater are members of the Board of Directors of the Babcock Center, Inc
- 7 Individual defendant, Stanley Butkus is the State Director of the South Carolina Department of Disabilities and Special Needs (DDSN)
- 8 The South Carolina Department of Health and Human Services is the state agency which is responsible for the operation of the Medicaid program pursuant to the Medicaid Act
- 9 Individual defendant, Susan Bowling is the Director of the South Carolina Department of Health and Human Services

FACTUAL BACKGROUND

- 10 Edward Mims is a person who has profound mental retardation and severe physical disabilities who was admitted to the Babcock Center in 1999
- 11 Edward was placed at Clusters, Babcock Center's largest residential facility and when his mother complained that Edward was being beaten by a staff member at Clusters, DDSN brought an action to terminate the rights of Edward's mother, thereby involuntarily committing Edward to DDSN custody
- 12 Edward was repeatedly beaten with a belt by another resident on or about January 25, 2002 after experiencing many "unexplained" injuries which required medical treatment during the time he was a resident at Clusters
- 13 In early 2002, Edward was transferred to Kensington ICF/MR, which was also operated by the Babcock Center
- 14 While at Kensington, Edward continued to experience unexplained injuries and

behavioral signs of being fearful of harm

- 15 On or about July 27, 2004, Edward's bed and room at Kensington were found to be infested with ants and he was treated at the emergency room for "ant bites all over "
- 16 On October 13, 2004, Kensington was cited to CMS (the federal Medicaid Agency) for Immediate Jeopardy which threatened the life and health of residents there after Edward's roommate choked to death at the facility
- 17 CMS cited Kensington for posing a threat to the health and safety of clients resulting from inadequate staff training, understaffing, failure to conduct thorough investigations and failure to take appropriate action to ensure client protections
- 18 In October 2004, Clusters was closed after CMS (the federal Medicaid Agency) cited Babcock for Immediate Jeopardy due to inadequate staffing, understaffing, failure to conduct thorough investigations and failure to protect residents from physical harm at that facility
- 19 Edward continued to be subjected to neglect and unexplained injuries while at Kensington and at the Babcock Center workshop he attended and Kensington was cited by the South Carolina Department of Health and Environmental Control for a Violation of Life Safety Code on or about November 23, 2004
- 20 In January of 2005, Kensington was cited by Carolina Medical Review for failure to meet federal standards of participation in the Medicaid program and the Director of SCDHHS notified Judy Johnson, Stanley Butkus and CMS of these deficits
- 21 On March 8, 2005, the South Carolina Department of Health and Environmental Control (SCDHEC) found that the deficiencies cited on November 23, 2004 had not been corrected and Kensington was decertified on April 29, 2005

22 On or about May 27, 2005, Edward was found in his room at Kensington to have a 4 cm
‘laceration on the undersurface of his penis’ with blood oozing from the wound

23 The injury required six or more stitches to repair and Edward was returned to Kensington
from the hospital instead of being taken to his mother’s home as had been planned before
the injury

24 Babcock Center failed to make a timely report of this or other injuries to the Ombudsman
or to law enforcement

25 On June 6, 7 and 8, Babcock Center refused to admit a court-appointed visitor into the
facility to examine Edward and to report back to the Court

26 On June 9, 2007, the Richland County Probate Court issued an emergency temporary
order authorizing Edward’s mother to take physical custody of him and to determine his
placement

27 On June 10, 2005, officials at DDSN and Babcock refused to allow Edward’s guardian to
remove him from Kensington so that she could provide services for him at home

28 Edward was finally taken into the custody of his mother after law enforcement was called
and the probate judge became involved in securing his release from Kensington

29 Babcock Center and its officials failed to investigate this and other injuries and failed to
protect Edward from harm

30 After Edward was removed from the Babcock Center by his mother, Defendants
conspired to keep Edward’s mother from being appointed as his permanent guardian

31 Defendants have subsequently denied services to Edward as a reprisal for his mother
reporting abuse and neglect and removing him from the custody of DDSN

PLAINTIFF’S CLAIMS

FOR A FIRST CAUSE OF ACTION

NEGLIGENCE

32 Plaintiff restates and realleges all of the allegations set out above in paragraphs 1 through
31 as if fully set forth herein

33 Defendant Babcock Center, Judy Johnson, its director, Craig Stoxen and Sue Slater,
members of the Babcock Center Board of Directors and Tonya Bradford, Babcock
Center's consumer advocate, failed to exercise due care in the provision of services to
Edward and the investigation of injuries after the incident which occurred on or about
May 27, 2007

34 All Defendants failed to protect Edward from harm prior to and after the incident which
occurred on May 27, 2007

35 All Defendants failed to exercise due care in providing for the training of staff at the
Babcock Center before and after this incident,

36 All Defendants failed to exercise due care in protecting Edward from harm and failed to
hold the Babcock Center and its management accountable for protecting the health and
welfare of Edward Mims both before and after this incident

37 Defendant the South Carolina Department of Health and Human Services failed to assure
the health and safety of Edward Mims at all times when he was in receiving ICF/MR
services

38 All Defendants failed to provide services necessary to maintain the health and safety of a
vulnerable adult, as mandated in the Omnibus Adult Protection Act, S C Code § 43-35 5,
et seq , the Medicaid Act and the common law duty of care of the Babcock Center and
DDSN

39 Plaintiff requests actual and punitive damages in an appropriate amount
40 Plaintiff requests legal fees and costs pursuant to 42 U S C § 1983 for violation of
federal law

FOR A SECOND CAUSE OF ACTION

VIOLATION OF 1396a(a)(8) and 1396a(a)(23) and 1983

41 Plaintiff restates and realleges all of the allegations set out above in paragraphs 1 through
40 as if fully set forth herein

42 Defendants have failed to provide Plaintiff with requested services with reasonable
promptness from a provider chosen by Plaintiff

43 Plaintiff requests an order providing Plaintiff injunctive relief requiring Defendants to
provide Plaintiff with services with reasonable promptness from a qualified Medicaid
provider chosen by Plaintiff

44 Plaintiff requests legal fees and costs as provided by 42 U S C § 1983 for violation of
Plaintiff's rights under the Medicaid Act

FOR A THIRD CAUSE OF ACTION

VIOLATION OF DUE PROCESS RIGHTS OF PLAINTIFF

45 Plaintiff restates and realleges all of the allegations set out above in paragraphs 1 through
44 as if fully set forth herein

46 Defendants have violated Plaintiff's right to a fair hearing and a final decision to be
provided within ninety days, causing Plaintiff to incur legal expenses and costs to
exercise his constitutional right to due process

47 Defendants have violated Plaintiff's due process rights under the United States
Constitution

48 Plaintiff requests injunctive relief and payment of costs and legal fees pursuant to 42
U S C § 1983

FOR A FOURTH CAUSE OF ACTION

VIOLATION OF SOUTH CAROLINA CODE OF LAWS § 44-81-1 et seq AND FEDERAL
LAWS PROTECTING DISABLED PERSONS

49 Plaintiff restates and realleges all of the allegations set out above in paragraphs 1 through
48 as if fully set forth herein

50 Defendants have violated Plaintiff's rights to be free from retaliation as provided in the
South Carolina Bill of Rights of Long Term Care Residents contained at South Carolina
Code of Laws §§ 44-81-10 and 70 as well as federal laws including 42 U S C §§ 1395i
3(c)(1)(A)(vi), 1396r(c)(1)(A)(vi) and 42 C F R 483 10(f)

51 Defendants violated 42 U S C §§ 1395i-3(c)(1)(C), 1396r(c)(1)(C) and 42 C F R
483 10(a)(3) which require the Defendants to recognize the rights of a person appointed
by State law to act on the behalf of an incompetent person

52 As a result of the violation of these rights by the Defendant, Plaintiff has suffered
physical and emotional injuries

53 Plaintiff requests actual and punitive damages in an appropriate amount

54 Plaintiff also requests injunctive relief and payment of costs and legal fees pursuant to 42
U S C § 1983

PRAYER FOR RELIEF

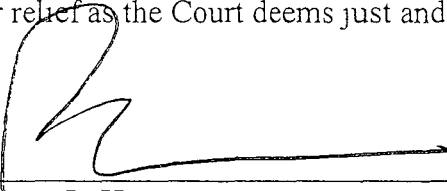
WHEREFORE, Plaintiff prays unto the Court for the following relief

A Actual and punitive damages in an appropriate amount

B Payment of legal fees and costs pursuant to 42 U S C § 1983

C Injunctive relief to provide Plaintiff services with reasonable promptness from providers chosen by Plaintiff

D Such other and further relief as the Court deems just and proper



Patricia L. Harrison
Attorney for Plaintiff
611 Holly Street
Columbia, South Carolina 29205
(803) 256 2017

May 29, 2007
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Edward Mims by and through his
legal guardian, Margaret Mims,
Plaintiff

vs

Babcock Center, Inc , Judy Johnson,
the South Carolina Department of
Disabilities and Special Needs,
Kathi Lacy and Stanley Butkus,
Defendants

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

AMENDED COMPLAINT

2007 CP 4003365

(Jury Trial Demanded)

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BAPB/TA 4 CDDN
CCC 865

The Plaintiff, complaining of the Defendants, alleges as follows

PARTIES

- 1 Plaintiff, Edward Mims is a resident of Richland County who has severe mental and physical disabilities, including profound mental retardation, which have existed from birth and are lifelong Plaintiff is unable to speak, but he makes squawking sounds when he is in distress He is incontinent and requires close supervision to prevent choking
- 2 This complaint is brought on behalf of Edward Mims by Margaret Mims, who is the natural parent and the duly appointed guardian for Edward Mims
- 3 The South Carolina Department of Disabilities and Special Needs (SCDDSN) is the state agency responsible for the administration and oversight of the MR/RD Medicaid waiver and ICF/MR Medicaid programs

EXHIBIT

B

tabbles

which provide services to persons who have mental retardation and other disabilities

4 The Babcock Center, Inc. is a private corporation which receives state, federal and private funds to provide services to persons who have mental retardation and related disabilities

5 The Babcock Center has provided these services to Plaintiff in Richland County and Lexington County, however, the most substantial part of the alleged acts giving rise to the causes of action herein occurred in Richland County

6 Individual Defendants Kathi Lacy and Stanley Butkus are employees of the South Carolina Department of Disabilities and Special Needs

7 Defendant Judy Johnson is the Director of the Babcock Center, Inc.

JURISDICTION AND VENUE

8 Plaintiff brings this action pursuant to South Carolina Code §§ 15-15-10, 15-53-20, 15-77-50, 15-78-10, 43-33-530, 42 U S C §§ 1983, 1985, 1988, the South Carolina Constitution, the United States Constitution, the Americans with Disabilities Act, the Rehabilitation Act and the common law of South Carolina

9 Venue is in Richland County where the most substantial part of the alleged

acts giving rise to the causes of action occurred

FACTUAL BACKGROUND

- 10 Plaintiff was admitted to a Babcock Center residential facility in 1999 when his mother became ill and was temporarily unable to provide for his care
- 11 In accepting Plaintiff as a patient and resident, Babcock Center and SCDDSN undertook a duty and responsibility of providing care, treatment and services for Plaintiff and had the duty to exercise reasonable care in supervising Plaintiff and providing appropriate oversight, care and treatment to him
- 12 Further, Babcock Center as the caregiver for a vulnerable adult, had the duty to provide the services necessary to maintain the health and safety of the vulnerable adult
- 13 Soon after Plaintiff was admitted to the Babcock Center, he began to be subjected to physical assaults and batteries which resulted in physical injuries and psychological abuse to Plaintiff
- 14 Employees of the Babcock Center, Kathi Lacy, Stanley Butkus and other employees of the SCDDSN were aware of the systemic abuse, neglect and exploitation of clients living in Babcock Center facilities
- 15 SCDDSN officials failed to report these incidents of abuse, neglect and

exploitation to the appropriate authorities and they have failed to take necessary action to investigate reports of abuse and neglect

- 16 When Plaintiff's mother complained of the treatment Plaintiff was receiving, as a reprisal, Babcock Center employees and employees of SCDDSN accused his mother of neglecting and/or abusing Plaintiff at home
- 17 The Defendants have established a pattern and practice of bringing reprisals against parents who complain about services provided by the Babcock Center
- 18 As a reprisal for making these reports to law enforcement, the Babcock Center and DDSN terminated Plaintiff's week-end home visits and falsely accused his mother of neglect
- 19 Plaintiff was never injured during his week-end visits to his home, but he experienced repeated injuries while living in Babcock Center facilities
- 20 When Plaintiff's mother reported to the Office of the South Carolina Attorney General that Plaintiff was being assaulted at Clusters employees of the Babcock Center and SCDDSN caused Plaintiff to be involuntarily committed to the custody of the Department
- 21 Defendants threatened Plaintiff's mother that she would not be able to see

her son if she contested the involuntary commitment

22 Employees of the Babcock Center and SCDDSN falsely informed the Probate Court and the court-appointed guardian ad litem that Plaintiff's mother was neglecting him and that she was unable to care for Plaintiff in her home

23 Despite these reprisals, Plaintiff's mother persisted in having this crime investigated and a Babcock Center employee confessed to beating Plaintiff

24 After this conviction, the Babcock Center did not advise Plaintiff's mother that her allegations had been substantiated and DDSN continued to refuse the requests of Plaintiff's mother that he be released back into his mother's custody and control

25 On or about December 16, 2001, Plaintiff was again beaten at the Babcock Center and his mother attempted to secure his release from the Babcock Center

26 SCDDSN sent a letter on December 27 2001 to Plaintiff's mother stating "We understand that you wish it were possible for him to live at home again All of us agree that one single person is not enough people to

provide care for Edward. It is impossible because of his conditions and the fact that several different people have to be awake and around him all the time.”

27 On or about January 24, 2002, Plaintiff was repeatedly beaten at Clusters by another resident with a belt, suffering abrasions and contusions requiring treatment in the emergency room.

28 In 2002, having assumed custody and control of Plaintiff SCDDSN transferred him to Kensington ICF/MR, a nursing facility which was also operated by the Babcock Center. Plaintiff continued to experience unexplained injuries and behavioral signs indicating that he was being abused.

29 On or about July 27, 2004, Plaintiff and his bed were found to be infested with ants and he was treated at the emergency room for “ant bites all over,” however, his mother was not informed that his room at Kensington had become infested with ants.

30 On October 13, 2004, CMS, the Federal Medicaid Agency, cited the Babcock Center for Immediate Jeopardy at Kensington after finding conditions there that threatened the life and safety of clients residing there.

31 At that time, CMS cited Babcock Center for posing a threat to the health

and safety of clients living at Kensington due to inadequate training, understaffing, failure to conduct thorough investigations and failure to take appropriate actions to assure client protections

32 During the last year that Plaintiff was at Kensington, the facility received additional Immediate Jeopardy citations for violation of health and safety standards which placed Plaintiff and other residents at risk of serious harm

33 According to SCDDSN, during fiscal year 2004, the rate of substantiated cases of abuse, neglect and exploitation at the Babcock Center was four times the state average

34 During this time, CMS and the South Carolina Department of Health and Human Services closed Clusters, the facility where Plaintiff had been forced to live during the first years of his involuntary confinement, for violation of health and safety standards

35 Plaintiff continued to be subjected to neglect and unsubstantiated injuries while at Kensington and at the Babcock Center workshop he attended during the daytime hours

36 In January of 2005, Carolina Medical Review reported that Babcock Center failed to meet federal standards for participant in the Medicaid program at Kensington and other facilities under its control

37 Defendants Johnson, Butkus and Lacy and were advised of these violations
and deficits and failed to take appropriate action to protect the health and
well being of Plaintiff and other residents

38 On March 8, 2005, the South Carolina Department of Health and
Environmental Control (SCDHEC) determined that violations previously
cited at Kensington had not been corrected and the facility was decertified
on April 29, 2005

39 On or about May 27, 2005, Plaintiff was found in his room at Kensington
with a 4 cm laceration on his penis which was not self inflicted

40 This injury required six or more stitches to repair and Plaintiff was returned
to Kensington, a decertified facility, from the hospital instead of being taken
immediately to his mother's home

41 Defendant Johnson and the Babcock Center failed to make a timely report to
law enforcement and the State Ombudsman of this sexual assault

42 Between the time that SCDDSN assumed responsibility for the involuntary
commitment of Plaintiff to the agency's care and custody and the injury
which occurred on or about May 27 2005, no one at the agency monitored
the condition of Plaintiff

43 Upon information and belief, Defendants Lacy and Butkus were informed of

this assault and they failed to make appropriate reports to law enforcement or to thoroughly investigate the incident

44 On June 6, 7, and 8, 2005, the Babcock Center refused to allow the court-appointed Visitor into Kensington to examine Plaintiff as ordered by the Probate Court

45 Upon information and belief, Defendant Johnson was aware of the attempts made by the court-appointed Visitor to examine the Plaintiff and she instructed Babcock Center staff not to allow the Visitor into the facility

46 On June 9 2007 the Richland County Probate Court issued an emergency order authorizing Plaintiff's mother to take physical custody of Plaintiff

47 On June 10, 2005, officials at SCDDSN and the Babcock Center refused to allow Plaintiff's mother to remove him from the facility

48 The Babcock Center and SCDDSN failed to adequately investigate the report that Plaintiff had been sexually assaulted at Kensington

49 The Babcock Center and SCDDSN and the individual Defendants failed to investigate this and other injuries to Plaintiff and violated their duty of care to protect Plaintiff from harm

50 After Plaintiff's mother finally succeeded in removing him from Kensington, the Defendants attempted to obstruct the proceedings for the

appointment of a guardian

51 The individual Defendants entered into a conspiracy to deprive Plaintiff of his civil rights and his right to receive services

52 As a reprisal, SCDDSN and Defendant Lacy denied Plaintiff's request for adult health care services, requiring Plaintiff to appeal eligibility for these services

53 During the time Plaintiff was denied these services, the Babcock Center was allowed to retain the funding that was allocated to Plaintiff for these services

54 Plaintiff's guardian, through her legal representative, repeatedly requested that Plaintiff's Medicaid funding be moved from the Babcock Center but SCDDSN continued to pay the Babcock Center even when services were not being provided by the Babcock Center

55 SCDDSN has allowed the Babcock Center to pay inadequate rates to respite caregivers, while requiring higher rates of pay to caregivers working in facilities operated by the Babcock Center

56 SCDDSN allows the Babcock Center to retain funds which are provided for these in home services when families are unable to locate caregivers due to inadequate payment for services

- 57 Upon information and belief, SCDDSN and the Babcock Center failed to pay fica taxes of respite and companion caregivers while paying these taxes for caregivers working at facilities operated by the Babcock Center
- 58 Upon information and belief, SCDDSN and the Babcock Center pays in-home caregivers lower wages and requires these caregivers to pay for background checks, driving reports, TB tests and other prerequisites of employment which are paid by the Babcock Center for employees who provide services in more restrictive settings
- 59 Upon information and belief, the Babcock Center pays for employees who work in more restrictive settings to attend mandatory training, but does not pay for hours spent in mandatory training of respite and adult companion caregivers
- 60 Through these practices, Defendants have administered the MR/RD Medicaid waiver program so as to force individuals who have disabilities into more restrictive residential and congregate day programs in violation of the Americans with Disabilities Act
- 61 Defendants have charged Plaintiff for services in excess of the cost of those services
- 62 Defendants have received payments for services which failed to meet

established standards or the needs of Plaintiff to receive treatment in the least restrictive setting

FOR A FIRST CAUSE OF ACTION
VIOLATION OF 42 U S C §§ 1983 and 1988

- 63 Each and every allegation above, not inconsistent herewith, is alleged in full as if set forth below
- 64 Individual Defendants Lacy, Butkus and Johnson, in their individual capacities, acted, as alleged herein under color of South Carolina and federal statutes, ordinances, regulations, customs or usage
- 65 Defendant SCDDSN failed to monitor Plaintiff's condition and treatment needs after involuntarily committing him to the custody of the State
- 66 Through their acts, the individual Defendants, in their individual capacities, subjected Plaintiff or caused him to be subjected to deprivation of his rights, privileges or immunities secured by the Constitution and laws of the United States, which include, but are not limited to, the right to liberty and the pursuit of happiness, the right to equal protection of the laws and the right to be secure in one's person and property against unreasonable seizure
- 67 Through their acts, the individual Defendants, in their individual capacities violated Plaintiff's rights granted under the Americans with Disabilities Act

68 The acts of the individual Defendants that deprived Plaintiff of his rights,
privileges and immunities secured by the Constitution or the laws of the
United States proximately caused great harm to Plaintiff for which he is
entitled to recover damages

69 In violating Plaintiff's federally-protected rights, individual Defendants
Johnson, Butkus and Lacy were motivated by evil motives and intent and
showed reckless and callous indifference to the federally protected rights of
Plaintiff, therefore the Plaintiff is entitled to recover punitive damages

70 The Plaintiff is entitled to recover reasonable attorney's fees and expenses
of this action in accordance with 42 U S C § 1988

FOR A SECOND CAUSE OF ACTION
VIOLATION UNDER 42 U S C §§ 1985 and 1988

71 Each and every allegation above not inconsistent herewith, is realleged in
full as if set forth below

72 Individual Defendants, in their individual capacities, entered into a
conspiracy

73 The purpose of this conspiracy was to deprive, either directly or indirectly,
Plaintiff of services in violation of the equal protection of the Constitution
or laws of the United States or of equal privileges and immunities under the
Constitution or laws of the United States

74 The individual Defendants' acts in furtherance of this conspiracy injured Plaintiff in his person and deprived him of his rights, privileges or immunities as a citizen of the United States for which the Plaintiff is entitled to recover actual damages

75 In injuring Plaintiff in his person and in depriving him of his rights, privileges or immunities as a citizen of the United States, the individual Defendants were motivated by evil motives and intent and showed reckless and callous indifference to Plaintiff's federally-protected rights, therefore the Plaintiff is entitled to recover punitive damages

76 The Plaintiff is entitled to recover the reasonable attorney's fees and expenses of this action in accordance with 42 U S C § 1988

77 Plaintiff demands a trial by jury

FOR A THIRD CAUSE OF ACTION
NEGLIGENT SUPERVISION

78 Each and every allegation above not inconsistent herewith, is realleged in full as if set forth below

79 The Defendants owed Plaintiff a duty of protecting the health and welfare of Plaintiff

80 The Defendants, through the acts of individual Defendants and the officers, agents and employees of the agency and corporate Defendants, breached their duty to Plaintiff and were negligent, negligent *per se*, grossly negligent, careless, reckless, wilful and wanton in the following particulars, with each subparagraph sufficient to support the relief sought

- a In failing to provide proper supervision to protect Plaintiff from assault, battery and sexual assault,
- b In failing to provide supervision to protect Plaintiff from injury,
- c In failing to properly monitor Plaintiff's condition and treatment needs after initiating involuntary commitment proceedings,
- d In failing to provide adequate staffing needed to assure the health and welfare of Plaintiff and other residents,
- e In failing to thoroughly investigate reports of abuse, neglect and exploitation of Plaintiff and other residents at his facility,
- f In failing to discharge Plaintiff to the care of his mother,
- g In failing to provide services in the least restrictive setting,
- h In obstructing Plaintiff's discharge from the Babcock Center,
- i In failing to report incidents which a reasonable person would suspect might have resulted from abuse or neglect,

j In obstructing the attempts of Plaintiff's guardian to establish the guardianship,

k In providing false and misleading information to the Probate Courts in order to prevent his discharge from the Babcock Center and the enforcement of Plaintiff's civil rights

81 Such negligence, gross negligence carelessness, recklessness, wilful and wanton conduct on the part of the Defendants proximately caused injury to Plaintiff for which the Plaintiff is entitled to recover actual and punitive damages attorney fees, expert witness fees, costs and expenses

FOR A FOURTH CAUSE OF ACTION
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT
AND THE REHABILITATION ACT

82 Each and every allegation above, not inconsistent herewith, is realleged in full as if set forth below

83 Defendants Johnson, Lacy and Butkus and SCDDSN have not provided Plaintiff with needed services in the most integrated setting appropriate to the needs of Plaintiff and have thereby violated the Rehabilitation Act and Americans with Disabilities Act

84 Defendant DDSN has operated its programs in such a way as to prevent Plaintiff and other disabled persons from remaining in their homes by

() failing to provide payment to caregivers of home-based services which is commensurate with funding provided for institutional services

85 Defendants' official practices have caused Plaintiff to be unnecessarily segregated and at risk of returning to an institution operated by the Defendants where Plaintiff has suffered serious harm and threats of harm

86 Defendants SCDDSN, the Babcock Center, Johnson, Butkus and Lacy have operated these programs so as to keep its institutions and workshops full

87 Providing needed services to Plaintiff would not fundamentally alter the nature of the services, programs or activities of the State

88 These violations of federal law are subject to repetition yet they have evaded review

()

89 Plaintiff is entitled to injunctive relief and to recover for damages, including legal fees, expert fees, other litigation and court costs and such other damages including punitive damages, occasioned by such deprivation of services

FOR A FIFTH CAUSE OF ACTION
UNJUST ENRICHMENT

90 Each and every allegation above, not inconsistent herewith, is realleged in full as if set forth below

91 The Defendants have received payment for staffing which was not provided

to Plaintiff

92 These Defendants received payment for treatment which was not provided
in a safe and effective manner

93 The Defendants, Judy Johnson, the Babcock Center, Inc and SCDDSN
have realized a benefit from the payments made for these services

94 It would be unjust and inequitable to allow the Defendants Judy Johnson,
the Babcock Center, Inc and SCDDSN to keep the payments which have
been charged to Plaintiff

95 Plaintiff is entitled to recover for damages, including legal fees, expert fees,
other litigation and court costs and such other damages, including punitive
damages, occasioned by Defendants' unjust enrichment

DAMAGES

96 As the direct and proximate result of Defendants acts and omissions set
forth above, Plaintiff has experienced conscious pain and suffering and
severe emotional distress

97 Plaintiff has been deprived of needed services and has been charged with
the costs of services which have not been provided, have been
inappropriately and negligently provided or have been overcharged

98 Plaintiff has been deprived of services in the least restrictive environment

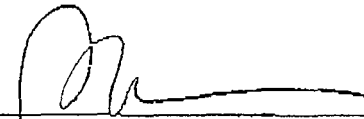
99 Plaintiff has experienced a violation of his civil, constitutional and statutory
rights and is entitled to attorney fees, costs, expenses

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays unto the Court for the following relief

- 100 Actual damages in an appropriate amount
- 101 Punitive damages in an appropriate amount
- 102 An order requiring Defendants to provide services in the least restrictive
environment appropriate to the needs of the Plaintiff
- 103 An order prohibiting the State from charging Plaintiff for services
- 104 Attorney fees, expert witness fees, costs and expenses
- 105 Such other and further relief as the Court deems just and proper

BY



Patricia L. Harrison
S C Bar No 11309
Attorney for Plaintiff
611 Holly Street
Columbia, South Carolina 29205
(803) 256 2017

May 7, 2008

Attorney for Plaintiff

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 2007 CP 4003365

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

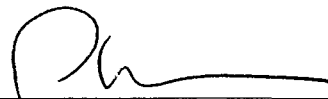
Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondent

AMENDED NOTICE OF APPEAL

Edward Mims appeals the order of Honorable Joseph M Strickland dated February 8, 2010, which was filed on February 9, 2010 Appellant received written notice of entry of this order on February 11, 2010

March 15, 2010



Patricia L Harrison
611 Holly Street
Columbia, South Carolina
(803) 256 2017
plh cola@att nct
Attorney for Appellant

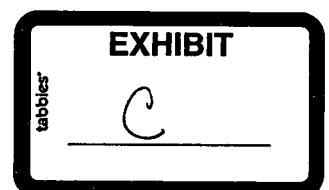
Other Counsel of Record

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PO Box 12487
Columbia, South Carolina 29211

Attorney for S C Dept of
Special Needs, Kathi Lacy,
Stanley Butkus

Attorney for Babcock Center, Inc
Judy Johnson



APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 2007 CP 4003365

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondent

PROOF OF SERVICE

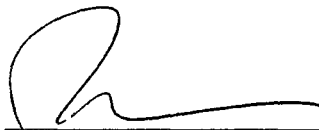
I, Patricia L Harrison, attorney for Appellant, certify that I have served the *Amended Notice of Appeal* in the above captioned case on the attorneys for the Defendants by US Mail with sufficient postage affixed on Mar 17, 2010

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Richland Co Clerk of Court
PO Box 192
Columbia, SC 29202

Christian Stegmaier, Esquire
Collins and Lacy
PO Box 12487
1330 Lady Street
Columbia, SC 29211

March 15, 2010



Patricia L Harrison
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(803) 256 2017
plh cola@att net
Attorney for Appellant

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO 2007CP4003365

Margaret Mims

vs

Babcock Center Inc

Plaintiff

Defendant

CHECK ONE

- ☐ JURY VERDICT This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON) ☐ Rule 12(b), SCRCP, ☐ Rule 41(a),
 SCRCP (Vol Nonsuit), ☐ Rule 43(k) SCRCP (Settled), ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON) ☐ Rule 40(j) SCRCP, ☐ Bankruptcy
- ☐ Binding arbitration subject to right to restore to confirm, vacate or modify arbitration award,
☐ Other _____

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED

☒ See attached order,☐ Statement of Judgment by the Court

Dated at Columbia, South Carolina, this ____ day of _____, 2010

PRESIDING JUDGEThis judgment was entered on the ____ day of _____, 2010, and a copy mailed first class this
9th day of February, 2010, to attorneys of record or to parties (when appearing pro se) as follows_____
Patricia Logan HarrisonKenneth P Woodington
Christian Stegmaier
James H Rion Jr
Leslie A. Cotter JrJoel W Collins Jr
Hugh Thomas Arthur II
William H Davidson II_____
ATTORNEY(S) FOR THE PLAINTIFF(S)_____
ATTORNEY(S) FOR THE DEFENDANT(S)Jeanette W McBride_____
Clerk of Court

2010 FEB - 08 AM 9:46
 JEANETTE W MCBRIDE
 C C P & G S
 RICHLAND COUNTY
 FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Edward Mims, by and through his legal)
guardian, Margaret Mims,)

Civil Action No 07-CP-40-65

Plaintiff,)

ORDER

v)

Babcock Center, Inc , Judy Johnson, the)
South Carolina Department of)
Disabilities and Special Needs,)
Kathi Lacy and Stanley Butkus,)

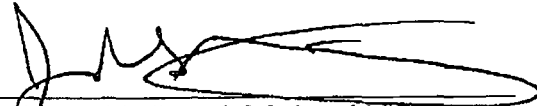
Defendants)
_____)

RICHLAND COUNTY
FILED
2010 FEB -8 AM 9 21
JEANETTE W McBRIDE
C C P & G S

THIS MATTER CAME BEFORE THE COURT on Plaintiff's motion to reconsider my
order dated November 23, 2009 dismissing the above-referenced matter without prejudice

After hearing argument of counsel and reviewing this matter, the Plaintiff's motion to
reconsider is denied

AND IT IS SO ORDERED


The Honorable Joseph M Strickland

Columbia, South Carolina

Feb 8, 2010

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 2007 CP 4003365

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondent

PROOF OF SERVICE

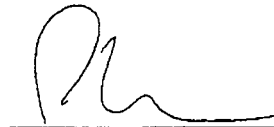
I, Patricia L. Harrison, attorney for Appellant, certify that I have served the *Notice of Appeal* in the above captioned case on the attorneys for the Defendants by hand delivery on March 10, 2010

Kenneth P. Woodington, Esquire
Davidson and Lindemann
PO Box 8568
1611 Devonshire Dr
Columbia, SC 29202

Richland Co. Clerk of Court
PO Box 192
Columbia, SC 29202

Christian Stegmaier, Esquire
Collins and Lacy
PO Box 12487
1330 Lady Street
Columbia, SC 29211

March 10, 2010



Patricia L. Harrison
611 Holly Street
Columbia, South Carolina
(803) 256 2017
plh cola@att.net
Attorney for Appellant

RECEIVED

4 2009

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

PLEADINGS

Edward Mims, by and through his legal)
guardian, Margaret Mims,)

Civil Action No 07-CP 40-3365

Plaintiff,)

ORDER

v)

Babcock Center, Inc , Judy Johnson, the)
South Carolina Department of)
Disabilities and Special Needs,)
Kathi Lacy and Stanley Butkus,)

Defendants)

2009 NOV 23 AM 9.03
CANETTE W McBRIDE
CCP & GS

RICHLAND COUNTY
FILED

THIS MATTER CAME BEFORE THE COURT pursuant to notice of motion and motion to reconsider the Court's previous Order denying the Defendants' motion to dismiss this action. All Defendants have joined in the original motion to dismiss and in this motion to reconsider.

A hearing was held on the original motions on March 30, 2009 with all parties in attendance whereupon the Defendants requested an Order dismissing this action pursuant to Rules (12)(b)(1), (b)(2), (b)(4), and (b)(5) of the South Carolina Rules of Civil Procedure. At this hearing the Honorable Joseph M. Strickland denied the Defendants' motion to dismiss the action, and later signed an order to this effect prepared by Plaintiff's Attorney Patricia Harrison on June 3, 2009. Thereafter, Defendants filed a motion to reconsider on June 15, 2009.

At the August 31 hearing on the Defendants' motion to reconsider, the Court clarified that it had denied the Defendants' request to dismiss the action based on judicial economy, as the Plaintiff may re file his Complaint. At this time the Court heard additional argument by all parties. While a Court decision regarding the applicable statutes of limitations is premature at

this time, the Court did hear argument regarding the possible effect of this motion on the applicable statutes of limitations

After hearing the arguments made by defense counsel and for the reasons discussed below, the Defendants' motion is granted

Plaintiff filed his initial Summons and Complaint in this Court on May 27, 2007, receiving case number 07-CP-40-3365. This Complaint named as Defendants the Babcock Center, Dr. Judy Johnson, Tonya Bradford, Craig Stoxen, Sue Slater, Stanley Butkus, Susan Bowling, and the South Carolina Department of Health and Human Services. The Plaintiff did not serve that Summons and Complaint on any Defendants named in that action. Almost a year later, on May 9, 2008, Plaintiff filed a Summons and Amended Complaint under the same file number. This Amended Complaint changed the named Defendants to include only the Babcock Center, Dr. Judy Johnson and Stanley Butkus and to add Defendants Kathi Lacy and the South Carolina Department of Disabilities and Special Needs. The Plaintiff served the Summons and Amended Complaint bearing the 2007 civil action number on these Defendants on or about May 12, 2008.

Neither the original Complaint nor the Amended Complaint was served within 120 days of the filing of action 07-CP-40-3365 in May 2007. The Plaintiff did not serve any Defendants until almost an entire year after filing in May 2008.

The original version of Rule 3 of the South Carolina Rules of Civil Procedure stated that "a civil action is commenced by filing and service of a summons and complaint." This language was accompanied by section (b), providing for the tolling¹ of a statute of limitations so long as actual service is accomplished with a "reasonable time" after filing. In 2004 this Rule was amended as

¹ Section (b) of the original rule was entitled "Commencement when Defendant Absent." In *Garner v. Houck*, 312 S.C. 481, 435 S.E.2d 847 (1993), the Court held that the title and headings should not be used in interpreting or limiting the meaning of text and that the Rule was not limited to absent defendants. Based on this Court decision, the heading of section (b) was changed to read "Tolling of Statute of Limitations."

follows “[a] civil action is commenced when the summons and complaint are filed with the clerk of court if” (1) the summons and complaint are served within the statute of limitations, or (2) “if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing” SCRPC Rule 3 (Amended 2004). The official note to this Amendment states these changes were intended to reflect the legislative intent expressed in § 15-3-20. See SCRPC Rule 3, Note to 2004 Amendment. It seems clear that the Rule continues to address a tolling period for a statute of limitations and has adopted the 120 day limit provided in § 15-3-20 as a more specific limit for what a “reasonable time” for service would be for the purposes of tolling.

The legislative intent regarding the commencement of a civil action is unequivocally clarified in South Carolina Code Section 15-3-20. This section provides that

(A) Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute

(B) A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing

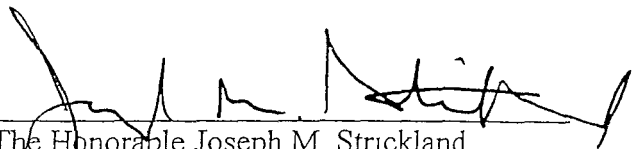
S.C. Code Ann. § 15-3-20 (emphasis added). “If a statute’s language is plain, unambiguous, and conveys a clear meaning ‘the rules of statutory interpretation are not needed and the court has no right to impose another meaning.’” *Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). Actual service was not accomplished on any Defendants within 120 days after filing of the 07-CP-40-3365 action in May, 2007. Therefore, based on the plain, unambiguous language of § 15-3-20, a civil action was not commenced in accordance with the South Carolina Rules of Civil Procedure.

As a result of the Plaintiff's failure to accomplish service within 120 days and commence the civil action, there was no suit in existence in which an Amended Complaint could be filed. Therefore, the filing and service of the Plaintiff's Summons and Amended Complaint in May 2008 bearing case action number 07-CP-40-3365 constituted a legal nullity. Because service of the original Summons and Complaint was never attempted, and because service of the second Summons and Amended Complaint were ineffective, this case must be dismissed for insufficiency of process under Rule 12(b)(4) and insufficiency of service of process under Rule 12(b)(5).

As an additional result of the Plaintiff's failure to accomplish service within 120 days and properly commence a civil action, subject matter and personal jurisdiction have not properly attached, and as such this case is also being dismissed under Rule 12(b)(1) and Rule 12(b)(2). This Court finds that the Plaintiff has failed to comply with the Rules of Civil Procedure in his attempt to commence a civil action. This failure to prosecute the case additionally justifies dismissal of this action. SCRCF Rule 41(b).

Based on the foregoing discussion, this Court **GRANTS** the Defendants' motion to reconsider and dismisses this action without prejudice.

AND IT IS SO ORDERED


The Honorable Joseph M. Strickland
Special Case & Court Judge

Columbia, South Carolina

~~November~~
~~September~~ 23, 2009

ATTACHMENT

7 name of plaintiff's attorney

- Prepare EDS for transmission to Court Administration by using an "A" or "added" case action code

6.3.4 Case Jackets

As each case is opened, a separate jacket should be prepared to hold all original papers associated with that case. The case number should be typed or written on the file tab and the jackets filed in numerical order by sequential case number. The case name may also be written on the jacket.

As additional papers are filed, they should be added to the case jacket, on top of previously filed papers unless local practice calls for adding papers to the end of the file; however, adding papers to the end of a case file can be time consuming.

6.3.5 Procedures for Restoring Common Pleas Cases

The following scenarios may require case restoration:

CF Case Ended by	Procedure
Ended in Error (Use Restore Date Field)	Original Case # Original Filing Date
Granted New Trial Before Appealed (Use Restore Date Field)	Original Case # Original Filing Date
Remanded from Federal Court (Use Restore Date Field)	Original Case # Original Filing Date

In all of the above-referenced situations, the **Restore Date Field** should be used to reinstate the case to the active docket. If you are unable to use the **Restore Date Field**, you must call the Data Entry Supervisor at SCJD (803-734-1800) so that the case can be manually restored. If you are simultaneously restoring and disposing of a previously disposed case, please keep in mind that the **Restore Date Field** must reflect a date that is on or before the **new Disposition Date**; otherwise an error will occur. In all instances of using the Restore Date Field, you must use an "M" (for "modified") action code to successfully retransmit the modified record.

The examples of restored cases listed below are functionally new records, even though they are related to prior cases. These types of records should be transmitted using an "A" (for "added") action code.

CP Case Ended by	Procedure
Remanded from Higher SC Court (New Record) Original Filing Date	Original Case # Suffix 'A'
Bankruptcy [not 40(j)] (New Record) Original Filing Date	Original Case # Suffix 'B'
Rule 40(j) (New Record) New Filing Date	New Case # Suffix 'R'
Ended due to Incomplete Service (New Record)	New Case # New Filing Date
Dismissed without Prejudice (New Record)	New Case # New Filing Date
Dismissed with Prejudice	May not be restored

When a case is restored after it has been in Bankruptcy status , the case will be restored using its original case number and a suffix of 'B' to designate bankruptcy and will retain the original filing date

When a case is restored after an appeal has been granted , the case will be restored using the original case number and a suffix of 'A' to designate appeal and will retain the original filing date

When a case is restored following a dismissal pursuant to Rule 40(j) , which allows for a case to be restored within a year the case receives a new case number with a suffix of 'R' . If the case is restored after a year , the case receives a new case number with no suffix . No suffix is required for those restored after a year because they are treated as a new case since the period to restore has expired

6.4 Case Updating

Between the time a case is filed with the court and the time it is set for trial additional papers will be filed with the clerk's office . Some will simply be recorded on the EDS and placed in the case jacket . Others will require further action by the clerk such as

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO 2007 -CP-40- 3365

Edward Mims

Babcock Center

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

☐ **JURY VERDICT** This action came before the court for a trial by jury
have been tried and a verdict rendered

☒ **DECISION BY THE COURT** This action came to trial or hearing before the court
The issues have been tried or heard and a decision rendered

☐ **ACTION DISMISSED** (CHECK REASON) ☐ Rule 12(b), SCRPC, ☐ Rule 41(a),
SCRPC (Vol Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other _____

☐ **ACTION STRICKEN** (CHECK REASON) ☐ Rule 40(j) SCRPC, ☐ Bankruptcy,
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify
arbitration award, ☐ Other _____

IT IS ORDERED AND ADJUDGED ☐ See attached order, ☐ Statement of Judgment by the Court

Plaintiff's Rule 59(e) motion is denied

Dated at Columbia South Carolina, this 30 day of March, 2009

[Signature]
PRESIDING JUDGE

This judgment was entered on the 30th day of March, 2009, and a copy mailed first class this
30th day of March, 2009 to attorneys of record or to parties (when appearing pro se) as follows

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]

RICHLAND COUNTY
FILED
2009 MAR 30 PM 3:03
JEANETTE W. McBRIDE
C.C.P. & G.S.

EXHIBIT

tabbles

D

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
SEP 28 2010
SC Court of Appeals

Case Tracking No 2010154146

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

Edward Mims, by and through his legal
Guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
And Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

PROOF OF SERVICE

I hereby certify that I served Respondents Babcock Center, Inc and Dr Judy Johnson's Motion to Strike upon counsel of record, by placing a copy in the United States mail, postage prepaid, to Patricia L Harrison, Esquire, 611 Holly Street, Columbia, South Carolina 29205, and to William Davidson, Esquire, Davidson & Lindemann, P A, Post Office Box 8568, Columbia, South Carolina 29202, on September 27, 2010

[Signature Page to Follow]

Respectfully submitted,

COLLINS & LACY, P C



By

JOEL W COLLINS, JR
jcollins@collinsandlacy com
CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy com
AMY L NEUSCHAFER
aneuschafer@collinsandlacy com
1330 Lady Street, Suite 601 (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (voice)
(803) 771-4484 (facsimile)

ATTORNEYS FOR RESPONDENTS
BABCOCK CENTER, INC & DR
JUDY JOHNSON

**PROOF OF SERVICE -
RESPONDENTS BABCOCK
CENTER, INC AND DR JUDY
JOHNSON'S MOTION TO
STRIKE**

Columbia, South Carolina
September 27, 2010



Christian Stegmaier | Direct Dial 803 255 0454 | E Mail cstegmaier@collinsandlacy.com

September 27, 2010

VIA UNITED STATES MAIL

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RECEIVED
SEP 28 2010
SC Court of Appeals

RE *Edward Mims, by and through his legal guardian, Margaret Mims v Babcock Center, Inc , Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus*
Court of Appeals Tracking No 2010154146
C/A No 07-CP-40-3365
C&L File No 969-109

Dear Ms Gee

Please find enclosed for filing the original and eight (8) copies of Respondents Babcock Center, Inc and Dr Judy Johnson's Motion to Strike in the above-referenced matter I am also enclosing herewith a check in the amount of \$25 00 for the required filing fee Please return a filed copy of same to me in the envelope provided herewith

By copy of this letter, I am serving a copy of same upon all counsel

Thank you for your time and attention Should you have any questions, please do not hesitate to contact me

Respectfully,

A handwritten signature in black ink, appearing to read "C. Stegmaier", with a horizontal line drawn underneath.

Christian Stegmaier

CBS lcc

Enclosures

cc Patricia L Harrison, Esquire
 William Davidson, Esquire



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29701
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

September 21, 2010

Christian Stegmaier, Esquire
Collins & Lacy, PC
P O Box 12487
Columbia, SC 29211

Re Mims, Edward v Babcock Center
2010154146

Dear Mr Stegmaier

The following Order has been endorsed on your Motion for Extension of Time in which to File and Serve Initial Brief of Respondent in the above entitled case on appeal

"Granted

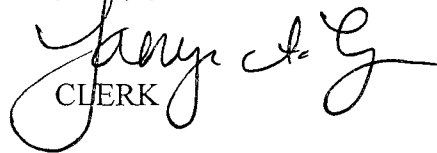
John Cannon Few C J
For the Court

By s/ Tanya A Gee
Clerk

September 20, 2010 "

Please be advised that the Respondent's Babcock Center, Inc Initial Brief and Designation of Matter must be served and filed no later than October 13, 2010

Very truly yours,


CLERK

TAG/mpm

cc Patricia Logan Harrison, Esquire
Kenneth P Woodington, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29 01
TELEPHONE (803) 734 1890
FAX (803) 7 4 1839
www.sccourts.org

September 17, 2010

Kenneth P. Woodington, Esquire
Davidson & Lindemann, PA
P O Box 8568
Columbia, SC 29202-8568

Re Mims, Edward v. Babcock Center
2010154146

Dear Mr. Woodington:

The following Order has been endorsed on your Motion to File Corrected Initial Brief of Respondents and Corrected Designation of Matter to be Included in the Record on Appeal in the above entitled case on appeal:

“Granted

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

September 16, 2010 ”

Please be advised that your Corrected Respondent’s Initial Brief and Designation of Matter was received and accepted as filed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

TAG/laf

cc Patricia Logan Harrison, Esquire
Christian Stegmaier, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

SEP 09 2010

SC Court of Appeals

Case Tracking No 2010154146

GRANTED

JOHN CANNON FEW, C J
FOR THE COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

By

Joseph M. Strickland
(Clerk) (Deputy Clerk)

Joseph M. Strickland, Special Circuit Court Judge

FILED

Case No 07-CP-40-3365

9/21/10
Edward Mims, by and through his legal
Guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
And Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

**RESPONDENTS BABCOCK CENTER, INC
AND DR JUDY JOHNSON'S MOTION FOR EXTENSION OF TIME IN
WHICH TO FILE AND SERVE INITIAL BRIEF OF RESPONDENTS**

**TO THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF
APPEALS**

Respondents Babcock Center, Inc and Dr Judy Johnson respectfully move this Court for
an Order granting them an extension of time in which to file and serve their Initial Brief of
Respondents

Counsel for Respondents have been conscientious in their efforts to prepare their initial
brief, however, because of the complexity of many of the legal issues attendant in this case as

9/13/10

1st motion

10/13/10

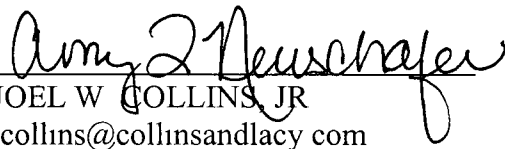
well as preparation of the Brief of Respondent in Carolina Chloride, Inc v Richland County, currently pending before the South Carolina Supreme Court, counsel projects they will require additional time to complete their initial brief. The current deadline is September 13, 2010. Respondents request a thirty (30) day extension, which would place the new deadline at October 13, 2010.

Respondents greatly appreciate the Court's time, attention, and assistance with regard to this request.

Respectfully submitted,

COLLINS & LACY, P C

By


JOEL W. COLLINS, JR.
jcollins@collinsandlacy.com
CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com
AMY L. NEUSCHAFER
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1330 Lady Street, Suite 601 (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (voice)
(803) 771-4484 (facsimile)

ATTORNEYS FOR RESPONDENTS
BABCOCK CENTER, INC. & DR.
JUDY JOHNSON

Columbia, South Carolina
September 8, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case Tracking No 2010154146

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

Edward Mims, by and through his legal
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v

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And Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

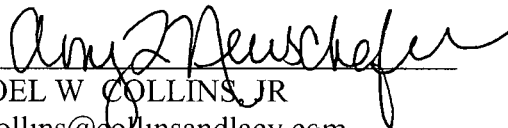
PROOF OF SERVICE

I hereby certify that I served Respondents Babcock Center, Inc and Judy Johnson's Motion for Extension of Time in which to File and Serve Initial Brief of Respondents upon counsel of record, by placing a copy in the United States mail, postage prepaid, to Patricia L Harrison, Esquire, 611 Holly Street, Columbia, South Carolina 29205, and to William Davidson, Esquire, Davidson & Lindemann, P A, Post Office Box 8568, Columbia, South Carolina 29202, on September 8, 2010

Respectfully submitted,

RECEIVED
SEP 09 2010
SC Court of Appeals

COLLINS & LACY, P C

By 
JOEL W COLLINS JR
jcollins@collinsandlacy.com
CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com
AMY L NEUSCHAFER
aneuschafer@collinsandlacy.com
1330 Lady Street, Suite 601 (29201)
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Columbia, South Carolina 29211
(803) 256-2660 (voice)
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ATTORNEYS FOR RESPONDENTS
BABCOCK CENTER, INC & DR
JUDY JOHNSON

Columbia, South Carolina
September 8, 2010



Amy L Neuschafer | Direct Dial 803 255 0443 | E Mail aneuschafer@collinsandlacy.com

September 8, 2010

VIA UNITED STATES MAIL

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RECEIVED

SEP 09 2010

SC Court of Appeals

RE *Edward Mims, by and through his legal guardian, Margaret Mims v Babcock Center, Inc , Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus*
Court of Appeals Tracking No 2010154146
C/A No 07-CP-40-3365
C&L File No 969-109

Dear Ms Gee

Please find enclosed for filing the original and eight (8) copies of Respondents Babcock Center, Inc and Dr Judy Johnson's Motion for Extension of Time in which to File and Serve Initial Brief of Respondents in the above-referenced matter I am also enclosing herewith a check in the amount of \$25 00 for the required filing fee Please return a filed copy of same to me in the envelope provided herewith

By copy of this letter, I am serving a copy of same upon all counsel

Thank you for your time and attention Should you have any questions, please do not hesitate to contact me

With kind regards, I am

Sincerely,

A handwritten signature in cursive script that reads "Amy L Neuschafer".

Amy L Neuschafer

ALN lcc
Enclosures

cc Patricia L Harrison, Esquire
 William Davidson, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

RECEIVED

SEP 02 2010

SC Court of Appeals

Edward Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the South Carolina Department
of Disabilities and Special Needs,
Kathi Lacy and Stanley Butkus,

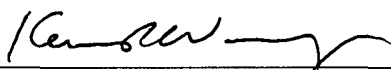
Respondents

**MOTION TO FILE CORRECTED INITIAL BRIEF OF RESPONDENTS AND
CORRECTED DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondents DDSN, Lacy and Butkus hereby move for permission to file the enclosed Corrected Initial Brief of Respondents and Corrected Designation of Matter. The Brief and Designation were mailed yesterday, September 1, 2010 and were not due until September 13, 2010. Upon review of the filing, counsel realized that the deposition of Leigh Flynn, which was referenced once in the brief and included in the Designation of Matter, had not been submitted to the Circuit Court. As a result, reference to that deposition should not have been made, and the proposed corrected filings would reflect that fact.

Undersigned counsel will be out of the country for two weeks starting later this date, September 2, 2010, so has not been able to consult with opposing counsel with regard to this motion

DAVIDSON & LINDEMANN, P A

BY 
WILLIAM H. DAVIDSON, II
KENNETH P. WOODINGTON
1611 Devonshire Drive
Post Office Box 8568, 2nd Floor
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Respondents DDSN
Lacy and Butkus*

Columbia, South Carolina

September 2, 2010

GRANTED
JOHN CANNON FEW, C J
FOR THE COURT

By 
(Clerk) (Deputy Clerk)

9/16/10

FILED
9/17/10 

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

RECEIVED

SEP 02 2010

SC Court of Appeals

Edward Mims

Appellant,

v

Babcock Center, Inc , Judy Johnson, the South Carolina
Department of Disabilities and Special Needs,
Kathi Lacy and Stanley Butkus,

Respondents

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P A , attorneys for the Respondents South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus, does hereby certify that service of below listed documents in the above-captioned matter was made upon counsel for the Appellant by hand delivery and upon counsel for Respondent Babcock Center, Inc by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 2nd day of September 2010, addressed as follows

- 1) **Motion to File Corrected Initial Brief of Respondents and Corrected Designation of Matter to be Included in the Record on Appeal**

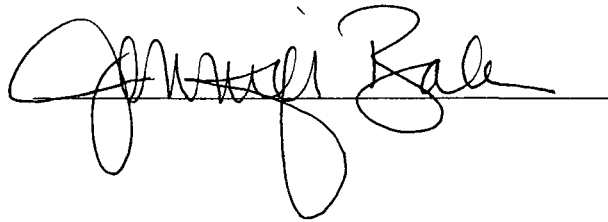
- 2) Initial Brief of Respondents DDSN, Lacy and Butkus (Corrected)
- 3) Respondents' Designation of Matter to be Included in the Record on Appeal (Corrected)

Hand Delivered

Patricia L. Harrison, Esquire
611 Holly Street
Columbia, South Carolina 29205

Via U S Mail

Christian Stegmaier, Esquire
Collins & Lacy, P C
1330 Lady Street, Sixth Floor
Post Office Box 12487
Columbia, South Carolina 29211

A handwritten signature in black ink, appearing to read "M. J. Bale", is 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

September 2, 2010

Hand Delivered

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

Also admitted in North Carolina
† Certified Mediator
RECEIVED
SEP 02 2010
SC Court of Appeals

RE Edward Mims, by and through his legal guardian, Margaret Mims v Babcock Center, Inc ,
Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy
and Stanley Butkus
Court of Appeals Tracking Number 2010154146
Civil Action Number 2007-CP-40-3365
Claim Number 44654
Our File Number 104 7785

Dear Ms Gee

Please find enclosed for filing the originals and one copy each of the below listed documents
in the above referenced matter

- 1) **Motion to File Corrected Initial Brief of Respondents and Corrected Designation of Matter to be Included in the Record on Appeal**
- 2) **Initial Brief of Respondents DDSN, Lacy and Butkus (Corrected)**
- 3) **Respondents' Designation of Matter to be Included in the Record on Appeal (Corrected)**

Please file the originals and return a clocked-in copy of each document to me by way of my courier I have not included the \$25.00 filing fee since the moving parties include an agency of the State of South Carolina and its employees

By copy of this letter, I am serving copies on all counsel of record

Thank you for your assistance in this matter

The Honorable Tanya A Gee
September 2, 2010
Page Two

With highest regards, I am

Sincerely yours,

DAVIDSON & LINDEMANN, P A

A handwritten signature in black ink that reads "Ken Woodington". The signature is written in a cursive, slightly slanted style.

Kenneth P Woodington

KPW/mb
Enclosures

cc (w/ Enclosures)

Patricia L Harrison, Esquire
611 Holly Street
Columbia, South Carolina 29205

Christian Stegmaier, Esquire
Collins & Lacy, P C
Post Office Box 12487
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

RECEIVED

SEP 02 2010

SC Court of Appeals

Edward Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the South Carolina Department
of Disabilities and Special Needs,
Kathi Lacy and Stanley Butkus,

Respondents

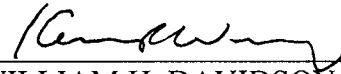
**RESPONDENTS' DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL (CORRECTED)**

Respondents DDSN, Lacy and Butkus propose that the following be included in the
Record on Appeal

- 1 Both Motions to Dismiss (covering , if not already designated
- 2 Order dated June 4, 2009
- 3 DDSN, et al Motion to Reconsider dated June 15, 2009

I certify that this designation contains no matter which is irrelevant to this appeal

DAVIDSON & LINDEMANN, P A

BY 
WILLIAM H DAVIDSON, II
KENNETH P WOODINGTON
1611 Devonshire Drive
Post Office Box 8568, 2nd Floor
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Respondents DDSN
Lacy and Butkus*

Columbia, South Carolina

September 2, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

RECEIVED

SEP 02 2010

SC Court of Appeals

Edward Mims

Appellant,

v

Babcock Center, Inc , Judy Johnson, the South Carolina
Department of Disabilities and Special Needs,
Kathi Lacy and Stanley Butkus,

Respondents

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P A , attorneys for the Respondents South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus, does hereby certify that service of below listed documents in the above-captioned matter was made upon counsel for the Appellant by hand delivery and upon counsel for Respondent Babcock Center, Inc by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 2nd day of September 2010, addressed as follows

- 1) **Motion to File Corrected Initial Brief of Respondents and Corrected Designation of Matter to be Included in the Record on Appeal**

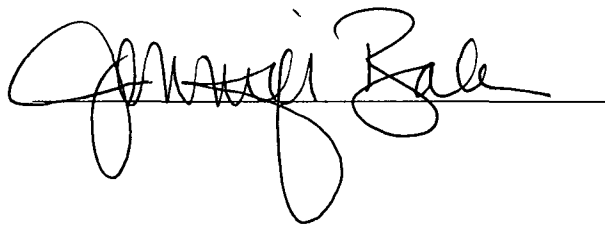
- 2) **Initial Brief of Respondents DDSN, Lacy and Butkus (Corrected)**
- 3) **Respondents' Designation of Matter to be Included in the Record on Appeal (Corrected)**

Hand Delivered

Patricia L. Harrison, Esquire
611 Holly Street
Columbia, South Carolina 29205

Via U S Mail

Christian Stegmaier, Esquire
Collins & Lacy, P C
1330 Lady Street, Sixth Floor
Post Office Box 12487
Columbia, South Carolina 29211



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

SEP 03 2010
SC Court of Appeals

RECEIVED
SEP 03 2010
SC Court of Appeals

Edward Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the South Carolina Department
of Disabilities and Special Needs,
Kathi Lacy and Stanley Butkus,

Respondents

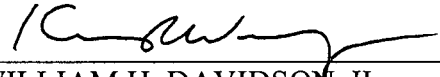
**RESPONDENTS' DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondents DDSN, Lacy and Butkus propose that the following be included in the
Record on Appeal

- 1 Both Motions to Dismiss (covering , if not already designated
- 2 Order dated June 4, 2009
- 3 DDSN, et al Motion to Reconsider dated June 15, 2009
- 4 Deposition of Leigh Flynn, cover page and pp 52-53

I certify that this designation contains no matter which is irrelevant to this appeal

DAVIDSON & LINDEMANN, P A

BY 
WILLIAM H. DAVIDSON, II
KENNETH P. WOODINGTON
1611 Devonshire Drive
Post Office Box 8568, 2nd Floor
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Respondents DDSN
Lacy and Butkus*

Columbia, South Carolina

September 1, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

RECEIVED
SEP 03 2010
SC Court of Appeals

Edward Mims

Appellant,

v

Babcock Center, Inc , Judy Johnson, the South Carolina
Department of Disabilities and Special Needs,
Kathi Lacy and Stanley Butkus,

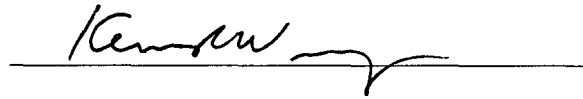
Respondents

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P A , attorneys for the Respondents South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus, does hereby certify that service of the **Initial Brief of Respondents DDSN, Lacy and Butkus and Respondents' Designation of Matter to be Included in the Record on Appeal** in the above-captioned matter was made upon all 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 1st day of September 2010, addressed as follows

Patricia L Harrison, Esquire
611 Holly Street
Columbia, South Carolina 29205

Christian Stegmaier, Esquire
Collins & Lacy, P C
1330 Lady Street, Sixth Floor
Post Office Box 12487
Columbia, South Carolina 29211

A handwritten signature in black ink, appearing to read 'C. Stegmaier', is written over a horizontal line.

1

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 1, 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 Edward Mims, by and through his legal guardian, Margaret Mims v Babcock Center, Inc ,
Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy
and Stanley Butkus
Court of Appeals Tracking Number 2010154146
Civil Action Number 2007-CP-40-3365
Claim Number 44654
Our File Number 104 7785

Dear Ms Gee

Please find enclosed for filing the originals and one copy each of the **Initial Brief of Respondents DDSN, Lacy and Butkus and Respondents' Designation of Matter to be Included in the Record on 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

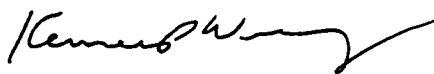
By copy of this letter, I am serving copies on all counsel of record

Thank you for your assistance in this matter

With highest regards, I am

Sincerely yours,

DAVIDSON & LINDEMANN, P A



Kenneth P Woodington

KPW/jmb
Enclosures

RECEIVED
SEP 03 2010
SC Court of Appeals

The Honorable Tanya A Gee
September 1, 2010
Page Two

cc (w/ Enclosures)

Patricia L Harrison, Esquire
611 Holly Street
Columbia, South Carolina 29205

Christian Stegmaier, Esquire
Collins & Lacy, P C
Post Office Box 12487
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
EDWARD MIMS,)
) Appellant,)
)
vs)
)
BABCOCK CENTER, JUDY JOHNSON,)
)
SCDDSN, KATHI LACY, STANLEY)
)
BUTKUS,)
)
)
Respondent)
_____)

IN THE COURT OF APPEALS

CASE NO 2007 CP 40 03365

AMENDED CERTIFICATE OF SERVICE

I, Patricia L Harrison, do certify that on August 12, 2010, I served all counsel of record as below listed in this action with copies of the *Brief of Appellant and Designation of Matter* at the addresses listed below

() Hand-Delivering it to his office or,

(x) mailing it to him/her at his her last known address by depositing it in the US Mail, in an envelope with sufficient postage affixed, or,

Kenneth P Woodington, Esquire
Davidson and Lindemann
PO Box 8568
1611 Devonshire Dr
Columbia, SC 29202

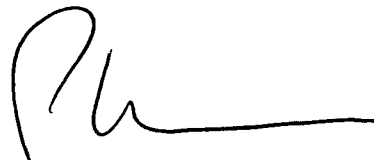
Christian Stegmaier, Esquire
Collins and Lacy
PO Box 12487
Lady Street
Columbia, SC 29211

August 19, 2010

RECEIVED

AUG 23 2010

SC Court of Appeals



Patricia L Harrison
611 Holly Street
Columbia, South Carolina
(803) 256 2017

Attorney for Edward Mims

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

August 18, 2010

RECEIVED

AUG 23 2010

SC Court of Appeals

The Honorable Tanya Gee
Clerk of Court
SC Court of Appeals
1015 Sumter Street-2nd Floor
Columbia, SC 29201

Re Edward Mims v Babcock, Inc
07 CP 40 03365
Court of Appeals Tracking No 2010154146

Dear Ms Gee

Please find for filing the Amended Certificate of Service for the Initial Brief and Designation of Matter in the matter of Edward J Mims Also enclosed is a copy to be clocked We apologize for any inconvenience to the Court Please find enclosed a self-addressed, stamped envelope for your convenience in returning our clocked copies

Thank you for your attention to this matter

Sincerely,



Patricia L Harrison

cc Christian Stegmaier, Esquire
Kenneth P Woodington, 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

August 17, 2010

Patricia Logan Harrison, Esquire
611 Holly St
Columbia, SC 29205

Re Mims, Edward v Babcock Center
2010154146

Dear Ms Harrison

We have received your Initial Brief of Appellant in the above matter. However, the Proof of Service shows that this Brief was served on May 3, 2010. Please provide this Court with an Amended Proof of Service showing the correct date of service within ten (10) days of the date of this letter.

Furthermore, you requested a clocked copy of the Notice of Appeal and Designation of Matter be returned but there was no self-addressed stamped envelope enclosed. If you would like the copies returned, please send the self-addressed stamped envelope with the Amended Proof of Service.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc Christian Stegmaier, Esquire
Kenneth P. Woodington, Esquire

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

Edward Mims

Appellant,

v

Babcock Center, Judy Johnson, SCDDSN, Kathi Lacy, Stanley Butkus,
Appellees

Designation of Matter to be Included in the Record on Appeal

Appellant proposes the following be included in the Record on Appeal

- 1 Summons and Complaint filed May 27, 2007
- 2 Letter from Christian Stegmaier dated July 5, 2007
- 3 Amended Summons and Complaint filed May 9, 2008
- 4 Defendant's Motion to Dismiss filed June 9, 2008
- 5 September 18, 2008 Notice of Hearing on Defendant's Motion to Dismiss
- 6 Plaintiff's Motion to Request Recusal dated October 3, 2008, with Exhibits
- 7 Affidavit of Orin Briggs dated March 10, 2009, Exhibit 9 of Plaintiff's Motion to Alter or Amend
- 8 Affidavit of Amy Davenport dated March 10, 2009, Exhibit 10 of Plaintiff's Motion to Alter or Amend

9 Defendants' letter requesting a continuance dated October 8, 2008
10
11 Transcript of Hearing dated March 9, 2009

12 Circuit Court Order dated March 10, 2009
13
14 Transcript of Hearing dated March 30, 2009

15 Circuit Court Order dated March 31, 2009

16 Motion to Alter or Amend or for Reconsideration dated April 10, 2009 and
Memorandum with Exhibits

17 Transcript of Hearing dated September 4, 2009

18 Circuit Court Order dated November 23, 2009

19 Plaintiff's Motion to Reconsider dated _____

20 Order denying Motion to Reconsider dated February 8, 2010

21 Notice of Appeal to the SC Court of Appeals filed on March 10, 2010 appealing
orders dated November 23, 2010 and February 8, 2010

22 Rule 59(e) Motion dated March 25, 2009 and Memorandum with Exhibits
23
24 Affidavit of Margaret Mims dated March 6, 2009 with Exhibits

25 Affidavit of M Leigh Flynn, Esquire dated March 6, 2009 with Exhibits

26 July 28, 2003 Letter of Ombudsman

27 Incident reports of injuries sustained by Edward Mims

28 Wall Street Journal Article dated September 13, 2005

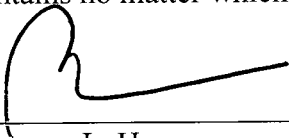
29 Brief of Appellant dated 22 September 2005, Exhibit 12 and 13

30 Letter of Patricia Harrison to Dorothy Moore dated March 19, 2007

31 Reduction in Edward Mims' budget

I certify that this designation contains no matter which is irrelevant to this appeal

August 12, 2010



Patricia L. Harrison
611 Holly Street
Columbia, South Carolina 29205
(803) 256-2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
EDWARD MIMS,)
) Appellant,)
)
vs)
)
BABCOCK CENTER, JUDY JOHNSON,)
)
SCDDSN, KATHI LACY, STANLEY)
)
BUTKUS,)
)
)
Respondent)
_____)

IN THE COURT OF APPEALS

CASE NO 2007 CP 40 03365

CERTIFICATE OF SERVICE

RECEIVED

AUG 16 2010

SC Court of Appeals

I, Patricia L Harrison, do certify that on this date May 3, 2010, I have served all counsel of record as below listed in this action with copies of the *Brief of Appellant* herein below specified

() Hand-Delivering it to his office or,

(x) mailing it to him/her at his her last known address by depositing it in the US Mail, in an envelope with sufficient postage affixed, or,

Kenneth P Woodington, Esquire
Davidson and Lindemann
PO Box 8568
1611 Devonshire Dr
Columbia, SC 29202

Christian Stegmaier, Esquire
Collins and Lacy
PO Box 12487
Lady Street
Columbia, SC 29211

Date

Aug 12, 2010

Patricia Harrison

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

August 12, 2010

The Honorable Tanya Gee
Clerk of Court
SC Court of Appeals
1015 Sumter Street-2nd Floor
Columbia, SC 29201

RECEIVED

AUG 16 2010

SC Court of Appeals

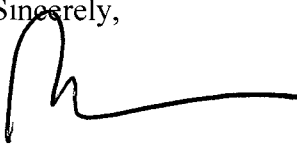
Re Edward Mims v Babcock, Inc
07 CP 40 03365
Court of Appeals Tracking No 2010154146

Dear Ms Gee

Please find for filing the original Appellant's Initial Brief in the matter of Edward J Mims Also enclosed is a copy to be clocked and returned to this office in the enclosed envelope

By copy of this letter, we are serving a copy of same upon counsel Thank you for your attention to this matter and should you have any questions, please do not hesitate to contact this office

Sincerely,



Patricia L Harrison

cc Christian Stegmaier, Esquire
Kenneth P Woodington, Esquire

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

July 19 2010

The Honorable Tanya Gee
Clerk of Court
SC Court of Appeals
1015 Sumter Street-2nd Floor
Columbia, SC 29201

RECEIVED
JUL 20 2010
SC Court of Appeals

Ms Desiree Allen
SC Court Administration
1015 Sumter St , Ste 200
Columbia, SC 29201

Re Transcripts, Edward Mims v Babcock, Inc
07 CP 40 03365
Court of Appeals Tracking No 2010154146

Dear Ms Gee and Ms Allen

We received the transcript of the March 9, 2009 hearing before Judge Manning on July 13, 2010 This transcript was provided by Crystal Holmes

Sincerely,



Patricia L Harrison

cc Christian Stegmaier, Esquire

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

June 24, 2010

The Honorable Tanya Gee
Clerk of Court
SC Court of Appeals
1015 Sumter Street-2nd Floor
Columbia, SC 29201

Ms Desiree Allen
SC Court Administration
1015 Sumter St , Ste 200
Columbia, SC 29201

RECEIVED
JUN 25 2010
SC Court of Appeals

Re Transcripts, Edward Mims v Babcock, Inc
07 CP 40 03365
Court of Appeals Tracking No 2010154146

Dear Ms Gee and Ms Allen

Yesterday we received the transcripts of the March 30, 2009 and the September 4, 2009 hearings before Judge Strickland. These transcripts were provided by Pat Harman. We have not received the transcript of the March 9, 2009 hearing before Judge Manning from Crystal Holmes. It was requested, with payment, on June 7, 2010. This update is intended to keep you informed and we will notify you when all transcripts are received.

Sincerely,



Patricia L. Harrison

cc Christian Stegmaier, Esquire

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

June 16, 2010

Ms Desiree Allen
SC Court Administration
1015 Sumter St , Ste 200
Columbia, SC 29201

RECEIVED

JUN 17 2010

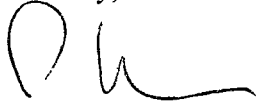
SC Court of Appeals

Re Transcripts, Edward Mims v Babcock, Inc
07 CP 40 03365
Court of Appeals Tracking No 2010154146

Dear Ms Allen

Enclosed are copies of correspondence from this office requesting copies of transcripts in the Matter of Edward J Mims We apologize for not copying your office on the original letters to the court reporters By copy of this letter, we are letting the Court of Appeals know of this correspondence

Sincerely,



Patricia L Harrison

cc S C Court of Appeals

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

June 7, 2010

Ms Pat Harmon
Richland County Masters in Equity
PO Box 192
Columbia, SC 29202

Re Edward Mims, v Babcock Center, Judy Johnson,
SCDDSN, Kathi Lacy, Stanley Butkus,
Case Number 07 CP 40 03365
Court of Appeals tracking number 2010154146

Dear Ms Harmon

We represent Edward Mims in the above referenced case in the SC Court of Appeals
We are requesting a transcript of the hearings held on March 30, 2009 and Sept 4, 2009 before
Judge Joseph Strickland If you were not the court reporter for those hearings, please advise who
we should contact to obtain the transcript Ms Crystal Holmes has advised us that she was not
the court reporter for those hearings

Please provide this office with an invoice and we will remit payment promptly Thank
you for your assistance in this matter

Cordially,



Nancy C Law, Assistant to
Patricia L Harrison

cc Christian Stegmaier, Esquire
Kenneth Woodington, Esquire
SC Court of Appeals

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

June 7, 2010

Ms Crystal Holmes
PO Box 611
Columbia, SC 29202-0611

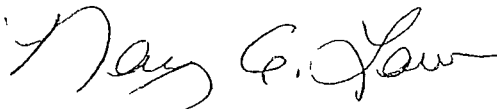
Re Edward Mims, v Babcock Center, Judy Johnson,
SCDDSN, Kathi Lacy, Stanley Butkus,
Case Number 07 CP 40 03365

Dear Ms Holmes

Thank you for your letter of May 17, 2010 regarding the above referenced matter
Enclosed is a check in the amount of \$298 15 for a copy of the transcript of the hearing held
before Judge Casey Manning on March 9, 2009

If there is anything else needed from this office, please do not hesitate to call Thank you
for your assistance in this matter

Cordially,



Nancy C Law, Assistant to
Patricia L Harrison

cc Christian Stegmaier, Esquire
Kenneth Woodington, Esquire
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

1 V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

June 15, 2010

Patricia Logan Harrison, Esquire
611 Holly St
Columbia, SC 29205

Re Mims, Edward v Babcock Center
2010154146

Dear Ms. Harrison

We have received copies of the requests for the transcript in the above matter. According to Rule 207 of the South Carolina Appellate Court Rules, all correspondence with the court reporter must be copied also to the Office of Court Administration. Please provide this Court with proof that you served these requests on the Office of Court Administration within ten (10) days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy Clerk
CLERK

TAG/mpm

cc Christian Stegmaier, Esquire
Kenneth P. Woodington, Esquire

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

June 7, 2010

RECEIVED
JUN 08 2010
SC Court of Appeals

Ms Crystal Holmes
PO Box 611
Columbia, SC 29202-0611

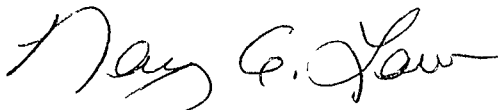
Re Edward Mims, v Babcock Center, Judy Johnson
SCDDSN, Kathi Lacy, Stanley Butkus,
Case Number 07 CP 40 03365

Dear Ms Holmes

Thank you for your letter of May 17, 2010 regarding the above referenced matter
Enclosed is a check in the amount of \$298 15 for a copy of the transcript of the hearing held
before Judge Casey Manning on March 9, 2009

If there is anything else needed from this office, please do not hesitate to call Thank you
for your assistance in this matter

Cordially,



Nancy C Law, Assistant to
Patricia L Harrison

cc Christian Stegmaier, Esquire
Kenneth Woodington, Esquire
SC Court of Appeals

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

June 7, 2010

Ms Pat Harmon
Richland County Masters in Equity
PO Box 192
Columbia, SC 29202

RECEIVED
JUN 8 2010
SC Court of Appeals

Re Edward Mims, v Babcock Center Judy Johnson,
SCDDSN, Kathi Lacy, Stanley Butkus,
Case Number 07 CP 40 03365
Court of Appeals tracking number 2010154146

Dear Ms Harmon

We represent Edward Mims in the above referenced case in the SC Court of Appeals
We are requesting a transcript of the hearings held on March 30, 2009 and Sept 4, 2009 before
Judge Joseph Strickland If you were not the court reporter for those hearings, please advise who
we should contact to obtain the transcript Ms Crystal Holmes has advised us that she was not
the court reporter for those hearings

Please provide this office with an invoice and we will remit payment promptly Thank
you for your assistance in this matter

Cordially,



Nancy C Law, Assistant to
Patricia L Harrison

cc Christian Stegmaier, Esquire
Kenneth Woodington, Esquire
SC Court of Appeals



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

June 2, 2010

Patricia Logan Harrison, Esquire
611 Holly St
Columbia, SC 29205

Re Mims, Edward v Babcock Center
2010154146

Dear Ms Harrison

The following Order has been endorsed on your Motion to Reinstate in the above entitled case on appeal

“Granted

s/ Jasper M Cureton A J

June 01, 2010 ”

Please be advised that the transcript must be ordered in accordance with Rule 207 of the South Carolina Appellate Court Rules within ten (10) days of the date of this letter

Very truly yours,


CLERK

TAG/mpm

cc Christian Stegmaier, Esquire
Kenneth P Woodington, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 13 2010
SC Court of Appeals

Case Tracking No 2010154146

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

Edward Mims, by and through his legal
Guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
And Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

**RESPONDENTS BABCOCK CENTER, INC
AND JUDY JOHNSON'S RETURN TO
APPELLANT'S MOTION TO REINSTATE**

**TO THE HONORABLE JUDGES OF THE SOUTH CAROLINA
COURT OF APPEALS**

By Order dated April 20, 2010, this Court dismissed the above-captioned appeal due to Appellant's failure to timely order the transcript and failure to file and serve the Initial Brief of Appellant and Designation of Matter. Appellant has moved this Court for an order reinstating the appeal, claiming she timely ordered the transcripts but inadvertently failed to copy the clerk of this Court on the correspondence with the court reporter Respondents Babcock Center, Inc. and Dr. Judy Johnson ("Respondents") oppose Appellant's motion, as she has failed to show good cause exists to reinstate the appeal.¹

The Supreme Court of South Carolina has advised "the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992). A party's failure to comply with these rules warrants dismissal of the appeal. Id., Rule 260, SCACR. An appeal that is dismissed

¹ Respondents have not filed this Return with the intention of being unnecessarily adversarial or uncivil. However, in light of the fact that Rule 240(e) provides that a party's failure to file a return may be deemed a consent by that party to the relief sought in the motion or petition, Respondents believe it is in the best interests of their clients to file a return and avoid continued litigation.

for failure to comply with the Appellate Court Rules may be reinstated only upon a showing of good cause Rule 260(A), SCACR

Rule 207, SCACR, sets forth the procedure and timing for ordering the transcript after commencement of an appeal This rule provides, in pertinent part, as follows

a) Appeals From a Lower Court

(1) Ordering the Transcript Where a transcript of the proceeding must be prepared by the court reporter, appellant shall, within the time provided for ordering the transcript, make satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript **In appeals from the court of common pleas, masters in equity, special referees or the family court in domestic actions, the transcript must be ordered within ten (10) days after the date of service of the notice of appeal** In appeals from the court of general sessions or the family court in juvenile actions, the transcript must be ordered within thirty (30) days of the date of service of the notice of appeal **Appellant shall contemporaneously furnish all counsel of record, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter** Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings below If a party to the appeal unjustifiably refuses to agree to ordering less than the entire transcript, appellant may move to be awarded costs for having unnecessary portions transcribed, this motion must be made no later than the time the final briefs are due under Rule 211

Rule 207(a)(1), SCACR (emphasis added)

In the instant case, Appellant filed her Notice of Appeal on March 10, 2010. Accordingly, to be in compliance with the Appellate Court Rules, Appellant must have ordered the transcript and informed the Court of the same by March 20, 2010. However, according to Appellant's motion and the exhibits thereto, the transcripts were not ordered until March 30, 2010. In her March 30, 2010 letter, Appellant requested copies of three transcripts: (1) the March 30, 2009 hearing before Judge Strickland,² (2) the September 4, 2009 hearing before Judge Strickland, and (3) the March 9, 2009 hearing before Judge Manning. The request for all three of these transcripts was made to Crystal Roach (now apparently Crystal Holmes). Appellant asserts her request for the transcripts was timely made and the delay in obtaining the transcripts "unavoidable" due to the incapacity of the court reporter. (Motion of App p 2, ¶¶ 9 and 10)

There can be no dispute that Appellant's March 30, 2010 request was not timely made, as it was made ten days after the deadline imposed by the Appellate Court Rules. The only explanation Appellant provides for the delay in ordering the transcripts is that her assistant was unable to locate the

² Judge Strickland, the Richland County Master-In-Equity, was sitting in the capacity of a circuit court judge.

name of Judge Strickland's court reporter on the South Carolina Courts website. Such explanation does not amount to good cause to reinstate the appeal. The difficulty locating the identity of Judge Strickland's court reporter could have been solved by simply contacting his chambers or Court Administration and requesting the information. Moreover, the South Carolina Courts website provides very specific instructions regarding the procedure for ordering a transcript on a link located on its homepage entitled "How to obtain a transcript" (Ex. A). These instructions not only explain the process, but provide the names and contact information of the appropriate persons to contact if assistance is required. Finally, counsel for Appellant acknowledges she was not aware of her assistant's delay in ordering the transcript until April 22, 2010. (Motion of App. p. 2, ¶ 13)

Appellant also claims the delay in obtaining the transcript for the hearing before Judge Manning is attributable to the fact that Ms. Holmes was in a car accident in late 2009. However, this fact does not supply good cause to reinstate the appeal, as the order issued by Judge Manning as a product of this hearing is not the subject of the instant appeal. In her Notice of Appeal and Amended Notice of Appeal, Appellant appeals only from the November 23, 2009 order granting Respondents' motion to dismiss and the February 9,

2010 order denying Appellant's motion for reconsideration, both issued by Judge Strickland. Therefore, the transcript of the hearing before Judge Manning, which was on March 9, 2009, is not germane to this appeal and did not need to be ordered from the court reporter to proceed with this appeal. Accordingly, the alleged difficulty in obtaining the transcript of the hearing before Judge Manning does not justify reinstatement of the appeal.

Furthermore, even assuming, arguendo, that the transcript of the hearing before Judge Manning is somehow necessary for the instant appeal, Appellant has not shown good cause exists for the delay in ordering this transcript. According to Appellant's own admission, Appellant requested the transcripts of the hearing before Judge Manning in **March 2009** (See App Ex 3 & Ex 4). Appellant alleges she never received the transcript in response to this request. However, the fact she was not provided with the transcript in response to her first request does not excuse her failure to timely order it after the Notice of Appeal was filed. In fact, Appellant's previous request for this transcript shows Appellant has been in possession of the name and contact information of Ms. Holmes, Judge Manning's court reporter, since March 2009. Therefore, Appellant has not shown good cause

exists for failing to Judge Manning's court reporter until after the deadline had passed to do so

Moreover, to date, there is no indication Appellant has ordered the pertinent transcripts—those of the hearings before Judge Strickland—from the correct court reporter. Appellant ultimately sent her request for all three transcripts, including those for the hearings before Judge Strickland, to Ms Holmes. The Court Calendar on the South Carolina Court website indicates Ms Holmes was the court reporter for Judge Manning at the March 9, 2009 hearing (Ex B). It is not apparent from Appellant's motion why she also believes Ms Holmes was the court reporter for Judge Strickland at the March 30, 2009 and September 4, 2009 hearings.

In short, Appellant's failure to comply with the Appellate Court Rules by timely ordering the transcripts has unnecessarily and unjustifiably prolonged this litigation, which pertains to, inter alia, untimely service of process. Not only was the transcript not ordered within the time period allowed by Rule 207, SCACR, it is not apparent at this time that the transcripts of the hearings before Judge Strickland—the only transcripts relevant to this appeal—have been ordered from the correct court reporter. Accordingly, this appeal is likely to be even further delayed. Therefore,

Respondents respectfully request the Court deny Appellant's motion to
reinstate the appeal and issue the remittitur in this case

Respectfully submitted,

COLLINS & LACY, P C

By 

JOEL W COLLINS, JR

jcollins@collinsandlacy.com

CHRISTIAN STEGMAIER

cstegmaier@collinsandlacy.com

AMY L NEUSCHAFER

aneuschafer@collinsandlacy.com

1330 Lady Street, Suite 601 (29201)

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Columbia, South Carolina 29211

(803) 256-2660 (voice)

(803) 771-4484 (facsimile)

ATTORNEYS FOR RESPONDENTS

BABCOCK CENTER, INC & DR

JUDY JOHNSON

Columbia, South Carolina
May 13, 2010

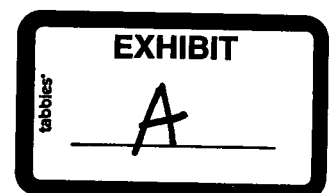
How do I obtain a transcript?

Anyone who is a party or an attorney interested in obtaining a transcript from a court proceeding must order the transcript in writing by contacting the court reporter assigned to record the proceedings. In your letter, you must provide the exact date of the proceeding, the name of the judge, the county where the proceeding was heard, and the name of the case.

In order to determine who the court reporter was, you may click on the Judicial Department calendar which lists the terms of court. There you will find every court term from January 2002 to the present. Once you have located the term of court, county, and the judge who presided, you will see the court reporter's name listed in blue. Clicking on the blue link will bring up the mailing address. You may contact the court reporter directly using this address. If you do not have access to the Internet, you may contact the Office of Court Administration to determine who the court reporter was who recorded the proceedings. Once your request is received, court reporters should acknowledge your request in writing within two weeks, advising you of the cost to obtain the transcript. Court reporters do not accept personal checks. You will be instructed to send a money order or certified bank check in order to obtain the transcript.

Pursuant to South Carolina Appellate Court Rule 607, court reporters have 60 days to prepare and deliver the transcript after satisfactory payment arrangements are made. If the court reporter is unable to complete the transcript in 60 days, he or she may request a 30-day extension. If this extension is granted, you will be notified by Court Administration. Court reporters may ask for up to three extensions from Court Administration. If court reporters are unable, due to heavy transcript loads, time in court, or other extenuating circumstances, to produce the transcript within that additional 90-day time frame, they may request an additional extension from the Chief Justice. If granted, you will be notified by Court Administration.

If after following this procedure your request is not acknowledged or the transcript has not been received, you may contact Court Administration. We would be glad to assist you. If you are requesting a transcript from Family Court proceedings, contact the Family Court Coordinator, Tammy Brown via email **tbrown@sccourts.org**. For Circuit Court proceedings, contact the Circuit Court Reporter Coordinator, Tracy Garrett via email **tgarrett@sccourts.org**. If you have questions regarding court reporters and/or transcripts in general, you may contact Desiree Allen, Court Reporter Manager, South Carolina Court Administration, 1015 Sumter Street, Suite 200, Columbia, SC 29201, or via email **dallen@sccourts.org**.



March 2009 Go To Date

Terms of Circuit and Family Court March 2009

Circuit Number	3/2/2009	3/9/2009	3/16/2009	3/23/2009	3/30/2009
5	Common Pleas Richland Barber James NO CR NEEDED 2 RUTLEDGE 3 4 5 6 General Sessions Richland Childs J NO CR NEEDED 2 HELMS 3 4 5 am MCCURDY 5 pm 6 General Sessions Richland Manning L NO CR NEEDED 2 HOLMES 3 4 5 6 Common Pleas Richland Lee Alison WILLIAMS General Sessions 6 Kershaw Keesley William	Common Pleas Richland Barber James HARRIS Common Pleas Richland Lee Alison TRACY General Sessions Richland Kinard J MCCURDY General Sessions Richland Childs J RUTLEDGE Common Pleas Non-Jury 9 10 11 Manning L HOLMES 9 10 NO CR NEEDED 11	Common Pleas Richland Barber James HELMS General Sessions Kershaw Kinard J MCCURDY Common Pleas Richland Lee Alison WILLIAMS 16 17 18 19 am NO CR NEEDED 19 pm 20 General Sessions Richland Childs J JORDAN General Sessions Richland Manning L HOLMES 16 17 18 NO CR NEEDED 19 WILLIAMS 20	Common Pleas Non-Jury 23 24 Early Doyet DAVENPORT 23 24	Common Pleas Richland Barber James HARRIS 30 TRACY 31 1 2 NO CR NEEDED 3 General Sessions 30 31 1 2 Richland Childs J HELMS General Sessions Richland Cooper G Thomas THUEME 30 WILLIAMS 31 1 2 3 THUEME 3 pm Common Pleas Richland Kinard J MCCURDY Common Pleas Non-Jury/PCR Manning L HOLMES

EXHIBIT

B

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Case Tracking No 2010154146

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 07-CP-40-3365

Edward Mims, by and through his legal
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Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
And Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

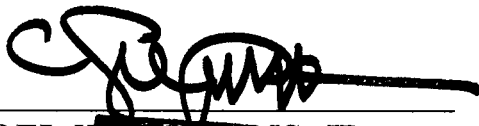
PROOF OF SERVICE

I hereby certify that I served Respondents Babcock Center, Inc and Judy Johnson's Return to Appellant's Motion to Reinstate upon counsel of record, by placing a copy in the United States mail, postage prepaid, to Patricia L Harrison, Esquire, 611 Holly Street, Columbia, South Carolina 29205, and to Kenneth P Woodington, Esquire, Davidson & Lindemann,

P A, Post Office Box 8568, Columbia, South Carolina 29202, on May 13, 2010

Respectfully submitted,

COLLINS & LACY, P C

By 
JOEL W COLLINS, JR
jcollins@collinsandlacy com
CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy com
AMY L NEUSCHAFER
aneuschafer@collinsandlacy com
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ATTORNEYS FOR RESPONDENTS
BABCOCK CENTER, INC & DR
JUDY JOHNSON

Columbia, South Carolina
May 13, 2010



Christian Stegmaier | Direct Dial 803 255 0454 | E Mail cstegmaier@collinsandlacy.com

May 13, 2010

VIA HAND-DELIVERY

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RECEIVED
MAY 13 2010
SC Court of Appeals

RE *Edward Mims, by and through his legal guardian, Margaret Mims v Babcock Center, Inc , Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus*
Court of Appeals Tracking No 2010154146
C/A No 07-CP-40-3365
C&L File No 969-109

Dear Ms Gee

Please find enclosed for filing the original and seven (7) copies of Respondents Babcock Center, Inc and Judy Johnson's Return to Appellant's Motion to Reinstate in the above-referenced matter. Please return the clocked copy to me via my courier.

By copy of this letter, I am serving a copy of same upon all counsel.

Thank you for your time and attention. Should you have any questions, please do not hesitate to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "C. Stegmaier", with a long horizontal line extending to the right.

Christian Stegmaier

CBS lcc
Enclosures

cc Patricia L. Harrison, Esquire
 Kenneth P. Woodington, Esquire
 Dr. Judy Johnson

SOUTH CAROLINA COURT OF APPEALS

Case No 2010154146

Appeal from Joseph M Strickland, Special Circuit Court Judge
Trial Court Case No 2007 CP 4003365

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

MOTION TO REINSTATE

Edward Mims moves pursuant to South Carolina Rules of Appellant Procedure 231 to
reinstate this appeal This Motion is made within 15 days of the filing of the Order of Dismissal
for failure to provide proof of ordering the transcript This motion is made on the grounds set
forth in the attached Memorandum Counsel attempted to contact opposing counsel prior to the
filing of this motion

May 3, 2010



Patricia L Harrison
611 Holly Street
Columbia, South Carolina
(803) 256 2017
plhcola@att.net
Attorney for Appellant

FILED

6/2/10

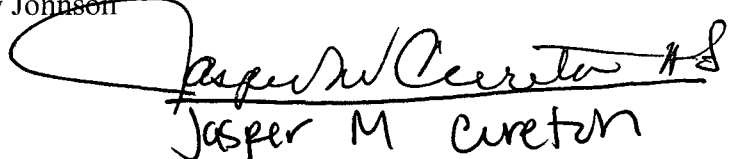
Other Counsel of Record
Kenneth P Woodington
Davidson Morrison & Lindeman
PO Box 8568
Columbia, South Carolina 29202

Christian Stegmaier
Collins & Lacy
PO Box 12487
Columbia, South Carolina 29211

Granted.

Attorney for S C Dept of
Special Needs, Kathi Lacy,
Stanley Butkus

Attorney for Babcock Center, Inc
Judy Johnson



Jasper M Cureton

6/1/10

SOUTH CAROLINA COURT OF APPEALS

Case No 2010154146

Appeal from Joseph M Strickland, Special Circuit Court Judge

Trial Court Case No 2007 CP 4003365

RECEIVED
MAY 03 2010
SC Court of Appeals

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondents

MEMORANDUM TO MOTION TO REINSTATE

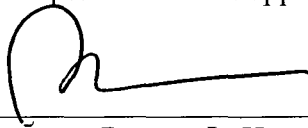
Edward Mims moves pursuant to South Carolina Rules of Appellant Procedure 231 to reinstate this appeal. This Motion is made within 15 days of the filing of the Order of Dismissal for failure to provide proof of ordering the transcript. This motion is made on the following grounds:

- 1 This is an appeal of the order of Honorable Joseph M Strickland dated February 8, 2010, which was filed on February 9, 2010. Appellant received written notice of entry of this order on February 11, 2010 and filed this appeal on March 10, 2010.
- 2 On March 10, 2010, Appellant's counsel instructed her legal assistant in writing to order the transcripts. Exhibit 1.
- 3 Counsel's legal assistant attempted unsuccessfully to determine who the court reporter was for the hearings before Judge Strickland and to order the transcripts, but that information was not posted on the court's website and the legal assistant encountered difficulties in obtaining the transcripts. Exhibit 2.
- 4 Appellant's counsel had sent a request for the transcript and copies of the tapes of the hearing before Judge Manning in 2009, to the court reporter. Counsel received a

response from the court reporter informing us that she could not provide the requested tapes, but the transcript of that hearing, which produced an interlocutory order, was not provided as requested Exhibits 3 and 4

- 5 Appellant later learned that the court reporter was in a serious accident Thanksgiving of 2009 and that the court reporter would be unable to produce the transcripts
- 6 Not knowing about the court reporter's accident, on March 30, 2010, counsel's legal assistant sent a letter to the court reporter requesting the transcripts using the same address that had been used for the 2009 request Exhibit 5 Copies of this letter were sent to opposing counsel, but a copy of this request was inadvertently not provided to this Court
- 7 On or about April 14, 2010, the court advised counsel's office that the court reporter was in an automobile accident Thanksgiving and was "hurt badly "
- 8 After learning of this accident, counsel has contacted Court Administration and was advised to write to the court reporter at her private address requesting the transcripts and this request has been sent by certified mail Exhibit 6
- 9 Appellant made a timely attempt to obtain the transcripts, but due to the incapacity of the court reporter, was not able to obtain the transcripts Counsel provided opposing counsel with a copy of the written request for the transcripts on March 30, 2010
- 10 Civil procedure rules should be construed to secure a just determination and the Respondents have not been prejudiced by the unavoidable delay in obtaining the transcript *Elam v South Carolina Dept of Transp* , 361 S C 9, 602 S E 2d 772 (S C 2004)
- 11 Violation of the Rule requiring notice to this Court was not in any way willful or intentional and reinstatement may be ordered by this Court for just cause
- 12 In *Henning v Kaye* 307 S C 436, 415 S E 2d 794 (S C 1992), reinstatement was ordered where Appellant failed to comply with SCACR Rules 207 and 208 *See also Moody v Dickinson*, 54 S C 526, 32 S E 563 (S C 1899) (Court may properly allow appellant to correct clerical error not prejudicial to the defendant)
- 13 On April 22, 2010, counsel received the Order of Dismissal while preparing to leave Columbia to attend the of a family member out-of-town and learned for the first time that the Court had not been notified of the problems encountered in obtaining the transcript and the reported disability of the court reporter

- 14 Violation of the this Court's Rules was not intentional and efforts were made to secure the transcript in a timely manner
- 15 Appellant is a person who has profound disabilities and he has the mental capacity of a young child Where the interests of minors or incompetents are involved, the South Carolina Supreme Court has found procedural rules to be "subservient to the court's duty to zealously guard" the rights of those persons who are incompetent *Mr T v Ms T*, 378 S C 127, 662 S E 2d 413 (S C App 2008) That Court has found that procedural rules are subservient to the court's duty to zealously guard the rights of persons who are not capable *Ex Parte Morris* 367 S C 56, 624 S E 2d 649 (2006) , *Joiner v Rivas* 342 S C 102, 536 S E 2d 372 (2000) Where the rights and best interests of a minor child are concerned, the court may appropriately raise, *ex mero motu* issues not raised by the parties *Ex parte Roper* 254 S C 558, 176 S E 2d 175 (1970) *See also Arscott v Bacon* 351 S C 44, 567 S E 2d 898 (Ct App 2002) (due to role of courts in protecting minors, the appellate court may raise *ex mero motu* issues not raised by the parties) The duty to protect the rights of minors and incompetents has precedence over procedural rules otherwise limiting the scope of review and matters affecting the rights of minors can be considered by this court *ex mero motu* *Galloway v Galloway*, 249 S C 157, 153 S E 2d 326 (1967) , *Caughman v Caughman* 247 S C 104, 146 S E 2d 93 (1965) *See also S C Dep't of Soc Servs v Basnight* 346 S C 241, 551 S E 2d 274 (Ct App 2001) (under South Carolina's public policy, the best interests of minor children prevail over procedural impediments to obtaining support for minor children)
- 16 Pursuant to SCACR 234 the time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 227 may be extended or shortened by the appellate court, or by any judge or justice thereof
- 17 Appellant respectfully requests an order extending the time to notify the Court of the requests for the transcripts and finding good cause for the reinstatement of this appeal due to the good faith attempts made by Appellant to obtain the transcripts, the lack of prejudice to the Respondents and the lack of fault of and unfairness to the Appellant, who is a person with severe disabilities
- 18 Appellant's counsel attempted to contact opposing counsel before filing this motion



Patricia L. Harrison
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Columbia, South Carolina
(803) 256 2017
plh cola@a att net
Attorney for Appellant

May 3, 2010

Other Counsel of Record
Kenneth P Woodington
Davidson Morrison & Lindeman
PO Box 8568
Columbia, South Carolina 29202

Attorney for S C Dept of
Special Needs, Kathi Lacy,
Stanley Butkus

Christian Stegmaier
Collins & Lacy
PO Box 12487
Columbia, South Carolina 29211

Attorney for Babcock Center, Inc
Judy Johnson

EXHIBITS

Exhibit 1	Instructions of counsel to legal assistant to order transcripts	6
Exhibit 2	Affidavit of Nancy Law, legal assistant to Patricia L. Harrison	7
Exhibit 3	March 26, 2009 letter to court reporter	8
Exhibit 4	Acknowledgment of receipt of request by court reporter	9
Exhibit 5	March 30, 2010 request to court reporter requesting transcripts	10
Exhibit 6	May 3, 2010 letter sent to court reporter's private address, pursuant to instructions of Court Administration, to request transcripts	11
Exhibit 7	Notes of legal assistant of conversation with Judge Manning's office	12

Exhibit 1

Nancy C Law

From Patricia L Harrison <plh cola@worldnet att net>
To <plhcola@bellsouth net>
Sent Wednesday March 10 2010 4 44 AM
Attach mims noticeofappeal wpd
Subject Mims

Nancy, please print notice of appeal in Mims case, which is attached Send with cover letter to Court of Appeals and file today Also file with Richland County clerk Send proof of service showing that it was served upon counsel (Ken and Christian) Order transcript of (1) hearing before Judge Manning (where he whited out order), (2) 1st hearing before Judge Strickland and (2) rehearing before Judge Strickland

REMIND ME TO FILE [REDACTED] response with [REDACTED] today!!!!

Don't let me forget that I have phone conf with [REDACTED] please call [REDACTED] and make sure she will be at her phone at 2 00

Thanks

Trisha

Exhibit 2

AFFIDAVIT OF NANCY C LAW

1 I am a legal assistant in the Law Office of Patricia L. Harrison

2 I am familiar with the matter of Edward Mims

3 Ms. Harrison instructed me in writing on March 10, 2010 to order the transcripts of the
hearings before Judge Manning and Judge Strickland

4 Between March 10, 2010 and March 30, 2010, I attempted to determine who the court
reporter was for these hearings. There were no court reporters listed on the website at
www.sccourt.org for Judge Strickland.

5 On March 30, 2010, I wrote to Crystal Roach requesting copies of the transcripts of
March 9, 2009, March 30, 2009 and September 4, 2009.

6 Ada from Judge Manning's chambers called on April 14, 2010, to tell me that she had
received my letter to Crystal Roach and that Ms. Roach was badly hurt in an automobile
accident Thanksgiving weekend and would not be able to transcribe.

7 I have contacted Desiree Allen at Court Administration and have been instructed to write
to Crystal Roach-Holmes at her personal address.

8 I have mailed a letter by certified mail to the court reporter at the address provided by
Court Administration.


Nancy C Law


Notary Public for South Carolina
My Comm Expires 8-14 2015

Exhibit 3

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

March 26, 2009

Ms Crystal Roach
Richland County Courthouse
1701 Main Street, Room 223
Columbia, SC 29202

Re Edward Mims, v Babcock Center, Judy Johnson,
SCDDSN, Kathi Lacy, Stanley Butkus,
Case Number 07 CP 40 03365

Dear Ms Roach

I am requesting copies of the transcripts and the tapes of the first three hearing heard the morning of March 9, 2009 before Judge Manning. Specifically, I am requesting a copy of the transcript and tape of the hearing on Defendant's Motion to Dismiss in the above captioned case, the transcript and tape of the hearing that followed in *Blackwell v Birket* (2008 CP 40 02260) and the transcript and tape of the hearing that followed the *Blackwell* case.

Please provide this office with an invoice and we will remit payment promptly.

Thank you for your assistance in this matter.

Cordially,

Patricia L Harrison

cc William Davidson, Esquire
Christian Stegmaier, Esquire

Exhibit 4

April 14th, 2009

Patricia L Harrison, ESQ
611 Holly Street
Columbia, S C 29205

CORRESPONDENCE

In Re Edward Mims Vs Bacock Center, Judy Johnson

Dear Ms Harrison,

I have received your request dated March 26, 2009 on March 29, 2009 for a copy of the tapes of the first three hearing heard on the morning of March 9th, 2009. All tapes are considered state property, we are prohibited to send out copies of tapes, however, if you have ordered a transcript and there is a challenge to the accuracy of the transcript please indicate the page(s) and line number(s) and I will review the records and report my findings.

If you have any further questions, please contact me at the above address. Thank you.

Sincerely,

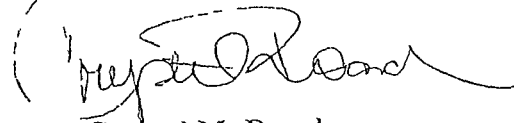

Crystal M. Roach

Exhibit 5

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

March 30, 2010

Ms Crystal Roach
Richland County Court of Common Pleas
PO Box 192
Columbia, SC 29202

Re Edward Mims, v Babcock Center, Judy Johnson,
SCDDSN, Kathi Lacy, Stanley Butkus,
Case Number 07 CP 40 03365

Dear Ms Roach

We represent Edward Mims in the above referenced case. The matter is now before the SC Court of Appeals. We are requesting a copy of the transcript of the hearing held on March 9, 2009 before Judge Manning. We are also requesting a transcript of the hearings held on March 30, 2009 and Sept 4, 2009 before Judge Strickland in the same matter. If you were not the court reporter for those hearings, please let us know. I was unable to find the court reporter's name on the website.

Please provide this office with an invoice and we will remit payment promptly. Thank you for your assistance in this matter.

Cordially,



Nancy C Law, Assistant to
Patricia L Harrison

Exhibit 6

~

/

/

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

May 3, 2010

Via Certified Mail

Ms Crystal Holmes
PO Box 611
Columbia, SC 29202

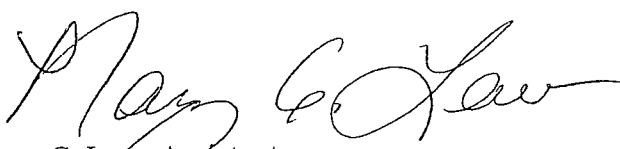
Re Edward Mims v Babcock Center, Judy Johnson, SCDSN, Kathi Lacy, Stanley Butkus
Case # 2007 CP 40 02265

Dear Ms Holmes

I am requesting copies of three transcripts of hearings in the above referenced matter
The first hearing was held on March 9, 2009 before Judge Manning The second hearing was
held on March 30, 2009 before Judge Strickland and the third was held on September 4, 2009
before Judge Strickland

We are sorry to have to bother you with this request during your recuperation at home
We hope for your full recovery If we need to contact someone else to obtain these transcripts,
please be so kind as to provide us with the contact information and well make that request

Cordially,


Nancy C Law, Assistant
to Patricia Harrison

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Exhibit 7

Crystal House, at 11:00

was at auto
accident Terminal

Not building



Car created

Reserve Area

734-1800

Area - high 11' x 5'

Area 10' x

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
EDWARD MIMS,)
) Appellant,)
)
vs)
)
BABCOCK CENTER, JUDY JOHNSON,)
)
SCDDSN, KATHI LACY, STANLEY)
)
BUTKUS,)
)
)
Respondent)
_____)

IN THE COURT OF APPEALS

CASE NO 2007 CP 40 03365

CERTIFICATE OF SERVICE

I, the undersigned employee of the Law Office of Patricia L. Harrison, do certify that on this date May 3, 2010, I have served all counsel of record as below listed in this action with copies of the *Motion to Reinstate and Memorandum* herein below specified

(x) Hand-Delivering it to his office or,

() mailing it to him/her at his her last known address by depositing it in the US Mail, in an envelope with sufficient postage affixed, or,

Kenneth P. Woodington, Esquire
Davidson and Lindemann
1611 Devonshire Dr
Columbia, SC 29202

Christian Stegmaier, Esquire
Collins and Lacy
Lady Street
Columbia, SC 29211

RECEIVED
MAY 03 2010
SC Court of Appeals

5-03-2010
Date

Nancy G. Law
Nancy Law, Assistant to Patricia Harrison

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

May 3, 2010

FAX (803) 256 2213

HAND DELIVERY

The Honorable Jeanette Barber
Clerk of Court
SC Court of Appeals
1015 Sumter Street-2nd Floor
Columbia, SC 29201

RECEIVED
MAY 03 2010
SC Court of Appeals

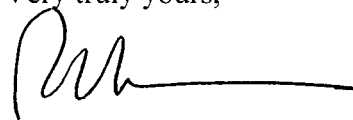
Re Mims v Babcock Center, Inc , Judy Johnson, the South Carolina Department of
Disabilities and Special Needs, Kathi Lacy and Stanley Butkus,
Case No 2007 CP 40 03365
Tracking No 2010154146

Dear Ms Barber

We are respectfully requesting that this case be reinstated as requested in the attached Motion to Reinstate and Memorandum We encountered difficulties in obtaining the transcripts and only recently learned that the court reporter was in a serious accident last Thanksgiving and will not be able to prepare the transcript We sent our request for the transcript to opposing counsel in March, but inadvertently failed to provide this Court with a copy of that request

We have contacted Court Administration about obtaining the transcripts and have followed their instructions, sending the request to the court reporter's private address, instead of directly to the Court We promise to follow up with Court Administration if the transcript is not produced in a timely manner I have attempted to contact opposing counsel prior to filing this motion We very much appreciate your consideration of this Motion Please advise if we need to provide anything further to the Court

Very truly yours,



Patricia L Harrison

cc Kenneth P Woodington, Esquire
Christian Stegnaier, Esquire

The South Carolina Court of Appeals

Edward Mims, by and through his legal
guardian, Margaret Mims, Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of
Disabilities and Special Needs, Kathi
Lacy and Stanley Butkus, Respondents

The Honorable Joseph M Strickland
Richland County
Trial Court Case No 2007-CP-40-03365

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court Due to the failure of appellant to provide proof of ordering the transcript and/or failure to serve and file the Appellant's Initial Brief and Designation of Matter in the above matter, as provided for in Rules 207, 208 and 209 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Richland County after fifteen (15) days, exclusive of the date of filing this Order

V. Clew Allen, Deputy CLERK
For the Court

Columbia, South Carolina
April 20, 2010

cc Patricia Logan Harrison, Esquire
Christian Stegmaier, Esquire
Kenneth P Woodington, Esquire
The Honorable Jeanette W McBride

FILED
4/20/10

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 2007 CP 4003365

RECEIVED
MAR 19 2010
SC Court of Appeals

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondent

AMENDED NOTICE OF APPEAL

Edward Mims appeals the order of Honorable Joseph M Strickland dated February 8, 2010, which was filed on February 9, 2010 Appellant received written notice of entry of this order on February 11, 2010

March 15, 2010



Patricia L Harrison
611 Holly Street
Columbia, South Carolina
(803) 256 2017
plh cola@att net
Attorney for Appellant

Other Counsel of Record

Kenneth P Woodington
Davidson Morrison & Lindeman
PO Box 8568
Columbia, South Carolina 29202

Christian Stegmaier
Collins & Lacy
PO Box 12487
Columbia, South Carolina 29211

Attorney for S C Dept of
Special Needs, Kathi Lacy,
Stanley Butkus

Attorney for Babcock Center, Inc
Judy Johnson

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

Joseph M Strickland, Special Circuit Court Judge

MAR 19 2010

Case No 2007 CP 4003365

SC Court of Appeals

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondent

PROOF OF SERVICE

I, Patricia L Harrison, attorney for Appellant, certify that I have served the *Amended Notice of Appeal* in the above captioned case on the attorneys for the Defendants by US Mail with sufficient postage affixed on Mar 17, 2010

Kenneth P Woodington, Esquire
Davidson and Lindemann
PO Box 8568
1611 Devonshire Dr
Columbia, SC 29202

Richland Co Clerk of Court
PO Box 192
Columbia, SC 29202

Christian Stegmaier, Esquire
Collins and Lacy
PO Box 12487
1330 Lady Street
Columbia, SC 29211

March 15, 2010



Patricia L Harrison
611 Holly Street
Columbia, South Carolina
(803) 256 2017
plh cola@att net
Attorney for Appellant

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA SOUTH CAROLINA 29205

TELEPHONE (803) 256 2017

FAX (803) 256 2213

March 17, 2010

The Honorable Jeanette Barber
Clerk of Court
SC Court of Appeals
1015 Sumter Street-2nd Floor
Columbia, SC 29201

RECEIVED
MAR 19 2010
SC Court of Appeals

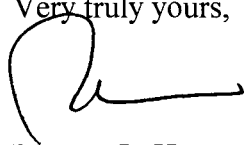
Re Mims v Babcock Center, Inc , Judy Johnson, the South Carolina Department of
Disabilities and Special Needs, Kathi Lacy and Stanley Butkus, 2007 CP 40 03365
Case Tracking # 2010154146

Dear Ms Barber

Enclosed is our Amended Notice of Appeal in Mims v Babcock Center, Inc , Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus along with a Proof of Service showing that the Amended Notice of Appeal has been served on the attorneys of record We apologize for any inconvenience this may have caused Also enclosed is a copy of the November 23, 2009 order of Judge Strickland

We would appreciate your closing and returning the copy in the enclosed stamped envelope Thank you very much for your assistance in this matter

Very truly yours,



Patricia L Harrison

cc Kenneth P Woodington, Esquire
Christian Stegnaier, Esquire
Richland County Clerk of Court



The South Carolina Court of Appeals

LANYA A. GEE
CLERK

V. CLARK ALLEN
DEPUTY CLERK

POST OFFICE BOX 116
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COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 318-1800
FAX (803) 731-8196
WWW.SOUTHSC.O

March 12, 2010

Patricia Logan Harrison Esquire
611 Holly St
Columbia SC 29201

Re Mims Edward v. Babcock Center
2010154146

Dear Ms. Harrison:

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. Clark Allen, Deputy Clerk
CLERK

TAG/mpm

cc Christian Stegmaier Esquire
Kenneth P. Woodington Esquire



The South Carolina Court of Appeals

PATY A A GEE
CLERK

V CLAIR ALLEN
DEPUTY CLERK

POST OFFICE BOX 11
COLUMBIA SOUTH CAROLINA 29201
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29201
TEL: (803) 733-1800
FAX: (803) 733-1830
WWW.CSCOURTS.OH

March 12, 2010

Patricia Logan Harrison Esquire
611 Holly St
Columbia SC 29205

Re Mims Edward v Babcock Center
2010154146

Dear Ms Harrison

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 the Notice of Appeal does not show which attorney represents which party. Please provide this Court with an Amended Notice of Appeal showing which attorney represents which party and a copy of the order dated November 23 2009 within ten (10) days of the date of this letter.

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 also 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. Claude Allen, Deputy Clerk
Tarva A. Gee
CLERK

TAG/mpm

cc Christian Stegmaier Esquire
Kenneth P. Woodington Esquire

The Supreme Court of South Carolina

PE 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, 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:

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.

PU 03/10/10
POS 03/10/10

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

Joseph M Strickland, Special Circuit Court Judge

MAR 10 2010

Case No 2007 CP 4003365

SC Court of Appeals

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondent

NOTICE OF APPEAL

Edward Mims appeals the order of Honorable Joseph M Strickland dated February 8, 2010, which was filed on February 9, 2010 Appellant received written notice of entry of this order on February 11, 2010

March 10, 2010



Patricia L Harrison
611 Holly Street
Columbia, South Carolina
(803) 256 2017
plhcola@att.net
Attorney for Appellant

Other Counsel of Record

Kenneth P Woodington
Davidson Morrison & Lindeman
PO Box 8568
Columbia, South Carolina 29202

Christian Stegmaier
Collins & Lacy
PO Box 12487
Columbia, South Carolina 29211

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M Strickland, Special Circuit Court Judge

Case No 2007 CP 4003365

RECEIVED

MAR 10 2010

SC Court of Appeals

Edward Mims, by and through his legal
guardian, Margaret Mims,

Appellant,

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and
Stanley Butkus,

Respondent

PROOF OF SERVICE

I, Patricia L Harrison, attorney for Appellant, certify that I have served the *Notice of Appeal* in the above captioned case on the attorneys for the Defendants by hand delivery on March 10, 2010

Kenneth P Woodington, Esquire
Davidson and Lindemann
PO Box 8568
1611 Devonshire Dr
Columbia, SC 29202

Richland Co Clerk of Court
PO Box 192
Columbia, SC 29202

Christian Stegmaier, Esquire
Collins and Lacy
PO Box 12487
1330 Lady Street
Columbia, SC 29211

March 10, 2010



Patricia L Harrison
611 Holly Street
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plh cola@att net
Attorney for Appellant

PATRICIA L HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
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TELEPHONE (803) 256 2017

FAX (803) 256 2213

March 10, 2010

The Honorable Jeanette Barber
Clerk of Court
SC Court of Appeals
1015 Sumter Street-2nd Floor
Columbia, SC 29201

RECEIVED
MAR 10 2010
SC Court of Appeals

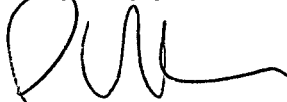
Re Mims v Babcock Center, Inc , Judy Johnson, the South Carolina Department of
Disabilities and Special Needs, Kathi Lacy and Stanley Butkus,
2007 CP 40 03365

Dear Ms Barber

Attached is our Notice of Appeal in Mims v Babcock Center, Inc , Judy Johnson, the
South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus
along with a Proof of Service showing that the Notice of Appeal has been served on the attorneys
of record A check for the filing fee is enclosed

We would appreciate your clocking and returning the copies in the enclosed stamped
envelope Thank you very much for your assistance in this matter

Very truly yours,



Patricia L Harrison

cc Kenneth P Woodington, Esquire
Christian Stegnaier, Esquire
Richland County Clerk of Court

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO 2007CP4003365

IN THE COURT OF COMMON PLEAS

Margaret Mims

vs

Babcock Center Inc

Plaintiff

Defendant

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b) SCRPC, ☐ Rule 41(a)
 SCRPC (Vol Nonsuit) ☐ Rule 43(k) SCRPC (Settled) ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j) SCRPC ☐ Bankruptcy
- ☐ Binding arbitration subject to right to restore to confirm vacate or modify arbitration award
- ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED

☒ See attached order☐ Statement of Judgment by the Court

Dated at Columbia, South Carolina, this _____ day of _____, 2010

PRESIDING JUDGEThis judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this
9th day of February, 2010, to attorneys of record or to parties (when appearing pro se) as follows_____
Patricia Logan Harrison

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kenneth P Woodington
Christian Stegmaier
James H Rion Jr
Leslie A Cotter JrJoel W Collins Jr
Hugh Thomas Arthur II
William H Davidson II_____
ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W McBride

Clerk of Court

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Edward Mims, by and through his legal
guardian, Margaret Mims,

Civil Action No 07-CP-40-65

Plaintiff,

ORDER

v

Babcock Center, Inc , Judy Johnson, the
South Carolina Department of
Disabilities and Special Needs,
Kathi Lacy and Stanley Butkus,

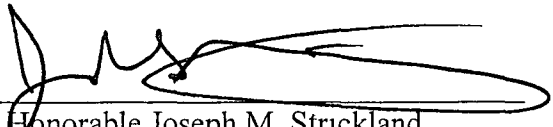
Defendants

RICHLAND COUNTY
FILED
2010 FEB -8 AM 9 21
JEANETTE W McBRIDE
CCP & GS

THIS MATTER CAME BEFORE THE COURT on Plaintiff's motion to reconsider my
order dated November 23, 2009 dismissing the above-referenced matter without prejudice

After hearing argument of counsel and reviewing this matter, the Plaintiff's motion to
reconsider is denied

AND IT IS SO ORDERED


The Honorable Joseph M Strickland

Columbia, South Carolina

Feb 8, 2010

RECEIVED 1 2009

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

PLEADINGS

Edward Mims, by and through his legal)
guardian, Margaret Mims,)

Civil Action No 07-CP-40-365

Plaintiff,)

ORDER

v)

Babcock Center, Inc , Judy Johnson, the)
South Carolina Department of)
Disabilities and Special Needs,)
Kathi Lacy and Stanley Butkus,)

Defendants)

2009 NOV 23 AM 9.03
CANETTE W MBRIDE
CCP & GS

RICHLAND COUNTY
FILED

THIS MATTER CAME BEFORE THE COURT pursuant to notice of motion and motion to reconsider the Court's previous Order denying the Defendants' motion to dismiss this action. All Defendants have joined in the original motion to dismiss and in this motion to reconsider.

A hearing was held on the original motions on March 30, 2009 with all parties in attendance whereupon the Defendants requested an Order dismissing this action pursuant to Rules (12)(b)(1), (b)(2), (b)(4), and (b)(5) of the South Carolina Rules of Civil Procedure. At this hearing the Honorable Joseph M. Strickland denied the Defendants' motion to dismiss the action, and later signed an order to this effect prepared by Plaintiff's Attorney Patricia Harrison on June 3, 2009. Thereafter, Defendants filed a motion to reconsider on June 15, 2009.

At the August 31 hearing on the Defendants' motion to reconsider, the Court clarified that it had denied the Defendants' request to dismiss the action based on judicial economy, as the Plaintiff may re-file his Complaint. At this time the Court heard additional argument by all parties. While a Court decision regarding the applicable statutes of limitations is premature at

this time, the Court did hear argument regarding the possible effect of this motion on the applicable statutes of limitations

After hearing the arguments made by defense counsel and for the reasons discussed below, the Defendants' motion is granted

Plaintiff filed his initial Summons and Complaint in this Court on May 27, 2007, receiving case number 07-CP-40-3365. This Complaint named as Defendants the Babcock Center, Dr. Judy Johnson, Tonya Bradford, Craig Stoxen, Sue Slater, Stanley Butkus, Susan Bowling, and the South Carolina Department of Health and Human Services. The Plaintiff did not serve that Summons and Complaint on any Defendants named in that action. Almost a year later, on May 9, 2008, Plaintiff filed a Summons and Amended Complaint under the same file number. This Amended Complaint changed the named Defendants to include only the Babcock Center, Dr. Judy Johnson and Stanley Butkus and to add Defendants Kathi Lacy and the South Carolina Department of Disabilities and Special Needs. The Plaintiff served the Summons and Amended Complaint bearing the 2007 civil action number on these Defendants on or about May 12, 2008.

Neither the original Complaint nor the Amended Complaint was served within 120 days of the filing of action 07-CP-40-3365 in May 2007. The Plaintiff did not serve any Defendants until almost an entire year after filing in May 2008.

The original version of Rule 3 of the South Carolina Rules of Civil Procedure stated that "a civil action is commenced by filing and service of a summons and complaint." This language was accompanied by section (b), providing for the tolling¹ of a statute of limitations so long as actual service is accomplished with a "reasonable time" after filing. In 2004 this Rule was amended as

¹ Section (b) of the original rule was entitled "Commencement when Defendant Absent." In *Garner v. Houck*, 312 S.C. 481, 435 S.E.2d 847 (1993), the Court held that the title and headings should not be used in interpreting or limiting the meaning of text and that the Rule was not limited to absent defendants. Based on this Court decision, the heading of section (b) was changed to read "Tolling of Statute of Limitations."

follows “[a] civil action is commenced when the summons and complaint are filed with the clerk of court if” (1) the summons and complaint are served within the statute of limitations, or (2) “if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing” SCRPC Rule 3 (Amended 2004). The official note to this Amendment states these changes were intended to reflect the legislative intent expressed in § 15-3-20. See SCRPC Rule 3, Note to 2004 Amendment. It seems clear that the Rule continues to address a tolling period for a statute of limitations and has adopted the 120 day limit provided in § 15-3-20 as a more specific limit for what a “reasonable time” for service would be for the purposes of tolling.

The legislative intent regarding the commencement of a civil action is unequivocally clarified in South Carolina Code Section 15-3-20. This section provides that

(A) Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute

(B) A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing

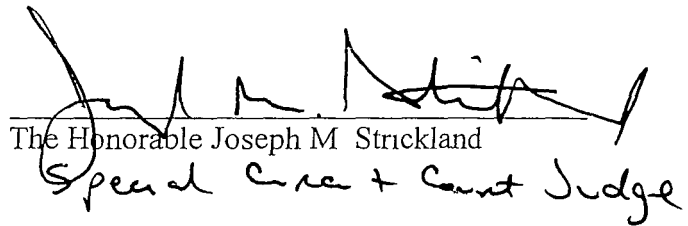
S.C. Code Ann. § 15-3-20 (emphasis added). “If a statute’s language is plain, unambiguous, and conveys a clear meaning ‘the rules of statutory interpretation are not needed and the court has no right to impose another meaning.’” *Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). Actual service was not accomplished on any Defendants within 120 days after filing of the 07-CP-40-3365 action in May, 2007. Therefore, based on the plain, unambiguous language of § 15-3-20, a civil action was not commenced in accordance with the South Carolina Rules of Civil Procedure.

As a result of the Plaintiff's failure to accomplish service within 120 days and commence the civil action, there was no suit in existence in which an Amended Complaint could be filed. Therefore, the filing and service of the Plaintiff's Summons and Amended Complaint in May 2008 bearing case action number 07-CP-40-3365 constituted a legal nullity. Because service of the original Summons and Complaint was never attempted, and because service of the second Summons and Amended Complaint were ineffective, this case must be dismissed for insufficiency of process under Rule 12(b)(4) and insufficiency of service of process under Rule 12(b)(5).

As an additional result of the Plaintiff's failure to accomplish service within 120 days and properly commence a civil action, subject matter and personal jurisdiction have not properly attached, and as such this case is also being dismissed under Rule 12(b)(1) and Rule 12(b)(2). This Court finds that the Plaintiff has failed to comply with the Rules of Civil Procedure in his attempt to commence a civil action. This failure to prosecute the case additionally justifies dismissal of this action. SCRCR Rule 41(b).

Based on the foregoing discussion, this Court **GRANTS** the Defendants' motion to reconsider and dismisses this action without prejudice.

AND IT IS SO ORDERED


The Honorable Joseph M. Strickland
Special Circuit Court Judge

Columbia, South Carolina

~~November~~
~~September~~ 23, 2009

ATTACHMENT

7 name of plaintiff's attorney

- Prepare EDS for transmission to Court Administration by using an "A" or "added" case action code

6 3 4 Case Jackets

As each case is opened a separate jacket should be prepared to hold all original papers associated with that case. The case number should be typed or written on the file tab, and the jackets filed in numerical order by sequential case number. The case name may also be written on the jacket.

As additional papers are filed they should be added to the case jacket, on top of previously filed papers unless local practice calls for adding papers to the end of the file; however, adding papers to the end of a case file can be time consuming.

6 3 5 Procedures for Restoring Common Pleas Cases

The following scenarios may require case restoration:

CP Case Ended by	Procedure
Ended in Error (Use Restore Date Field)	Original Case # Original Filing Date
Granted New Trial Before Appealed (Use Restore Date Field)	Original Case # Original Filing Date
Remanded from Federal Court (Use Restore Date Field)	Original Case # Original Filing Date

In all of the above-referenced situations, the **Restore Date Field** should be used to reinstate the case to the active docket. If you are unable to use the **Restore Date Field**, you must call the Data Entry Supervisor at SCJD (803-734-1800) so that the case can be manually restored. If you are simultaneously restoring and disposing of a previously disposed case, please keep in mind that the **Restore Date Field** must reflect a date that is on or before the **new Disposition Date**; otherwise an error will occur. In all instances of using the Restore Date Field, you must use an "M" (for "modified") action code to successfully retransmit the modified record.

The examples of restored cases listed below are functionally new records, even though they are related to prior cases. These types of records should be transmitted using an "A" (for "added") action code.

CP Case Ended by**Procedure**

Remanded from Higher SC
Court
(New Record)
Original Filing Date

Original Case #
Suffix 'A'

Bankruptcy [not 40(j)]
(New Record)
Original Filing Date

Original Case #
Suffix 'B'

Rule 40(j)
(New Record)
New Filing Date

New Case #
Suffix 'R'

Ended due to Incomplete
Service
(New Record)

New Case #
New Filing Date

Dismissed without Prejudice
(New Record)

New Case #
New Filing Date

Dismissed with Prejudice

May not be restored

When a case is restored after it has been in Bankruptcy status the case will be restored using its original case number and a suffix of 'B' to designate bankruptcy and will retain the original filing date

When a case is restored after an appeal has been granted , the case will be restored using the original case number and a suffix of 'A' to designate appeal and will retain the original filing date

When a case is restored following a dismissal pursuant to Rule 40(j) which allows for a case to be restored within a year , the case receives a new case number with a suffix of 'R' . If the case is restored after a year , the case receives a new case number with no suffix . No suffix is required for those restored after a year because they are treated as a new case since the period to restore has expired

6.4 Case Updating

Between the time a case is filed with the court and the time it is set for trial , additional papers will be filed with the clerk's office . Some will simply be recorded on the EDS and placed in the case jacket . Others will require further action by the clerk such as