

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Doyet A. Early, III, Circuit Court Judge

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OCT 24 2014

SC Court of Appeals

Case No. 2008-CP-40-6656

Appellate Case No. 2014-002029

John R. Rakowsky.....Respondent

v.

Adrian Falgione,
James Spencer,
Estate of Doris Holt, Irene
Santacroce, and Rodney Keith Lail,.....Defendants

Of whom, Estate of Doris Holt, Irene Santacroce, and Rodney
Lail, are.....Appellants

**Omnibus Emergency Motion to Stay the Proceedings
in the Underlying Case and
Motion to Allow the Undersigned to Order the
Transcript Late or Out of Time**

Appellants, Estate of Doris Holt, Irene Santacroce, and Rodney Lail, (hereinafter the Appellants) by and through the undersigned, file this Omnibus Emergency Motion to Stay the Proceedings in the Underlying Case and Motion to Allow the Undersigned to Order the Transcript Late or Out of Time.

BACKGROUND

Judge Early has conducted this case primarily through emails which have kept key matters off the Court Record, despite the continued objections of the undersigned and the *Pro Se* litigant James Spencer. (c. g. See attached Exhibit "A", p. 7, last paragraph.)

On **June 23, 2014**, the Order being appealed was first issued, after the hearing was cancelled by Judge Early that was scheduled to occur on June 4, 2014, where the opposing sides were to present the arguments for merit concerning issues covered by the dispositive Order.

From **June 23, 2014**, until **July 10, 2014**, the undersigned repeatedly requested the name of the author of the dispositive Order from His Honor and all counsels who drafted the Order executed on June 23, 2014 (See attached Exhibit "B"), as it covered topics never raised before the Court in this proceeding and statements that are absolute fabrications of fact. All the requests went unanswered as to how the dispositive Order was developed without the knowledge or input of the undersigned counsel.

On **July 10, 2014**, Judge Early admitted that the Order he executed on June 23, 2014 was a product of *ex-parte* communications between the counsel for the Plaintiff, Desa Ballard, and His Honor. (See attached Exhibit "B").

On **July 10, 2014**, Judge Early stated he was going to void the *ex-parte* Order issued on July 10, 2014. (See attached Exhibit "B").

On **August 20, 2014**, a hearing was held on the Emergency Omnibus Motions filed by the undersigned and the *Pro Se* Defendant James Spencer regarding concerns including the basis for refusing to allow proper discovery related to issues that had been ruled on by the *ex-parte* dispositive Order.

On **September 9, 2014**, Judge Early sent an email with an unsigned Order which he said he had filed with the Richland County Clerk of Court that both reinstated the *ex-parte* Order of June 23, 2014 and dismissed the Omnibus Motions filed by the undersigned and the *Pro Se* Plaintiff James Spencer. (See attached Exhibit "C").

On **September 17, 2014**, the undersigned filed an appeal on the *ex-parte* dispositive Order issued on June 23, 2014.

On **September 29, 2014**, the undersigned discovered from the Richland County Clerk of Court (See attached Exhibit "D") that the *ex-parte* Order issued on June 23, 2014, had never been voided as promised by Judge Early on July 10, 2014. Further, no paperwork existed explaining the basis of his Orders besides the *ex-parte* Order at the Clerk of Court's office.

On **October 4, 2014**, Judge Early stated that he was going to decide the Interpleader action regarding the remaining issues on October 26, 2014. This is in direct conflict with the *ex-parte* Order issued on June 23, 2014, under appeal before this Appellate Court in which he states in the Order on page 12, paragraph E:

"The undersigned retains jurisdiction of the remaining portion of this action which seeks an interpleader as to the settlement funds from the Southern Holdings case **once the federal court action is final.**" (See Attached Exhibit "E".)

On **October 21, 2014**, Judge Early was notified by email, US Mail and Fax that the federal action is not final. This was the latest of multiple reminders. (See attached Exhibit "F".)

On October 23, 2014, Plaintiffs' counsel once again ignored the fact that the interpleader issues are part of the *ex-parte* Order appealed before this Court. Plaintiff rushes to consummate this matter irrespective of the ongoing relevant litigation in both the South Carolina Appellate Court, which clearly stays this case from proceeding as documented in above herein and **Exhibit "E"**. Furthermore, the Fourth Circuit Court of Appeal confirms litigation in this matter is continuing. **(See attached Exhibit "G")**.

The evidence clearly establishes that once again Plaintiff is circumventing legal due process by presenting once again Judge Early with an draft Order that is fourteen pages long and goes into matters never raised in this case and makes statements of fact untruthful statements in an attempt to interfere with the due process rights being pursued by the former clients, who are defendants in the interpleader action, in other legal forums. This is not only unethical but unconscionable and an attempt to circumvent the undersigned clients due process rights secured by the 14th Amendment of the United States Constitution.

Therefore, the undersigned has no option but request the Appellate Court issue an unprecedented Order to stay the proceedings in the underlying action forthwith due to the subject matter under appeal and the clear possibility of the misuse of Judicial Process underway taking place in the lower court.

As the primary architect of the *ex-parte* Order, Plaintiffs' counsel Desa Ballard is once again issuing a draft Order without factual basis which makes rulings on cases currently being litigated in other proceedings and are not and have not been a subject of this proceeding whatsoever. If Judge Early signs this draft Order he is not only wrongfully making untruthful statements on issues he knows nothing about, he is doing so to deliberately undermine the legitimate efforts of individuals

seeking due process of law in violation of the 14th Amendment of the United States Constitution in other legal forums.

DISCUSSION

Based on the Clerk of Court Records, the undersigned now believes (*emphasis added*) the issues raised during the **August 20, 2014**, hearing are highly relevant since the undersigned learned what was supposed to be a revoked *ex-parte* Order that was issued on June 23, 2014, had never been revoked according to the records maintained by the Richmond County Clerk of Court **see attached Exhibit "C"**. Therefore, the undersigned has appropriately formerly requested a transcript of the hearing held on August 20, 2014. (**See attached Exhibit "H"**.)

The undersigned apologizes for the confusion, but as can be seen from the attached documents and the events described herein, the transcript of the August 20, 2014 hearing now appears to be highly relevant and necessary based on the inconsistencies of the records of the Clerk of Court's Office and the use of emails by Judge Early that effectively kept the proceedings off the Court record to conduct this litigation.

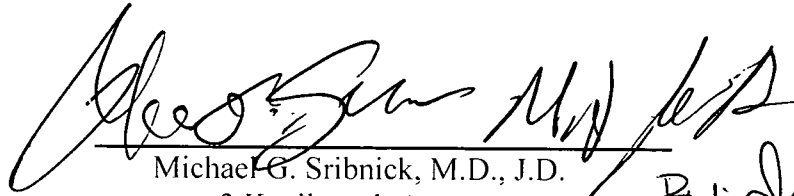
Because the undersigned represents indigent clients, he does not take the ordering of this transcript out of time lightly. The undersigned was trying to conserve the funds of the indigent clients and assumed the statements by Judge Early were accurate and that the Clerk of Courts records would contain the relevant information. Good cause exists and an absolute need exists for this transcript to further understand what happened relative to the dispositive Order being appealed based on the evidence recently discovered on September 29, 2014 as documented herein.

CONCLUSION

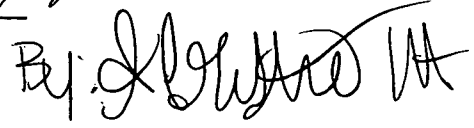
After diligent efforts it turns out the only Court record intact is the transcript of August 20, 2014. Therefore, the August 20, 2014, transcript is now highly relevant given the discrepancy and missing Court records first discovered on September 29, 2014, concerning the dispositive *ex-parte* Order being appealed.

The Transcript of the hearing on August 20, 2014 is now relevant despite the hearing being held months after the issuance of the Order on June 23, 2014. This confusion and contradictions, missing records and litigation by email outside the office of the Clerk of Court and off the record, necessitate the ordering of the transcript of the hearing as the Orders containing the rationale for Judge Early's decisions are non-existent or forever lost. **Therefore**, for all the reasons herein, the Appellants humbly pray the granting of the Motion to Allow the Undersigned to Order the Transcript Late or Out of Time and prays this Honorable Court issue an Order to stay the proceeding in the lower court.

Respectfully submitted, this 24th day of October, 2014



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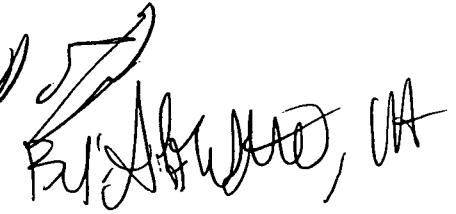
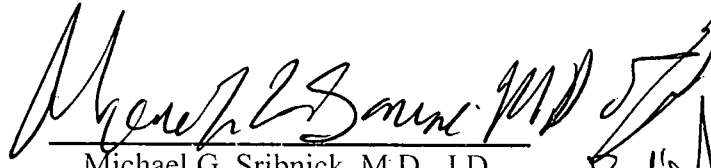


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Certificate of Service

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