



The South Carolina Court of Appeals

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January 23, 2015

Wesley Smith
465 N. Nassau Street
Charleston SC 29403

Re: Wesley Smith v. Charleston County
Appellate Case No. 2014-000643

RECEIVED

FEB 13 2015

SC Court of Appeals

Dear Mr. Smith:

This Court received your notice of appeal dated January 3, 2015. We construe your filings as an attempt to revive your appeal that was dismissed on April 30, 2014, for failure to timely serve the appeal, and remitted on May 20, 2014. Accordingly, we are returning your filings to you.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Daniel Francis Blanchard, III, Esquire
Enclosure

The South Carolina Court of Appeals

Wesley Smith, Appellant,

v.

Charleston County School District and Mr. Townsend,
Respondents.

Appellate Case No. 2014-000643

ORDER

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SC Court of Appeals

Appellant is attempting to appeal circuit court orders filed March 20, 2006, and November 29, 2007. Because Appellant failed to timely serve the notice of appeal as required by Rule 203(b)(1) of the South Carolina Appellate Court Rules, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:

Wesley Smith

Daniel Francis Blanchard, III, Esquire

FILED

4/30/14

McDowell v. SCDSS

304 S.C. 539 (1991) 405 S.E.2d 830

Fannie R. McDOWELL, Appellant v. SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, Respondent.

23409

Supreme Court of South Carolina.

Heard April 22, 1991.

Decided May 28, 1991.

*540 Harold F. Daniels, Piedmont Legal Services, Inc., Spartanburg, for Appellant; Gen. Counsel Bruce Holland, and Asst. Gen. Counsel Tana G. Vanderbilt, S.C. Dept. of Social Services, Columbia, for respondent.

Heard April 22, 1991.

Decided May 28, 1991.

GREGORY, Chief Justice:

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SC Court of Appeals

This appeal is from an order denying appellant attorney's fees under S.C. Code § 15-77-300 (Supp. 1990). We affirm in part, reverse in part, and remand.

Appellant commenced an action for judicial review under the Administrative Procedures Act (APA), S.C. Code Ann. § 1-23-380 (1986), contesting the decision of respondent Department of Social Services (DSS) denying her food stamp *541 benefits. DSS ruled that a 1984 Chrysler automobile, titled jointly in appellant's and her son's names, was appellant's asset. This asset placed her over the resource limit for food stamp eligibility. The circuit court affirmed the agency's decision. On appeal to the Court of Appeals, however, appellant prevailed on the ground she held the car only as the trustee of a resulting trust in favor of her son and the car was therefore improperly considered her asset. *McDowell v. South Carolina Department of Social Services*, 296 S.C. 89, 370 S.E. (2d) 878 (Ct. App. 1987).

Appellant then filed a petition for attorney's fees pursuant to § 15-77-300. The circuit court dismissed the petition for untimeliness. On appeal, the Court of Appeals reversed the dismissal and remanded the case to the circuit court for consideration on the merits. *McDowell v. South Carolina Department of Social Services*, 300 S.C. 24, 386 S.E. (2d) 280 (Ct. App. 1989). Appellant filed a supplemental petition for attorney's fees incurred in petitioning for such fees and in appealing the dismissal of the petition. The total fee claimed was \$10,515.31.

On the merits of the appellant's petition, the circuit court found as follows: (1) appellant is not entitled to attorney's fees for the hearing before DSS because § 15-77-300 does not apply to agency proceedings; (2) appellant is not entitled to attorney's fees for proceedings in the circuit court because DSS's denial of food stamps was substantially justified; (3) appellant is not entitled to attorney's fees on appeal to the Court of Appeals under § 15-77-300, but is entitled only to \$750 pursuant to Supreme Court Rule 38, § 4. We first determine whether DSS acted without substantial justification thereby entitling

appellant to attorney's fees under § 15-77-300. Section 15-77-300 provides in pertinent part:

In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if: *542 (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

In *Heath v. County of Aiken*, ___ S.C. ___, 394 S.E. (2d) 709 (1990), we held that "substantial justification" for the purposes of this statute means justified to a degree that could satisfy a reasonable person. An agency action supported by substantial justification is one which has a reasonable basis in law and fact. See *Pierce v. Underwood*, 487 U.S. 552, 108 S. Ct. 2541, 101 L.Ed. (2d) 490 (1988). Under § 15-77-300, the agency action we examine for substantial justification is DSS's action in "pressing its claim" against the adverse party. We therefore look to the agency's position in litigating this case to determine whether it is one which has a reasonable basis in law and fact.[1]

Applying this standard, we conclude DSS acted without substantial justification. The facts regarding appellant's joint ownership of the Chrysler were undisputed. She furnished no consideration for its purchase but signed all the necessary documents because she had an established credit record and her son did not. DSS found appellant participated in purchasing the car solely as a favor to her son. DSS ruled, however, that for a resulting trust to arise, the property could not be jointly titled. This conclusion is incorrect under established South Carolina precedent. When property is titled jointly, a resulting trust does not arise unless there is evidence to the contrary, as in this case. See *Legendre v. South Carolina Tax Comm'n*, 215 S.C. 514, 56 S.E. (2d) 336 (1949). DSS therefore relied on an erroneous legal conclusion in defending its decision in proceedings before the circuit *543 court and Court of Appeals. DSS's litigation position was not substantially justified because it had no reasonable basis in law and fact.

Having determined that appellant has shown DSS acted without substantial justification as provided in § 15-77-300 and finding no special circumstances that would make an award of attorney's fees unjust, we conclude the trial judge abused his discretion in denying appellant's petition. See *Heath*, supra (standard of review). We must next determine what fees are recoverable.

First, the trial judge held appellant is not entitled to attorney's fees for the hearing before DSS. We agree since at this point the agency was not "pressing its claim" in litigation against appellant but was merely functioning as an administrative decision-maker. We therefore affirm the denial of attorney's fees for this stage of the proceedings below.

Second, the trial judge held appellant was not entitled to attorney's fees for the action for judicial review in the circuit court. DSS contends this ruling is correct because this is not "a civil action" since it is not commenced by service of a summons and complaint, see Rules 2 and 3(a), SCRCP, and § 15-77-300 by its terms applies only to "civil actions." We reject DSS's argument. An action for judicial review is one properly brought in the court of common pleas although it is by petition pursuant to § 1-23-380(b) and not by summons and complaint. We find it is a civil action within the terms of § 15-77-300. To

hold that § 15-77-300 does not apply to such actions would eviscerate the statute since an agency typically "presses its claim" in the courts in the context of actions for judicial review. Appellant is therefore entitled to attorney's fees for the judicial review action in circuit court.

Third, the trial judge held appellant was entitled only to \$750 for the appeal under Supreme Court Rule 38.[2] Rule 38, however, does not preempt an award of attorney's fees to which one is otherwise entitled. We reverse the trial judge's ruling and hold appellant is entitled to attorney's fees under § 15-77-300 for fees incurred on appeal.

*544 Finally, appellant is entitled to attorney's fees under § 15-77-300 for this litigation and appeal seeking to secure such fees. We remand to the circuit court for a final determination to the total amount of the fee to be awarded according to the guidelines set forth herein. (LATER)

Affirmed in part; reversed in part; and remanded.

HARWELL, CHANDLER, FINNEY and TOAL, JJ., concur.

NOTES

[1] See *Spencer v. Nat'l Labor Relations Bd.*, 712 F. (2d) 539 (D.C. Cir.1983), for an extensive discussion of the merits of evaluating the agency's litigation position rather than the underlying action giving rise to the litigation. *Spencer* construed the Equal Access to Justice Act (EAJA) before its subsequent amendment requiring that both the agency's litigation position and its underlying action be substantially justified. 28 U.S.C. § 2412(d)(2)(D). The language of § 15-77-300, however, does not track the EAJA beyond using the phrase "the court order is not valid based on the fact that is not substantially justified." The enforcement agency reliance of law for application is absent this case thus order, this court and or delegated officials are lacking legal familiarity

[2] Now Rule 222, SCACR.

CERTIFICATE OF COMPLIANCE

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Case No. 2003-CP-10- 4751

Charleston County School District (CCSD) et al,
Respondent(s)

v

Mr. Wesley Edward Smith III

Appellant

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SC Court of Appeals

CERTIFICATE OF COMPLIANCE

I, Mr. Wesley Edward Smith III comes now before this honorable court in accordance with the expressly written rules, but in understanding with any semblance of the letter recommendations (see enclosed dated January 23, 2015). By providing allowance to dispose of the proper law agency law review, would not suspect a soul, for possibly being a violator of the rules or server to block any avenue to challenge the alleged in violation of a citizens afforded rights. While Mr. Wesley Edward Smith III, remains in custody with this State process under personal affairs, Mr. Wesley Edward Smith III is continually sustaining personal injuries from a backlash of continued mistreatment, collateral attacks, from wrongful acts perceived due

to wrongful business practices. CCSD business practice has subjected many other citizens either unintentionally or intentionally, such as the right to work as employees, while introduction to its internal madam and mad house practice process. Other employee have not shown the common courtesy. The performance of CCSD after committing an alleged wrong, seeks to hide from or be aided under the State doctrines, which allegedly provided an umbrella of such protection. The CCSD shows a lack of care in its business practice and does not display the warmth a proper business should show and employee, independent contractor or a customer. The undersigned clearly states that I, Mr. Wesley Edward Smith III represents self. As required in accordance with rule 11 of the South Carolina Rules of Civil Procedures, as hereby affirmed a consultation and offer was made to the opposing party.

The opposing parties are unable to reconcile or conciliate the matter of personal torturous injuries sustained from the accident. The Charleston County School District does not believe that its business practice committed any wrongful acts that would be in violation of the State laws, rules or the protected right of another citizen. CCSD does not acknowledge the subsequent responsibility of being liable if such findings are discovered, and such results that due process and appellate rights were/are being denied. By CCSD own written admissions, its own egregious nature, decided to perform and conduct an internal process for an alleged statutory violation while operating under the State laws and rules that governs a judicial process. The termination from employment served as the implied notice to Mr. Wesley Edward Smith III that CCSD had an inherent right to act and terminate any other employee without justification for arbitrary treatment of another employee while disregarding his and her protected rights. CCSD and its

personnel conducted its own internal process but substantive proof of law enforcement supporting memorandum is absent. The CCSD refuses to disclose the review committee findings, refuse to pay Mr. Wesley Edward Smith all the money owed for the first wrongful termination, 401K investment in the company, 529 Share regarding Education and investment with accruing divestments . Final disposition remain, but shaded and overlooked by the assertion of the premature orders from Honorable R. Markley Dennis dated 20 March 2006 and the Honorable Doyet A. Early order date 20 November 2007 on the grounds that CCSD terminated mr. Wesley Edward Smith III from employment on the unlawful premise that I, Wesley Edward Smith III was the sole statutory violator, and as such, CCSD believes they were personally injured in some form or personal fashion that is substantially unexplained. CCSD stated they had reasonably good faith reason to believe that the alleged unlawful act occurred while Mr. Wesley Edward Smith III was proffered his duties as proscribed by the district. CCSD solely took matter against Mr. Wesley Edward Smith III. Objectionable reasons are left believe the CCSD knew that it would cause an injury or had reason to believe that subjecting any to this type of process that and injury would incur. CCSD has not only personally injured the Appellant, but also believed in violation of his recognizable rights afforded due process regarding the substantive evidence or proof required to act as implied enforcement agency.

THEREFORE the issuance of a remittitur without the support of review committee's fact finding under the written law would be legally unfamiliar and not impartially treated. Could easily be construed as a conduct not adhering to the expressly written rule of law.

CONFIDENTIALITY STATEMENT

This also serves notice to all person not originally or has become inadvertently involved in the State process, that the enacted rules, laws, policies and procedures protects rights of all citizen that are the subject of the State of acting delegated interveners involved in a collective process from being arbitrarily targeted by the collection, sharing, transmission and the production who are not privy of such shared public information that protects the personal information by as well as my protected rights and subjects all violator liable to the protecting statutes and state law.

February 10, 2015

Respectfully Submitted



Mr. Wesley Edward Smith III

OPENING BRIEF WITH MEMORANDUM ARGUMENT OF LAW

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Case No. 2003-CP-10- 4751

Charleston County School District (CCSD) et al,

Respondent(s)

v.

Mr. Wesley Edward Smith III,

Appellant

APPELLANT OPENING BRIEF

I, Mr. Wesley Edward Smith III comes now before this honorable court with objections to the courts letter dated January 23, 2015 (See such ltr attached) . This letter refers to an action that is not identified or found in the appellate rule. Initially, this court was respectfully request to review the order per lower court findings. The ruling of the honorable Doyet A. Early III order dated 20 November and the Honorable R. Markley Order dtate 20 March 2006, leaves reasonable doubt related to questioning final dispositions that are remaining. These s

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SC Court of Appeals

objectionably questionable act are perceived in violation to the expressly written rules and State laws. As such questions are raised in accordance with the requirements under South Carolina Rules of Civil Procedures rule 56, "a genuine issue of material fact remains".

The lower court ruling is perceived to be a genuine issue of material fact (in violation of rule 56 SCRPC) if reasonable inferences are allowed to remain on the docket sheets as a valid source of information of reference, but quite impossible because reasonable inferences and questions are still unanswered. The court order does not allow the contesting of the State actors actions, but yet decided to place Mr. Wesley Edward Smith III in contempt of court for raising a question was raised, as to the require performance of duties or the lack thereof, which presumes to cause the judicial injustice.

The actor's deciding to act under the law lack of performance of duty to a reasonable, upright and prudent man, shows throughout the order. The State actors typed the order in the format that was pleasurable to them and them only. The showing of contempt should have been applied on the state actors as well, until the establishment of rights, standings and holdings and recoveries from personal injuries sustained, could have been filtered thru this consolidation.

As relevant, in light of the final assessment of the lower decision, it is believed, that this court by issuing a remittitur vice reviewing the actual factual, leaves stains of reasonable doubt and objectionable inferences remaining of said order. Then such order is that extraordinary occurrence, as narrowly tailored, that does not conform with the other set registered case previously decided over. Furthermore, the appeal for the appellate review seem to be adversely

affected by the ruling. I object to such action and respectfully demanding a fair hearing and equal justice under the law, as I Mr. Wesley Edward Smith III was the subject of the respondent stating a reason to believe that CCSD was acting in acted good faith. The CCSD claimed that I committed a statutory wrong while employed with CCSD. I, Mr. Wesley Edward Smith III has been violated and personally injured.

This honorable court has personal jurisdiction over the all subject matters between the parties involving the resolution of a legal and personal relief and remedy for this related actions and affords such remedies and relief, as afforded under the same set of laws, as Mr. Wesley Edward Smith III became the private employment subject of the rules and application of implied enforcement right of the laws.

This appellant was the subject of numerous alleged crimes that occurred and was convicted without a fair or equally administration of law, on the basis of hearsay. I have the lost the enjoyment of consortium and the enjoyment of teamwork that comes with employment and results that hinders me from being employed. The final action of this court rulings is based upon rumors and hearsay from third party State prosecutors and its defense attorneys, who are proximately liable, by either intentionally or unintentionally conspiring to conjure up the outcome, which gives reason to believe the acts were finalized, but the end results, answers such questions of a mock judicial trial, with objectionable inferences being reasonably drawn from their several or collective duties performed.

The respondent initiated actions on a faulty premise and relies on the State longstanding doctrine to bail them out. Intent is beyond any reason, for which this court professionalism and expertise is kindly requested and demanded without unequivocal interpretations based on the English (not how acts are done or applied in reference to England) but by the expressly written laws and rule that governs this court appellate actions. Mr. Wesley Edward Smith III was terminated from employment and seemed to be blackballed (refusing to be hired) under the same set of alleged implications for convictions. Without affording Mr. Wesley Edward Smith III his afforded right to appeal, which would've may it seem more plausible that a fair hearing was allowed. Also without the required substantive evidence/proof required by law, I suffered personal injuries. This one-sided action (CSSD being the victim, the Judge, being their own jury and review board panel) I am offended as held without fact of law or supporting memorandum of law enforcement review. The respondent implied act for terminating the employment of an employee and his or her rights appears plausible upon first sight, but upon a closer review, this court should find that the final order of the trial court, honorable Doyet A. Early "lacked familiarity" to concretely conclude without reason inferences and question of conflict of law remaining, which is the legal element absent for which further review s respectfully demanded and required by the rules governing fair treatment and equal justice under the law for all. Without the credible witnesses or the agency review, or seal of approval, this court should find the order as frivolous and a moot issue, worth the modification, amending, dismissal, based on the reasonable doubt that such civil unrest crime is created due to being mentally and physically handicapped citizens, regardless of race, age, gender, color or known.

denomination, affiliations and or socially accepted associations.

In closing, ASSUMING ARGUENDO, responsive to the CCSD asserted defense reason to act in good faith, that due to the aforementioned injustice, an extension of time is respectfully requested (if court deems necessary) is also sought into the matters related to the State involuntary taken of time and service away from my job(s) related to Mr. Wesley Edward Smith III for which the appellant seeks property recover and restoration, monetary and economical relief damages, independent action in equity against the citizen after a harm, injury or some other abuse has occurred) being that practice of the State, as one of the longest termed agents and or longest standing doctrine. The designated elected and its appointing of delegates failed to warn the reestablishment of the history problematic doctrines that were republished without a favorable change regarding diversity or use for a multicultural society to benefit, or for the mannerism for it should remain standing. By resigning these laws and rules back into the mainstream of our society, it appears to personally institutionalized an operation for the States own compelling reasons. The signors knew or should have reasonably known that a hazard or potential hazards would exist and the possibility of an accident would occur between the State prosecutors, the court and the citizens, for acts that are left in the hands of randomly delegated state prosecutors.

The long standing laws and rules exist, but failure to warn the other civilized citizens that such destructive, defective, non-reconstructed devises, causes and effects has the potential to commit judiciary accidents, have long termed bottleneck effects which can and cause docketed cases time delays, unsupported documenter to unreasonably intervene. Subsequent intervention

could continue to cause civil unrest and cause others to sustain personal injuries while in pursuit of justice, freedom, liberty is being deprived civil rights and civil liberties, all at the same time.

Thus to date, the Remittitur is untimely, unfit for this judicial duty and serving as another State barrier to discover the truth, manipulated the judicial process machinery from functioning in the mannerism which is was designed, to abuse the very limited integrity fabric of the court, to commit fraud upon the court alters and to prevent the nuisance interveners from continuing to encroach upon the due process civil unrest, civil liberties and also the civil right of countless others in this private matter. Relying on McDowell v S.C. Dept' Of Soc. Serv., 300 S.C 24, 386, S. E. 2d 280 (Ct App, 1989): see Christy v Christy 317 S. C. 145 452 S. E. 2d 1 (ct App. 1994) (The final disposition of a case occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. Until that time, the case is pending on appeal (Offered into evidence Enclosed) As understood, a citizen that is the subject a final hearing of the law is when the laws and rules are being followed according to the rules and the subjective action of a party affiliation or compelling reason to conduct business.

February 10, 2015

Respectfully Submitted


Mr. Wesley Edward Smith III

REPLY BRIEF IN OPPOSITION WITH LAW MEMORANDUM

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Case No. 2003-CP-10- 4751

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SC Court of Appeals

Charleston County School District (CCSD) et al,

Respondent(s)

v

Mr. Wesley Edward Smith III,

Appellant

REPLY BRIEF IN OPPOSITION OR ODER OR ISSUANCE OF REMITTITUR WITH SUPPORTING LAW MEMEORANDUM ARGUMENT

I Mr. Wesley Edward Smith, III as issue are relevant to the issuance of any remittitur's as relevant to this appeal process I object under the findings in "McDowell v S.C. Dept' of Social Services (Ct. App. 1989). Based on based on information and belief from the enacted rules, if necessary, Mr. Wesley Edward Smith III in his request to leave court, seeks to file motions and other similarity situated claims that affords proper but independent equitable relief, declaratory

relief. administrative law findings, reinstatements, redresses, release and recovery from the state delegated traps and devise, while being afforded economical relief with beneficial remedies on claims for the adverse matter regarding protected employment rights and the afforded legal rights regarding the adherence to afford all citizen regardless of race, color, disability, sex, gender, national origin or any other previous forms for in-volunteering personal servitude which has/is precluding recognizable legal right regarding civil liberties substantives and procedural due process.

On the subject matter of the issuance of the remittitur by this court, reasons are given at the point that such accomplished act is untimely and not legally ripe to conclude further, without first correcting at this intermediate level. Findings not legally supported are not final. Such non finalizations are those usually considered not ripe for the adjudication process, equates to a moot process and are simply frivolous issues.

Upon the drawing of court cases, as relied and related on similar issues, with such reasons to doubt reason to choose, Mr. Wesley Edward Smith III believe that final order is erroneously in contempt of court (challenge legal authenticity in this court) and ask similar questions. As relied upon in "McDowell v S.C. Dept' of Social Services (Ct. App. 1989).

STANDARD FOR REVIEW

Based on the contents of the enclosed letters received from this court dated [April 30 2014], but the most appeal letter dated 23 February 2015, I, Wesley Edward Smith III construes variations in the law with subsequent application of the appellate rules are

being inferred. Below are genuine issues related to the how the court seeks to treat the court action or how would prefer this case be programmed according to the court rules. As instructions read, its construed as either the court will review the rule independently or by a consolidated action or as consolidated per rule and relief and remedy sought.

ON ISSUES RELATED HOW ACTION ARE HEARD BY THIS COURT

PURSUANT TO RULE 214,215,217,221, 222, 244, 245, 246, 260 related to matters of consolidation, rehearing and actions governing remittitur

PURSUANT TO RULE 214 [214,215,217,221 , 222, 244, 245, 246, 260]

Rule 214 CONSOLIDATION

Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.

PURSUANT TO RULE 221 [215,215,217,221 , 222, 244, 245, 246, 260]

Rule 221 REHEARING AND REMITTITUR

(a) Rehearing. Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court. A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court. No petition for rehearing shall be allowed from an order denying a petition for a writ of certiorari under Rule 242, SCACR.

(b) Remittitur. The remittitur shall contain a copy of the judgment of the appellate court, shall be sealed with the seal and signed by the clerk of the court, and unless otherwise ordered by the court shall not be sent to the lower court or administrative tribunal until fifteen (15) days have elapsed (the day of filing being excluded) since the filing of the opinion, order, judgment, or decree of the court finally disposing of the appeal. If a petition for rehearing is received before the remittitur is sent, the remittitur shall not be sent pending disposition of the petition by the court. Where a petition for rehearing has been denied, the Court of Appeals shall not send the remittitur to the lower court or administrative tribunal until the time to petition for a writ of certiorari under Rule 242(c) has expired. If a petition for writ of certiorari is filed, the Court of Appeals shall not send the remittitur until notified that the petition has been denied. If the writ is granted by the Supreme Court, the Court of Appeals shall not send the remittitur.

(c) Rehearing of Motions. The appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal. Looking for a word from this court on the rules.

In Closing, an action is considered untimely without the legal finding and support of the law that concludes a process on a case by case basis. The issue before this court, is to review the order, which on its face appear out of order. By the state prosecutors having the ability, as a layman, who false claimed, and were then given the ability to type court orders, file, signed and finalized as completed. The order, this date still holds Mr. Wesley Edward Smith III (and other unbeknownst) in contempt of court, but does not allow the afforded opportunities allotted to join the parties for interaction, had not the delegated appointed was chosen. Delegation into the matter of a personal nature without having firsthand knowledge in the affairs can become complicated and interwoven. Without the support of any conclusive or substantive fact related to the respondent element (absent) of the law enforcement or applicable administrative agency, whose duty responsible to report to the adjudicators, by providing conclusive facts. Any other issue should be liberally construed and summarily dismissed, not for the entire consolidated action to sheer speculated subjective ideas for other persons doings and short comings.

I Mr. Wesley Edward Smith III acknowledged my protected recognizable right have been violated by the CCSD is liable for the personal injuries sustained from reason to believe a dereliction of a duty due to carelessness or negligence, duty owed which caused to the dissatisfied, aggrieved legally injured and personally harmed. CCSD has hired against its own policies a state prosecutors to intervene in this private affair, that continues to encroach upon my personal private rights while changing the specification of the court requirements.

THEREFORE the remittitur submitted as the affirmed finalized disposition to

the lower court is erroneously submitted and premature as well. based on the fact that the premature ruling and granting of a court order is Unsubstantially justified.. The lower case was denied the substantive and review which in turn would have allowed the producer due process. The applicable administrative agency was not allowed to review (a prerequisite prior to entering the courts) nor was the law enforcement agency approval or concur with the findings . Thus the court actions ar implied as a right to act as the enforcement agency granting relief of law, but is absent this case substantive matter (supporting memorandum of law) an as such this court lacked legal familiarity to make such a determination, while slipping into a sheer speculative mode without the substantiated facts and not circumstances of gathering evidence from persons that used he said/she said.

February 10, 2015

Respectfully Submitted



Mr. Wesley Edward Smith III

EXTENTIONS GOVERING LEAVE TO APPEAL BRIEF OFMR. WESLEY EDWARD SMITH III (the ex parte) of CASE 2003-CP-10-4751

QUESTION PRESENTED

Reasonable inference are being drawn to an error of law under rule 56 can the final ruling of this common law court (lower court) ruling be final when the courts or all opposing and dissenting parties of the respondent action taken were affordly unfamiliar with the case, without the respondents submission of a complaint or the service of the summons for the person who personally harmed the respondents before the jurisdiction of the appointed afford court?

I. INTRODUCTION

I, Mr. Wesley Edward Smith III based on the lack of service in the process by the State of it delegated and since the State activity involves the court rules, I move to appeal case number 2003-CP-10-4751, as perceive (for perception is based without proof for doing an ct or action, supported by memorandum of law to act or reasons that were beyond doubt) a violation of the state rules and has been mistakenly identified this case as Mr. Wesley Edward Smith III being the only perpetrator, for an unknown act or offensive activity, for which the case or final court ruling fails to provide the "unidentified" elements or the claims for relief the respondent were seeking in its initial complaint or the list of tortuous acts under SC codes 15-178-10 (et seg) personal injuries, tht the accident caused the State, the State prosecutor or the State delegated officials who represents the Charleston County School District (herein refer to as 'CCSD") were able to collect.

II. ISSUE ON APPEAL for the application of law under the South Carolina Rules of Civil Procedure Rules:

ISSUE 1 Did the court err in not adhering to discovery in accordance with RULE 2 ONE FORM OF ACTION

There shall be one form of action to be known as "civil action."¹

ISSUE 2: Did the court err in not adhering to discovery in accordance with RULE 3 COMMENCEMENT OF ACTION

(a) Commencement of civil action. 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 in any manner prescribed by law; or

(2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

ISSUE 3: Did the court err in not adhering to discovery in accordance with RULE 3(b) (b) Filing *In Forma Pauperis*.

(1) Except as provided in (2) below, a plaintiff who desires to file an action *in forma pauperis* shall file in the court a motion for leave to proceed *in forma pauperis*, together with the complaint proposed to be filed and an affidavit showing the plaintiff's inability to pay the fee required to file the action. If the motion is granted, the plaintiff may proceed without further application and file the complaint in the court without payment of filing fees.

(2) Where a party is represented in a civil action by an attorney working on behalf of or under the auspices of a afford aid society or a afford services or other nonprofit organization funded in whole or substantial part by funds appropriated by the United States Government or the General Assembly of the State of South Carolina, which has as its primary purpose the furnishing of afford services to indigent persons, or the South Carolina Bar Pro Bono Program, fees related to the filing of the action shall be waived without the necessity of a motion and court approval. Before the filing fees will be waived, the attorney representing the party must file with the clerk a written certification that representation is being provided on behalf of or under the auspices of the society, organization or program, and that the party is unable to pay the filing fees.

¹ These Rules are the same as Federal Rules 1 and 2 except the name of the State. Rule 81 provides that the Rules will apply also to Magistrate's, Probate and Family Courts where not inconsistent with the rules of those courts. Rule 2 is substantially identical to Code Sections 15-1-80 and 90. This Rule also abolishes the mostly cosmetic differences between "actions" and "special proceedings". A special proceeding is really only a civil action in which some special remedy is sought; i.e., writ of mandamus, writ of habeas corpus, etc.

ISSUE 4: Did the court err in not adhering to discovery in accordance with rule RULE 4 PROCESS

(a) Summons: Issuance. The summons shall be issued by plaintiff or plaintiff's attorney. Copies of the original summons shall be served upon each defendant.

(b) Same: Form. The summons shall be signed by the plaintiff or his attorney, contain the name of the State and county, the name of the court, the file number of the action, and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.

(c) By Whom Served. Service of summons may be made by the sheriff, his deputy, or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action. Service of all other process shall be made by the sheriff or his deputy or any other duly constituted law enforcement officer or by any person designated by the court who is not less than eighteen (18) years of age and not an attorney in or a party to the action, except that a subpoena may be served as provided in Rule 45.

(d) Summons: Personal Service. The summons and complaint must be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Voluntary appearance by defendant is equivalent to personal service; and written notice of appearance by a party or his attorney shall be effective upon mailing, or may be served as provided in this rule. Service shall be made as follows: of persons imprisoned, and patients in a state hospital or similar institution, personal service of process may be made by the superintendent of the institution or by the director of the prison system or by assistants duly designated by the superintendent or the director in writing for the purpose of making service of process, instead of the sheriff. The superintendent or the director or their designated assistants shall not be entitled to any costs therefore. Service on confined or imprisoned persons shall also conform to the provisions of § 15-9-510, S.C. Code, 1976.

**ISSUE 5: Did the court err in not adhering to discovery in accordance with rule 26
RULE 26**

GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. The frequency or intent of use of discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c) of this Rule.

**III. afford MEMROANDUM OF LAW ARGUMENT UNDER RULE 56 TO
SUPPORT SPECIFIC OBJECTIONS**

Did the court err in not adhering to discovery in accordance with rule 56. As supported

**RULE 56
SUMMARY JUDGMENT**

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motions and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve opposing affidavits not later than two days before the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

IV In Summary on the basis that the court order and respondents acts are without the substantive familiarization of law under rule 56, how can the court or respondents justify or point out in its ruling not to have shown preferential treatment to the more preferred client, or that such ruling on record strictly adheres to the aforementioned rules and the supported the afford the respondents complaint in this courts ruling(s). When such perception and an act exist, all opportunities to raise stated and specific objections must be were not allowed based on the information, allows the challenging of the respondents state evidence and supporting corroborating statement of facts from its listed eye witnesses who claim to have attested (but not in a official court of law) the same facts without having objectionable question being raised and inference of state law conflict still remaining. Where is the this present that Mr. Wesley Edward Smith III was afforded his afforded rights, before, during and after being sanctioned by the court of common pleas and the appointed adjudicator (s)in the rulings, directly related to case number 2003-CP-10-4751?

The error of law and printed the signed court ruling has not allowed not afford this citizens, regardless or previous forms of personal servitude the state accomplished in recent past,

should have accepted the respondent claims judicial fairness or the that Mr. Wesley Edward Smith III inquisitional process into you the finalized and "dismissed with prejudice" or further declared agency action as "untimely" by assertion of a the state defense of the remittitur (as cosigned back into existence in this day and age of modernization).

Under rule 56, as clearly written in the English language, when a genuine issue of material fact remains, or afford unfamiliar, the parties has the right to contest the uncontested issues while having all opportunities afforded to do so without constraints or barriers. This afford the parties to raise objections or point out in the court record such perceived violation of law or contradiction of fact. If the respondents presented evidence, a rebuttal of stated facts by the state witness or delegated official statements. This allows the specific objections in the record, with the potential potentially cause and error of law, unequal application of justice under the law or procedural is considered reasonably unfair. Strict adherence and compliance to the established written rules are necessary via personal ideology or party institutionalization affiliation is mandatory, as aforementioned herein. Parties without a legal standing, or the first hand knowledge, foremost, common sense should kick in and would have been more acceptable to the courts to approach or allow these laws to be more liberally construed, if found the actor and its acts were indecent or were not allowed here, which encompasses summarily dismissal. Each perpetrator under the guise of law, is liable and held responsible for the proximate cause under justice. Those citizen who are non related to the afford proponents of all areas of justice law actions, can quickly give the relationship of this court, not to be in conformance with such written rules, to become more unfamiliar with the actual courts process and abuse the power of the courts that

prevent the judicial machinery from performing in judicial efficiency . Allowing any citizen, who jobs is the State prosecutor, to arbitrarily call another citizen or a laymen for practice is quite unnecessary and very unprofessional (state prosecutors personally referencing another citizen as such). By not allowing the adversely affected, aggrieve and dissatisfied party to raise issues in this court of common pleas, as here narrowly tailors seems to raise reason for the hastiness of the rulings. The State and the state prosecutor intervention would have prevented this implied infraction for the error of law in violation of rule 56 and foremost perceived as a continual violation of denying the citizen of recognizable civil liberties entitled to Mr. Wesley Edward Smith III. Proof required and needed.

WHEREAS based on the following reason to believe as respondent act imply the violation of civil liberties (criminal intent as applied requesting transfer court) and deprivation of afforded rights, a restatement of rights absent false claims redress criminal intent, redress cross civil claims, restoration, recovery of economical monetarily relief and equitable independent judgments remedies are respectfully demanded by declared, order, declaration, affirmation and concurrences for the applicable court or afforded agencies,

WHEREAS without the disclosure of the respondent complaint or summon on very pertinent and time sensitive matters, which is the substantive evidence, required, that governs the respondents acceptance to the court alter as granted is perceived an error of law based on information and belief because the respondent have not complied with the civil rule of law rule 3 that requires the court process to initially open its gates, to any and all complaining parties but first done so by first filing a complaint and then the service of a summons on the party(s) with

the substantive evidence of the enforcement agency supporting memorandum, specifically citing the personal or afford injury sustained. The case ruling of selection order 2003-CP-10-4751, so **THEREFORE** the respectful request for this court review deals with the issues of the state court ruling in review is believe a mere presumption of what happened, pure conjecture of law without the supporting memorandum of law the respondent relied upon to be granted was not affordly ripe for the judicial process afford sustained, this coupled with not being able to contest review based on the lack of following the process and the most recent rulings, to any citizen not be considered an injustice, with the supporting fact based on the state court adjudicators acts of Honorable R. Markely Dennis order filed dated 20 March 2006 (granting part one (1) of the respondents acts and the close afford business by order finalizing ruling part two (2) of the Honorable Doyet A. Early 29 November 2007 (herein contesting afford familiarity in accordance with the applied rules) which appears to considered procedurally unfair, substantially unfounded, denies civil liberty, while violating civil rights and governing opportunity to seek relief /redress that equal afford due process are continually offensive.

Reversal. remand and recovery is lawfully in order due to the lack of service of process of a complaint summons or any other designated intent devises of the state which allowed acts of enforcements as implied, to use my name, business, partners or associates for the use of a civil process [criminal]. I do not condone the state or its delegated elected parties by affiliation interests or like other, did not imply nor authorized the waiving of any state right afforded to me in any process of law or indifference. I reserve all other rights KNOWN and UNKNOWN at this time, do this customary and traditional common practice of the law of things and on the bulling, harassment and torturing of citizens and their family members

February 10, 2015

Respectfully Submitted



Mr. Wesley Edward Smith III

**PROOF OF SERVICE
In The Court of Appeals**

Appeal from Charleston County
Court of Common Pleas

Doyet A . Early, Circuit Court Judge

Order dated: 29 November 2007

Charleston County School District et al, Respondent(s);

v.

Mr. Wesley Edward Smith III, Appellant,

PROOF OF SERVICE

I, Wesley Edward Smith III, certify that on February 10, 2015, submit's a supplement to the notice and motion to appeal the common pleas [this not the court to raise similar objections any criminal action tha arose at the hands of the respondents or as asserted and risen under rule 203(b)(1) for which Mr. Wesley Edward Smith III reserves all right afforded to appeal such a one-sided rendition of the respondents court process] which was denied. Herein are issues related to the personal injuries sustained and dissenting objections of the Judges orders with reasonable inference remaining in violation of rules and the citizen right, with the supporting law memorandum, was sent by First Class Mail via United States Mail on all parties listed in this action to the following:

To: Mr. Daniel F. Blanchard, III ESQ
151 Meeting Street 4th Floor
Charleston, SC 29403

NOTICE TO PERSON OF INTEREST

Governor's Office of South Carolina
Governor Nikkie Haley
1205 Pendleton Street
Columbia, SC 29201

Mr. Ashley Able III, ESQ
One Liberty Square
55 Beattie Place Suite 800
Greenville, SC 29601

Ms. Cynthia D Blair, ESQ
220 Executive Center Dr
Suite 200
Columbia, SC 29201

February 10, 2015

Respectfully Submitted


Mr. Wesley Edward Smith III

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 WESLEY SMITH,)
)
 Plaintiff,)
)
 -vs)
)
 CHARLESTON COUNTY SCHOOL)
 DISTRICT and MR. TOWNSEND,)
)
 Defendants.)

THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO. 03-CP-10-4751

FILED
 2007 NOV 29 PM 3:39
 JULIE J. ARMSTRONG
 CLERK OF COURT

ORDER
 RECEIVED
 FEB 13 2015
 SC Court of Appeals

This matter came before this Court for a hearing on November 9, 2007, involving the Motion for Sanctions filed on October 10, 2007 by the Defendants Charleston County School District (hereinafter "CCSD") and Anderson Townsend (hereinafter "Townsend") pursuant to S.C. R. CIV. PRO. II(a) and S.C. CODE ANN. §§ 15-36-10 *et seq.* (South Carolina Frivolous Civil Proceedings Sanctions Act).

Daniel F. Blanchard, III of Rosen, Rosen & Hagood, LLC appeared for the Defendants. Plaintiff Wesley Smith appeared *pro se*. After considering the arguments and submissions of the parties, this Court hereby makes the following findings of fact and/or conclusions of law:

PROCEDURAL & FACTUAL BACKGROUND

1. This lawsuit arises out of Plaintiff Wesley Smith's (hereinafter "Smith") termination from employment with the CCSD on November 29, 2001. The CCSD had hired Mr. Smith for the 2001-02 school year to work as a tactical officer at the Military Magnet School. Anderson Townsend was the principal at the school and was Mr. Smith's direct supervisor.
2. Following his termination, Mr. Smith initiated this lawsuit on November 14, 2003 through his legal counsel (Chalmers Johnson, Esquire and Bonnie Hunt, Esquire). His original

Complaint against the CCSD¹ included, *inter alia*, claims for slander, intentional infliction of emotional distress, and punitive damages against the CCSD. The CCSD filed a Motion to Dismiss on December 15, 2003 asserting that the claims for slander, intentional infliction of emotional distress, and punitive damages against the CCSD are barred as a matter of law under the South Carolina Tort Claims Act, S.C. CODE ANN. §§ 15-78-110 *et seq.*

3. By Consent Order filed on June 14, 2004, Mr. Smith voluntarily withdrew his claims for slander, intentional infliction of emotional distress, and punitive damages against the CCSD and agreed to submit an Amended Complaint removing those claims. On June 23, 2004, Mr. Smith filed an Amended Complaint asserting four causes of action: (1) intentional infliction of emotional distress against Mr. Townsend; (2) breach of contract accompanied by fraudulent intent against the CCSD; (3) breach of contract against the CCSD; and (4) third party interference with a contract against Mr. Townsend.

4. By Order filed on March 20, 2006, Circuit Judge R. Markley Dennis, Jr. granted partial summary judgment in favor of the Defendants as to Mr. Smith's first, second, and fourth causes of action of the Amended Complaint. However, Judge Dennis denied the motion as to the third cause of action for breach of contract against the CCSD on the grounds that it would be premature to dismiss that claim at that point in time, but also granted the CCSD leave to refile the motion after additional discovery was conducted.

5. On May 3, 2006, after conducting additional discovery, the CCSD filed a Renewed Motion for Summary Judgment seeking dismissal of Mr. Smith's single remaining cause of action for breach of contract against the CCSD.

6. On July 19, 2006, without objection from Mr. Smith, Mr. Smith's legal counsel

¹ Although the caption of the original Complaint referred to "Mr. Townsend" as a named defendant, Mr. Smith never served Mr. Townsend with the original Complaint. Mr. Townsend did not answer or respond to the original Complaint.

(Mr. Johnson and Ms. Hunt) were relieved from the case. Mr. Smith did not obtain new counsel, but continued *pro se*.

7. On January 10, 2007, without a hearing, Circuit Judge Perry Buckner granted Mr. Smith's *ex parte* Motion to Proceed *in forma pauperis*.

8. By Order filed on March 27, 2007, Circuit Judge Deadra L. Jefferson granted the CCSD's Renewed Motion for Summary Judgment and dismissed Mr. Smith's only remaining cause of action for breach of contract against the CCSD.

9. On April 11, 2007, Mr. Smith filed a Motion for Reconsideration involving Judge Jefferson's Order.

10. By Order filed on July 2, 2007, Judge Jefferson denied Mr. Smith's Motion for Reconsideration, thereby ending his claims in the Circuit Court.

11. On July 3, 2007, Mr. Smith filed a Motion to Proceed *in forma pauperis* and a Notice of Appeal with the South Carolina Court of Appeals.

12. On July 18, 2007, Judge Jasper Cureton of the South Carolina Court of Appeals filed an Order denying the Mr. Smith's Motion to Proceed *in forma pauperis*. Additionally, the Clerk of the Court of Appeals wrote Mr. Smith on July 18, 2007 advising him as follows: "The appellant is notified that he must provide an Amended Notice of Appeal, with Proof of Service on opposing counsel, and the One Hundred (\$100.00) dollar Notice of Appeal filing fee within ten (10) days of the date of this letter or it may result in the dismissal of your appeal." Mr. Smith thereafter failed to comply with the Clerk of Court's letter.

13. On August 2, 2007, the Court of Appeals filed an Order dismissing Mr. Smith's appeal. Mr. Smith did not appeal this Order or file a petition to reinstate his appeal.

14. On August 21, 2007, the Court of Appeals filed an Order of Remittitur stating in

dismissed and REMITTED to the Clerk of Court for Charleston County.” This Order was filed with the Circuit Court on August 23, 2007. Mr. Smith did not appeal this Order.

15. Following the dismissal of Mr. Smith’s claims in the Circuit Court and the dismissal of his appeal in the Court of Appeals, Mr. Smith has filed numerous pleadings and documents in the Circuit Court in which he attempts to relitigate his same claims against the Defendants. These documents include, but are not limited to, a “Notice of Appeal,” “Affidavit of Wesley Edward Smith III,” and “Introduction and Plaintiff’s Supporting Memorandum” filed on October 2, 2007; an “Amended Certificate of Service” and purported subpoenas *duces tecum* addressed to Mr. Townsend and Dr. Ronald McWhirt (Superintendent of the CCSD) filed on October 4, 2007; a “Motion for New Trial” filed on October 15, 2007; a “Plaintiff’s Amended Certificate of Service (Modification)” filed on October 19, 2007; a “Plaintiff’s Request: Motion for Subpoena Production of Documents (*duces tecum*) to Support Plaintiff’s Motion for New Trial” filed on November 1, 2007; a “Plaintiff’s Notice of Motion for Monetary Relief of Summary Judgment Order Against Defendant and Sanctions with Memorandum and Law Argument to Support Plaintiff’s Motion for New Trial” dated November 5, 2007; and a “Plaintiff’s Supporting Memorandum to the Record for Sanction Levied Against the Defense in this Action” dated November 8, 2007.

16. In the above-referenced pleadings and documents, Mr. Smith attempts to relitigate claims based on the same facts and events at issue in his Amended Complaint, which was previously dismissed, and further attempts to assert multiple new causes of action or legal theories against the CCSD based on the same events and factual allegations at issue in Mr.

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Smith's original claims. As examples, the pleadings entitled "Introduction and Plaintiff's Supporting Memorandum," "Motion for New Trial," and "Plaintiff's Amended Certificate of Service (Modification)" request a judgment against the CCSD for monetary damages in the amount of ~~\$3.5 million for alleged defamation~~, damages in the amount of ~~\$600,000.00~~ under the South Carolina Tort Claims Act, and punitive damages ~~of \$3.5 million based on events~~ surrounding his termination from the CCSD.

17. On October 10, 2007, the Defendants filed a Motion for Sanctions pursuant to S.C. R. CIV. PRO. 11(a) and S.C. CODE ANN. §§ 15-36-10 *et seq.* and also filed an Affidavit of Counsel in Support of Award of Sanctions.

18. As reflected above, Mr. Smith has continued to file pleadings attempting to relitigate his claims even after service of the Defendants' Motion for Sanctions.

LAW & ANALYSIS

19. "Where there has been an appeal, 'final disposition of the case' occurs when the remittitur is filed in the circuit court." McDowell v. S.C. Dept' of Soc. Serv., 300 S.C. 24, 386 S.E.2d 280 (Ct. App. 1989); see Christy v. Christy, 317 S.C. 145 452 S.E.2d 1 (Ct. App. 1994) ("The final disposition of a case occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. Until that time, the case is pending on appeal.").

20. By virtue of the Court of Appeals's Order dismissing Mr. Smith's appeal and the remittitur sending the case back to the Circuit Court, the prior Circuit Court Orders granting summary judgment in favor of the Defendants as to all of Mr. Smith's causes of action are final and the case has been finally disposed of. Mr. Smith's claims against the Defendants have been ended and are final.

21. "Matters decided by the appellate court cannot be reheard, reconsidered, or

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~~relitigated in the trial court, even under the guise of a different form." Ackerman v. McMillan,~~

324 S.C. 440, 477 S.E.2d 267 (Ct. App. 1996). "The decision of the appellate court is final as to all questions decided" and "[i]t is the duty of the trial court to follow the decision of the appellate court." Id.

22. Although Mr. Smith is *pro se*, this is not an excuse for filing frivolous pleadings with the Court and continuing a frivolous action. Goodson v. American Bankers Ins. Co., 295 S.C. 400, 368 S.E.2d 687, 689 (Ct. App. 1988) ("~~Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.~~"); McCall v. A-T-O Inc., 276 S.C. 143, 276 S.E.2d 529, 530 (1981) (The South Carolina Supreme Court "has never held laymen to a lesser standard than attorneys").

23. S.C. R. CIV. PRO. 11(a) provides that "[t]he signature of an attorney or party [on a pleading] constitutes a certificate by him that he has read the pleading, motion or other paper, that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay." Rule 11(a) further states that "[i]f a pleading, motion or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee."

24. S.C. CODE ANN. § 15-36-10(A)(4) of the South Carolina Frivolous Civil Proceedings Sanctions Act also states as follows:

(A)(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

- (i) the person has not read the frivolous pleading, motion, or document;
- (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
- (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or
- (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

25. S.C. CODE ANN. §§ 15-36-10(B) & (G) of the Act further state in relevant part:

(B)(1) If a document . . . does not otherwise comply with this section, it must be stricken unless it is . . . amended to comply with this section after the omission is called to the attention of the attorney or the party.

(2) If . . . an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.

(G) Sanctions may include:

(1) an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section. Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and

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any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding;

(2) an order for the attorney to pay a reasonable fine to the court; or

(3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.

26. This Court finds that, by virtue of Mr. Smith's filing of the above-referenced pleadings and documents with this Court following the dismissal of his appeal, Mr. Smith has improperly attempted to relitigate claims based on the same facts and events at issue in his Amended Complaint, which was previously dismissed, and has further attempted to assert multiple new causes of action or legal theories against the CCSD based on the same operative events and factual allegations that were raised in his previous claims.

27. Additionally, this Court finds that Mr. Smith has attempted to relitigate claims for slander, intentional infliction of emotional distress, and punitive damages against the CCSD in direction contravention of the Consent Order filed on June 14, 2004 (in which Mr. Smith withdrew the exact same claims from this case) and when such claims are clearly barred as a matter of law under the provisions of the South Carolina Tort Claims Act.

28. This Court further finds that Mr. Smith has asserted and continued to assert claims that are frivolous, baseless, and which are clearly barred under existing law, are not warranted under existing law, are not supported by the facts or the law, and are not supported by good grounds. This Court further finds that Mr. Smith has continued to pursue these baseless and frivolous claims against the Defendants without a good ground for doing so; for the purpose of harassing or injuring the Defendants; for the purpose of delay; and/or for a purpose other than that of securing proper discovery, joinder of parties, or adjudication of the claim.

29. This Court finds that, as a direct result of Mr. Smith's actions and these frivolous

proceedings, the Defendants have incurred attorney's fees and litigation costs in defending against the claims. Defendants have submitted an affidavit of counsel supporting an award of \$1,480.00 in attorney's fees and \$25.00 in court costs, or a total of \$1,505.00.

30. Based on the factors enumerated in Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989), and this Court's review of the file in this litigation, the difficulty of the services rendered, the time necessarily expended, the result accomplished, the professional standing of counsel, and fees customarily charged in this area for similar legal services, this Court finds that an award of \$1,505.00 in attorney's fees and costs is reasonable and appropriate.

31. As observed in the unpublished opinion in Gobbi v. SunTrust Mortgage, Op. No. 2006-UP-243 (S.C. Ct. App. filed May 16, 2006), and based on S.C. R. Civ. PRO. 63, this Court has jurisdiction to review and reverse Judge Buckner's prior Order filed on January 10, 2007 granting Mr. Smith's *ex parte* Motion to Proceed *in forma pauperis*. Judge Buckner is no longer assigned to this judicial circuit.

32. In Gobbi, the Court of Appeals held that a judge may deny a party *in forma pauperis* status based on a specific finding that the party has repeatedly filed abusive and frivolous pleadings. See also In re Maxton, 325 S.C. 3, 478 S.E.2d 679, 679 (1996). This Court finds that Mr. Smith has repeatedly filed pleadings and documents in this Court involving the same matters that are frivolous, non-meritorious, and abusive of the litigation process. Accordingly, this Court finds that Judge Buckner's prior Order granting *in forma pauperis* status to Mr. Smith should be reversed and rescinded because of Mr. Smith's repetitive filings that are frivolous, non-meritorious, and abusive.

33. Further, as held in Judge Cureton's Order filed on July 18, 2007, which denied Mr. Smith's motion to proceed *in forma pauperis* in the Court of Appeals, Mr. Smith has the

burden of showing that his right to proceed *in forma pauperis* rests upon a statute or a fundamental constitutional right. No such right exists in this case. Therefore, this Court finds that Mr. Smith has failed to demonstrate the necessary prerequisites for proceeding *in forma pauperis*. See *Ex parte: Martin v. State*, 321 S.C. 533, 471 S.E.2d 134 (1995) (motions to proceed *in forma pauperis* may be granted only when specifically authorized by statute or required by constitutional provisions).

CONCLUSION

Based on the above findings of fact and/or conclusions of law, it is hereby

ORDERED, ADJUDGED, AND DECREED that the Defendants' Motion for Sanctions filed on October 10, 2007 is hereby GRANTED; and

FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff Wesley Smith is hereby ordered to pay \$1,505.00 to the Defendant Charleston County School District as a monetary sanction for filing frivolous pleadings and documents with this Court; and

~~FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff Wesley Smith's frivolous pleadings are hereby stricken and dismissed with prejudice, including the "Notice of Appeal," "Affidavit of Wesley Edward Smith III," and "Introduction and Plaintiff's Supporting Memorandum" filed on October 2, 2007; the "Amended Certificate of Service" and purported subpoenas *duces tecum* filed on October 4, 2007; the "Motion for New Trial" filed on October 15, 2007; the "Plaintiff's Amended Certificate of Service (Modification)" filed on October 19, 2007; the "Plaintiff's Request: Motion for Subpoena Production of Documents (*duces tecum*) to Support Plaintiff's Motion for New Trial" filed on November 1, 2007; the "Plaintiff's Notice of Motion for Monetary Relief of Summary Judgment Order Against Defendant and Sanctions with Memorandum and Law Argument to Support Plaintiff's Motion for New Trial" dated November~~

5, 2007; the "Plaintiff's Supporting Memorandum to the Record for Sanction Levied Against the Defense in this Action" dated November 8, 2007; and any other pleadings filed after the dismissal of the Plaintiff's claims that attempt to relitigate the same facts, events, or claims; and


FURTHER ORDERED, ADJUDGED, AND DECREED that the prior Order filed in this Court on January 10, 2007, which granted Plaintiff Wesley Smith's Motion to Proceed *in forma pauperis*, is hereby rescinded and canceled; and

FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff Wesley Smith is hereby enjoined, restrained, and prohibited from filing any new or further lawsuits, complaints, pleadings, motions, petitions, writs, or other similar documents in this Court that seek money damages or other legal or equitable relief arising from the same facts or events referenced in the Complaint filed in this case on November 14, 2003 or in the Amended Complaint filed in this case on June 23, 2004; and

FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk of Court shall serve a copy of this Order upon all parties to this action and shall note or record in the file of this case that Plaintiff Wesley Smith's claims have been disposed of and are final; and

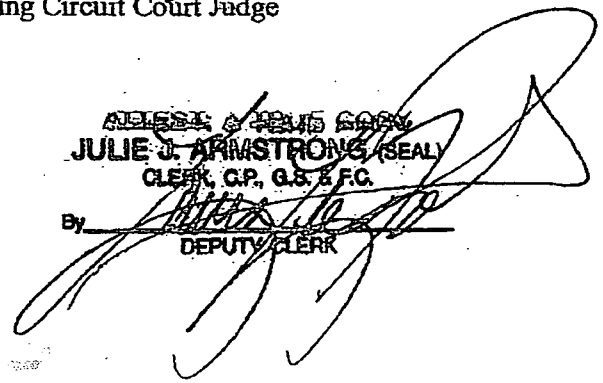
FURTHER ORDERED, ADJUDGED, AND DECREED that willful disobedience of the non-monetary requirements of this Order by any party to this action shall constitute contempt of Court subjecting the offending party to an appropriate penalty or punishment; and

AND IT IS SO ORDERED!


The Honorable Doyet A. Early, III
Presiding Circuit Court Judge

Bamberg, South Carolina.

This 20th day of November, 2007.


JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By _____
DEPUTY CLERK

Wesley E. Smith III
465 North Nassau Street
Charleston, South Carolina 29403
(843)723-8598

February 10, 2015

MEMORANDUM TO RECORDS

CLERK

Honorable Julie Armstrong
100 Broad Street Suite 106
Charleston, S.C. 29403

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FEB 13 2015


SC Court of Appeals

RE: Charleston County School District INC, et al (CCSD) v. Wesley Edward Smith, III
Appellant

Dear Honorable Julie J. Armstrong;

Enclosure (1) is submitted for your immediate actions. Per the referenced court order on finalization of case law, the appellant appeals for a judicial review of this lower court order findings based on its court written order and the State Appeals Court submitting a Remittitur.

This Court order(s) leaves genuine issue of material fact, which by merit, the court is substantively unfamiliar regarding questions in the ruling with pending and unresolved civil personal related to final dispositions. The final dispositions are still open with inferences remaining in conflict of law. Without disclosing valuable support law memorandum, this court by affirming on the business letterhead is the contempt devise being used by other persons that chooses to encroach upon the judicial mechanism and the rules governing the protected rights of other citizens. The Judge's signed order is implying an expression of carrying out the enforcement realm of its authority, but not showing the adhering to the enforcement practices of the expressly written state rules and laws. This ruling and one-sided court action, as implied acts clearly shows, expresses its judgment from the bench that has already been made against Mr. Wesley Edward Smith III was without allowing disclosure of substantive evidence (proof), calling of credible witnesses, calling on lay or expert witnesses, proof that is beyond any reasonable man/women good faith doubt for believing, nor will this "contempt of Court order" allow the citizens, liberty freedom of expression or freedom to rightly speak while opposing such a catastrophic event. Thanking you in advance, while keeping the faith,


Mr. Wesley Edward Smith III

COPY TO: State Court of Appeals

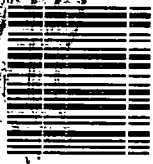
Mr. Daniel F. Blanchard, III EQUIRE

c/o CCSD

Mr. Wesley E. Smith III
465 N. Nassau Street
Charleston, South Carolina 29403

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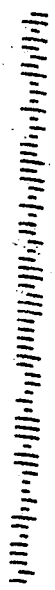
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FEB 18 2015

SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

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