

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE GREENVILLE COUNTY
Court Of Common Pleas
Alexander S. Macaulay, Circuit Court Judge

Case No.: 2005-000140

RECEIVED

JUL 02 2015

SC Court of Appeals

Kenneth L. Holbert, Jr..... Appellant,

v.

Greenville Technical College Respondent.

**RESPONSE TO PLAINTIFF'S REQUEST FOR TEMPORARY INJUNCTION
AND MOTION TO DISMISS APPEAL**

Respondent Greenville Technical College (hereinafter "the College"), by and through its undersigned counsel, hereby submits this Response to Appellant Kenneth L. Holbert's (hereinafter "Appellant") "Request for Temporary Injunction."

INTRODUCTION/FACTS

Appellant was employed by the College from 1989 to January of 2007.¹ In 2006, while Appellant was employed by the College, the Greenville County School District ("District") brought suit against Appellant alleging conversion of certain computers

¹ The termination of Appellant's employment was appealed and affirmed in accordance with State Human Resources Regulations and applicable State law by the South Carolina Budget and Control Board, the South Carolina Administrative Law Court, and the South Carolina Court of Appeals. See Holbert v. South Carolina State Bd. for Tech. and Comprehensive Educ., 08-ALJ-30-0061-AP (2009), affirmed by 2012-UP-133 (S.C. Ct. App. 2012).

purchased by Appellant at a District auction. The litigation was subsequently settled out of court by agreement of the parties. The College was not a party to this litigation.

Six years later, in 2012, Appellant brought suit against the College alleging conversion of property Appellant allegedly brought to the College from 2000-2006.² A trial was held in Greenville County on October 15-16, 2014, with the Honorable Alexander Macaulay presiding. After presentation of the evidence, the jury returned a verdict for the College. On January 21, 2015, Appellant filed a Notice of Appeal with this Court. By Order dated May 21, 2015, this Court granted Appellant's trial counsel's Motion to Be Relieved and instructed Appellant to "obtain new counsel or proceed *pro se*" and to "submit proof that he has ordered the [trial] transcript" within thirty (30) days.

On June 22, 2015, Appellant filed a "Memorandum for Request for Temporary Injunction" and a request to the Court reporter requesting the transcript. In his memorandum, Appellant alleges an unnamed former co-worker possesses "Confidential Data" from his 2006 litigation against the Greenville County School District. Appellant also claims his 2006 legal counsel, David Gannt, committed malpractice by failing to address and/or correct issues relating to his 2006 litigation against the Greenville County School District. Finally, Appellant asks this Court to order the unnamed former co-worker and the College to turn over the "Confidential Data" and to conduct an investigation into the matter.

ARGUMENT

Initially, the College is unaware of any authority that would enable this Court to grant the relief sought by Appellant. All issues referred to in Appellant's pleading are

² Appellant admitted in his deposition testimony that the property he sought during his 2012 suit against the College was not any property in dispute during his 2006 litigation with the District.

either matters to which the College was not a party, or matters which have been properly adjudicated by the appropriate forum. However, even assuming Appellant's request for relief is viable, Appellant does not meet the standard required for preliminary injunction. See Levine v Spartanburg Reg'l Servs. Dist., Inc., 626 S.E.2d 38 (S.C. Ct. App. 2005) (establishing the elements for preliminary injunction as follows: (1) Plaintiff will suffer irreparable harm if the injunction is not granted; (2) Plaintiff has a likelihood of success on the merits; and (3) no other adequate remedy at law exists). Specifically, Appellant does not allege that he personally is at risk of irreparable harm, only that the unnamed students may be at risk due to a seemingly unresolved issue stemming from Appellant's 2006 litigation against the Greenville County School District. See Sanford v. South Carolina State Ethics Comm., 685 S.E.2d 600, 385 S.C. 483 (holding an injunction should be granted only where some irreparable injury is threatened for which the *parties* have no adequate remedy at law).

Moreover, Appellant has failed to demonstrate that this relief is necessary to maintain the rights of the parties during the pendency of the litigation, particularly in light of the fact that Appellant's arguments are unrelated to the current litigation. Allegro, Inc. v. Scully, 762 S.E.2d 54, 409 S.C. 392 (Ct. App. 2014) (finding the purpose of a temporary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it).

Finally, Appellant has failed to file a record on appeal with this Court as required by the South Carolina Appellate Court Rules. See Rule 207(a), SCACR (requiring appellant to make satisfactory arrangements, including payment for transcript, within ten (10) days after the date of service of the notice of appeal). Appellant filed his Notice of

Appeal on January 21, 2015, and requested a copy of the trial transcript on January 30, 2015. As of June 22, Appellant had not remitted payment to the court reporter.

Accordingly, Appellant's Motion for Preliminary Injunction should be denied, and his appeal should be dismissed pursuant to the South Carolina Appellate Court Rules.

Respectfully submitted,

BOYKIN & DAVIS, LLC

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Attorneys for Respondent Greenville Technical
College

July 2, 2015
Columbia, South Carolina

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PROOF OF SERVICE

The undersigned of Boykin & Davis, LLC, hereby certifies that she has served the **RESPONSE TO PLAINTIFF'S REQUEST FOR TEMPORARY INJUNCTION AND MOTION TO DISMISS APPEAL** on Appellant of record, by mailing a copy of same, postage prepaid and return address clearly indicated, addressed to the following on this 2nd day of July, 2015:

Kenneth L. Holbert, Jr., *Pro se*
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Patricia M. Thompson, Paralegal

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July 2, 2015

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VIA HAND-DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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Re: Kenneth L. Holbert, Jr. v. Greenville Technical College
Appellate Case No.: 2015-000140

Dear Ms. Kitchings:

Enclosed herewith for filing, please find the original and seven (7) copies of the Response to Plaintiff's Request for Temporary Injunction and Motion to Dismiss Appeal regarding the above-referenced matter. Please return a file-stamped copy of the pleading to our courier.

By copy of this letter, we are serving a copy on the *Pro se* Appellant. Should you have any questions, please feel free to contact our office.

Sincerely,



Courtney M. Laster

/pmt

Enclosures

cc: Kenneth L. Holbert, Jr., *Pro se* (w/encl.)
Charles J. Boykin, Esq. (w/o encl.)

BOYKIN & DAVIS, LLC .
Attorneys and Counselors at Law

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