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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Active/Retired Circuit Court Judge

Case No. 2012-CP-10-8135

Karen Oliver, Appellant,

v.

Amanda Lawrence and Trident United Way, Respondents.

FINAL BRIEF OF APPELLANT

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4. The Appellant (Plaintiff) was not allowed to rebut the Respondents' (Defendants') attorney's inaccurate claim that no new evidence here today before Judge J.C. Nicholson, Jr. abruptly ended the hearing.

5. The Order signed by Judge J.C. Nicholson, Jr. on October 27, 2013 but filed on October 18, 2013 made claims that Judge J.C. Nicholson, Jr. reviewed all of the motions and filed exhibits. He would not have been able to sign that Order without being prejudice, bias and could not have reviewed the items with equality for both parties in the case. He refused to receive the Filed Supplemental Exhibits from the Appellant (Plaintiff) and refused to allow the Appellant (Plaintiff) rebuttal of the Respondents' (Defendants') attorney's claims. He refused to receive the Filed Supplemental Exhibits from the Appellant (Plaintiff) and refused to allow the Appellant (Plaintiff) rebuttal of the Respondents' (Defendants') attorney's claims.
6. The Order signed by Judge J.C. Nicholson, Jr. falsely claims that the Appellant's (Plaintiff's) Defamation of Character and Breach of Contract were adjudged by the arbitrator. The Appellant (Plaintiff) was never notified by the arbitrator of a meeting so how could he have addressed any issue of concern for the Appellant (Plaintiff). The Claim that the Defamation of Character is not within the statute of limitations is only addressing the gateway incident not the other incidents which are within the statute of limitations. Judge Nicholson did not allow for the presentation of them when he refused the Filed Supplemental Exhibits.
7. The transcript provided to the court is inadequate because it does not contain the challenges made to the court reporter, Mona Manley. **The court reporter did not deny that the challenged events or statements did not occur.** She only cited confidentiality about naming those in already seated in courtroom's well when Judge J.C. Nicholson, Jr. did not use proper names and his abruptness. She never responded that the challenged events and statements did not occur she just refused to incorporate them in the transcript.

STATEMENT OF THE CASE

The Appellant (Plaintiff) filed a complaint on December 18, 201 with the court against Amanda Lawrence and Trident United Way. The Respondents (Defendants) filed a Motion to Dismiss filed January 24, 2013. A change in counsel took place for the Respondents (Defendants) on April 5, 2013 from Ashley Kutz to Christy Fargnoli. Christy Fargnoli files Supplemental Exhibits for Motion to Dismiss on May 13, 2013. May 13, 2013 the date of initial hearing before Judge J.C. Nicholson, Jr.. Judge J.C. Nicholson, Jr. rules to Dismiss. Appellant (Plaintiff) files Motion for Reconsideration on May 23, 2013. On August 30, 2013 Judge J.C. Nicholson, Jr. granted a Motion to Dismiss without a hearing. September 6, 2013 Appeal by Plaintiff Right to Due Process denied by courts. September 7, 2013 Judge J.C. Nicholson vacates order and schedules hearing for week of October 7, 2013. October 9, 2013 Appellant (Plaintiff) filed Supplemental Exhibits with court. October 17, 2013 Appellant (Plaintiff) filed Revised Certificate of Service along with green signature card (signed and received October 10, 2013) for Defendants' attorney due to Judge J.C. Nicholson not allowing the Appellant (Plaintiff) to distribute the Filed Supplemental Exhibits in court on October 9, 2013. October 18, 2013 Judge J.C. Nicholson denies the Appellant's (Plaintiff's) Motion to Reconsider. October 18, 2013 The Appellant (Plaintiff) puts in a Motion to have a rehearing without denial of her Right to Due Process. November 18, 2013 Motion Denied by Judge Nicholson informed Appellant (Plaintiff) can go to the appellate court. Notice of Appeal sent November 23, 2013 to Defendants' attorney for Order dated October 18, 2013.

ARGUMENT

I. Judge J.C. Nicholson, Jr. not allowing the equitable use of the courtroom's well during the hearing for the Motion for Reconsideration on October 9, 2013. The Appellant (Plaintiff) was not allowed equitable accommodations within the courtroom's well and experienced environmental psychological intimidation. Is it equitable court procedure for the person not bringing the motion before the court to tell the judge how long a hearing will take?

On October 9, 2013 at the Hearing for the Motion for Reconsideration Judge J.C. Nicholson, Jr. who will hereafter, also be called Judge Nicholson interchangeably, refused to provide equitable use of the courtroom's well for use by the Appellant (Plaintiff). The Appellant (Plaintiff) did not have a table for use for her paperwork, Filed Supplemental Exhibits and had to use her pink breast cancer awareness catchall for her items for use in the courtroom throughout the entire hearing. The lack of equitable accommodations with in the courtroom's well provided a hindrance and environmental psychological intimidation to the Appellant (Plaintiff) with Judge Nicholson's approval and guidance. Judge Nicholson violated the Appellant's (Plaintiff's) Right to Due Process in a non-hostile environment. Prior to this, Judge Nicholson was informed by the Respondents' (Defendants') attorney Christy Fargnoli *from the courtroom's public viewing area* that the issues to be discussed would not take long. Consequently, it was not Christy Fargnoli who brought the motion before the court. Judge Nicholson then inquired of the legal teams (Defendant and Plaintiff) that were already seated and setup in the courtroom's well,

if they would allow us to go ahead of them. Setup means their paperwork was laid out upon the tables, visual aids on the easel and briefcases nearby the chairs in which they sat. The Appellant (Plaintiff) cited this in Certified Mail 70092820000410736728 to the Commission on Judicial Conduct she was so taken aback by this and other prejudicial behavior by Judge Nicholson. Judge Nicholson knew the hearing was scheduled he designated it in his Order to Vacate for that week.

The court reporter, Mona Manley, did not deny that these acts took place. She just refused to enclose the events in parenthesis (as stated in the court reporter's handbook) Citing confidentiality, but Judge Nicholson never used their proper names so that should not have been an issue. In the court reporter's response to the challenges made to the transcript she refused to address the comment made by Christy Fargnoli, **but never denied** it was made.

The Appellant could not find any precedent case where the judge would not allow equitable use of the courtroom's well. Guilty pleading murderers, child molesters, rapists and their legal teams are given equitable use of the courtroom's well by the judge they are being sentenced by or during trial when found guilty or not.

II. Judge J.C. Nicholson, Jr. intentionally provided an inaccurate interpretation of Rule 59g to the Appellant (Plaintiff) cultivating further intimidation of the Appellant (Plaintiff) while already providing environmental psychological intimidation, bias and prejudice. Judge J. C. Nicholson, Jr. also allowed the Respondents' (Defendants') attorney, Christy Fargnoli, to mislead the court and provide false information in regards to Rule 59g to the court without correcting her which further provided an atmosphere for intimidation to the Appellant (Plaintiff).

Judge Nicholson continued his interrogation tactics. He continued to show bias, prejudice and inequity in the application of court procedures. He intentionally provided an inaccurate interpretation of Rule 59g to the Appellant (Plaintiff) by stating that the motion had to be mailed, Transcript Page 4 lines 3-6 (R. p. 57 lines 3-6). He went as far as allowing Christy Fargnoli to mislead the court and provide the same false information in regards to Rule 59g while continuing to further intimidate the Appellant (Plaintiff) Transcript Page 5 (R. p.58). Judge Nicholson knows that Rule 59g does not require a motion to be mailed. It requires the judge to receive a copy and a correspondence is not required. **Judge Nicholson vacated his Order filed September 17, 2013 due to Rule 59g, how could he not have known it now in court?** He even accepted Christy Fargnoli's interpretation causing further confusion and intimidation of the Appellant (Plaintiff). It was very clear at this point that the Appellant (Plaintiff) was in a hostile environment where the scales of justice tilted on the side of the Respondents (Defendants) and the blinders were <u>not</u> on Lady Justice. The Respondents (Defendants) have a parking space labeled for their organization in the parking garage there at the courthouse. So it was clear that the Appellant (Plaintiff) was not getting fair treatment.

If the Appellant Plaintiff) is the only one that knew Rule 59g then it was not going to be an equitable hearing as you can determine from this point. Judge Nicholson knew that the Appellant (Plaintiff) was telling the truth about providing a copy of the Motion for Reconsideration to the court for him by giving a copy to the clerk whom she filed the motion with after she told her she needed to get a copy to Judge Nicholson. The Appellant (Plaintiff) was asked, if she would like for it to be placed in his box? **Judge Nicholson knew that the Appellant (Plaintiff) was being honest because how would she have known that he had a box in the Clerk of Court's office?**

Judge Nicholson did not provide equity in the use of the courtroom for the Appellant (Plaintiff). Judge Nicholson intentionally provided an inaccurate interpretation of Rule 59g. He also allowed Christy Fargnoli to follow his lead and provide an inaccurate interpretation of Rule 59g without correction. If Judge Nicholson does not know the Rule, would he not ask for an interpretation from his law clerk before giving and accepting a false interpretation? If Judge Nicholson did not know Rule 59g, why did he use it as a basis for vacating his Order signed on September 12, 2013 and filed on September 17, 2013 (R. p. 9) scheduling a hearing for the week of October 7, 2013? Rule 59g: Judge to be provided with a copy. A party filing a written motion under this rule shall provide a copy of the motion to the judge within 10 days after filing the motion.

III. Judge J.C. Nicholson, Jr. refused to provide equitable implementation of the courtroom procedures in the allowance of the receipt, distribution and presentation of the Filed Supplemental Exhibits from the Appellant (Plaintiff) even though the same format was used a previously allowed to Christy Fargnoli. Judge J.C. Nicholson previously allowed the receipt, distribution and presentation of the filed supplemental exhibits from the Respondents' (Defendants') attorney without hesitation—Exhibit E on May 13, 2011.

Judge Nicholson refused to receive the Filed Supplemental Exhibits from the Appellant (Plaintiff) and to allow her to distribute them to the Respondents' (Defendants') attorney-Christy Fargnoli and present them. The Appellant (Plaintiff) informed the court that even if he accepted the Exhibit E that was previously allowed to be received, distributed and presented in court to Judge Nicholson and the Appellant (Plaintiff) by Christy Fargnoli that she could disprove it and prove the Defamation of Character and the Breaches of Contracts without hearsay, it was there all in black and white. Judge Nicholson refused to allow his receipt, the distribution and presentation of them. However, the environmental psychological intimidation with the inequitable use of the courtroom's well with not having use of the table space to lay out her documentations appeared to have had a reverse effect on Judge Nicholson causing him to misconstrue the paperwork that the Appellant (Plaintiff) had to hold in the pink breast cancer awareness catchall were either not there are just insignificant. Judge Nicholson would have seen the Filed Supplemental Exhibits as relevant if the Appellant (Plaintiff) was allowed to have equitable use of the courtroom's well and not work on top of another legal teams items. The Appellant (Plaintiff) informed the Commission on Judicial Conduct via Certified Mail 70092820000410736728 dated October 31, 2013 of these very prejudicial acts by Judge

Nicholson. Judge Nicholson clearly showed a bias in allowing only one side's Filed Supplemental Exhibits to be received, distributed and presented. The same format for submission to the court that was used by the Respondents' attorney previously in court May 13, 2013, was used by the Appellant (Plaintiff) but with different outcomes. Judge Nicholson clearly had already shown bias prior to the attempted submissions. The Appellant (Plaintiff) had to revise the Certificate of Service that she brought to court with her as it was previously filed that it would be made via hand delivery at the hearing that same day October 9, 2011. Consequently, this was the same way Christy Fargnoli made hers, but she was allowed to do so and receipt was made by Judge Nicholson, distribution and presentation. Clearly, bias and prejudice in the implementation of court procedures toward the Appellant (Plaintiff) who was already subjected to a hostile, environmentally psychologically intimidating courtroom atmosphere and judge. Please see the attached Certificates of Service for both sides (R. pp. 71-74).

Judge Nicholson's refusal to receive, allow distribution and presentation has also been intentionally omitted by the court reporter. **However, in the challenges made to the court reporter she never denied that the refusal of the Filed Supplemental Exhibits took place or was not in the recordings.** She just refused to address it.

IV. The Appellant (Plaintiff) was not allowed to rebut the Respondents' (Defendants') attorney's inaccurate claim that no new evidence here today before Judge J.C. Nicholson, Jr. abruptly ended the hearing.

The claim made by the Respondents' attorney Christy Fargnoli that no new evidence here today. Page 12 lines 5-10 of the transcript (R. p. 65 lines 5-10). This after Judge Nicholson earlier refused to allow receipt, distribution and presentation from the Appellant (Plaintiff) of her Filed Supplemental Exhibits. Yet, if Judge Nicholson would have given the same courtesies of court to the Appellant (Plaintiff) the court would have seen the new evidence that supported the statements made by the Appellant (Plaintiff) (she could disprove the contents of Exhibit E). However, given Judge Nicholson's behavior throughout the hearing, he chose not want to hear nor see the truth throughout the entire proceedings. It was Judge Nicholson that suggested to use the Federal Arbitration Act (FAA) not the Respondents' attorney. He was very biased, prejudiced and allowed environmental psychological intimidation. Transcript Page 12 Lines 1-25 (R. p. 65 lines 1-25), Transcript Page 13 Lines 14-25 (R. p.66 lines 14-25), Transcript Page 15 Lines 1-6 (R. p. 68 lines 1-6). Judge Nicholson even went as far as allowing out of court research, but refused to allow the Appellant (Plaintiff) a chance to rebut. All of the Filed Supplemental Exhibits were within the statutes of limitations. ***Even in the Court of Appeals the Appellant is allowed to rebut the answer by the Respondent.*** Judge Nicholson did not allow it to happen. The Appellant (Plaintiff) would have been able to show how the Respondents' (Defendants') breached their contracts on more than one occasion along with defamation of character and Retaliation all within the statute of limitations. To not allow the Appellant (Plaintiff) a chance to rebut the claims made by

the Defendants' attorney Judge Nicholson reproduced his action he claim to have vacated on September 12, 2013 then not hearing the Appellant (Plaintiff) and receiving her Filed Supplemental Exhibits all while compromising the Appellant's (Plaintiff's) Right to Due Process. Transcript page 13 Line 1-5 (R. p. 66 lines 1-5).

The court reporter did not deny that Judge Nicholson refused to allow the Appellant's (Plaintiff's) rebuttal she just addressed the abruptness factor when challenges to this specific item being omitted from the transcript was made.

V. The Order signed by Judge J.C. Nicholson, Jr. on October 27, 2013 but filed on October 18, 2013 made claims that Judge J.C. Nicholson, Jr. reviewed all of the motions and filed exhibits. He would not have been able to sign that Order without being prejudice, bias and could not have reviewed the items with equality for both parties in the case. He refused to receive the Filed Supplemental Exhibits from the Appellant (Plaintiff) and refused to allow the Appellant (Plaintiff) rebuttal of the Respondents' (Defendants') attorney's claims.

Contained in the first paragraph of the Adjudged Decision by Judge Nicholson signed October 27, 2013 page 4, but filed October 18, 2013 page 1 (R. p. 11) claims that at such time the court heard arguments from both sides and has reviewed the pleadings, motions, memoranda, and exhibits filed with the court. For the reasons set forth below Plaintiff Motion for Reconsider is DENIED.

Judge Nicholson never reviewed the Motion for Reconsideration he claimed in court not to have received it. How can he sign off saying he reviewed it, but claim not to have received it? Judge Nicholson refused to accept the Appellant's (Plaintiff's) Filed Supplemental Exhibits on October 9, 2013 along with allowing distribution and presentation of them. How could he have reviewed them with sufficient knowledge to make an informed decision? The Filed Supplemental Exhibits contained: A copy of the Plaintiff's submission to the Court is being submitted as a summary of titles of the contents in the Filed Supplemental Exhibits (R. p. 71). Without Judge Nicholson allowing a presentation or narrative (written or spoken) with simultaneous review of the items contained within the Filed Supplemental Exhibits he would not see the significance, neither value of them for each claim, nor derive a judgment without bias or prejudice. The same action Judge

Nicholson was trying to implement until he vacated his order on September 12, 2011 to which he essentially did the same thing, but in court by refusing to receive, allow distribution and presentation of the Filed Supplemental Exhibits still compromising the Appellant's (Plaintiff's) Rights to Due Process. Along with the Appellant's (Plaintiff's) rights to not be in a hostile courtroom environment. Even if Judge Nicholson went under the Federal Arbitration Act (FAA) this act does not allow the pre-arranged written agreement to be breached or changed without agreement by the parties involved. The arbitrator does not have autonomy to change the grievance procedure contractual agreement. There was no agreement by the Appellant and the Respondents to change the contractual guidelines on the procedures for arbitration that was agreed upon on August 30, 2010.

Breach of Contracts:

Judge Nicholson's Order states that the Appellant (Plaintiff) pursued binding arbitration in accordance with the agreement as previously provided by Ashley Kutz, former counsel for the Respondents, **Exhibit A**. (R. pp. 28-29 Section D) The Member Guidelines for Grievance Procedures **Section D pages 25-26** states: *The Grievant may request Binding Arbitration if a grievance hearing is adverse or if no decision is made within 60 days of the filing of the grievance. The arbitrator must be independent and selected by the agreement of the parties. If the parties cannot agree upon an arbitrator, the Corporation's Chief Executive Officer (the federal agency administering AmeriCorps) will appoint one* ***within 15*** *calendar days after receiving a request from one of the parties.* However, the appointment of an arbitrator did not take place in the established agreed upon timeline of 15 days from the request for one. March 18, 2011 the Appellant (Plaintiff) contacted Emily

Thompson of United Way Association of SC (overseeing the program) concerning the lack of proactive measures of Amanda Lawrence and Trident United Way **Exhibit X Pages 1-2** (R. pp. 81-82). *On March 29, 2011 the Appellant (Plaintiff) was contacted by Heather Alarcon, Associate General Counsel for AmeriCorps informing her that an arbitrator would be assigned.* Previously, on March 3, 2011 the Appellant (Plaintiff) contacted Patrick Corvington office of AmeriCorps about investigating the lack of proactive response from Amanda Lawrence concerning my request for binding arbitration. Chris Kerrigan, President of Trident United Way, received a letter requesting that they satisfy the breach, but did not response or satisfaction of the breach. Then, a final correspondence on action to be taken since they refused to satisfy the breach was sent and received by Chris Kerrigan **Exhibit S pages 1-5** (R. pp. 84-88). The letter provided by Ashley Kutz by the arbitrator dated June 1, 2011**Exhibit C** (R. p 32) clearly violates this pre-arranged contractual agreement. Further, the letter states that arbitration is to be held within 60 days which also violates the pre-arranged contractual agreement. Under state or federal law the pre-arranged contractual agreement must be followed. The arbitrator failed to follow:

Appendix A Code of Ethics for Arbitrators *Canon I: An Arbitrator Should Uphold the Integrity and Fairness of the Arbitration Process.* *Section F: When an arbitrator's authority is derived from an agreement of the parties, the arbitrator should neither exceed that authority nor do less than is required to exercise that authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules.*

Trident United Way guaranteed the Appellant (Plaintiff) prior to requesting a grievance by **Certified Mail 70101870000369177997 Dated January 6, 2011 Exhibit M page 2 paragraph 2** (R. p. 91 para 2) states: that the Program Director (Amanda Lawrence) will take the necessary steps to follow the Corporation for National and Community Service and State Commission protocol. By scheduling and having the arbitration beyond the contractually agreed upon time without agreement by the Appellant (Plaintiff) is a breach of the contract. Also, Amanda Lawrence and Trident United Way violated another provision of the contractual agreement by providing the name and decision of Cathy Liska to the arbitrator. Again, Ashley Kutz's **Exhibit A Member Guidelines for Grievance Procedures page 25 Section C paragraph 3 line 3** (R. p. 28 para 3 line 3) states: *In the event, a grievance is filed after the participation in any of the informal dispute resolution processes, the neutral party may not participate in the formal grievance procedure. In addition, no communication or proceeding of the informal dispute resolution process may be referred to or introduced as evidence at the grievance or arbitration proceeding.* Amanda Lawrence and Trident United Way provided prohibited information to the arbitrator **again** breaching the contractual agreement. The arbitrator in turn violated by accepting and enclosing it in his so-called decision. **Exhibit E page 4 para 4** (R. p. 42 para 4) from the arbitrator states: *Following termination, Petitioner pursued "appeal" of the Respondents' termination decision through the "Grievance Procedure" outlined in the Handbook. The Grievance Procedure conducted on February 9, 2011 by Neutral Cathy Liska. In sum, the termination decision was upheld by the Neutral. Thereafter, Petitioner pursued the subject arbitration.* All parties breached the contractual agreement in providing and using prohibited information about the Neutral.

Further, In the **Agreement for a Neutral-Facilitated Grievance Hearing Exhibit R page 1 Item #5** (R. p. 94 Item #5) States: *Communications during the grievance hearing and proceeding of the process shall be strictly confidential.* This agreement signed by Amanda Lawrence, Janet McKinney and Cathy Liska was also breached by Amanda Lawrence and Trident United Way. The Appellant was also provided this guarantee prior to going forth with the neutral facilitated process as with **Exhibit M page 1** (R. p. 94) .Yet, both items were breached.

In the **Disciplinary Action/Probation Policy of the Member Guidelines Exhibit Y page 3 paragraph 1 line 3** (R. p. 98 para 1 line 3) states: *If disciplinary action is warranted, it will be taken by program staff after consultation with the AmeriCorps member. While some incidents may be so severe as to warrant immediate termination from the Corps, most disciplinary action will ordinarily be governed by the following procedure:*

1. A corps member will be issued a verbal warning by the Program Director; this verbal warning will be documented in the Corps member's file.
2. If no improvement is demonstrated, the Corps member will receive a written warning documenting the problem and requesting a change in his /her performance.
3. Should the problem persist; a three-way meeting will be scheduled between the corps member, Program Director, and Senior Vice-President of Community Building to discuss the issue. A written plan to remedy the situation will be devised and implemented immediately. The Corps member will be placed on probation per conditions specified in the action plan.
4. A follow-up review by the Program Director will occur at a mutually agreeable time to assess whether or not any progress has been made. If the problem continues at the

time of, or after this meeting, the Corps member may be suspended without living allowance or terminated. Should there be a termination; the program will not provide a pro-rated education award.

If a Corps member feel that disciplinary action taken is not justified, he/she may appeal through the program's grievance procedure.

Amanda Lawrence and Trident United Way violated and breached the terms of this contractual agreement. **No verbal or written warning** was given to the Appellant (Plaintiff). A partial part of Step 3 of the procedures was initiated from the outset. At the December 3, 2011 meeting, Amanda Lawrence provided when the Appellant (Plaintiff) asked about her verbal and written warning she could not provide any documentation or date or implementation. However, when the Appellant (Plaintiff) requested a copy of the meeting notes that were provided at the meeting with the neutral on February 9, 2011. As provided by Janet McKinney **Exhibit H page 3** (R. p. 78) it states she tried through email and telephone messages to schedule a meeting in regards to a verbal warning. She only sent emails regarding the childcare breach of contract that was taking place on a national level. Where was the written warning requesting a change in the Appellant's (Plaintiff's) performance? Could a verbal warning have been done by coming out the Appellant's (Plaintiff's) work site? The Appellant was placed on suspension with pay **without** a verbal or written warning. All in violation and breach of the contractual agreement signed August 30, 2010. On November 30, 2011 the Appellant (Plaintiff) was placed on probation, but had until the end of the month to submit her time in the computer. They did not even give her the last day to submit her time. The members were given weekly, bi-weekly or by the end of the month all time for that month had to be in for entering their time in the system by Janet McKinney the major

emphasis was put on indirect and direct before the change. **Exhibit Y page 1-2** (R. pp. 96-97) shows this and **Exhibit W page 2** (R. p. 101).

Breach of Contracts, Breach of Contracts with Fraudulent Intent and Defamation of Character Libel and Slander

Consequently, as of November 5, 2010 the Appellant (Plaintiff) was commended by her direct supervisor Janet McKinney for doing a phenomenal job. She did this both verbally and via email **Exhibit W page 2** (R. p. 101). It was not until the Appellant (Plaintiff) could no longer incur the cost of childcare that was promised to be paid up to $70.00 weekly per child by Trident United Way via the Service Program **prior** to the Appellant (Plaintiff) joining the program which was another contractual agreement that was breached. The cost of subjecting the Appellant (Plaintiff) to the humiliating, degrading effects of putting herself and her children in a situation where payment for their after school care was to be made and it wasn't as promised in a timely fashion. Which led to the Appellant (Plaintiff) temporarily stopping her latter afternoon service hours as of November 10, 2010, **Exhibit I page 2** (R. p.103), used her own limited funds to prove good faith to the care provider **Exhibit J** (R. p. 108) then, asked Trident United Way to fit the bill until the problem was solved on a national level on November 15, 2010 **Exhibit I page 2** (R. p. 103) so the Appellant (Plaintiff) could successfully complete the program since she was doing a phenomenal job as parlayed by Janice McKinney. It was not until then did the Appellant (Plaintiff) begin to receive emails from Amanda Lawrence and Janice McKinney NOT ABOUT DISCIPLINARY ISSUES BUT CONCERNING THE BREACH IN THE CHILDCARE AGREEMENT **Exhibits I pages 3, 4, 5** (R. p. 104-106). Amanda Lawrence and Trident United Way was Retaliating against the Appellant (Plaintiff) for requesting that they pay the funds and reimburse all hours missed due to the lack of agreed upon payments having been made. This led

to Amanda Lawrence sending the letter dated November 30, 2010 and was the **gateway** for future defamation of character acts which was authorized by Trident United Way when they could have stopped it when it was pointed to them by the Appellant (Plaintiff) as noted by Ashley Kutz **in Exhibit D** (R. pp. 33-34) **and Exhibit M** (R. p. 90). The Appellant (Plaintiff) requested an investigation in the defamation of character and libel by Amanda Lawrence. Yet, it continued with the arbitrator and neutral. Retaliation is against the law. The defamation of character continued when Amanda Lawrence and Trident United Way asserted according to **Exhibit E** (R. p. 41) presented by Christy Fargnoli (Respondents') attorney page 3 para 3 states: *Given the complete failure of the Petitioner to **abide** by **any program requirements** for the month of November, Amanda Lawrence sent a letter* Petitioner on November 30, 2010, placing Petitioner on suspension.

The Appellant (Plaintiff) did abide by program requirements. The Appellant (Plaintiff) showed up to her school sites/work sites, special luncheon with parents and community at school site, completed paperwork for assisting family with ECCO program utilities assistance, attended 2-1-1 training and even provided a key that month for private entrance, outside commitments (i.e. Turkey Day Run) **Exhibits I page 2** (R. p. 103) **and Exhibit W page 2** (R. p. 101) proves it was defamation of character and libel (as it was requested to be in writing). If the Respondents placed the Appellant (Plaintiff) on suspension before the month was ended how could she have her time in if allotted to the end of the month? No discontent shown or documented at the December 3, 2010 meeting involving the missing of Monday meetings that was sent previously by email and approved by Janet McKinney who never showed discontent nor Amanda Lawrence until the arbitration **Exhibit H page 3** (R. p. 78). Amanda Lawrence testified: *the Petitioner's excuse unjustified.* The Appellant(Plaintiff) incurred a bill of $1,478.00 for after school care that was

subsequently paid by First Financial and a possible second payment by Trident United Way after close three (3) months had passed (September 2010 – November 2010) **Exhibit M page 3** (R. p. 90). Where can children go for care with a promise to pay and a bill is allowed to go close to $1,500.00 without any concern? After paying some out of pocket **Exhibit J** (R. p. 108), the Appellant (Plaintiff) decided to withdraw her children the manager then, the owner spoke with the Appellant (Plaintiff) and convinced her not to withdraw her children. The children were well behaved and the Appellant (Plaintiff) was not the problem with the bill. The Appellant (Plaintiff) concurred with them, but still needed to monitor her children because red flags came up. In the Appellant's (Plaintiff's) Dept. of Social Services, Darkness 2 Light and S.C. Dept. of Special Needs training on (child) sexual abuse the Appellant (Plaintiff) would have to come in and monitor the children and facility. The Appellant (Plaintiff) even made another payment since payment was still not there a week later. The Appellant (Plaintiff) was in a vulnerable position and that is prey to some predators. On November 8, 2010 when the Appellant (Plaintiff) spoke to Janice McKinney about missing the afternoon hours. Janice was in agreement when it came to the children. Judges what would you do for your children or grand-children? Amanda Lawrence may not think it was justified? IT WAS!!! What was not justified is the reason the Appellant (Plaintiff) had to take such measures—Breach of contract for the childcare payment. Lying to the arbitrator that my afternoon hours missed were not justified was libel and slander within the statutes of limitations. There were no discontent in the emails sent about the hours missed nor at the December 3, 2010 meeting with Trident United Way see their own meeting notes **Exhibit H** R. p.78). Due to the breach of contract.

Additionally, the Award Letter from First Financial for child care assistance dated November 22, 2010 was received by the Appellant (Plaintiff) over the holiday break for Thanksgiving **Exhibit**

K (R. p. 110). On November 29, 2010 Kenzie Cook signed the forms so payment could be made **Exhibit L** (R. p. 112). All of this prior to the suspension and libel and defamation of character gateway letter sent by Amanda Lawrence **Exhibit M page 1** (R. p. 90). Therefore, it was also Retaliation making it further unlawful. If the Appellant (Plaintiff) was at fault First Financial would not have sent an invite to join again through recertification for child care assistance **Exhibit N** (R. p. 114). Clearly, not at fault.

Also, **Exhibit E page 4 para 4** (R. p. 42 para 4) states: *Given the testimony of the witnesses and documents submitted into evidence, the record readily supports the termination decision of the Respondents and, that even when taken in the light most favorable to the Petitioner, the evidence demonstrates a systematic and conscious failure of Petitioner to comply with the basic requirements of the Respondents' Financial Stability Project leading directly to Petitioner's termination, all in accordance with the Member Handbook.*

The termination process was not in accordance with the guidelines in the Member Guidelines. The arbitration itself was not in accordance with the guidelines **Exhibit A pages 25-26** (R. pp 28 -29), **Exhibit C** (R. p. 32). the December 8, 2010 meeting that was scheduled with the Appellant (Plaintiff) and Trident United Way was cancelled and by Trident United Way via email due to staff unavailability **Exhibit O** (R. p. 116). A letter was sent however, when the Appellant tried to retrieve the letter from the U.S. Postal Service it was erroneously labelled as having been returned when it was still at the Post Office **Exhibit P pages 1-4** (R. pp. 118-121). Appellant (Plaintiff) even complied **Exhibit P page 6** (R. p. 123). Even in the letter Amanda Lawrence is dishonest **Exhibit P page 5** (R. p. 122), where she clearly makes the Appellant (Plaintiff) to be at fault for not meeting when the email sent in **Exhibit O** (R. p. 116) shows the truth. Amanda Lawrence tried to discredit the Appellant (Plaintiff) on all angles. Even with the

U.S. Post Office making the error and it being documented Janice McKinney and Amanda Lawrence refused to change the termination. Is this in accordance with the Member Guidelines when they were already in violation due to breach of contract? Amanda Lawrence and Trident United Way wanted the Appellant (Plaintiff) gone!!!

The Appellant (Plaintiff) has shown the breaches of the contractual agreements. The arbitrator required documentation which shows libel and slander with testimony in providing information that was defamation.

These were **never** adjudicated under the binding arbitration agreement where the pre-arranged contractual agreement was breached and no agreement was made by both parties to amend the agreement. The courts do have jurisdiction.

A contract is an obligation which arises from actual agreement of the parties manifesting words, oral or written or by conduct. *Prescott v. Furmers Tel, Coop., Inc. 335 S.C. 516 S.E. 2d 923 (1999).*

A party breaches a contract when he does not perform as he agreed upon to perform under contract *Sechrest v. Forest Furniture Co., 141 S.E. 2d 292 (N.C.1965).*

A contract exist where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act *Benya v. Gamble, 282 S.C. 624, 628; 321 S.E. 2d 57, 60, (ct. App. 1984).*

The Appellant (Plaintiff) did not deviate from the agreed upon terms of the contracts as the Respondents and the Appellant (Plaintiff) did not agree to amend the pre-arranged agreements.

The time of the statute of limitations starts with the knowledge of the breach and the utterance of the defamation of character and libel some provided in documentation. November 30, 2010 was only the gateway for future ones to occur. February 2011 and June 2011 the utterances all within the statutes of limitations. The May 13, 2011 brought more evidence all within the statute of limitations.

Breaches of contract with Fraudulent Intent the fraudulent act element is met by any act characterized by dishonesty, in fact unfair dealing or unlawful appropriation of another's property by design. *Perry v. Green, 313 S.C. 250, 254, 437 S.E. 2d 150, 152, (Ct. App. 1993).*

The Breach of Contract with the disciplinary Actions even after being made aware and still lied to the arbitrator to which Janice McKinney proves it against Amanda Lawrence in **Exhibit H page 3** (R. p. 78) (under verbal warning and outcome). Fortifying the Appellant's truth that the verbal and written warning **never** took place, but a lie was told to the arbitrator. Even defamation of character and libel to injure the reputation of the Appellant (Plaintiff) since the arbitrator asked for items to be in writing prior to their meeting. When the prohibited material/information about the neutral was provided to the arbitrator and documented in his so-called decision in **Exhibit A** (R. p. 28) common law malice with fraudulent intent accompanied the Breach of Contract. Breaching the contract signed January 26, 2011 with the neutral about confidentiality **Exhibit R pages 1** (R. p. 94) prior to the February 9, 2011 meeting again common law malice with fraudulent intent accompanied the Breach of Contract. Along with **Exhibit M page** 2 (R. p. 91) of the Certified Mail from Trident United Way--Bonnie Bella stating that *the Program Director will take the necessary steps to follow .....protocol* also breached with common law malice and fraudulent intent. All were completed actions.

Slander is spoken defamation while libel is written or accompanied by actions or conduct *Wilhoit v. WCSC, Inc., 293 S.C. 34, 358, S.E. 2d 397 (Ct. App. 1987).* The documents provided to the arbitrator and neutral and slander in testimony, the Respondents acted in ill will, wantonly injuring the Plaintiff along with common law malice *Jones v. Garner, Supra Lesesne v. Willingham, 83F Supp. 918, 921 (E.D.S.C. 1949).*

All criteria met for defamation of character.

Beneficiary 3rd Party Breach of Contract

When Trident United Way came into agreement with the service program they agreed to adhere to the governing rules and the implementation thereof; by breaching the simple agreements of the member guidelines and not making sure the child care assistance was already in place for members they breached their agreement with the service provider and the Appellant (Plaintiff) is a beneficiary to this also. The Appellant (Plaintiff) had reasonable expectation that Trident United Way would adhere to and meet their agreements **Exhibit W page 1** (R. p. 100).

VI. The Order signed by Judge J.C. Nicholson, Jr. on May 30, 2013 page 4, but filed May 31, 2013 (R. p. 2) falsely claims that the Appellant's (Plaintiff's) same claims were actually arbitrated and ruled upon and should have been adjudicated then. The Appellant (Plaintiff) was never notified by the arbitrator of a meeting so how could he have addressed any issue of concern for the Appellant (Plaintiff)? The Claim that the Defamation of Character is not within the statute of limitations is only addressing the gateway incident not the other incidents which are within the statute of limitations. Judge Nicholson did not allow for the presentation of them when he refused to receive, allow distribution and presentation the Filed Supplemental Exhibits. The claims made in this case is not the same as those presented to the neutral **Exhibit H page 1 and 2** (R. p. 76-77). Besides, the Appellant (Plaintiff) if given proper notification after the breach of the initial agreement for arbitration, the Appellant would have made adjustments to the claims made to the neutral by right. None was ever presented to the arbitrator as in **Exhibit C** (R. p. 32) it clearly indicates the arbitrator requesting documentation and memorandum of position in this matter. Did the Respondents provide that for the Appellant (Plaintiff)? It would not be legal. The Order again shows a bias, prejudice and inequity by Judge Nicholson.

VII. The transcript provided to the court is inadequate because it does not contain the challenges made to the court reporter, Mona Manley. **The court reporter did not deny that the challenged events or statements did not occur.** The court reporter only cited confidentiality about naming those in already seated in courtroom's well when Judge J.C. Nicholson, Jr. did not use proper names and his abruptness at the closing of the hearing. The court reporter **never** responded that the challenged events and statements did not occur she just refused to incorporate them in the transcript.

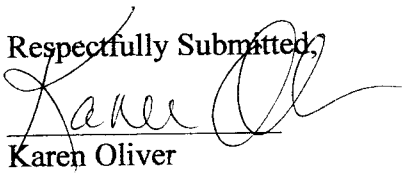
In accordance with the S.C. Court Reporter's Manual, *a transcript is the official document which provides the appellate court reliable information regarding trial court proceedings* **S.C. Court Reporter's Manual Page 24 Section XV PRODUCTION OF THE TRANSCRIPT**. It is to depict the actual events that took place in the court room. The court reporter was negligent in meeting the requirement of Common Pleas court as prescribed in the **S.C. Court Reporter's Manual page 13 Section 3 Common Pleas** it states: *All aspects or phases of proceedings in civils cases must be recorded verbatim.* Further, **S.C. Court Reporter's Manual page 25 Section A Preparation Responsibility sentence 2 line 2** states: *The requested transcript must be verbatim and prepared in upper and lower case and in accordance with the standardized format described below. (See Appendix 3, Exhibit 5-15).* In the challenges made to the court reporter, Mona Manley, never denied that the challenged event or statements did not take place. She just refused to incorporate them in the transcript. It is for these reason the Appellant (Plaintiff) has included the specific challenges made to the court report to provide the appellate court with reliable information regarding intentionally omitted

event and statements that took place on October 9, 2013 at the hearing with Judge J.C. Nicholson. The Appellant (Plaintiff) would enclose the response documented by the court reporter to the challenges some of which she did not even answer. She only address the confidentiality and abruptness at the end of court. Mona Manley has a responsibility to be impartial and unbiased in her transcription, but her lack of denial that the event and statements did not occur lets the court of appeals know that the challenged event and statements did take place. Therefore, the Appellant (Plaintiff) would enclose them with the transcript so appellate court can be more reliably informed of the court proceedings of October 9, 2013 with Judge Nicholson. **S.C. Court Reporter's Manual page 2 para 4** states: *The willful failure of a court reporter to comply with the provisions of this manual may constitute contempt of court enforceable by Order of Supreme Court.*

CONCLUSION

For the reasons stated this court should reverse the dismissal of the Appellant's (Plaintiff's) as court did have jurisdiction over the matter. The items under Breach of Contracts, Breach of Contract with Fraudulent Intent and Defamation of Character meets all the criteria and is within the Statute of Limitations. The court erred in stating that the matters were adjudicated in binding arbitration when it was never put before them or introduced. Judge Nicholson was prejudiced and biased in his application and implementation of court procedures. Judge Nicholson provided a hostile, bias, inequitable court room environment that was psychologically intimidating with that intent. Judge Nicholson did not provide an accurate interpretation of Rule 59g in court yet, made it his reason for vacating his decision on September 17, 2013 (R. p. 9) clearly showing his contradiction and adverse opinion of the Appellant (Plaintiff). The Appellant (Plaintiff) because she is a benefactor of the agreement between Trident United Way and the service program she is entitled to 3rd party Breach of Contract. Trident United Way came into agreement with the service program to adhere to their guidelines and that was clearly not met. The Appellant (Plaintiff) would but is not limited to: like all yearly monies stolen from her, childcare payments, educational awards, punitive damages all consisting from 2010 until the present. Amanda Lawrence and Trident United Way prevented her from being a part of the service corps each year the program was implemented.

Respectfully Submitted,



Karen Oliver

September 21, 2015

Karen Oliver
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Pro se

October 5, 2015

RECEIVED
OCT 08 2015
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Karen Oliver, Appellant, v. Amanda Lawrence and Trident United Way, Respondents.
Appellate Case No. 2013-002587

Dear Ms. Kitchings:

Please see the enclosed Final Briefs and Certificates of Service.

Sincerely,

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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Active/Retired Circuit Court Judge

Case No. 2012-CP-10-8135

Karen Oliver, Appellant,

v.

Amanda Lawrence and Trident United Way, Respondents.

PROOF OF SERVICE

I certify that I served the Final Brief on Amanda Lawrence and Trident United Way by depositing a copy of it in the United States Mail, postage prepaid, on October 5, 2015 addressed to their attorney of record, Christy Fargnoli of Clawson and Staubes, LLC 126 Sevens Farms Drive Charleston, SC 29492-8144.

October 5, 2015

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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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J.C. Nicholson, Jr., Active/Retired Circuit Court Judge

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October 5, 2015

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