**NOTICE FOR REVIEW PETITIONING FOR WRIT OF CERTIORARI**
**REINSTATEMENT OF CASE ON APPEAL AND NOTICE**



THE STATE OF SOUTH CAROLINA
In the Supreme Court
APPEAL FROM CHARLESTON COUNTY
Doyet A Early, Court of Common Pleas Judge
Order 20 November 2007 and
Appellant Court Review of Case 2015-000787

Mr. Wesley Edward Smith III, ..... Appellant.

v.

Charleston County School District, et al..... .....Respondent,

Wesley E. Smith, Pro Se
465 N, Nassau Street
Charleston, SC 29403
(804)244-7807
Attorney for Appellant
Daniel Francis Blanchard, III, Esquire
151 Meeting Street 4th Floor
Charleston, SC 29403
(843) 737-6550
Attorney for Respondent

**MR. WESLEY EDWARD SMITH III DISSENTING STATE APPEAL COURT LETTER DENYING TO ACKNOWLEDGE PETITION FOR REINSTATEMENT PURSUANT AUTHORITY OF APPELLATE COURT RULE 242**

**QUESTION PRESENTED**

How can the court of Appeals dismiss the expressly written order of the Honorable Doyet A. Early that was on review issued from the Court of Common Pleas as finalized, when the Court of Common Please has not followed the commencement practice that properly set the case for adjudicating purpose, not be perceived as an error of law, and a frivolous matter as identified a violation by S. C. Code 15-36-10 et seg or when such order has not been complied with governing Court and parties actions regarding the Court of Common Pleas pursuant to provisions of 203(b)(1) of the South Carolina Appellate Rules, not be implied as an error of the rule of law ripe for review?

**I. ISSUE ON APPEAL REGARDING THE ERROR OF LAW ARGUMENT UNDER S C CODE 15-36-10 et seg**

I Mr. Wesley Edward Smith III, the aggrieved, believes based on information and belief that a

violation of my legal rights while being adversely affected according to S C Code 15-36-10 et

seg. Taken from the express fact that if "a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law" (3)(B) and Section "(M) All violations of the provisions of this section must be reported to the South Carolina Supreme Court and a public record must be maintained and reported annually to the Governor, Senate, and House of Representatives according to the S C Code 15-36-10 ). The expressly supported written order from the judgment, as its written is perceived in error of law under S C Code 15-36-10 et seg. as well.

This violation of law and right are being reported and a request for the enforcement of law is promptly needed . Such reference to the remittitur notice disregard the perceived error of law violation under S C Law 15-36-10 which the Honorable Doyet A. Early order dated 20 November 2007, lacked the legal familiarity courts are accustomed to, that is believed deprived Mr. Wesley Edward Smith III of his legal rights and to appeal under the law rules 203(b)(1). According to the law, the uncontested and discriminative nature of the Court findings renders an unequal and partially biased judgment, is perceived as untimely, unnecessary without legal merit and allowed slanderous unsubstantiated proof and was without supporting law or enforcement agency law review arguments with notification to charge or legal right to appeal such decisions.

The Court of Common Pleas located within the State of South Carolina case has not officially commence according to the law, which makes the personal expressions by written order, the subjective substantive production by nature from the honorable Doyet A, Early dated

20 November 2007 (Encl 4), and the alleged subsequent judicial review findings of the South Carolina Appellate Court notice of Order dated 24 September 2015 a moot and frivolous issue as well. I believe that I have been prejudice against and that both finding are impartial with a stench of discrimination in violation of my Civil Rights. Relying on Goodson v the American Bankers Ins Co, 295 S.C. 400 (1988) of which the Court actions and Plaintiff lacked legal familiarity

This case is perceived an extraordinary circumstance when a depravation of legal rights is the result of a finding that leaves objectionable inferences and genuine issues of material facts regarding fair proceedings, equality and equity of the State practice under the color of the laws. The Court of appeals action remains legally uncontested and legally unchallenged according to the implied and or expressly written state laws. A case that is found to be adverse in nature which in error of the laws occurred is subjected to review in the State of South Carolina Supreme Court who may hear the case. Relying on proper restoration of relief and subsequent action involving equity and remedy afforded by review. Relying on *Donkle v. Forster 238 S.C. 90 (1961)*. In the order granting a new trial, it was said:

*"The motion was argued before me by counsel and after giving the matter careful and serious consideration, this Court is of the opinion that in view of the facts adduced at the trial, the jury should have rendered a verdict in favor of the plaintiff. To allow the jury's verdict to stand in this case would be a miscarriage of justice."*

The exception the appellant raised was the question of whether the trial Judge committed error in granting a new trial previously in error of law. Relied on *Sellar v Collins et al., 212 S.C. 26.* It was well settled, under the decisions of this Court, that an order granting or refusing a new trial when based solely on errors of law is subject to review by this Court, but when the order is based upon questions of fact, or upon both questions of law and fact, it is not appealable. Sellars v.

Collins et al., 212 S.C. 26, and the cases therein cited. Turner v. Carey, 223 S.C. 477,; Nichols v. Craven, 224 S.C. 244,; and Smith v. Traxler, 228 S.C. 418. In such cases, the Court was produced and all the circumstances surrounding this incident occurred in the presence of the counsels who should have complained then in sight of prejudice and the result that could possibly be adverse based on its rendition of the verdict.

Enclosed are the supporting orders and law arguments, Enclosure (1) (2) (3) (4) and (5) respectively. Appropriate relief is respectfully requested granted according to the authority afford under South Carolina Appellate Court Rules 242 or today's applicable rule for reversal, modification and extension based on the frivolous matters which causes and effects produce an error of law judgment which violated the State Courts and caused injuries to private party's. **WHEREAS** relief is sought pursuant the provision a dn authority or rule 242 or the the applicable relief that governs release for the suspension sanction, legal bonds and other applicable compelling forms that State process is legal binding which constraints are found in error of law. I disagree with the express written order of the lower court and dissent the State Court of Appeal review blindly dismissing such action, because it is impossible for the lower court to render a verdict of the State Court of Appeal in the lower Court of Common Pleas. This action is perceived as a prejudice and error of law which violates the enclosed precedent. Relying on *Mc Dowell v S C Department of Social Service 300 S.C. (Ct App 1989).* "Lacking Legal familiarity"

Action of alleged premeditation and intent beyond the reasonable realm of decency is gathered from the dismissal of the Appeal Court Order and the Court of Common Pleas order, when its goes a far to tell how the Appeals Court would render its verdict. I perceived the action

of the third party latches, third party legal entity, the alleged appointed Court Hearing Officers and the expressly written order(s) gathered as the substantive evidence as proof, from the Court of Common Pleas as discriminative, encroaches upon the limited integrity of the Courts, perceived error of state statutory laws regarding the casual engaging in an anti biased protected activity and the adverse injurious actions resulting to Mr. Wesley Edward Smith III regarding such employment practices under S C Code 15-36-10 et al, being outside its jurisdictional bounds of judicially descent and should be null and voided which case involves Frivolous Matters. . All other actions involving Mr. Wesley Edward Smith III claims by affirmed court order respectfully reversed and reconsidered, governing this error to the law.

October 5, 2015 Respectfully Submitted

Mr. Wesley Edward Smith III

# ENCLOSURE

# (1)

**Case: Mr. Wesley Edward Smith III**

**v**

**Charleston County School District et al,**

**Appeals case No 2015-000787**

# Donkle v. Forster

**238 S.C. 90 (1961)**
**119 S.E.2d 231**

Mrs. Millie DONKLE, Respondent, v. Johnnie Owens FORSTER, Appellant.
17764
**Supreme Court of South Carolina.**
April 10, 1961.
Messrs Haynsworth, Perry, Bryant, Marion & Johnstone, of Greenville, for Appellant.
*91 Messrs. J.G. Leatherwood and Rex L. Carter, of Greenville, for Respondent.
April 10, 1961.
MOSS, Justice.
This action was instituted by Mrs. Millie Donkle, the respondent herein, to recover damages for personal injuries sustained by her on November 1, 1959, while she was riding as a passenger in an automobile owned and driven by her husband. The respondent alleges in her complaint that the automobile in which she was riding was traveling in a southerly direction on Augusta Street, in the City of Greenville, South Carolina, and that the said automobile was brought to a complete stop for the purpose of making a left turn from said Augusta Street into East Tallulah Drive, and while so stopped, an Oldsmobile station wagon driven by Johnnie Owens Forster, the appellant herein, ran into and against the rear of the automobile in which the respondent was riding. The respondent charged in her complaint, in several particulars, that the appellant was guilty of negligence, carelessness and recklessness in the operation of his automobile, and that such proximately caused her injuries. The appellant interposed, by way of Answer, a general denial of the material allegations of the complaint.
This case was tried before the Honorable J. Robert Martin, Jr., and a jury, in July 1960, and resulted in a verdict in favor of the appellant. The respondent made a motion for a new trial on the ground that the verdict of the jury was *92 contrary to the evidence and that there was only one reasonable inference to be drawn therefrom, that the jury should have found a verdict for the respondent. The trial Judge set aside the verdict and granted a new trial, and from this order, the appellant has prosecuted this appeal. In the order granting a new trial, it was said:

"The motion was argued before me by counsel and after giving the matter careful and serious consideration, this Court is of the opinion that in view of the facts adduced at the trial, the jury should have rendered a verdict in favor of the plaintiff. To allow the jury's verdict to stand in this case would be a miscarriage of justice."

The exception of the appellant raises the question of whether the trial Judge committed error in granting a new trial.
It is well settled, under the decisions of this Court, that an order granting or refusing a new trial when based solely on errors of law is subject to review by this Court, but when the order is based upon questions of fact, or upon both questions of law and fact, it is not appealable. Sellars v. Collins et al., 212 S.C. 26, 46 S.E. (2d) 176, and the cases therein cited. Turner v. Carey, 223 S.C. 477, 76 S.E. (2d) 671; Nichols v. Craven, 224 S.C. 244, 78 S.E. (2d) 376; and Smith v. Traxler, 228 S.C. 418, 90 S.E. (2d) 482.

The case of Massey v. Adams, 3 S.C. 254, was an action of trespass to try title. A verdict was rendered by the jury in favor of the defendant, and, on motion of the plaintiffs, a new trial was granted. Upon appeal, this Court said:

"The only question proper for our consideration, is whether there was error of law in the order granting the new trial. If it was founded, either wholly or in part, on a conclusion from the fact contrary to that of the jury, then, according to the well established principles governing the Court in regard to appeals, in which propositions of law do not arise, we cannot interfere."

*93 In dismissing an appeal from an order granting a new trial, this Court, in Bowman v. Harby, 109 S.C. 396, 96 S.E. 144, said:

"It is too plain for discussion that, under our decisions, the order is not appealable, because the new trial was not granted solely upon a question of law, but involved a consideration of the facts and the conduct of the trial."

In Harvey v. Southern Ry. Co. et al., 133 S.C. 324, 130 S.E. 884, this Court said:

"* * * The order of the circuit judge was plainly based upon a consideration of the evidence and a conclusion therefrom inconsistent with the verdict. The case therefore falls within the rule that, under these circumstances, the order is not appealable. Snipes v. Davis, 131 S.C. 298, 127 S.E. 447. Ingram v. Hines, 126 S.C. 509, 120 S.E. 493."

As we construe the order of the trial Judge granting a new trial, it was based upon a consideration of the evidence and a conclusion therefrom inconsistent with the verdict of the jury.

In Marshall v. Charleston & S.R. Co., 57 S.C. 138, 35 S.E. 497, 498, this Court said:

"* * * Inasmuch, then, as the circuit Court based the granting of the new trial upon erroneous construction of defendant's pleading, there was error of law. If the court had granted the new trial on his view of the evidence, and had concluded therefrom that plaintiff had sustained the charge of negligence in the complaint, and that defendant had failed to sustain the defence of contributory negligence, we could not interfere, upon the rule stated at the beginning of this opinion. * * *"

The record shows that the facts were involved in the order of the trial Judge granting a new trial, and since the order was granted upon such ground, this Court cannot interfere.

*94 The exception of the appellant is overruled and the appeal dismissed.

TAYLOR, C.J., and OXNER and LEGGE, JJ., and J.M. BRAILSFORD, JR., Acting Associate Justice, concur.

# ENCLOSURE

# (2)

**Case: Mr. Wesley Edward Smith III**

**v**

**Charleston County School District et al,**

**Appeals case No 2015-000787**

# McDowell v. SCDSS

**304 S.C. 539 (1991)**

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:

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.

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 "substantially justified."

[2] Now Rule 222, SCACR.

# ENCLOSURE

# (3)

**Case: Mr. Wesley Edward Smith III**

**v**

**Charleston County School District et al,**

**Appeals case No 2015-000787**

# The South Carolina Court of Appeals

Wesley Edward Smith, III, Appellant,

v.

Charleston County School District, Respondent.

Appellate Case No. 2015-000787

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ORDER

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Appellant has failed to comply with the South Carolina Appellate Court Rules and with this Court's May 1, 2015 letter. Accordingly, this appeal is dismissed. Because this appeal is dismissed, this Court declines to act on any pending motions. Remittitur will be sent as provided in Rule 221, SCACR.

FOR THE COURT

Columbia, South Carolina

cc:
Wesley Edward Smith, III
Daniel Francis Blanchard, III, Esquire

FILED
6/25/15

# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
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July 15, 2015

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

**REMITTITUR**

Re: Wesley Edward Smith, III v. Charleston County School District
Appellate Case No. 2015-000787

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Wesley Edward Smith, III
Daniel Francis Blanchard, III, Esquire

# ENCLOSURE

# (4)

**Case: Mr. Wesley Edward Smith III**

**v**

**Charleston County School District et al,**

**Appeals case No 2015-000787**

# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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September 24, 2015

Wesley Smith
465 N. Nassau Street
Charleston SC 29403

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

Dear Mr. Smith:

The Court received your filing entitled "Notice of Appeal in a Civil Case" on January 23, 2015; a document entitled "Appellant Supplement" on March 2, 2015; a document entitled "Notice and Motion to Appeal with Extension or in the Alternative to Amend for Judgment" on February 13, 2015, which we construe as a motion to reinstate your appeal; letters requesting permission to amend your brief on May 15, and May 18, 2015; and a notice of appeal/petition for rehearing on September 18, 2015, which we also construe as a motion to reinstate your appeal.

On May 20, 2014, the Court of Appeals sent the remittitur on this appeal. The sending of remittitur ended this Court's jurisdiction over your case. Your appeal is over. We will not consider any further filings from you regarding Judge Early's 2007 order.

# ENCLOSURE

# (5)

**Case: Mr. Wesley Edward Smith III**

**v**

**Charleston County School District et al,**

**Appeals case No 2015-000787**

cc
J. Smith
A.F. Blanchard
12/4/07

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | THE COURT OF COMMON PLEAS |
| | ) | NINTH JUDICIAL CIRCUIT |
| COUNTY OF CHARLESTON | ) | CASE NO. 03-CP-10-4751 |
| WESLEY SMITH, | ) | |
| Plaintiff, | ) | **ORDER** |
| -vs | ) | |
| CHARLESTON COUNTY SCHOOL DISTRICT and MR. TOWNSEND, | ) | |
| Defendants. | ) | |

FILED
2007 NOV 29 PM 3:30
JULIE J. ARMSTRONG
CLERK OF COURT

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. 11(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

DAF #1

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



EXH A

Complaint against the CCSD[1] 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.

DAE #2

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.

DAE #3

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

part: "No Petition for Reinstatement having been filed in the above matter since issuance of this Court's Order dated August 2, 2007, IT IS SO ORDERED that the above appeal be and hereby is 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.

DAE #4

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.

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.

DAE #5

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

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 of 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."

DAE #6

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:

DAE #7

(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

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.

DAE #8

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.

DAE #9

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

DAE
#10

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.

THE STATE OF SOUTH CAROLINA
In the Supreme Court
APPEAL FROM CHARLESTON COUNTY
Doyet A Early, Court of Common Pleas Judge
Order 20 November 2007 and
Appellant Court Review of Case 2015-000787



Mr. Wesley Edward Smith III, Appellant.
v.

Charleston County School District et al, Respondent,

PROOF OF SERVICE

I , Wesley Edward Smith III, certify that on October 5, 2015, submits petition for reinstatement a response in opposition to State Court of appeal letter dated 24 September 2015. Such reference to the remittitur notice disregard the perceived error of law violation under S C Law 15-36-10 which the Honorable Doyet A. Early order dated 20 November 2007, lacked the legal familiarity courts are customer to, that is believed deprived Mr. Wesley Edward Smith III of his legal rights and to appeal under the law rules 203 (b)(1). According to the law the uncontested and discriminative Court that render an unequal and partially biased judgment, is perceived as untimely, unnecessary, without merit and prematurely allowed slanderous unsubstantial proof that was without supporting law or enforcement agency law review arguments or notification of a legal right to appeal that Court order was sent by First Class Mail via United States Mail and on all parties listed below in this action to the following.

TO: Attorney for Appellant
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