

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DARLINTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. ~~2013-002356~~
2015-002389

Opinion No. 2015-UP-402

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SO SUPREME COURT

Fritz Allen Timmons

Petitioner
~~Appellant~~

v.

SCESC and Browns a/s RV and Campers

Respondent

REPLY FOR PETITION OF WRIT OF CERTIORARI

Attorney for Respondents

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RESPONDENT'S COUNTER-STATEMENT OF QUESTIONS PRESENTED

- I Did the Court of Appeals correctly find that substantial evidence supports the ESC's decision that Petitioner voluntarily quit without good cause connected with his work?
- II Did the Court of Appeals correctly find that all remaining issues are unpreserved for appellant review?

APPELLANT'S REPLY QUESTIONS PRESENTED

- I DID THE APPEALS COURT APPLY STATE AND FEDERAL CODES AND COURT RULES WITHIN THERE PLAIN LANGUAGE AND CONSIDERED EVIDENCE AND/OR LACK OF?
- II CAN THIS COURT DENY THE FACT THAT THE SCESC HAS COMMITTED FRAUD UPON THE COURT?
- III DID THE SCESC VIOLATE IT'S OWN STATDARDS OF REVIEW?
- IV CAN THIS COURT DENY THE SPECIAL OR IMPORTANT REASONS UPON THE FACTS OF THE RECORD FOR A WRIT OF CERTIORARI?

ARGUMENTS

- I DID THE APPEALS COURT APPLY STATE AND FEDERAL CODES AND COURT RULES WITHIN THERE PLAIN LANGUAGE AND CONSIDERED EVIDENCE AND/OR LACK OF?

With the new Counsel for the SCESC (The SCESC aka DEW is an insurance agency and not a law firm, therefore the attorneys hired are subject to Rule 264, SCACR of which has failed to follow) giving fraudulent information as to granting the motion to dismiss and dismissing the Appeal, the Respondents has once again committed Fraud upon the Court. The First hearing to dismissed was denied on Nov. 4, 2009 (App. Pp. 4,

28) and was presided by and later overturned by Judge J. Michael Baxley (App. P. 28) and the Second hearing to dismissed on January 20, 2010 (App. P. 29) was presided over by Judge Paul M. Burch of which Failed to render an Order. This Failure to render an Order preventing the Unknown judge presiding over the Motion to Amend Hearing of May 25, 2011 (App. P. 30) to fail to render an order until an order for the dismissal was obtained of which led to that judge to leave the court room and return with the order of same date in reference to the dismissal hearing of January 20, 2010 (App. P. 5) from Judge Burch. The lack of Order along with the action of Darlington County Clerk of Courts Office (App. P. 31) led to the Ex parte communications (App. Pp. 89, 90, 91) an ultimately to the perjured Order of September 6, 2013 (App. P. 6) The Appeal hearing was held on Oct 8, 2013 without any Counsels for the Respondents and without any supporting evidence. Counsels for both Brown.s Rvs and the SCESC (Romi Yolanda Robinson (App. P. 28)) having being properly notified.

II CAN THIS COURT DENY THE FACT THAT THE SCESC HAS COMMITTED FRAUD UPON THE COURT?

With the counsels willfully giving the statement “the ESC did not compile and file the record on appeal to the circuit court.” (Respondent’s Return footnote 3 p.7) confirms the violation of State codes §18-7-130, §41-35-720 (2009), and §41-35-750 (2009) while committing fraud upon the Court. State Codes clearly states “A full and complete record shall be kept of all proceedings in connection with an appealed claim. All testimony at any hearing upon an appealed claim shall be recorded, but shall not be

transcribed unless the claim is further appealed.”, “ **With its answer** the commission **shall certify and file** with the court **all documents and papers** and a transcript of all testimony taken in the matter and its findings of fact and decision”, and “ the findings of the commission as to the facts, if supported by evidence and in the absence of fraud,“ does not give authority or jurisdiction to withhold the record. If a statute’s language is plain, unambiguous, and conveys a clear meaning, “the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Also no Record of the hearing if front of the Tribunal was filed, ipso facto, the Circuit Court did not have any evidence as to what was or was not heard and ruled upon. It is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud. Hilton Head Ctr. v. South Carolina Pub. Serv. Comm’n, supra. Numerous jurisdictions hold an attorney’s subornation of perjury and/or the intentional concealment of documents constitute fraud upon the court. See Kupferman v. Consol. Research & Mfg. Corp., 459 F.2d 1072 (2d Cir. 1972) (institution of action by attorney who knew that there was complete defense to action might be fraud upon the court). Extrinsic fraud, as opposed to intrinsic fraud, is often difficult, if not impossible to discover during the litigation. For example, concealing assets through an unknown third-party not subject to discovery is extrinsic fraud in that it constitutes conduct or activities outside of the court proceedings which deprive the other party of the opportunity to fully exhibit and try his case. 24 Am. Jur. 2d Divorce and Separation § 435 (1998); Chewning, 354 S.C. at 81, 579 S.E.2d at 610. Ipso facto, is currently violating §16-17-10 “(2) Willfully bring, prosecute or **maintain an action**, at law or in equity, in any court having jurisdiction within this State and (b) thereby **seeks to**

defraud or mislead the court,”. Thus leading to Judge Baxley’s statement “I don’t find a violation of federal law, which you have talked about, for overtime -- failure to pay overtime; nor do I find any other violation of state law” (App. P. 15, L4-6) and while the new contract for hire clearly states “There is no overtime pay” and “No pay for cleaning the shop - ever” (App. P. 20) of which was concealed by the SCESC. "A willful act is defined as one 'done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done: that is to say, with bad purpose either to disobey or disregard the law.'" Id. at 82-3, 370 S.E.2d at 874. "Contemptuous behavior is conduct that tends to bring the authority and administration of the law into disrespect." Ex parte Stone v. Reddix-Smalls, 295 S.C. 514, 516, 369 S.E.2d 840 (1980).

III DID THE SCESC VIOLATE IT’S OWN STATDARDS OF REVIEW?

With Respondents Counsel stating “To constitute good cause, the circumstances which lead an employee to leave the job must be such as would cause a **reasonable person to leave**” 76 Am Jur. 2nd Unemployment Compensation § 102.”, therefore, if not for the fact of the termination of the contract for hire being terminated, ipso facto, termination of employee without cause (§41-27-230), the Commission determined that violations of federal laws does not constitute as “GOOD CAUSE“ for a reasonable person (employee) to leave.

The Counsel also wishes this court to determine the decision of the Circuit Court upon the Record on Appeal and not the Record of the Circuit Court. This Court must base

any decision in favor of the SCESC strictly upon and limited to any evidence of the Circuit Court Records of which must be Stamped by the Darlington County Court and not any other that may have been under Rule 1004 SCRE within the Record on Appeal. Without any Representatives for the Respondents at Circuit Court trial, this Court must also Restrict its decision without any argument by the SCESC.

The Respondents claim of evidence as to the Appellant's quitting is the Commissions decision of which has no evidence of support. The Appellant on the other hand has the numerous statements of "change of wages" by the employer, ipso facto, breach/termination of contract of hire, State Code §41-27-230 "'**Employment**" means: (1)Any service performed ...**for wages under a contract of hire**, written or oral, expressed or implied..." along with a new work for hire contract (of which violates Federal Laws) (App. P. 30), Ipso facto, the Appellant was terminated by no fault of his own and did not quit by refusing to accept a new contract of hire. It makes no difference wither there is one minute or one year between the termination of one contract and the start of a new contract either by the same or a different employer, the fact remains that the contract was terminated by the employer.

IV CAN THIS COURT DENY THE SPECIAL OR IMPORTANT REASONS
UPON THE FACTS OF THE RECORD FOR A WRIT OF CERTIORARI?

The Respondent claims there is no "special or important reasons" to support granting the Petition for a Writ of Certiorari, Therefore, to determine if violations of Federal Laws, State Codes, and Court Process and Procedures constitutes as "special or

important reasons” , the Appellant submit’s the following Question to this Court for consideration.

- 1 Does Refusal to pay Overtime and have employee’s work off the clock violate Federal Wage Laws?
- 2 Does violation of Federal Wage Laws to be considered as “Good Cause” for an employee to quit?
- 3 Is the new work for hire contract by Brown’s Rvs substantial evidence (On it’s Face) of Federal Wage Law violations?
- 4 Does Brown’s Rv’s meet the immune requirements of Federal Wage Laws?
- 5 Did the SCESC and its counsels violate State Codes §18-7-130, §41-35-720 (2009), and §41-35-750 (2009) by failure to produce the whole Record to the Circuit Court and Deprive the Appellant to try his case in full?
- 6 Did Judge Paul M. Burch Violate the Appellant’s Rights to Due Process by failure to produce the Order for Motion to Dismiss Hearing of January 20, 2010?
- 7 Did Judge Paul M. Burch and Counsel for SCESC partake in Ex-parte communications that led to a perjured Order of the Motion to Amend Hearing of May 25 of which is was not presiding over nor present for and violates Rule 15, SCRCPC ?
- 8 Did Judge J. Michael Baxley abused his discretion by awarding the Appeal hearing of Oct 8, 2013 without any of the following;
 - (a)Counsels for the Respondents,
 - (b) any Arguments by the Respondents,
 - (c) the “Whole Record”, nor

- (d) any supporting evidence.
- 9 Is the Judge J. Michael Baxley Court order of Oct 8, 2013 sufficient detail with accuracy as to describe Reasoning and evidence behind decision?
- 10 Did the Appeals Court as well as this Court Ignored Rule 264, SCACR by permitting Romi Yolanda Robinson as Counsel at Circuit Court, Derrick K. McFarland as Counsel at Appeals Court, and currently Debra S. Tedeschi as Counsel at this Court Without Petitioning the Courts?
- 11 Does this Court permit the Violations of Court Rules upon one Party (Respondents) while Strictly enforcing upon the Opposing Party (Appellant) other than for correction of clerical error?
- 12 Does this Court Ignore violations of Court Rules and State Code pertaining to Lawyer and Judges Conduct?
- 13 Does this Court Ignore violations of Court Process by Court personnel?
- 14 Does this Court hold a Pro Se to the same or higher standards than it does for a Lawyer?
- 15 What was the substantial evidence of the Circuit Court's Record that supports their decision?
- 16 Does this Court Consider the unreasonable delay between hearings of this case to be standard practice or violations of Due Process?
- 17 Does this Court Consider the actions of one party to be the action of multiple parties when the counsel for one party does not represent the other (in said case SCESC is represented (currently) by Debra S. Tedeschi while Brown's Rvs **abandoned case prior to any appeal**, ipso facto, made no motions,

arguments nor produced any evidence in support)?

CONCLUSION

As in 25627 - Chewing v. Ford Motor Company “We hold an act of perjury or concealment of a document coupled with an intentional scheme to defraud the court justifies the setting aside of a judgment pursuant to Rule 60(b) due to extrinsic fraud. “, “the intentional concealment of documents by an attorney, is a sufficient fraud upon the court to allow a collateral attack on a judgment” and “ It is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." Hilton Head Center of South Carolina. Inc. v. Public Service Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987).” . With the above said, this Court should grant the Petition for Certiorari for the Fraud placed upon the Court by the SCESC and its Counsels that deprived the Appellant from trying his case if full.



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Jan. 4, 2016

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APPEAL FROM DARLINTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Appellate Case No.2013-002356

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S.C. SUPREME COURT

Fritz Allen Timmons

Appellant.

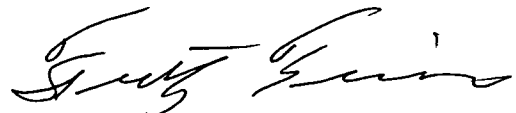
v.

SCESC and Browns a/s RV and Campers

Respondent

PROOF OF SERVICE

I, hereby certify that I have served the Reply for Petition of Writ of Certiorari on Debra S. Tedeshi, P.O. Box 8597, Columbia, SC 29202 for Respondents, by mailing one copy of the same, postage prepaid and return address clearly indicated on said envelope on Jan. 4, 2016,



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Jan. 4, 2016