

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

RECEIVED
JAN 17 2016
SC SUPREME COURT

January 8, 2016

Office of the Clerk
Supreme Court of the United States
Washington, D. C. 20543

RE: Mr. Wesley Edward Smith, III Petitioner v Charleston County School District INC et al
Respondents Case No. 2015-002061

Dear Honorable Clerk Connors;

Enclosed for your immediate actions and review on appeal, governed from instruction and forms that are designed by the Supreme Court to assist. Mr. Wesley Edward Smith III, (herein refer to as "Petitioner") involves the proceedings without assistance of counsel by free exercising of his civil rights and liberty governed under the construction of Constitutional due process while invoking such privileged Civil Rights. Under the authority of rules of the Supreme Court, which establish procedures that must be followed, I believe that I had a right to a fair and equal hearing prior to the assertion of the unchallenged objectionable inference drawn, from the premature issuance of the Remittitur Order without observing the claims.


I was robbed of my rights with "extreme prejudice" and I honestly believe that after these fifteen (15) years of trying to get some answers based on the State court process, by the self-elected delegated practitioners of the law, that I as the aggrieved and dissatisfied party who was stripped and rendered a helpless citizen, would be left constitutionally out to dry and die throughout this entire ordeal of a process, while being suspended in one place. I consider conditions with particulars, as considered hostile while in a workplace environment, where the personal actions are also being perceived as wrongful, dangerous and hazardous unlawful business practice at work, under the Constitutional authority and to a civilized society within the State of South Carolina and surrounding territories. As the decisions are being overlooked in the State Supreme Court by the blinders of what I believe is one of the contributing prejudice devices "Remittitur", the issues are seen in error Constitutional due process Civil Rights law of which the Remittitur was filed prematurely against me without affording me hearing, while I was the person subjected to the State rule of laws.

I believe that when I requested information from Congress and its committee members about a similar employment matters concerning the use of the State doctrine known as the "At Will Law" I believe from that inquiry until this present date, that I became a part of the lowest species in the pyloric kingdom which is the "scapegoat" by being collaterally attacked, subsequently damaged goods socio-economic status stripped and ostracized from the population

of civilized citizens in the governed community of such society.

This is not only perceived as Constitutional conflict, but a judgment which is impaired and cause and effect creates a conflict between a decision of which review is sought and a decision of another appellate court on the same issue. The petition seeks relief equal justice under the same set of law as aversive action were done under the law (minus ex post facto laws) and prosecution seek punishments greater than before to those perpetrators and violators found, that by the use of the employment arena in which to trap helpless citizen for monetary gains by any descriptive means of word of the extortion that the respondents to have the rights justice, life, liberty, pursuit of happiness and fair fullness of freedoms, as respondents are to also governed under the same set of authoritative Constitutional due process clause doctrines.

Yours truly, keeping the faith,


Mr. Wesley Edward Smith III

Copy: FILE

Honorable Julie J. Armstrong
Honorable Jenny A. Kitchens
Honorable Daniel Shearouse
Mr. Daniel F. Blanchard, III Esq
Ms. Alice F. Paylor, Esq
Mr. John Didit , Esq

The Supreme Court of South Carolina

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Wesley Edward Smith, III, Petitioner,

RECEIVED

v.

JAN 11 2016

Charleston County School District, Respondent.

Appellate Case No. 2015-002061

S.C. SUPREME COURT

ORDER

By order dated October 15, 2015, the petition for a writ of certiorari to review the decision of the South Carolina Court of Appeals in this matter was dismissed.¹ This order found that the Court of Appeals had properly sent the remittitur after petitioner failed to timely seek rehearing or reinstatement following the dismissal of the appeal.

Petitioner has now filed a second petition for a writ of certiorari seeking review of the decision of the Court of Appeals. This petition is dated November 4, 2015, and was received by this Court on December 7, 2015.

Appellate jurisdiction over this case ended when the remittitur was sent on July 15, 2015, and no further motions or petitions can be considered by either appellate court after that date. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007). Accordingly, the second petition for a writ of certiorari is hereby stricken and dismissed.


C.J.
FOR THE COURT

Columbia, South Carolina
December 8, 2015

cc: Daniel Francis Blanchard, III, Esquire
Mr. Wesley Edward Smith, III
The Honorable Jenny Abbott Kitchings

¹ Before the Court of Appeals, the Appellate Case Number was 2015-000787.

NOTICE TO APPEAL
IN THE UNITED STATES SUPREME COURT
on Appeal South Carolina Supreme Court
Court Review of Case 2015-002061
Order dated December 8, 2015

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
Pro Se
Daniel Francis Blanchard, III, Esquire
151 Meeting Street 4th Floor
Charleston, SC 29403
(843) 737-6550
Attorney for Respondent

I. INTRODUCTION

I. Mr. Wesley Edward Smith III informs this honorable court while exercising his fundamental right to appeal, unchallenged on appeal were issues are being overlooked which acts are not in accordance with the Constitution due process, and due process right which were adversely affected under Constitutional laws afforded within the State of Carolina are listed in relevant parts:

Under Article I SECTION 2. Religious freedom; freedom of speech; right of assembly and petition. The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances. (1970 (56) 2684; 1971 (57) 315.)

Article I SECTION 3. Privileges and immunities; due process; equal protection of laws. The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.)

ARTICLE I SECTION 22. Procedure before administrative agencies; judicial review. No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. (1970 (56) 2684; 1971 (57) 315.)

My statutory counterclaims related to such deprivation of rights afforded under:

S. C. Code 1-13-10 et seg State Human Affairs Commission (discriminative matters based age
race, religion, sex disability, color)

S C Code 41-7-10 labor and Enforcement (regarding citizen right to work)

S. C Code 41-1-10 et seg Pay and Wages (pay owed upon termination from employment for any
reason).

II. NATURE OF THE COURTS REVIEW

I am relying on the nature of the courts review for equal justice under the same laws as applied to Mr. Wesley Edward Smith III with no other compelling reason for doing so than just having a fair and partial practice at law applied correctly, according its Constitutional authority without equivocation.. This case is of national importance based on the national register of cases with similarity and which the previous case are in conflict, where this judgment (or placement of the prejudging remittitur). The case with the judgment conflicts is relied upon on a case which lacked legal familiarity in that of *the Goodson v. AMER. BANKERS INS. CO.* 295 S.C. 400, 368 S.E.2d 687 (1988), as understood of the Goodson v American Banker Ins INC (1988) case. In that case the court lack legal familiarity to produce a ripe case for adjudication. and thus this case due to similarity situated, should have been, at the least summarily dismissed for its was unripe. Unripe is justified in the form of not having a Complaint, no service of summons to all opposing parties for which a plausible answer could have been submitted to the courts to refute any claim of the respondent unseen claims, there was no stated claims with a requested relief as supported from a reliable state agency with the enforcement seal supporting memorandum of law argument, there was no magistrate report and or recommendation attached , no notice of the hearing and no service of a notice of appeal or the subsequent ramification of the possibility of waiver of appellate rights. At no time did I nor do I authorize the consent to the waive of my afforded shields, protections, safeguards and Constitutional due process which I am entitled to liberty,

life, pursuit of happiness and freedoms while merely attempting to inquire within

III. STATEMENT OF THIS CASE

As believed, based on information and prior beliefs, the elected officials in South Carolina Appellate Courts have willingly chosen what case are ripe for adjudication, either individually or collectively and responsible for such pickings. Those obligated to fulfill its duties as officiates, are liable for the results even stemming from another unripe produce doctrines. As plausibly seen, while making productive determinations, but implied and express later make a choice to assist the bullied, refused to aid the impoverished, help the helpless and assist the ignorant defenseless citizen, while knowing or reasonably known (by publicly placing or serving notice that there are potentially dangerous and hazardous doctrine in the form of orders in circulation that reeks and could have such a profound negative adverse affect on private citizen life in employment). Such persons knew or should have reasonably known of such dangers laid wait while employed under the State Constitution, and I believe could have prevented such trappings. As such, not only is this action perceived as a Constitutional conflict, but an extraordinary circumstance for which the placement and assertion of the order at this stage of litigation , as narrowly tailored, is nn extraordinary occurrence which impairs visions and cause and effect of such judgment creates a conflict between a decision of which this review is sought and the decision of another appellate court on the same issue.

IV. ISSUE OVERLOOKED REGARDING APPELLATE RIGHTS

I Mr. Wesley Edward Smith III informs this honorable court that while seeking to exercise my fundamental right to appeal the State Highest Court determination, the State Highest Court

professional experiences are being undermined or either prevented based on the issuance of the State issued order "Remittitur. This action gives reason to believe the premeditated issuance of a prejudging doctrine serves a that personal and or supports the use of unlawful business practices within the state while person are employed and governed under the State Constitution. Such barrier cause and effects has caused the overlooking and unchallenging of an important aspect on my case counterclaims, from the attacks. The issue herein address circulates around due process and the civil right of citizen to appeal an determination but are being denied a citizen right to appeal. The appeal depravation is taking place after a decision has been made that injures, defames, made a public spectacles while being subjected to the same practice and under the same set of Constitutional laws. I, Mr. Wesley Edward Smith III sustained employment injuries (all benefits associated) from the above captioned and hereinafter mentioned respondent(s).

Pursuant the provision of rule 203(d) as here stated in relevant parts; **(d) Filing.**

(1) Appeals from the Circuit Court, Family Court and Probate Court.

(A) Where to File. *The notice of appeal shall be filed with the clerk of the lower court and with the Clerk of the Supreme Court in the following cases:*

- (i) Any final judgment from the circuit court which includes a sentence of death.*
- (ii) Any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance; provided, however, in any case where the Supreme Court finds that the constitutional issue raised is not a significant one, the Supreme Court may transfer the case to the Court of Appeals.*
- (iii) Any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the State, its agencies, political subdivisions, public service districts, counties, and municipalities, or any other indebtedness now or hereafter authorized by Article X of the Constitution of this State.*
- (iv) Any final judgment from the circuit court pertaining to elections and election procedure.*
- (v) Any order limiting an investigation by a State Grand Jury under S.C. Code Ann. § 14-7-1630.**

Based on this rule overlooked is very concerning and disheartening, as directed accordingly to the underpinnings of section "*(i) Any final judgment from the circuit court which includes a sentence of death*" for which the sanctioning order prohibits Mr. Wesley Edward Smith III any legal recourse after being subjected to person relief system, if left without a constitutional challenge, is construed a death order by legal injections, as construed given from this State Circuit Court judges, juror and or hearing officers on related legal matters. Secondly this court should continually refrain from reviewing such deprivation actions (a citizens duty to inform and warn) thus according to "*(v) Any order limiting an investigation by a State Grand Jury under S.C. Code Ann. § 14-7-1630.*" that any such Constitutional due process violations are prohibited without exception, even the ex post facto amending of the rules.

V. CONCLUSION

Based on a few of the aforementioned, this petitioner, request your immediate actions on appeal to receive the up to date rules and procedure necessary for the indigent governed by the court, all related forms proceeding in forma pauperis that are designed by this Supreme Court to assist. Mr. Wesley Edward Smith III, (herein refer to as "Petitioner") involves the proceedings without assistance of counsel by free exercising of his civil rights and liberty governed under the construction of Constitutional due process while invoking such privileged Civil Rights. Under the authority of rules of the Supreme Court, which establish procedures that must be followed, I believe that I had a right to a fair partial and equal justice under the law by hearing prior to the assertion of the unchallenged objectionable questionable inference drawn, from the premature issuance of the Remiititur Order without observing Mr. Wesley Edward Smith III counterclaims. As seen in error my Constitutional due process Civil Rights law, which was filed against me. This is not only a perceived Constitutional conflict, but a judgment which is impaired and cause

and effect creates a conflict between a decision of which review is sought and a decision of another appellate court on the same issue.

Based on the aforementioned, the procedure package should be provided and this writ request should be respectfully granted according to the law and not the opinionated perspectives of the intervening premeditated prejudging doctrine of the State third party issued Remittitur Order without stating a viable claim for relief or without the highest agency supporting law argument memorandum to enforcement such judgmental relief accordingly.

The writ should be respectfully Granted and violator sought to prosector and punished for deprivation of a Constitutional Mandate

January 8, 2016

Respectfully Submitted



Mr. Wesley Edward Smith III

PROOF OF SERVICE
IN THE UNITED STATES SUPREME COURT
on Appeal South Carolina Supreme Court
Court Review of Case 2015-002061
Order dated December 8, 2015

Mr. Wesley Edward Smith III, Appellant.
v.
Charleston County School District, et al.....Respondent,

PROOF OF SERVICE

I, Mr. Wesley Edward Smith III, do swear or declare that on this date, January 8, 2016, as require bt the Suproem Court Rule 29 I have served the enclosed Notice to Appeal, Requesting Motion and information for Leave In forma Pauperis and Requesting Petition for Witi of Certiorari on each party to the above proceeding or that party's consel and on every other persn required to be served, by depositing an envelope containing documents in the United States mail properly addressed addressed to each of them and with first-class postage prepaid, or by delivery to third party commercial acarrier for delivery with 3 calender days

The names and addresses of those sevre are as followed:

Mr. Daniel Francis Blanchard, III, Esquire
151 Meeting Street 4th Floor
Charleston, SC 29403

Ms Alice F. Paylor Esquire
151 Meeting Street 4th Floor
Charleston, SC 29403

Superintendent
Charleston County School District
75 Calhoun Street
Charleston, South Carolina 29403

I declare that under the penalty of perjury that the foregoing is true and correct.

Executed on January 8, 2016



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

ENCLOSURE (1)

DISSENTING COURT ORDER DATED 8 DEC 2015

under Court Review of Case 2015-002016
Order dated December 8, 2015

Mr. Wesley Edward Smith III, Appellant.

v.

Charleston County School District et al, Respondent,

ENCLOSURE (2)

under Court Review of Case 2015-002016
Order dated December 8, 2015

Mr. Wesley Edward Smith III, Appellant.

v.

Charleston County School District et al, Respondent,

Goodson v. AMER. BANKERS INS. CO.

295 S.C. 400, 368 S.E.2d 687 (1988)

Donald GOODSON, Respondent v. AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA, Appellant.

1155

Court of Appeals of South Carolina.

Heard March 22, 1988.

Decided May 9, 1988.

*401 Robert T. Williams, of Williams & Brink, Lexington, for appellant.

John A. Mason, Columbia, for respondent.

Heard March 22, 1988.

Decided May 9, 1988.

SHAW, Judge:

Donald Goodson commenced an action against appellant, American Bankers Insurance Company of Florida, hereinafter American. From a denial of a motion to set aside the judgment [lacked legal familiarity with judicial proceedings], American appeals.

We affirm.

American, through its agents, Rick and Sharon O'Rear, posted an appearance recognizance bond for Goodson. In exchange, Goodson agreed to pay American a certain sum, and as security for the debt, Goodson permitted the O'Rears to hold his truck. The O'Rears subsequently sold the truck although Goodson claimed to have paid and worked off the debt owed. As a result, Goodson sued American on various theories.

Goodson's summons and complaint were served on the South Carolina Department of Insurance which accepted service and forwarded these documents to Norman I. Weil, an attorney for American. A timely answer was served and filed, signed by Ms. O'Rear as agent for American. However, the answer did not state an address. In April of 1986, Goodson's attorney sent requests for admissions and interrogatories to both Ms. O'Rear and Mr. Weil which apparently were never answered. The record also reflects a letter was sent to Ms. O'Rear and Mr. Weil in September of 1986 informing *402 them the case would be coming to trial soon.[1] On October 2, 1986, the case was heard before a jury. American did not appear at the trial and was not represented by counsel. The jury returned a verdict in favor of Goodson for \$34,800 actual damages and \$15,200 punitive damages.

I.

American contends the trial judge erred in refusing to set aside the judgment for excusable neglect under Rule 60 of the South Carolina Rules of Civil Procedure (FRAUD) claiming it received no notice of the trial. Rule 60(b)(1) S.C.R.C.P. provides as follows: FRAUD

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence [inadvertent resulting from carelessness: done unintentionally or without thinking], surprise, or excusable neglect ...

Although most often used when relief is sought from a judgment by default, Rule 60(b)(1) applies to any final judgment. See H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 398-399 (2nd Ed. 1985). Relief under this section is within the sound discretion of the trial judge and will not be disturbed absent a clear abuse of that discretion. *Id.* at 399. Such an abuse arises when the judge issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support [BOO-YAH, Albeit] *Id.* (See also *Ledford v. Pennsylvania Life Insurance Co.*, 267 S.C. 671, 230 S.E. (2d) 900 (1976) and *Ricks v. Weinrauch*, 293 S.C. 372, 360 S.E. (2d) 535 (Ct. App. 1987). While these cases deal with the trial court's discretion in setting aside default judgments, the principles are equally applicable to motions for relief from ANY final judgment.)

American points to no error of law by the trial judge. Rather, it contends the trial judge abused his discretion in finding there was no excusable neglect which would warrant setting aside the judgment.

We disagreed,

*403 Whether American received notice of the impending trial is not clear. Goodson claims to have sent notice. American claims it never received any. However, it is clear that American's own neglect was the cause of any such problem. First, the answer was signed by Ms. O'Rear and not an attorney. Contrary to Rule 11 of the South Carolina Rules of Civil Procedure, Ms. O'Rear did not give an address on the answer.[2] Secondly, a party has a duty to monitor the progress of his case. 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. (See H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 400 (2nd Ed. 1985) and *McCall v. A-T-O, Inc.*, 276 S.C. 143, 276 S.E. (2d) 529 (1981)). Any neglect resulted from American using Ms. O'Rear, a layman, in defending the case. In our opinion, the facts of this case do not amount to excusable neglect.

II.

American next contends the trial judge erred in refusing to set aside the judgment, as the verdict rendered by the jury was excessive. American asserts the actual damages were limited to \$8,820, the amount prayed for by Goodson, yet the jury returned a verdict of \$34,800 in actual damages. It bases this contention on two arguments.

A. American claims under Rule 55(b)(1) of the South Carolina Rules of Civil Procedure, it was entitled to be served with written notice of the application for judgment at least three days prior to the hearing and it received no such notice. American summarily claims its nonappearance at trial constituted a default situation. We disagree.

Rule 55(a) of the South Carolina Rules of Civil Procedure states, "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend ... the clerk shall enter his default upon the calendar." (emphasis added). In the instant case, American had not "failed to plead" and no default was entered by the clerk.

*404 Further, Rule 55(b) provides for written notification where there has been an application for judgment by default. There was no such application. The case went before a jury and a full trial was held on the matter.

B. In finding the judgment should not be set aside for an excessive verdict, the trial judge correctly relied on Rule 54(c) of the South Carolina Rules of Civil Procedure. That rule provides: A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

American argues, while the trial judge was correct on the law, he was incorrect in his finding that Goodson was entitled to such relief. The trial judge stated, "It appears from the testimony presented at the trial, and I so find and rule, that the damages awarded by the jury are consistent with the case presented by the plaintiff, and are in accord with the relief to which plaintiff was entitled under the evidence." We do not have the transcript of the trial before us and, therefore, cannot second guess the finding of the trial judge. The appellant is responsible for compiling an adequate record from which this court can make an intelligent review. We will not consider facts that do not appear in the transcript of record. *Windham v. Honeycutt*, 290 S.C. 60, 348 S.E. (2d) 185 (Ct. App. 1986).

Affirmed.

CURETON, J., concurs and dissents in separate opinion.

GOOLSBY, J., concurs in separate opinion.

CURETON, Judge (concurring and dissenting):

American moved to set aside Goodson's judgment apparently under equity principles and under Rules 59[1] and 60 of the South Carolina Rules of Civil Procedure based on: (1) its *405 failure to receive notice of the hearing in accordance with Rule 55(b)(1); (2) mistake, inadvertence and/or excusable neglect under Rule 60(b)(1); and (3) excessiveness of the jury verdict.

I.

American argues the trial court erred as a matter of law in holding Goodson's judgment was not a default judgment. Moreover, it argues that because the judgment is a default judgment, it was entitled to three days' notice of Goodson's application for the judgment and his failure to give such notice makes the judgment void and it should be set aside under Rule 60(b)(4).

It is clear default may result from delicts other than failure to file an answer. In fact, Rule 55(a) provides for the entry of default when a party fails to "otherwise defend." There is some disagreement among the federal courts whether under similar circumstances a defendant is entitled to default status as opposed to the plaintiff being entitled to proceed to obtain a judgment based on a trial on the merits in the defendant's absence.[2] The logical basis for this disagreement seems to be that a defendant who files an answer, but fails to appear or defend thereafter, should not be penalized more severely than a defendant who does absolutely nothing. By way of illustration, if American had done nothing in this case, Goodson's recovery of actual damages under Rule 54(c) could not have exceeded the amount stated in his complaint which was \$8,820.00.

Although there appears to be authority for the proposition that a failure to appear at trial after answering the complaint should entitle a defendant to default status, the majority view appears to permit the plaintiff to proceed to judgment on the merits.[3] See 11A Words and Phrases "Default" 272-274 (1971); *Coulas v. Smith*, 96 Ariz. 325, 395 P. (2d) 527 (1964); *Tartaglia v. Del Papa*, 48 F.R.D. 292 (E.D.Pa. *406 1969). I, therefore, agree with the majority that the judgment at hand was not a default judgment. Thus, Rule 55 is inapplicable.

In *Sijon v. Green*, our Supreme Court held:

[W]here a judgment roll does not contain evidence that a party-litigant received notice of the hearing or trial and a judgment is rendered, the absent party, upon motion, is entitled to a judicial determination of whether he received proper notice. If it be determined that the party received such notice, the judgment remains; if not, the absent party is entitled to a new trial.

289 S.C. at 128, 345 S.E. (2d) at 248. In the case at hand, the trial court made no finding whether American received notice of the hearing. In fact, he reasoned that any lack of notice was the fault of American since its agent Sharon O'Rear failed to list her address in the pleadings and

American failed to keep abreast of the progress of the trial roster to determine when the case would come to trial. The Sijon court did not have before it the question of whether the notice of hearing could be waived by the defendant. To that extent, the holding in Sijon is inapposite. The record contains no showing why American did not list its address on its pleadings or keep abreast of the trial roster. Therefore, it has not sustained its burden of showing the trial judge abused his discretion in failing to find excusable neglect. *Em-Co Metal Products, Inc. v. Great Atlantic & Pacific Tea Co.*, 280 S.C. 107, 311 S.E. (2d) 83 (Ct. App. 1984).

II.

Nevertheless, I am persuaded by American's argument that the excessiveness of the verdict provides a basis for relief from judgment. Although Rule 60 provides no basis for setting aside a judgment on this ground, our Supreme Court has held that a judgment should be vacated on general principles of equity where the award is patently and greatly out of proportion to the wrongs alleged in the complaint. *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 274 S.E. (2d) 290 (1981); *Williams by and through Williams v. Vereen*, 284 S.C. 219, 325 S.E. (2d) 337 (Ct. App. 1985). In *Renney*, the *407 appellant based his motion to vacate on S.C. Code Ann. Section 15-27-130 (1976).[4] The Supreme Court, on its own motion, vacated the judgment on equitable grounds stating:

"Whether a defendant is or is not in default, it is incumbent upon the judge and/or the jury to make a judicial determination of the amount recoverable based on the proof."

275 S.C. at 567, 274 S.E. (2d) at 293.

Here, Goodson itemized his actual damages in his complaint as amounting to \$8,820.00.[5] While we have no hint of why or how the jury awarded \$34,000 in actual damages, it is implicit American's non-appearance at trial had something to do with the amount of the verdict. I would hold the actual damages award is so patently out of proportion to the wrongs alleged in the complaint, that this court should do as our Supreme Court did in *Renney*, and reverse and remand the case for a new trial on actual damages only.

The majority cites Rule 54(c) as support for upholding the excessive actual damages award. I agree that in an ordinary non-default trial of a case, a party's pleadings should not preclude relief for which the party is justly entitled. However, where as here, Goodson itemizes his actual damages, it is unduly prejudicial to American for the court and jury to award actual damages grossly in excess of those specified in the complaint. As to those damages, American had absolutely no notice Goodson was claiming them. See *United States v. Hardy*, 368 F. (2d) 191 (10th Cir.1966) (party had no notice other party was claiming damages because no plain statement appeared in either pleadings or pretrial order). Goodson notes the law has always been that a party is entitled to fully recover all damages incurred, although not demanded in his complaint, citing former Code Section 15-35-70 and cases enumerated thereunder especially the case of *Christopher v. Christopher*, 18 S.C. 600 (1882). But attention is directed to the case of *Straub v. Screven*, 19 S.C. 445 (1883) which holds that where a complaint stated *408 amounts due and credits allowed and demanded judgment for a certain sum, and the answer admitted the allegations, it was error for the trial judge to reduce the credits and give judgment for a larger sum. I would reverse and remand for a new trial on actual damages only.

GOOLSBY, Judge (concurring):

I concur in the opinion of Judge Shaw.

Regarding Judge Cureton's view that the case should be remanded for a new trial on the issue of damages alone, the trial judge, as Judge Shaw points out, made an express finding that the proof supported the amount recovered. Nothing in the record shows otherwise. Indeed, the reason why

we have as Judge Cureton stated, "no hint of why or how the jury rewarded \$34,000 in actual damages," is because the appellant failed to provide us with a proper record. Moreover, neither of the appellant's two exceptions fairly raise the issue of whether the damages awarded were excessive because their amount exceeded the amount itemized in the complaint. Ordinarily, if a question is not asked of us, we do not answer it.

NOTES

[1] A letter from Mr. Weil to a Mr. Nowosad of American indicates Mr. Weil had notified American of the suit but had not been retained to handle it.

[2] S.C.R.C.P. 11 provides in part, "A party who is not represented by an attorney shall sign his pleading and state his address."

[1] I cannot discern American's argument under Rule 59.

[2] See 6 J. Moore, W. Taggart and J. Wicker, Moore's Federal Practice Section 55.02[3], n. 12 (2d ed. 1987).

[3] The question of whether a defendant received notice of the hearing at which he failed to appear is another issue. Failure of a defendant to receive such notice may give rise to right of new trial for the defendant. *Sijon v. Green*, 289 S.C. 126, 345 S.E. (2d) 246 (1986).

[4] Repealed by Act 100, 1985 S.C. Acts 277. Now replaced by S.C.R. Civ. P. 60.

[5] While not required, Rule 8(a) permits a plaintiff to demand a sum certain in money as actual damages.

ENCLOSURE (3)

DISSENTING COURT ORDER DATED 8 DEC 2015: S. C. STATE CONSTITUTION

under Court Review of Case 2015-002016
Order dated December 8, 2015

Mr. Wesley Edward Smith III, Appellant.

v.

Charleston County School District et al, Respondent,

ARTICLE I.
DECLARATION OF RIGHTS

SECTION 1. Political power in people.

All political power is vested in and derived from the people only, therefore, they have the right at all times to modify their form of government. (1970 (56) 2684; 1971 (57) 315.)

SECTION 2. Religious freedom; freedom of speech; right of assembly and petition.

The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances. (1970 (56) 2684; 1971 (57) 315.)

SECTION 3. Privileges and immunities; due process; equal protection of laws.

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.)

SECTION 4. Attainder; ex post facto laws; impairment of contracts; titles; effect of conviction.

No bill of attainder, ex post facto law, law impairing the obligation of contracts, nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate. (1970 (56) 2684; 1971 (57) 315.)

SECTION 5. Elections, free and open.

All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office. (1970 (56) 2684; 1971 (57) 315.)

SECTION 6. Residence.

Temporary absence from the State shall not forfeit a residence once obtained. (1970 (56) 2684; 1971 (57) 315.)

SECTION 7. Suspension of laws.

The power to suspend the laws shall be exercised only by the General Assembly or by its authority in particular cases expressly provided for by it. (1970 (56) 2684; 1971 (57) 315.)

SECTION 8. Separation of powers.

In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other. (1970 (56) 2684; 1971 (57) 315.)

SECTION 9. Courts; speedy remedy.

All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained. (1970 (56) 2684; 1971 (57) 315.)

SECTION 10. Searches and seizures; invasions of privacy.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained. (1970 (56) 2684; 1971 (57) 315.)

SECTION 11. Presentment or indictment.

No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger. The General Assembly may provide for the waiver of an indictment by the accused. Nothing contained in this Constitution is deemed to limit or prohibit the establishment by the General Assembly of a state grand jury with the authority to return indictments irrespective of the county where the crime has been committed and that other authority, including procedure, as the General Assembly may provide. (1970 (56) 2684; 1971 (57) 315; 1989 Act No. 5; 1989 Act No. 8.)

SECTION 12. Double jeopardy; self-incrimination.

No person shall be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself. (1970 (56) 2684; 1971 (57) 315.)

SECTION 13. Taking private property; economic development; remedy of blight.

(A) Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property. Private property must not be condemned by eminent domain for any purpose or benefit including, but not limited to, the purpose or benefit of economic development, unless the condemnation is for public use.

(B) For the limited purpose of the remedy of blight, the General Assembly may provide by law that private property constituting a danger to the safety and health of the community by reason of lack of ventilation, light, and sanitary facilities, dilapidation, deleterious land use, or any combination of these factors may be condemned by eminent domain without the consent of the owner and put to a public use or private use if just compensation is first made for the property. (1970 (56) 2684; 1971 (57) 315; 2007 Act No. 15.)

SECTION 14. Trial by jury; witnesses; defense.

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both. (1970 (56) 2684; 1971 (57) 315.)

SECTION 15. Right of bail; excessive bail; cruel or unusual or corporal punishment; detention of witnesses.

All persons shall be, before conviction, bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, or with violent offenses defined by the General Assembly, giving due weight to the evidence and to the nature and circumstances of the event. Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained. (1970 (56) 2684; 1971 (57) 315; 1998 Act No. 259.)

SECTION 16. Libel.

In all indictments or prosecutions for libel, the truth of the alleged libel may be given in evidence, and the jury shall be the judges of the law and facts. (1970 (56) 2684; 1971 (57) 315.)

SECTION 17. Treason.

Treason against the State shall consist alone in levying war or in giving aid and comfort to enemies against the State. No person shall be held guilty of treason, except upon testimony of at least two witnesses to the same overt act, or upon confession in open court. (1970 (56) 2684; 1971 (57) 315; 2007 Act No. 15.)

SECTION 18. Suspension of habeas corpus.

The privilege of the writ of habeas corpus shall not be suspended unless when, in case of insurrection, rebellion or invasion, the public safety may require it. (1970 (56) 2684; 1971 (57) 315.)

SECTION 19. Imprisonment for debt.

No person shall be imprisoned for debt except in cases of fraud. (1970 (56) 2684; 1971 (57) 315.)

SECTION 20. Right to keep and bear arms; armies; military power subordinate to civil authority; how soldiers quartered.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner nor in time of war but in the manner prescribed by law. (1970 (56) 2684; 1971 (57) 315.)

SECTION 21. Martial law.

No person shall in any case be subject to martial law or to any pains or penalties by virtue of that law, except those employed in the armed forces of the United States, and except the militia in actual service, but by the authority of the General Assembly. (1970 (56) 2684; 1971 (57) 315.)

SECTION 22. Procedure before administrative agencies; judicial review.

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. (1970 (56) 2684; 1971 (57) 315.)

SECTION 23. Provisions of Constitution mandatory.

The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms. (1970 (56) 2684; 1971 (57) 315.)

SECTION 24. Victims' Bill of Rights.

(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:

(1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute;

(2) be reasonably informed when the accused or convicted person is arrested, released from custody, or has escaped;

(3) be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present;

(4) be reasonably informed of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail;

(5) be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing;

(6) be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process;

(7) confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition;

(8) have reasonable access after the conclusion of the criminal investigation to all documents relating to the crime against the victim before trial;

(9) receive prompt and full restitution from the person or persons convicted of the criminal conduct that

caused the victim's loss or injury, including both adult and juvenile offenders;

(10) be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post-conviction release decision;

(11) a reasonable disposition and prompt and final conclusion of the case;

(12) have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules subject to amendment or repeal by the legislature to ensure protection of these rights.

(B) Nothing in this section creates a civil cause of action on behalf of any person against any public employee, public agency, the State, or any agency responsible for the enforcement of rights and provision of services contained in this section. The rights created in this section may be subject to a writ of mandamus, to be issued by any justice of the Supreme Court or circuit court judge to require compliance by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of these services contained in this section, and a wilful failure to comply with a writ of mandamus is punishable as contempt.

(C) For purposes of this section:

(1) A victim's exercise of any right granted by this section is not grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

(2) "Victim" means a person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a crime against him. The term "victim" also includes the person's spouse, parent, child, or lawful representative of a crime victim who is deceased, who is a minor or who is incompetent or who was a homicide victim or who is physically or psychologically incapacitated.

(3) The General Assembly has the authority to enact substantive and procedural laws to define, implement, preserve, and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.

(4) The enumeration in the Constitution of certain rights for victims shall not be construed to deny or disparage others granted by the General Assembly or retained by victims. (1998 Act No. 259.)

SECTION 25 Hunting and fishing.

The traditions of hunting and fishing are valuable parts of the state's heritage, important for conservation, and a protected means of managing nontreated wildlife. The citizens of this State have the right to hunt, fish, and harvest wildlife traditionally pursued, subject to laws and regulations promoting sound wildlife conservation and management as prescribed by the General Assembly. Nothing in this section shall be construed to abrogate any private property rights, existing state laws or regulations, or the state's sovereignty over its natural resources.

HISTORY: 2011 Act No. 20, Section 1, eff May 5, 2011.

ENCLOSURE (4)

PETITIONER PROOF OF CITIZENSHIP

Appellant Court Review of Case 2015-000787

Mr. Wesley Edward Smith III, Appellant.

v.

Charleston County School District et al, Respondent,

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

CLERK
Honorable David Shearouse
South Carolina Supreme Court
1231 Gervais Street
Columbia, S C 29201



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