

THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM THE RICHLAND COUNTY  
COURT OF COMMON PLEAS

**RECEIVED**

TANYA GEE, CIRCUIT COURT JUDGE

FEB 01 2016

**SC Court of Appeals**

Appellate Case No. 2015-002367

ORLANDO I. BROWN, PRO SE,.....Appellant.

v.

THE STATE OF SOUTH CAROLINA.....Respondent.

**RESPONDENT'S RETURN TO APPELLANT'S**

**MOTION FOR RELIEF**

Temus C. Miles, Jr., Esquire  
P.O. Box 7217  
Columbia, S.C. 29202  
803-265-4645  
Attorney for Respondent

Pursuant to Rule 240, SCRACR, the Respondent sets forth its return to the Appellant's Motion for a Relief, as follows:

The Appellant has filed a Motion for Relief wherein he requests the South Carolina Court of Appeals grant him \$15,000,000.00 as a result of what he has construed to be barratry on behalf of the trial Judge, the Honorable Tanya Gee. In short, the Appellant claims Judge Gee committed the offense of barratry by instructing defense counsel at the conclusion of the hearing on the Motions to Dismiss to prepare a proposed Order granting a Motion to Dismiss primarily on the basis of the South Carolina Tort Claims Act immunity and later signing an Order of Dismissal based on 12(b)(6), SCRCP. There is no legal basis for the relief requested by the Appellant. The Motion for Relief appears to be a result of his confusion with the South Carolina Rules of Civil Procedure and should be denied.

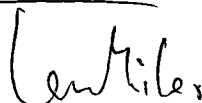
South Carolina Rules of Civil Procedure 12(b)(6) provides a procedural mechanism by which a Defendant can move for dismissal of claims which fail "to state facts sufficient to constitute a cause of action" in the State of South Carolina. The Defendant's Motion for Dismissal was a 12(b)(6) motion based, inter ally, on the immunities provided by the South Carolina Tort Claims Act. South Carolina Rules of Civil Procedure 12(b)(6) is simply the procedural mechanism by which the Respondent/Defendant presented, and the Judge reached, the immunities included within the South Carolina Tort Claims Act. They are not opposing independent grounds for the grant of the Motion to Dismiss.

The basis of the Respondent/Defendant's Motion, and the ultimate ruling of the Court, was that due to the immunities granted through the South Carolina Tort Claims Act, the Appellant had failed to state facts sufficient to constitute a cause of action within the State of South Carolina and, accordingly, dismissal pursuant to Rule 12(b)(6) was appropriate. As a

result, the Order which the trial Judge signed was pursuant Rule 12(b)(6), SCRCPP, and based on the immunities included in the South Carolina Tort Claims Act, given that the defendant's failure to state claims upon which recovery could be granted was due to the immunities of the South Carolina Tort Claims Act. Accordingly, the final order signed by the trial Judge is absolutely consistent with the instructions given by the trial Judge to defense counsel at the conclusion of the hearing on the Motion to Dismiss. There has been no change of basis for the dismissal between the issuance of the trial Judge's order instruction and the final Order of Dismissal. Moreover, it is axiomatic that the trial Judge's conduct in this ruling was not barratry: a common law offense that is committed when an individual is overly officious in instigating or encouraging prosecution of groundless litigation. In this case, the ruling of the trial Judge effected the dismissal of litigation that was determined to be baseless. This, by definition, is the opposite of barratry.

For the reasons set forth above, the Respondent respectfully requests that the Appellant's Motion for Relief be denied.

Respectfully submitted,



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Temus C. Miles, Jr.  
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Post Office Box 7217  
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803-256-4645  
Attorney for the Respondent

Columbia, South Carolina  
February 1, 2016

THE STATE OF SOUTH CAROLINA

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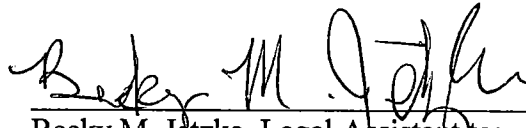
v.

THE STATE OF SOUTH CAROLINA.....Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 1, 2016, a copy of the foregoing Respondent's Return to Appellant's Motion for Relief was duly served on opposing counsel by depositing same in the United States Mail, certified/return receipt requested, first-class, postage prepaid, addressed as follows:

Orlando Brown  
440 Rimer Pond Road  
Blythewood, SC 29016

A handwritten signature in black ink, appearing to read "Becky M. Jetzke". The signature is written in a cursive style and is positioned above a horizontal line.

Becky M. Jetzke, Legal Assistant to:  
Daniel R. Settana, Jr.  
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+ Also licensed in N.C.

Of Counsel:  
C. E. Hardin, Jr.

February 1, 2016

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FEB 01 2016

**SC Court of Appeals**

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Seant Street  
Columbia, SC 29201


RE: Orlando I. Brown v. State of South Carolina  
Appellate Case No. 2015-002367  
Our File No.: 9-463

Dear Ms. Kitchings:

Enclosed herewith please find the original and seven (7) of Respondent's Return to Motion for Relief. I request that you return a stamped and filed copy with my courier.

Thank you for your assistance in this matter. Should you have any questions or concerns regarding this matter, please contact me at my direct dial: (803) 705-2149.

Sincerely,

  
Temus C. Miles, Jr.

TCM/bmj  
Enclosures

cc: Orlando Brown (via certified mail, return receipt requested)