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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. SUPREME COURT

S. Jackson Kimball, III, Special Circuit Court Judge

Case No. 2014-CP-46-1425
Appellate Case No. 2016-001613

Ryan Powell Petitioner,

v.

Amy Boheler d/b/a York County Auditor,
Beth Latham d/b/a York County Treasurer, and
Robert Kiser d/b/a York County Delinquent Tax Collector,
each in their individual and official capacities Respondents.

Return in Opposition to Amended
Petition for Writ of Certiorari¹

Powell’s amended petition for writ of certiorari is his most-recent challenge to the authority of York County to assess and collect property taxes. Powell initiated his litigious efforts in December 2013, when he first attempted to file suit in the original jurisdiction of this court. Appellate Case 2014-00005. This court denied Powell’s petition in February 2014. Order dated 2/20/2014, App. Case 2014-000005. Powell’s motion for reconsideration in that case was, likewise, denied.

¹ Powell’s filing includes a “Notice of Duty to Administer Justice so that Ryan’s Human Rights are Protected.” York County does not believe it is necessary to respond to that Notice.

In May 2014, Powell filed this action in the Court of Common Pleas for York County. (R. p. 8). Then, in August 2014 Powell attempted to file a second action in the original jurisdiction of this court. Appellate Case 2014-001894. Powell's second petition to file suit in this court was also denied. *See* Supreme Ct. Order filed Sep. 25, 2014 in App. Case 2014-001894. Finally, in October 2014 Powell filed a petition for writ of error in the original jurisdiction of this court. Appellate Case 2014-002311. That petition was also denied, and this court threatened to sanction Powell "should he continue to file frivolous petitions which are not proper for this Court in its original jurisdiction." S.C. Supreme Court Order of Dismissal in App. Case 2014-02311, dated Nov. 21, 2014. Powell's motion to certify appeal of this case pursuant to Rule 204 was also denied. S.C. Supreme Court Order in Appellate Case 2015-001219, dated July 2, 2015.

Powell characterizes his numerous and repetitive filings, including this petition for writ of certiorari, as an effort to protect the constitutional and human rights of a "private person."² In reality, it is just the latest salvo in Powell's long-planned and carefully orchestrated campaign to circumvent and frustrate this state's tax laws, to challenge the limits of state government, and to avoid paying his fair share as a citizen and resident of York County. Much of Powell's petition strays far from framing an appellate argument, and ventures into philosophical espousals on the limited role of government and, in particular, the role of the judiciary;³ the distinction between "natural rights" (which Powell claims to possess) and "civil rights" (which Powell, apparently, disavows);⁴ Powell's assertion that he is the owner of a (presumably, sovereign(?)) parcel of land

² Powell designates himself a "private person," to differentiate himself from a "citizen" or "resident" of York County, and as an apparent declaration that he is "not a subject of any governmental corporation." Petition at 2. *See also* Powell's Motion to Rehear and Seal Case, Appellate Case 2014-002578 (Ct. App.)("This Court has obviously misunderstood that Ryan Powell did **NOT** bring his action as a US created and owned Social Security grantor trust (i.e. an instrumentality of US Inc.)").

³ See Petition at 4-5.

⁴ See Petition at 2-3.

that lies “within the borders of the land mass named South Carolina;”⁵ and his belief that York County’s taxation of Powell’s property is tantamount to “slavery.”⁶ Most of Powell’s petition, “which read[s] like a doctrinal manifesto,”⁷ is better suited for a philosophical debate than it is for an appellate brief.

Powell asserts that his case raises important constitutional considerations and “novel” issues of law, but it does not. The only issues actually raised by Powell’s appeal were these:

1. Did the circuit court properly determine that it did not have subject matter jurisdiction to decide Powell’s challenge to the taxing authority of York County? *and*

2. Did the trial court properly conclude that Powell’s complaint failed to state a claim upon which relief could be granted where Powell’s tort claims were based solely upon the efforts of York County’s employees to assess and collect property taxes?

Because the Court of Appeals resolved each of those issues in favor of York County, that court properly affirmed the circuit court’s order of dismissal. There is nothing meritorious, novel or unique about Powell’s case that warrants further judicial review. This court should deny Powell’s petition.

RESPONDENT’S STATEMENT OF THE CASE

Powell filed this action in the Court of Common Pleas on May 1, 2014, asserting ten causes of action against York County’s auditor, treasurer and delinquent tax collector (the “County Employees”). (R. p. 8). Each of Powell’s claims arises solely from the County’s efforts

⁵ Powell’s early pleadings refer to his land as “allodial land,” but he seems to have abandoned that terminology in his more recent filings. “Allodial” title was an ancient term, used to describe a particular type of land grant in feudal England. A holder of “allodial” title owned his property outright, with no obligation to pay tribute or supply troops to the crown.

⁶ Petition at 7.

⁷ Quoting the circuit court’s order of June 25, 2014. (R. p. 2).

to assess and collect taxes on a piece of real property that Powell claims to own.⁸ Id. Powell's complaint also included a motion for writ of mandamus, seeking an order compelling the County Employees to perform various tasks, including: return money allegedly "extorted" from Powell (i.e. – the taxes and penalties Powell paid to York County); and update York County's records to "remove all reference to [Powell's] allodial land." Id. at 11-12.

Rather than answer Powell's complaint, York County appeared on behalf of the County Employees, asserting that York County should be substituted as defendant in Powell's lawsuit. (R. p. 29). York County also moved to have Powell's complaint dismissed pursuant to Rules 12(b)(1) and 12(b)(6) S.C.R. Civ. P. Id. On June 25, 2014, the circuit court issued a written order granting each of York County's motions and dismissing Powell's complaint pursuant to Rules 12(b)(1) and 12(b)(6) S.C. R. Civ. P. (R. p. 2).

On appeal, the South Carolina Court of Appeals affirmed. Powell then filed a "Motion to Rehear and to Seal Case, Notice of Mandatory Duty to Protect Ryan's Human Rights and Freedoms." On July 5, 2016, the Court of Appeals denied Powell's motion for rehearing. On July 12, 2016, the Court of Appeals denied Powell's motion to seal the record on appeal.

⁸ While Powell asserts that he owns the property, he has neither filed nor produced a deed evidencing his ownership.

ARGUMENT

1. Powell's petition should be denied because neither his complaint, nor the circuit court's order of dismissal, nor the Court of Appeals' opinion affirming dismissal raises legitimate constitutional questions or novel issues that require this court's review.
(Response to Powell's Questions 2, 5 and 6)

In May 2014, Powell filed what was, essentially, a tort action alleging economic loss and other damages at the hands of York County's tax assessor, treasurer and delinquent tax collector. On June 25, 2014, the circuit court entered an order dismissing Powell's case, in its entirety. (R. pp. 2-5). The circuit court's order did not turn upon constitutional considerations, the protection of human rights, whether York County and the judges of this state are bound by the *International Covenant on Civil and Political Rights*, or whether York County has "enslaved"⁹ Powell by collecting taxes from him. Rather, the circuit court's order held: (1) Powell had no right to pursue damages related to York County's assessment and collection of property taxes; and (2) if Powell wished to challenge the authority of York County to assess and levy taxes on his property, then he was required to bring that claim in the Administrative Law Court. *Id.* On appeal, the South Carolina Court of Appeals concluded that the circuit court had properly decided those issues, and affirmed without discussion.

While Powell would very much like to try his case in this court as a constitutional or "human rights" challenge to the limits of governmental authority, he has no right to do so. This court has made clear that its primary function is to "act as an appellate court to review appeals from the trial courts." *Key v. Currie*, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991). Therefore, this court is not required to pass judgment on the propriety of Powell's philosophical or constitutional beliefs -- that taxation and slavery are one in the same; that a "private person" may

⁹ Throughout this litigation, Powell has frequently equated himself to a "slave." See, e.g., Petition at 7.

avoid taxation by refusing to record his deed; that government is required to demand payment of taxes in only “gold or silver coin;” or that York County has violated Powell’s human or constitutional rights by assessing and collecting taxes. Those issues were never litigated in Powell’s case or decided by any lower court, and they cannot be raised for the first time on appeal. Pye v. Estate of Fox, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006) (“It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.”). As this court has repeatedly admonished Powell, those issues will not, and cannot, be tried in the original jurisdiction of this court.¹⁰ See Orders in Appellate Cases 2014-00005, 2014-001894 and 2014-002311. Powell’s petition raises no legitimate issue for certiorari, and should be denied.

2. The Court of Appeals properly affirmed dismissal of Powell’s challenge to the taxing authority of York County.
(Response to Powell’s Question 3)

As should be abundantly clear from Powell’s petition and his myriad other filings, Powell’s overarching objective in this long-planned and protracted litigation is to free himself from a recognized, and virtually universal, obligation of living in a civilized society - taxation.¹¹ Powell apparently believes that he has “outsmarted” the system by not recording his deed, and that he consequently has no obligation to pay for the roads he uses, the police and fire protection he receives, or for access to the courts in which he so often appears. Powell’s challenge to York County’s taxing authority, if he has one, falls squarely within the scope of the Revenue Procedures Act. See S.C. Code Ann. § 12-60-80(A)(Law. Co-op. 2014)(“Except [in cases for a declaratory judgment where the sole issue is whether a statute is constitutional], there is no

¹⁰ One of Powell’s oft-repeated refrains is that York County has “utterly failed to respond” to the allegations of Powell’s verified complaint. York County was not, and is not, required to respond to Powell’s allegations because the lawsuit in which Powell made those allegations has been dismissed. See Rule 12(b)(a)S.C.R. Civ. P. (“The service of a motion permitted under this rule alters [the deadline to answer]. . .”).

¹¹ “*In this world, nothing can be said to be certain except death and taxes.*” – Benjamin Franklin

remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.”). The RPA includes a contested-case procedure which vests South Carolina’s Administrative Law Court with exclusive jurisdiction to decide challenges to county assessments,¹² and another provision that provides “if a taxpayer brings an action covered by this chapter in circuit court, the circuit court *shall* dismiss the case without prejudice.” S.C. Code Ann. § 12-60-3390 (Law. Co-op. 2014).

The circuit court properly determined that Powell was not entitled to litigate his challenge to York County’s taxing authority in the circuit court, and the Court of Appeals properly affirmed that ruling. This court need not grant certiorari to review the Court of Appeals’ opinion.

3. The Court of Appeals properly affirmed dismissal of Powell’s claims for damages pursuant to Rule 12(b)(6). (Response to Powell’s Question 4)

By its express terms, South Carolina’s Tort Claims Act grants “the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit from any tort except as waived by this chapter.” S.C. Code Ann. § 15-78-20(b)(Law. Co-op. 2005). The Act also “expressly preserve[s]”*“all other immunities* applicable to a governmental entity, its employees and agents.” S.C. Code Ann. § 15-78-20(b)(Law. Co-op. 2005). As both the circuit court and the Court of Appeals recognized, the state has preserved its immunity from “liability and suit” for, among other things, “any loss resulting from . . . (3) execution, enforcement or lawful implementation of any process; (4) adoption, enforcement or compliance with any law . . . whether valid or invalid . . . ; (9) entry upon any property where the entry is expressly or impliedly authorized by law; [and] (11) assessment or collection of taxes or special assessments or enforcement of tax laws.” S.C. Code Ann. § 15-78-60 (Law. Co-op.

¹² S.C. Code Ann. § 12-60-2540 (Law. Co-op. 2014).

2005). The Tort Claims Act also makes clear that it is to be “liberally construed in favor of limiting the liability of the State.” S.C. Code Ann. § 15-78-20 (Law. Co-op. 2005).

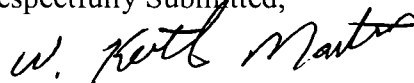
The circuit court held that Powell had no right to pursue tort claims related to the County’s “assessment or collection of taxes” or its “enforcement of tax laws” and, therefore, dismissed Powell’s tort claims pursuant to Rule 12(b)(6). On appeal, the Court of Appeals properly affirmed that decision. Neither order implicates important constitutional considerations or raises “novel” issues of law.

CONCLUSION

It is frustrating that a man who has consumed so much of the time, energy and financial resources of his home county and of this state’s judiciary continues to argue that he has no obligation to pay his fair share to support those institutions. It is impermissible for that man to pursue damages from county employees whose only alleged “wrong” was to perform their jobs. See S.C. Code Ann. § 15-78-60 (11) (Law. Co-op. 2015). Powell’s legal position has no merit and his perceived plight is a mess of his own making. While York County holds no illusion that denial of Powell’s petition will end his absurd and self-orchestrated assault on the county, Powell’s petition should, nonetheless, be summarily denied.

September 1, 2016

Respectfully Submitted,



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ATTORNEYS FOR RESPONDENTS

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each in their individual and official capacities Respondents.

CERTIFICATE OF SERVICE

The undersigned, an employee of Hamilton Martens, LLC certifies that the Respondents' Return in Opposition to Amended Petition for Writ of Certiorari was served upon Appellant by depositing same in the United States Mail, with sufficient postage affixed and addressed as follows:

Mr. Ryan Powell
25056 Timberlake Drive
Fort Mill, SC 29708

This the 2 day of September, 2016



L. Melia Sweatt
Paralegal