

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

) IN THE COURT OF COMMON PLEAS
) IN THE FOURTH JUDICIAL CIRCUIT
)

Samuel Hepburn,

2016 AUG 15 PM 1:05

Civil Action No. 2014-CP-13-00187

Plaintiff,

FAYE L. SELLEERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

ORDER

RECEIVED

vs.

SEP 14 2016

Alan M. Wilson, Attorney General,

SC Court of Appeals

Defendant(s).

This matter comes before the Court upon Defendant Attorney General Alan M. Wilson's Motion to Dismiss, which was heard Wednesday, December 17, 2014. Present at the hearing was the pro-se Plaintiff and Assistant Attorney General Courtney E. Lowell appearing on behalf of Attorney General Alan M. Wilson.

Plaintiff was indicted for Murder by the Chesterfield County Grand Jury in 1996. On August 12, 1997, Plaintiff pleaded guilty to voluntary manslaughter and was sentenced to 19 years imprisonment. Plaintiff filed an Application for Post-Conviction Relief seeking to vacate the plea on February 23, 1999 and the PCR court granted the relief by order filed February 17, 2000. On June 6, 2001, at the new trial, the Plaintiff was found guilty of murder and was sentenced to thirty (30) years. In 2004, Plaintiff filed a subsequent PCR Application alleging ineffective assistance of counsel, due process and double jeopardy; however, the PCR Court denied relief.

On March 13, 2014, Plaintiff filed this declaratory judgment action against Attorney General Alan M. Wilson asserting that the appointment of the special prosecutor in his 2001 trial constituted the unauthorized practice of law.

A True Copy, Attest

Faye L. Selles

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

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As discussed below, after full consideration of the pleadings filed in this action, the oral arguments of the parties, applicable law and for the reasons set forth below, the Court grants Defendant's Motion to Dismiss.

ANALYSIS

The Plaintiff's action is dismissed for two reasons. First, the Office of the Attorney General received an unfiled copy of the Plaintiff's action, without a Summons, on February 27, 2014 by regular mail. Plaintiff's failure to properly commence the action and to properly serve the summons and complaint in this matter requires the dismissal of this action. Rules 3(a)(1), 12(b)(1), SCRPC, see also *Jasper County Board of Education v. Jasper County Grand Jury*, 303 S.C. 49, 398 S.E.2d 489 (1990); *Chabek v. Nationwide Mut. Fire Ins. Co.*, 303 S.C. 26, 397 S.E.2d 786 (Ct. App. 1990). Moreover, Rule 5(d) of the South Carolina Rules of Procedure allows the court to dismiss the action upon failure to serve the summons and complaint "on the court's own initiative or upon application of any party."

Second, Plaintiff failed to state facts sufficient to constitute a cause of action for declaratory judgment, or any other cause of action, requiring dismissal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Plaintiff alleges that the appointment of the special prosecutor in his case constituted the unauthorized practice of law.

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6), SCRPC; *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007); *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001).

South Carolina courts have traditionally permitted private counsel to assist the State in prosecutions. *State v. Nichols*, 325 S.C. 111, 119, 481 S.E.2d 118, 122 (1997); *State v. Mattoon*,

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287 S.C. 493, 339 S.E.2d 867 (1986); *State v. Addis*, 257 S.C. 482, 186 S.E.2d 415 (1972); *State v. Lee*, 255 S.C. 309, 178 S.E.2d 652 (1971); and *State v. Gregory*, 172 S.C. 329, 174 S.E. 10 (1924). “The trial court has discretion to allow the solicitor to have the assistance of counsel employed by the prosecuting witness or other person interested in securing a conviction with the consent of the solicitor.” *Nichols*, 325 S.C. at 119, 481 S.E.2d at 122. “When an attorney, with the consent of the solicitor and the approval of the judge, participates in the trial of a case he assumes the same obligations to the court as the solicitor himself. In the trial of a case it is proper for him to do and say those things which a solicitor might do and say.” *Addis*, 257 S.C. at 487, 186 S.E.2d at 417. Moreover, a special assistant solicitor is not automatically disqualified because of his simultaneous representation of an interested person. *Mattoon*, 287 S.C. at 494, 339 S.E.2d at 869.

This Court finds Plaintiff’s recourse would have been to move for the disqualification of the special prosecutor at the time of trial; however, as discussed above, appointment of private counsel to assist the State in prosecutions has been permitted.

Accordingly, it is hereby,

ORDERED for the reasons set forth above, the Defendant’s Motion to Dismiss is **GRANTED**.

AND IT IS SO ORDERED.

*Note: This motion was granted
by court order on December
18th 2014. Journal Order
was lost in mail.*

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Judge Paul M. Burch
Fourth Judicial Circuit

August 12, 2016
Pageland, South Carolina