

22028

STATE OF SOUTH CAROLINA  
In The Court of Appeals

Appeal From Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2014-002725

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SC Court of Appeals

Clark D. Thomas, ..... Appellant,

V.

Evening Post Publishing Co.,  
d/b/a The Post and Courier,  
Glenn Smith, Officially  
and Individually, ..... Respondent.

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**RECORD ON APPEAL**

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**(VOLUME II OF II)**

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1 warrant?

2 MS. HENSLEY: My position would just be, Your  
3 Honor, that the subpoena wasn't properly served because  
4 it did not include the witness fee, by the plaintiff's  
5 own admission. And that the testimony of Mr. Terry is  
6 unnecessary, also by the plaintiff's own admission and  
7 by your ruling with regard to condonation.

8 And any testimony with regard to the May 12th,  
9 2007 incident would be duplicative because we have  
10 allowed the introduction of Deputy Frost's report.

11 MR. THOMAS: If I may.

12 THE COURT: Certainly.

13 MR. THOMAS: I can't emphasize enough how much I  
14 don't want to do that. Like I say, he is an honorable  
15 man. But I'm convinced that there is a reason they  
16 don't want him here. Because I don't think he would  
17 get on the stand, like I say, and alter the truth.

18 I would like an alternative to a bench warrant.  
19 Now, of course, you could always rule that my failure  
20 to include witness fees would be grounds to quash the  
21 subpoena. I would hope that my pro se and unlearned  
22 level of understanding of the practice of law would  
23 preclude that determination.

24 So I would -- if I could get a reason why he is  
25 not here, you know, they haven't offered any reason

1 other than he is just not here. And he lives with Ms.  
2 Maree.

3 THE COURT: And of course, Mr. Thomas, Ms.  
4 Hensley or Ms. Crowley is under no obligation to  
5 explain why your witness did not appear.

6 MR. THOMAS: But I'm trying to avoid locking him  
7 up.

8 THE COURT: I'm asking you whether you want me  
9 to rule on whether or not a bench warrant should be  
10 issued for his arrest, Mr. Thomas. Or do you want me  
11 to take that under advisement while you call another  
12 witness?

13 MR. THOMAS: You know what, Your Honor, I'm not  
14 going to put him in jail. I will dismiss his  
15 testimony. I can't do it.

16 THE COURT: All right, sir. Do you have any  
17 other witnesses you would like to call?

18 MR. THOMAS: Plaintiff rests.

19 THE COURT: Ms. Hensley, he has rested.

20 MS. HENSLEY: Your Honor, the only witness that  
21 I would call would be my client just on the issue of  
22 attorney's fees.

23 THE COURT: You are under oath already, ma'am.  
24 Have a seat in the witness chair.

25 Full name again for the court reporter. And you

1 are still under oath, ma'am.

2 THE WITNESS: Rachel Marie Crowley.

3 THE COURT: Thank you, ma'am.

4 Whenever you're ready, ma'am.

5 MS. HENSLEY: Thank you, Your Honor, may it  
6 please the Court.

7 THE COURT: Yes, ma'am.

8 RACHEL MARIE CROWLEY,

9 after having previously duly sworn to tell the truth,  
10 the whole truth and nothing but the truth testified on  
11 her oath as follows:

12 DIRECT EXAMINATION

13 BY MS. HENSLEY:

14 Q Rachel, you filed a financial declaration with  
15 this Court, correct?

16 A Yes, ma'am.

17 Q And in that financial declaration you told the  
18 Court that you aren't presently working?

19 A Correct.

20 Q Is that right?

21 A Yes, ma'am.

22 Q You don't earn any money?

23 A No, ma'am.

24 Q And so when you came to me you told me that you  
25 couldn't pay any fees; is that right?

1 A Yes, ma'am.

2 MS. HENSLEY: And, Your Honor, if I could just  
3 approach.

4 THE COURT: Yes, ma'am.

5 MS. HENSLEY: And I'm just going to ask the  
6 court reporter to mark this exhibit as Defendant's 1.

7 THE COURT: It's a?

8 MS. HENSLEY: Affidavit of fees, Your Honor.

9 THE COURT: Mr. Thomas, I'm going to ask you at  
10 this time, do you have any objection to this being  
11 admitted?

12 I'm not asking if you agree with it or you  
13 disagree with it. I'm just asking do you object to it  
14 being admitted into evidence so I may look at it?

15 MR. THOMAS: An affidavit for?

16 THE COURT: Of Ms. Hensley's fees.

17 MR. THOMAS: Well.

18 THE COURT: Just as to the admission of the  
19 evidence.

20 MR. THOMAS: I would object on the grounds that  
21 she has admitted adultery, and that she is not entitled  
22 to anything on that. That would be the grounds for my  
23 objection thereto. I don't see where this should even  
24 be considered under those circumstances.

25 THE COURT: I'm going to allow it in. That is

1 certainly a fact the Court would determine in  
2 mitigation, should the Court determine that and award  
3 fees it's appropriate. So I will allow it into  
4 evidence.

5 I'm not ruling that it is appropriate, though.

6 MR. THOMAS: Your Honor, there was one other  
7 thing.

8 THE COURT: Sure.

9 MR. THOMAS: The deposition of Eraine Biering.  
10 We entered that in.

11 THE COURT: Yes, sir.

12 MR. THOMAS: But that does goes toward the proof  
13 of a post --

14 THE COURT: It's testimony just as if she sat on  
15 the witness stand, Mr. Thomas.

16 MR. THOMAS: Okay, I was just making sure.

17 THE COURT: Certainly.

18 It's a?

19 MS. HENSLEY: Defendant's 1.

20 THE COURT: Thank you.

21 (Whereupon, Defendant's Exhibit No. 1 is marked  
22 and admitted into evidence.)

23 Q (By Ms. Hensley) Rachel, I'm just going to show  
24 you what we have marked as Defendant's Exhibit No. 1.  
25 Do you recognize that?

1 A Yes, ma'am, I do.

2 Q And that's my affidavit as to the fees that I've  
3 incurred representing you in this case?

4 A Yes, ma'am, that's correct.

5 Q And when you came to me, didn't you tell me that  
6 you didn't have any objection to Mr. Thomas obtaining a  
7 divorce? Isn't that correct?

8 A That's very correct.

9 Q And you had no objection to any of the times  
10 that he has been offered a divorce by this Court, even  
11 when you weren't present; is that correct?

12 A No, ma'am, not at all. I mean it is correct  
13 that I haven't had no objections to that prior.

14 Q And the fees that I have incurred representing  
15 you, you have not been able to pay, correct?

16 A No, ma'am.

17 Q And I told you I was going to charge my fees at  
18 the rate of \$175 an hour, correct?

19 A Yes, ma'am.

20 Q And that we would try to recover those fees as  
21 part of your counterclaim, correct?

22 A Yes, ma'am.

23 Q And so do you believe that my -- the statement  
24 of services rendered, attached to my attorney fee  
25 affidavit, is accurate?

1 A Yes, ma'am.

2 Q And you would agree that I had incurred,  
3 invested 52-and-a-half hours on this case?

4 A Yes, ma'am, at least.

5 Q So I've incurred fees of over \$9,000?

6 A Yes, ma'am.

7 Q And are you asking the Court to require Mr.  
8 Thomas to pay those fees?

9 A Yes, ma'am.

10 MS. HENSLEY: And, Your Honor, if I could just  
11 move to --

12 THE COURT: It's already admitted. Thank you.

13 MS. HENSLEY: If I could just show the plaintiff  
14 the exhibit, the financial declaration. I'm going to  
15 ask to have marked as Defendant's 2.

16 THE COURT: Any objection to her financial  
17 declaration being admitted, Mr. Thomas?

18 MR. THOMAS: None, Your Honor.

19 THE COURT: Without objection that's Defendant's  
20 2.

21 (Whereupon, Defendant's Exhibit No. 2 is  
22 admitted into evidence.)

23 Q (By Ms. Hensley) And, Rachel, I'm just going to  
24 show you what we marked as Defendant's Exhibit No. 2.  
25 Do you recognize that?

1 A Yes, ma'am.

2 Q And that's your financial declaration we filed  
3 with this court?

4 A It absolutely is.

5 Q And I made a correction to the first page where  
6 I had a typographical error on your name, correct?

7 A Yes, ma'am.

8 Q And other than that, it's a true and accurate  
9 financial declaration that we filed with the court?

10 A Yes, ma'am.

11 Q In this case. And it shows that you are total  
12 monthly income is zero?

13 A Yes, ma'am.

14 Q Is that true and accurate?

15 A Uh-hum.

16 Q Yes?

17 A Yes, ma'am. Yes.

18 Q Rachel, with regard to your drug use, is it fair  
19 to say that before you became involved with the  
20 plaintiff you were not a habitual user of drugs?

21 A Yes, ma'am, that's correct.

22 Q And you only became a habitual user of drugs  
23 after the plaintiff introduced you to heroin; is that  
24 correct?

25 A Yes, ma'am, that's correct.

1 Q And during your marriage, did the plaintiff  
2 supply you with heroin?

3 A Yes, ma'am.

4 Q On a regular basis?

5 A Approximately every day.

6 Q And other drugs?

7 A (Affirmative head shake.) Yes. A lot of  
8 alcohol.

9 Q Alcohol? Crack cocaine?

10 A Yes, ma'am.

11 MS. HENSLEY: That's all the questions I have,  
12 Your Honor.

13 THE COURT: Cross-examination?

14 MR. THOMAS: Yes.

15 CROSS-EXAMINATION

16 BY MR. THOMAS:

17 Q So you alleged that I got you strung out on  
18 heroin?

19 A Yes. And you said the same thing.

20 Q I did?

21 A Yes.

22 Q I think I said was you needed to have it and  
23 then I was the one you were getting it from at the  
24 time. I think you are referring to my trial testimony.  
25 I indicated that you couldn't have spent more than 24

1 hours at your mother's house.

2 But it's miraculous how you can remember all  
3 these details, and you have difficulty --

4 MS. HENSLEY: Objection, Your Honor.

5 THE COURT: Mr. Thomas, you are editorializing  
6 again.

7 Q (By Mr. Thomas) So, okay. My question is how  
8 is it that you can remember with specificity that I  
9 supplied you with these drugs, but you cannot remember  
10 where you were living? I'm confused. Can you please?

11 A I remember very clearly how I got started doing  
12 drugs. That's not something somebody forgets very  
13 easily.

14 Q So I think my attorney made a comment during  
15 trial he said, you remember what you want to remember.  
16 Do you recall that question?

17 A No, I do not.

18 Q Let me see if I can bring that forth for the  
19 Court.

20 MS. HENSLEY: I would just object as to  
21 relevance, Your Honor.

22 THE COURT: Mr. Thomas, how is a question by  
23 your attorney whether she remembers it or not at the  
24 criminal trial relevant here? Whether she remembers a  
25 question in a criminal trial?

1 MR. THOMAS: Because you told me that if she  
2 says something that it's not relevant to memory, and I  
3 can show where she crossed herself before, I could  
4 bring it forth. I'm just bringing forth that she  
5 claimed before that she remembered specific things when  
6 she could.

7 I'm just trying to show you where she did it at  
8 trial, too.

9 THE COURT: Your question was, do you remember a  
10 question by my attorney at my criminal trial, and she  
11 said she doesn't remember. How is the transcript going  
12 to be relevant to that, sir?

13 MR. THOMAS: Well the point I'm trying to make  
14 is that she remembers what she wants to remember. And  
15 she used that tactic during my trial. And it's an  
16 inconsistent statement I am thinking.

17 THE COURT: You can ask her. Go ahead.

18 I will overrule the objection, Ms. Hensley. I'm  
19 going to let him ask her.

20 MR. THOMAS: Well, you know, it happened and  
21 it's clearly irrelevant. What is important here today  
22 is that everybody sees what really happened here.

23 And I don't think I need to proceed any further.  
24 But you've done an exemplary job. Just like you did in  
25 trial. But we will see you in PCR Court.

1 THE WITNESS: Your Honor, isn't that a threat?

2 MS. HENSLEY: Your Honor --

3 THE COURT: Whoa. Was that a question, Mr.  
4 Thomas?

5 MR. THOMAS: Well I did -- it was -- it's just  
6 I'm totally frustrated.

7 THE COURT: I appreciate the fact that you are  
8 frustrated, sir. But this is where you question her.

9 MR. THOMAS: Right.

10 THE COURT: Do you have a question for her?

11 MR. THOMAS: But I mean have you noticed that --

12 THE COURT: Do you have a question for her?

13 MR. THOMAS: No, ma'am. No. There is no point.  
14 There is no reason to ask anymore questions.

15 THE COURT: He has no more questions, Ms.  
16 Hensley. Anything on redirect?

17 MS. HENSLEY: No, Your Honor.

18 THE COURT: You may step down, Ms. Crowley,  
19 thank you.

20 THE WITNESS: Thank you.

21 THE COURT: Anything else, Ms. Hensley?

22 MS. HENSLEY: Nothing further, Your Honor.

23 THE COURT: Anything in reply, Mr. Thomas?

24 MR. THOMAS: I just want to --

25 THE COURT: Any testimony in reply? Testimony?

1 MR. THOMAS: I want to reserve my right to a  
2 closing argument.

3 THE COURT: I have already told you you can have  
4 that, sir.

5 MR. THOMAS: Okay.

6 THE COURT: The question is, do you have any  
7 testimony? There is a difference between testimony --

8 MR. THOMAS: No, no, I have no testimony. Thank  
9 you.

10 THE COURT: All right. We are going to be in  
11 recess. I'm going to review these documents and review  
12 my notes. And I am going to rule this evening. So  
13 please do not leave the courthouse.

14 Anyone who's a witness is free to leave, parties  
15 can leave if they wish but I will be ruling on this  
16 record before the end of this day today. That does not  
17 necessarily mean I will be ruling before 5 o'clock  
18 though.

19 So thank you. I will ask that you leave the  
20 courtroom at this time because I'm staying in here with  
21 the exhibits. Thank you.

22 MR. THOMAS: I should clean up my stuff, right?

23 THE COURT: You may do so, yes, sir.

24 Please tell Ms. Hensley, she left, but I will  
25 give her the same opportunity as I'm giving Mr. Thomas

1 to make any closing argument she'd like to make.

2 THE OFFICER: Yes, Your Honor.

3 THE COURT: Thank you.

4 (Whereupon, a recess was taken.)

5 THE OFFICER: Parties are present, Your Honor.

6 THE COURT: Thank you, sir.

7 what is that noise?

8 A VOICE: His hearing aide.

9 THE COURT: Okay. Thank you.

10 All right, we are back on the record in Thomas  
11 versus Crowley, 2010-DR-10-4251. Both parties along  
12 with their attorneys have returned to the courtroom.

13 Mr. Thomas, I indicated to you I'd give you an  
14 opportunity to make a closing argument. I'm glad to  
15 hear your closing argument at this time if you would  
16 like to make one, sir.

17 MR. THOMAS: Thank you, Your Honor. During the  
18 course of several hearings in this matter there were a  
19 number of motions put forth, and I was informed that  
20 those motions would be properly presented at the  
21 conclusion of the trial.

22 I'm interpreting that to be this moment.

23 THE COURT: Yes, sir.

24 MR. THOMAS: Okay. I sought to prove, I'm  
25 trying to just to prove that I'm not the animal that I

1 have been depicted as. Contrary to newspaper articles,  
2 and one-sided, you know, I never got a chance to tell  
3 my story.

4 In all candor, I was elated with the opportunity  
5 to present my side of the facts, and that I would be  
6 able to secure what actually transpired. That didn't  
7 take place. And I apologize to the Court and all the  
8 parties involved for my failure, for the failure in my  
9 efforts.

10 I must commend Ms. Hensley on her acumen. She  
11 was quite effective. Her prowess is impressive. All  
12 having said, it's not been my ambition to put anybody  
13 in jail. I'm living a terrible existence right now.  
14 I've tried to be a good human being. I'm not proud of  
15 everything that has happened in my life, but  
16 specifically getting addicted to drugs, that's not  
17 something that was, you know, it's just led to a lot of  
18 misery in my life and those that care about me.

19 All that I would seek from this Court at this  
20 time is that I do get judicial notice of the  
21 restraining order claim that the defendant made in her  
22 ex-parte waiver of attendance that was filed on I  
23 believe March 9th of 2009, the motion was filed seeking  
24 that relief.

25 And I would ask for judicial notice of Ms.

1 Maree's perjured testimony with regard to turning the  
2 computer over. Now I would like to make record that  
3 I'm not seeking that they go to jail. As a matter of  
4 fact, I'm not concerned about fines or any other  
5 sanctions, I just wanted the court record, as I  
6 understand judicial notice can be reached if the facts  
7 are present to establish that that has taken place.  
8 And that's what I seek.

9 Rachel and I, our relationship was dysfunctional  
10 clearly. And I had no business being involved with a  
11 woman that much younger than me to begin with. I  
12 suppose I cannot blame her for her adulterous affair  
13 during the course of our marriage and thereafter.  
14 However, I would ask that this Court recognize that she  
15 is not entitled to any kind of compensation, be it  
16 legal fees, or any kind of considerations in that  
17 regard.

18 I'm willing to accept the responsibility of poor  
19 judgment. And I would like to anticipate a ruling  
20 commensurate to that with regard to her adultery and  
21 request for legal fees.

22 It is true I was offered an opportunity to  
23 accept a non-contested divorce. This was after  
24 numerous pleadings raising the underlying criminal  
25 matter. And it's due to my inexperience I was not

1 certain that my failure to respond would not be  
2 considered a tacit admission to my guilt, and I  
3 couldn't take that possibility.

4 I stand to spend the next 12 years in prison,  
5 the rest of my productive life, if I don't adequately  
6 defend what is going on with me.

7 That's why all of the situation with what it is.  
8 I seriously can't fault Ms. Hensley for doing her job  
9 appropriately. It's quite a job. Having said that, I  
10 would just conclude my argument asking for the judicial  
11 notice as I asked. And that's it. I thank you for the  
12 opportunity to express those feelings.

13 THE COURT: Certainly. Thank you, sir.

14 I will extend the same opportunity to you if you  
15 so desire, Ms. Hensley.

16 MS. HENSLEY: No thank you, Your Honor. Nothing  
17 from the defendant.

18 THE COURT: All right. I'd like to review a few  
19 more notes that I've just made and then I will be  
20 prepared to rule. You can just be at ease. Thank  
21 you.

22 (Whereupon, a recess was taken.)

23 THE COURT: Okay. We are back on the record.  
24 with respect to the plaintiff's request that Ms. Maree  
25 be found to have committed perjury or presented false

1 testimony, the Court declines to make that ruling.

2 The events testified to by both the defendant  
3 and her mother occurred several years ago, and this  
4 Court finds that any inconsistencies presented today  
5 are simply a memory lapse due to the passage of time.

6 I address that first because it was the last  
7 point raised by Mr. Thomas.

8 The issues before this Court today are contained  
9 in the plaintiff's amended complaint, and the  
10 plaintiff's original complaint. They are also  
11 contained in the original answer filed by the  
12 defendant, and the amended answer and amended  
13 counterclaim filed by the defendant.

14 Those issues, taken in order, are as follows:  
15 The plaintiff requested a divorce on the grounds of one  
16 year's continuous separation. He failed to testify and  
17 request any relief, nor did he present any  
18 corroborating testimony as to the one year divorce. So  
19 the Court will decline to grant him a divorce on the  
20 grounds of one year's continuous separation.

21 The plaintiff also alleged adultery and  
22 requested a divorce on the grounds of the defendant's  
23 adultery. Again the plaintiff failed to testify and  
24 request any relief.

25 Even if the plaintiff had testified with respect

1 to the relief requested, that being adultery, he failed  
2 to present any corroborating testimony. Although the  
3 defendant stipulated to post-separation adultery, even  
4 with the defense stipulation to adultery, corroboration  
5 independent is still required.

6 The Court has heard Mr. Smiley's testimony. I  
7 do not find that corroborates any adultery. I do not  
8 find the plaintiff's father, Mr. Thomas's, testimony,  
9 corroborates adultery. And I do not find that the  
10 deposition testimony of Ms. Biering, which I read  
11 during the recess in chambers, corroborates any  
12 adultery. It certainly has assumptions contained  
13 therein, but it does not contain any testimony that  
14 could corroborate a divorce on the grounds of adultery.  
15 So that relief is denied.

16 with respect to the divorce requested on the  
17 grounds of the defendant's habitual drunkenness and her  
18 habitual drug use. Again the plaintiff failed to  
19 testify. His mother testified -- excuse me -- her  
20 mother testified as to the defendant's addiction to  
21 heroin, but she also testified that the plaintiff  
22 caused the addiction so the defendant would not leave  
23 him. The defendant also testified as to her addiction  
24 and that the plaintiff caused her addiction.

25 In addition, in reviewing Ms. Biering's

1 testimony, pursuant to her deposition which the Court  
2 again reviewed, her testimony was that both the  
3 plaintiff and the defendant used not only heroin, but  
4 crack cocaine.

5 The Court will not grant a divorce on the ground  
6 of habitual drug use based on that testimony. There  
7 was testimony as to an episode of drunkenness by the  
8 defendant post-separation, that being the incident of  
9 May 12, 2007. I do find that on May 12th, 2007 the  
10 defendant was intoxicated.

11 One incident of drunkenness does not rise to the  
12 level of proof required to grant a divorce on the  
13 ground of habitual drunkenness. And there was no  
14 testimony that drug use or drunkenness caused the  
15 breakup of the marriage, which is the second element  
16 required for a divorce to be granted on those statutory  
17 grounds. Therefore the divorce on habitual  
18 drunkenness, and/or habitual drug use is denied.

19 With respect to the plaintiff's request for  
20 alimony, plaintiff failed to testify and did not  
21 address to the Court any of the statutorily required  
22 factors to be considered for a grant of alimony.

23 Even if the factors had been addressed, the  
24 defendant clearly has no ability to pay. And the  
25 defendant was not at fault in the breakup of the

1 marriage. The Court would therefore not be inclined to  
2 award alimony, even if any of the other factors had  
3 been addressed in testimony.

4 with respect to the plaintiff's request for fees  
5 and litigation costs, those factors were addressed  
6 under the decision of Glascott versus Glascott. No  
7 fees were incurred. There was some testimony from the  
8 plaintiff's mother that she had, quote, financed the  
9 litigation in response to a question from the Ms.  
10 Hensley.

11 There was no breakdown as to the cost of this  
12 litigation versus the cost of pursuing post-conviction  
13 relief or appellate relief from the criminal case, and  
14 therefore the Court declines to award fees in this  
15 action. The Court has no authority to award any fees  
16 or costs in any post-conviction relief, general  
17 sessions actions, or appellate actions involving  
18 general sessions matters.

19 with respect to the issue of marital property,  
20 no evidence or testimony as to the existence of any  
21 marital property at the date -- excuse me, at the date  
22 of filing, was presented to the Court. It was  
23 stipulated by the defendant that the computer is  
24 non-marital property and is the property of the  
25 plaintiff. All other property in existence at the date

1 of separation and filing was either sold prior thereto,  
2 or destroyed by mice in a storage unit.

3 With respect to the answer and counterclaim, and  
4 the amended answer and counterclaim, the defendant  
5 seeks a divorce on the grounds of a one year's  
6 continuous separation. The defendant testified as to  
7 the date of the marriage and the date of the  
8 separation; requested a divorce on the grounds of a one  
9 year's continuous separation; and multiple witnesses  
10 corroborated the separate date, and continuous  
11 separation of the parties through cross-examination  
12 testimony elicited by Ms. Hensley.

13 Therefore, the Court finds the defendant has  
14 carried her burden of proof with respect to a divorce.  
15 Will grant to her a divorce on the grounds of a one  
16 year's continuous separation. She did not seek nor  
17 present any evidence or testimony as to any other  
18 grounds for divorce. And the Court does not rule on  
19 any of those issues.

20 The parties by stipulation have agreed to a  
21 mutual physical restraining order, and this Court  
22 grants that relief.

23 The only other relief requested is an award of  
24 attorney's fees requested by the defendant's attorney.  
25 The Court has reviewed the case of Glascott versus

1 Glascott, 2003 S.E.2d 313, and considered the following  
2 factors on this issue.

3         The nature, extent and difficulty of this  
4 litigation. It has been clear to this Court today that  
5 this case has been extremely difficult for a long  
6 period of time. There are a lot of issues. But the  
7 issue in this court is the dissolution of the marriage  
8 and any issues attendant thereto.

9         And the plaintiff has made this case, by his  
10 attempts to litigate and/or re-litigate the criminal  
11 case, the criminal appeal's case, and perhaps prepare  
12 for the post-conviction case, much more difficult and  
13 much more extensive than necessary.

14         The time necessarily devoted by Ms. Hensley of  
15 52-and-one-half hours was necessary due to the  
16 extensive filings. And the Court notes the court file  
17 is approximately one foot thick. And also the  
18 litigious approach to the divorce taken by the  
19 plaintiff.

20         The plaintiff was on multiple occasions,  
21 according to the testimony of his mother, offered to be  
22 granted a divorce on the grounds of one year's  
23 continuous separation. And for whatever reason, be it  
24 valid or not, refused those offers.

25         The third factor the Court must consider is the

1 professional standing of counsel. I don't believe that  
2 I have had Ms. Hensley in my courtroom. If I have,  
3 it's been on a short matter. But I will agree with the  
4 plaintiff that her prowess is effective. And this  
5 Court is impressed by the professional manner in which  
6 Ms. Hensley approached this case, her ability to focus  
7 on the issues before this Court, and I find her to be  
8 of high professional standing.

9 The fourth factor under the Glasscot of course  
10 is to consider is contingency of compensation.  
11 The defendant is unemployed. No testimony was  
12 presented that she is employable at this time, or in  
13 the future. And she has no appreciable assets with  
14 which to discharge her attorney's fees.

15 The next factor under Glasscot is the beneficial  
16 results obtained by counsel. And today Ms. Hensley has  
17 finally been successful in the trial of this case in  
18 obtaining a divorce for the defendant after almost two  
19 years of litigation in a divorce with no issues except  
20 a divorce on the grounds of one year's continuous  
21 separation at filing, and restraining orders. No  
22 appreciable marital property every alleged. She has  
23 clearly obtained a beneficial result for her client in  
24 this matter.

25 The last factor to be considered is customary

1 legal fees charged. Ms. Hensley's hourly rate is \$175  
2 per hour. And, quite frankly, this Court believes that  
3 is below the customary rate charged for lawyers of her  
4 caliber and her experience and expertise exhibited here  
5 today.

6 This Court recognizes that the plaintiff is  
7 currently incarcerated in the South Carolina Department  
8 of Corrections. He is incarcerated at this time for  
9 crimes for which he was convicted, wherein the  
10 defendant was the victim. And that he has no present  
11 ability to pay an award of fees to the defendant's  
12 attorney.

13 However, he is an electrician and can earn, or  
14 has the potential to earn, income upon his release at  
15 whatever time, be it through the completion of his  
16 sentence or through a post-conviction relief grant, the  
17 ability to earn that income.

18 Therefore, the Court does award to Ms. Hensley  
19 for the benefit of the defendant's attorney's fees in  
20 the amount of \$9,000 for attorney's fees and costs.  
21 That sum is to be paid by the plaintiff within 30 days  
22 of his release from incarceration.

23 That will be the order of the Court. Ms.  
24 Hensley, prepare me a proposed order. Good afternoon.

25 We are recess. Thank you.



STATE OF SOUTH CAROLINA  
In The Court of Appeals

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

Trial Court Case No. 2013-CP-10-5444

RECEIVED

DEC 29 2014

SC Court of Appeals

Clark D. Thomas, ..... Appellant,

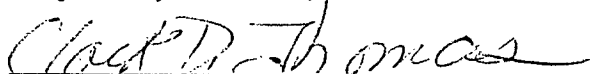
V.

Evening Post Publishing Co.,  
D/b/a The Post and Courier,  
Glenn Smith, Officially  
and Individually, ..... Respondent.

**NOTICE OF APPEAL**

Clark D. Thomas, *pro se*, Appellant in the above-captioned case, appeals the final judgment of the Honorable R. Markley Dennis, Jr., filed on November 4, 2014. Appellant received written notice of entry of the final judgment on November 12, 2014, and timely mailed on November 13, 2014, for filing a motion to alter or amend that was denied and filed on December 1, 2014. This *Notice of Appeal* was timely mailed for filing on December 29, 2014.

Respectfully submitted,



Clark D. Thomas #187845

BRCI / Moultrie A-2087

4460 Broad River Road

Columbia, SC 29210

*December 29*, 2014  
Columbia, SC

STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

DEC 29 2014

Appeal From Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

SC Court of Appeals

Trial Court Case No. 2013-CP-10-5444

Clark D. Thomas, ..... Appellant,

V.

Evening Post Publishing Co.,  
d/b/a The Post and Courier,  
Glenn Smith, Officially  
and Individually, ..... Respondent.

**PROOF OF SERVICE**

I certify that I have served the *Notice of Appeal* on the Defendants in the above-captioned case by depositing a copy of it in the United States Mail, postage prepaid, on December 29, 2014, addressed to their attorney of record, Jay Bender, Post Office Box 8057, Columbia, SC 29202.

Respectfully submitted,

*Clark D. Thomas*

Clark D. Thomas #187845  
BRCI / Moultrie A-2087  
4460 Broad River Road  
Columbia, SC 29210

*December 29*, 2014  
Columbia, SC

Clark David Thomas #187845  
Broad River C.I. / Moultrie A-2087  
4460 Broad River Road  
Columbia, SC 29210

December 29, 2014

RECEIVED  
DEC 29 2014  
SC Court of Appeals

The Honorable Jenny Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

**HAND DELIVERED**

**Re: Clark D. Thomas v. Evening Post Publishing Co., et. al.  
Trial Case No. 2013-CP-10-5444  
Court of Appeals Case No.**

Dear Ms. Kitchings:

Please attach the *Order* listed below to the *Notice of Appeal* in the referenced case sent by me and received by your office in today's mail whereas it was inadvertently left out.

1. *Order Granting Summary Judgment* filed November 4, 2014.

With kindest regards  
I am,



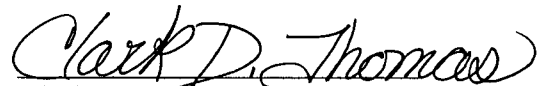
Clark D. Thomas

cc: The Honorable Julie J. Armstrong  
Jay Bender, Esquire

**CERTIFICATE OF APPELLANT**

Pursuant to Rule 210(g), SCACR, Appellant in the above-captioned *Appeal* hereby certifies that this *Record on Appeal* contains all material to be included by any of the parties and not any other material.

Respectfully submitted,



Clark D. Thomas #187845  
BRCI / Moultrie A-2087  
4460 Broad River Road  
Columbia, SC 29210

*August 20*, 2015  
Columbia, SC