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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Master in Equity and Special Circuit Court Judge

Case No.: 2015-CP-07-1343
APPELLATE CASE NO. 2016-000955

John Alden Bauer, III, Appellant

v

Beaufort County School District, Respondent

**APPELLANT'S REPLY TO RESPONDENT'S RETURN TO
APPELLANT'S MOTION FOR DISCRETIONARY REVIEW**

Please Note

Assertions made by Respondent claiming frivolity under Rule 269 are contradicted by physical, tangible, legally accepted documents, properly served, and in counsel's possession, and supplemented, since October 27, 2014. Counsel, and other representatives of the district, refused to investigate and confirm the truth of Appellant's documents, answer factual questions, remove false evidence, preserve electronic evidence that they had agreed to preserve, or to supply 11,000 emails that they had agreed to furnish.

I, John Alden Bauer III, the Appellant, affirm knowingly, under penalty of perjury, hereby attest that all statements and evidence submitted and presented are truthful and were done in good faith.

Reply

Respondent, via counsel David Duff, expressed no viable contention against Appellant's Motion for Discretionary Review, and counsel while claiming frivolity, has simultaneously resorted to his own frivolity, citing Rule 269 of the South Carolina Appellate Court Rules.

Appellant is unsure of tradition but reading South Carolina Frivolous Civil Proceedings Sanctions Act, Section 15-36-10(2)(d), Hydra vs. Delo

C.A. NO.: 2012-CP-23-1735, taken together with Rule 269 SCACR, it would seem to be inappropriate for this court to consider sanctions, that are described as coming from Post-Trial Motions, before the court has heard the case.

Respondent targets motions as being frivolous that were intended to ameliorate actions by counsel in his substantial role as “*unbiased*” Advice Counsel (speaking 108 times) at the Beaufort County School District Board Hearing, April 29-May 2, 2015. Counsel knowingly allowed false evidence to be admitted, allowed exculpatory evidence to be withheld, and allowed or caused 17 exhibits, that had been admitted to the record without objection, to be removed and shredded while counsel attended jury deliberations.

(Violation of Gonzales v. McEuen, 435 F. Supp. 460 (C.D. Cal. 1977) U.S. District Court for the Central District of California - 435 F. Supp. 460 (C.D. Cal. 1977) March 2, 1977)

Respondent counsel’s only rationale of relevant documents not being indexed at the close of the Board Hearing is based on the fact that he, while acting as “*unbiased*” Advice counsel to the Board, successfully blocked the district’s own evidence that would have cleared Appellant.

Respondent’s Return is, *ironically*, frivolous in and of itself

1. In universal common law, *frivolity* involves legal claims that, due to their lack of legal merit and lack of good faith have little chance of being won and with little intent other than harassment.
2. Meritorious claims are to cite legal authorities, such as statutory laws or case law, to support their arguments. Appellant's Motion for Discretionary Review cited Federal Law, State Law, Case Law, and attached appropriate exhibits.
3. Respondent did not cite any of the laws or their application contained in Appellant's Motion as being frivolous, nor did he challenge the *relevance* of the exhibits.
4. Appellant's Motion for Discretionary Review was submitted in "good faith" and supported with carefully constructed legal arguments.
5. As uslegal.com states "*a pro se defendant ... (is) expected to construct legal arguments, cite legal authority, or draft her petition as artfully as a lawyer would.*" Respondent's Return failed to meet the standard which is expected of a pro se litigant.
6. Many obvious sources assert that a claim or defense may be frivolous because it had no underlying justification in fact, or because it was not presented with an argument for a reasonable extension or reinterpretation of the law. Appellant's Motion was in "good faith" and supported with carefully constructed legal arguments.

7. In the United States, Rule 11 of the Federal Rules of Civil Procedure and similar state rules, require that an attorney perform a due diligence investigation concerning the factual basis for any claim of frivolity.
There is no indication that Respondent performed such an investigation.
8. How do Judges decide the merits of such a case? As Appellant understands it they are to do so on the basis of evidence presented before them, case law, and other relevant considerations.

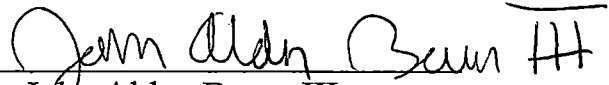
For the reasons given Appellant, as appropriate, will request that Respondent be sanctioned for his false, harassing, unsubstantiated, and as odd as it sounds, frivolous accusation of frivolity pursuant to Rule 269 SCACR.

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Respectfully Submitted,

A handwritten signature in black ink that reads "John Alden Bauer III". The signature is written in a cursive style with a horizontal line underneath it.

John Alden Bauer III
109 Ashton Hill Drive
Columbia, SC 29229
843-384-1506

November 7, 2016

CERTIFICATE OF SERVICE VIA US MAIL

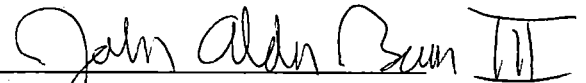
The undersigned, John Alden Bauer III, pro se, certifies that he has served the following Counsel of Record with the foregoing APPELLANT'S REPLY TO RESPONDENT'S RETURN TO APPELLANT'S MOTION FOR DISCRETIONARY REVIEW by making a copy of same, postage prepaid, and return address clearly indicated to the following on the 7th day of November, 2016.

David Duff, Esq.
Duff, White and Turner
3700 Forest Dr.
Suite 404
Columbia, SC 29204

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