

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge 15th Judicial Circuit

Civil Action No. 2014-CP-26-08367
2014-CP-26-03362 (formerly 2013-CP-02816)

Appellate Case No. 2016-001328

RECEIVED

FEB 15 2017

SC Court of Appeals

Gabriel Barnhill & GSB Enterprises LLC Respondents,

v.

J Floyd Swilley, J Floyd Swilley Investment
Advisors, Laurel K Swilley, SMG Partners
LLC, SMS Services LP, William C Piner,
WCP Limited LLC, 809 Holdings LP, QC
Financial LLC, Heath Causey, and Sage
Financial Group LLC, J Floyd Swilley,
SMG Partners LLC, Alicia Piner, Heath
Causey, Sage Advisory Group LP, Sage
Private Equity Group LLC, Secured Asset
Factoring Exchange, Inc, SAFE, Inc, Digics,
LLC, 9-1-1 Plumbing, LLC, and Sage
Funding, LP and Christopher Pitcock, Defendants

of whom J Floyd Swilley, Laurel K Swilley
and Heath Wendell Causey, are the Appellants.

Memorandum in support of the Motion to Strike the 2nd Initial Brief of the Respondents

Appellant Causey does here by add as support for his Motion to Strike the 2nd Initial Brief of the Respondents as filed on January 25, 2016.

Background

On June 20, 2016, Appellant John F. Swilley and Laurel K. Swilley did file their Notice of Appeal with the Honorable Court. On June 22, 2016, this Honorable Court did respond and assigned Appellate case number 2016-001328 via a letter that Attorney Fata was copied on. On June, 27, 2016 Appellant Causey did file his Notice of Appeal with this Honorable Court. On June 30, 2016, this Honorable Court did respond and assigned Appellate Case Number 2016-001377 via a letter that Attorney Fata was copied. On July 20, 2016, this Honorable Court did order a consolidation of the cases 2016-001328 & 2016-001377. Attorney Fata was copied on this July 20, 2016 order as well. On July 28, 2016, this Honorable Court did extend this Appellant Causey and Appellants Swilley's time to file the Appellants Initial Brief and Designation of Matter until August 19, 2016, Attorney Fata was carbon copied on this communication as well. On August 19, 2016 Appellants Swilley & Causey did file their respective Initial Briefs and Designation of Matter. In Appellant Causey's Initial Brief mailed on August 19, 2016, Appellant Causey did reference in his Brief, the Swilleys' Brief on page 11 "This Appellant references the entire Brief of the Swilleys' and asserts the same arguments and assertions as his own unless specifically identified within this brief". Attorney Fata was copied on this Brief as well. On August 23, 2016, this Honorable Court sent a notice of deficiency to Attorney Adler that his caption/title was not correct, Attorney Fata was copied on this letter as well. On September, 22, 2016 Attorney Fata filed a Motion to Strike the Brief of the Swilleys for Material not in Record, specifically Attorney Fata identified the notary and any notary related references. On August 29, 2016 Attorney Fata filed two (2) motions for extension under the

separate case numbers even after Attorney Fata had been notified that the cases were consolidated. On August 31, 2016, this Honorable Court did extend the time for Attorney Fata and Barnhill to file the Respondents' Initial Brief and Designation of Matter until October 19, 2016, Attorney Fata was copied. On October 13, 2016 Attorney Fata & Barnhill filed a second request for extension. On October 17, 2016, this Honorable Court did order "The time for serving and filing the Respondents' Initial Brief and Designation of Matter is hereby extended until October 31, 2016. No further extension shall be granted absent extraordinary circumstances." This order was filed under case #2016-001328 and the captions were for all three appellants. On November 2, 2016 Barnhill through his Attorney Fata filed the Initial Brief under Case# 2016-001377. On December 13, 2016, Appellant Causey filed his Initial Brief Reply, on December 29, 2016, the Respondent filed a Motion to Strike Causey's Reply Brief. On January 5, 2017 the Honorable Court notified Attorney Fata of the deficiency in his filings via a letter, on January 10, 2017, Attorney Fata's Office, did correct this deficiency and did so without notifying any other party. Attorney Fata filed a letter as well as a check with the Honorable Court without notification to any other party and that was in direct violation of Rule 262(2). On January 17, 2017, this Appellant filed his Response to that Motion to Strike and a Motion to Amend Appellant Causey's Initial Brief. On January 19, 2017, this Appellant also filed a motion to strike Respondents' 2nd Initial Brief and request for an extension of time to respond to that same brief.

Argument

Causey is a party to the case and has standing for his Motion to Strike.

RULE 269

FRIVOLOUS APPEALS, PETITIONS, MOTIONS, OR RETURNS

Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require. This Rule does not apply to any matters where counsel is required by law to pursue an appeal or petition for writ of certiorari even though the matter may be frivolous.

This Appellant Causey draws the honorable courts Attention to the Return to Motion filed by Attorney Fata on January 25, 2017 "Causey has no standing to move to strike Barnhill's brief..." Attorney Fata argument is flawed and frivolous and has been taken for the sole purpose of delay and was done so in violation of Rule 269. As a party to the case this Appellant Causey would have sufficient standing to make an argument to a brief that the opposing side that could cause this Appellant's case harm. The above-mentioned cases were consolidated and Attorney Fata filed both Initial Briefs under case # 2016-001377, that case number was assigned to Appellant Heath Causey on June 30, 2016. If not for Attorney Fata and his staff arrogance and oversight they would have noticed that error and corrected such. This action just adds to Arguments of Extrinsic Fraud made in Appellants Swilley and Causey's Initial Brief, the Reply Brief of Appellant Causey and the Appellant Causey's Return to Motion to Strike and Motion to Amend Appellant Causey's Initial Brief and Designation of Matter. Appellant Causey draws the Honorable Court's attention to Appellant Causey's Return to Motion to Strike and Motion to

Amend Appellant Causey's Initial Brief and Designation of Matter as well as the Exhibits attached. This motion shows a pattern by Attorney Fata and his staff to mislead, engage in ex parte communication, and to defraud the Honorable lower Courts, their Honorable Judges and cause harm to this appellant as an unrepresented party. Also, if Attorney Fata failed to follow the Appellant Court Rules then logically he failed to follow the lower courts rules as well. Appellant Causey requests the court Strike the Second Initial Brief of the Respondent.

The Cases are Consolidated and there should have been only One (1) Initial Brief.

RULE 214
CONSOLIDATION

Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.

This Appellant calls to the Honorable Court's attention that on July 20, 2016 this Honorable Court did order consolidation. "This Court has received multiple notice of appeal in this matter. These appeals will be consolidated for consideration by the Court under South Carolina Appellate Court Rules (SCACR), and we anticipate receiving one record on appeal. The time for perfecting this appeal will run from the service of the last notice of appeal." (Order July 20, 2016) If the court anticipated only one record of appeal then logic would dictate that the Honorable Court wanted one Initial Brief from each Party.

Attorney Fata & Respondent Barnhill should have filed one Initial Brief with all information in it for the case referencing Initial Briefs of Appellant Swilley & Appellant Causey. Barnhill would then have been given the opportunity to amend that brief in the event that the Motion to Strike was successful or unsuccessful. Instead Attorney Fata ignored that. If Attorney Fata and Barnhill believed the cases were separate Attorney Fata would have been required to request an extension of time to file his initial brief in the event that his Motion to Strike was unsuccessful as there would have been no Amended Brief and no Extension of time by Attorney Fata's own calculations. Those words were not in that Motion to Strike and thus Attorney Fata has abandoned that argument. Another possibility is Attorney Fata never intended to make that argument only holding the phone call just in case Attorney Fata need to commit yet another action of fraud on this Honorable Court. This Appellant has shown in his Reply Brief that this is routine behavior for Attorney Fata and his staff. This Appellant Causey request the court Strike the Second Initial Brief of the Respondent as improperly filed late per Rule 208(2) & 208(4)

The time to file the Brief of the Respondent has passed.

RULE 208

INITIAL BRIEFS

(a) Time for Serving and Filing Initial Briefs.

...

(2) Brief of Respondent. Within thirty (30) days after service of appellant's brief, respondent shall serve one copy of his brief on all parties to the appeal and file with the clerk of the appellate court one copy of the brief with proof of service.

...

(4) Failure to File. Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260. Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper.

RULE 240

MOTIONS AND PETITIONS GENERALLY

(a) Applicability. This Rule governs all motions or petitions filed in the appellate court, including but not limited to: motions for extension of time, motions to reinstate, petitions for rehearing, motions to be relieved as counsel or for substitution of counsel, petitions for supersedeas, motions to remand or dismiss and petitions for hearing *en banc*. Where Rules 241 through 246 provide different or additional requirements or procedures, those requirements or procedures shall apply.

(b) Stay of Time Limits. Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.

The case was consolidated case # 2016-001328 and case# 2016-001377. Attorney Fata received both Brief of the Appellants Swilley and Causey on or around August 19, 2016 as they

were timely filed. Per SCACR 208(2) Barnhill was given 30 days from August 22, 2016 to tender his initial brief. Attorney Fata filed two (2) separate motions for extension of time Per SCACR 240(b) ..." time limits imposed by these Rules shall not be stayed by the filing of a motion or petition". Therefore, Barnhill would not have 30 days after the amended brief as was argued, but would have 30 days from the initial brief plus extensions allowed by this Honorable Court. Attorney Fata errors in his argument that his motion to strike has somehow extended the time limits when by Rule 240(b) clearly states the fact to the contrary. Per SCACR 208(4) this Appellant request the court strike the Second Initial Brief of the Respondent in its entirety.

Attorney Fata did tender an Initial Brief on November 2, 2016, a brief that was a weak poorly written brief with several circular arguments many of which countered each other. Barnhill Respondent Initial Brief ignored many of the issues raised by the Appellants. Now Attorney Fata seeks to correct his many errors and omissions after having been pointed out in the Reply Brief filed on December 13, 2016. The Initial Briefs of Appellant Causey and Swilley were virtually identical with few exceptions. Attorney Fata should have filed a complete brief with all of his complete arguments addressing all the concerns mentioned in both Appellants' Briefs as the case was consolidated. He then would have the ability to file an amended Brief to address any changes that were made in the Amended Swilley Initial Brief. Attorney Fata instead chose not to address those issues but instead raised new issues in the initial brief filed on November 2, 2016. It was not until this Appellant filed his Rely Brief and gave further credence to his extrinsic fraud arguments and improper notification argued as well as gave Attorney Fata's arguments little to no creditability that Attorney Fata sought to file a second initial brief to repair and strengthen those issues. Attorney Fata and Barnhill have failed to raise the issues on Appeal therefore waiving their right to challenge it and thus they have been abandoned.

Attorney Fata seeks this Honorable Court's assistance in committing yet another action of fraud and deception against this Appellant Causey, an unrepresented party. He seeks to rewrite his brief after the Appellants have countered his argument this simply is not how the appeals process is supposed to work. If the motion is successful, Attorney Fata has nullified Appellant Causeys Reply Brief as the closing word of the case as intended when the rules were written.

RULE 263

TIME

...

(b) Extending and Diminishing Time Prescribed by These Rules. The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.

I also note the Rule 263(b). Time ... may be extended or shortened by the appellate court, or by any judge or justice thereof. The rule makes no mention of a possible phone in conference calls like that Attorney Fata argues he had a discussion with someone in the clerk's office.

Per rule 240 (g) "Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition". Since Attorney Fata failed to file a motion to extend the time to file Respondents 2nd Initial Brief, it shall be deemed abandoned. This

Appellant Causey request that the court Strike the Second Initial Brief of the Respondent as it was improperly filed per Rule 208(2), 208(4), 263(b), 240(b), 208(4), 263(b) and 267(a)

Failure to comply with Rule 208 (8) & Rule 267

Rule 208(8) All briefs shall comply with the requirements of Rule 267, except that the cover of initial briefs may be made of white paper of not less than twenty pound weight and the initial briefs shall not be bound but shall be securely stapled or fastened on the top left hand corner.

The honorable courts attention should be drawn to the fact that the 2nd initial Brief filed by Attorney Fata filed on December 29, 2016 was not in compliance With Rule 267(a) captions. The case number if it were to only reference the Swilleys would be 2016-001328 not 2016-001377 as filed. It is notable that he does have the proper appellants on this 1st Initial Brief filed on November 2, 2016. In that brief Attorney Fata list the Appellants as Heath Wendell Causey. Attorney Fata did this even after being copied on correspondence on August 22, 2016 to Attorney Adler for having the same issue and Attorney Fata failed make the correction on his filing prior to that being filed with the court. This Appellant Causey request the court Strike the Second Initial Brief of the Respondent as deficient under Rule 208(8)Forms & Rule 267(a) Captions

The court should view this 2nd initial brief as yet another attempt of Attorney Fata to commit fraud on the court

RULE 269

FRIVOLOUS APPEALS, PETITIONS, MOTIONS, OR RETURNS

Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require. This Rule does not apply to any matters where counsel is required by law to pursue an appeal or petition for writ of certiorari even though the matter may be frivolous.

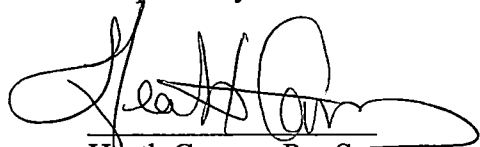
This Appellant references his return to Motion to Strike and Motion to Amend Appellant Heath Causey's Initial Reply Brief and its exhibits. This Appellant request the court to review its contents and exhibits and add the following arguments as Attorney Fata continues his Fraud on the Court and his failure to comply with the rules. The 2nd Initial Brief is yet another attempt of Attorney Fata and his office to rewrite the rules to the benefit of his client and disadvantage as well as prejudice this unrepresented Appellant. If Attorney Fata and his staff will fail to follow the Rule of this Honorable Court then logic dictates he held the lower court in the same regards and failed to adhere to them as well and rewrote them to ignored them as well.

Conclusion

Attorney Fata has erred in his assertions, (1) that Barnhill should get two briefs as the case was consolidated Barnhill would only get one (2) that Attorney Fata may call the court to get an extension of time to file his brief when the time could not be extended per Rule 263(b) except by the Honorable Court and that would have required Attorney Fata to file a Motion for Extension that was not filed. (3) That Attorney Fata and his staff could get away with yet another attempt to defraud the court after being called out on such for a fifth time by this Appellant

Causey. This Appellant Causey prays the Honorable Court take action to strike the 2nd Initial Brief of Barnhill, as per SCACR 208(4), 208(2), 263(b), 208(8), and 267(a) strike the Initial Brief in its entirety or at least allow this Appellant the ability to address those issues the Respondent raised in them and to impose a sanction on the Respondent and his Attorney for failure to adhere to any of SCACR Rules. Attorney Fata has made a mockery and defiled the very institution that he now comes to and request to affirm his wrong doings. This Appellant pleads the court protection for these flagrant actions of defiance as they continue to cause this Appellant Causey harm and per SCARC 208(4) & 269 where both Briefs are not in compliance strike all of his filings and impose on Attorney Fata a sanction to discourage his misconduct.

Respectfully Submitted



Heath Causey, Pro Se
1705 N Oak St Suite 2
Myrtle Beach, SC 29577
(843) 424-9258

Copies to:

Counsel of Record:
Nate Fata, PA
P.O. Box 16620
Surfside Beach, SC 29587
Attorney for Respondents

F. Miles Adler
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island, SC 29585
Attorney for Appellants Swilleys

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge 15th Judicial Circuit

Civil Action No. 2014-CP-26-08367
2014-CP-26-03362 (formerly 2013-CP-02816)

Appellate Case No. 2016-001328

Gabriel Barnhill & GSB Enterprises LLC

Respondents,

v.

J Floyd Swilley, J Floyd Swilley Investment
Advisors, Laurel K Swilley, SMG Partners
LLC, SMS Services LP, William C Piner,
WCP Limited LLC, 809 Holdings LP, QC
Financing LLC, Heath Causey, and Sage
Financial Group LLC, J Floyd Swilley, SMG
Partners LLC, Alicia Piner, Heath Causey,
Sage Advisory Group LP, Sage Private Equity
Group LLC, Secured Asset Factoring
Exchange, Inc, SAFE, Inc, Digics, LLC, 9-1-1
Plumbing, LLC, and Sage Funding, LP and
Christopher Pitcock,

Defendants

of whom J Floyd Swilley, Laurel K Swilley
and Heath Wendell Causey, are the Appellants.

RECEIVED
FEB 15 2017
SC Court of Appeals

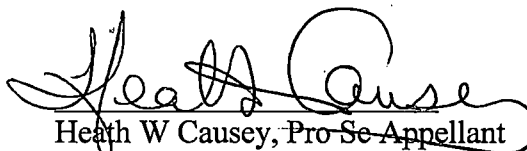
PROOF OF SERVICE

I certify that I have served the Memorandum in support of the Motion to Strike the 2nd Initial Brief of the Respondents by Appellant Heath W Causey by depositing a copy of it in the United States mail, postage prepaid, on Friday, February 10, 2017 addressed to the following:

Counsel of Record:

Nate Fata, PA
P.O. Box 16620
Surfside Beach, SC 29587
Attorney for Respondents

F. Miles Adler
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawley's Island, SC 29585
Attorney for Appellants "Swilleys"

A handwritten signature in black ink that reads "Heath W Causey". The signature is written in a cursive style with a large, looping flourish at the end of the name.

Heath W Causey, Pro Se Appellant
1705 N Oak Street Suite 2
Myrtle Beach, SC 29577
t. 843-424-9258
heath.causey@mac.com
Pro Se Appellant

Heath W. Causey
1705 N Oak Street Suite 2
Myrtle Beach, SC 29577

February 10, 2017

VIA USPS PRIORITY MAIL

Jenny Abbot Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

FEB 15 2017

SC Court of Appeals

Re: Gabriel Barnhill and GSB Enterprises. LLC v J. Floyd Swilley at al.
Case No.: 2014-CP-26-08367 Appellate Case No.: 2016 -001328

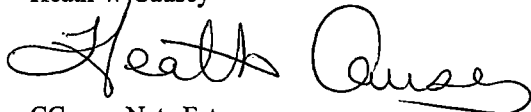
Dear Ms. Kitchings,

Enclosed for filing the original and six (6) copies of the Appellants' corrected Proof of Service in the above referenced matter for his Memorandum of Support..

Please return a filed copy to me in the enclosed self-addressed stamped envelope.

Thank you for your kind assistance in this matter

Heath W. Causey



CC: Nate Fata
F. Miles Adler, Esq

P

\$5.95 US POSTAGE
PRIORITY MAIL
FR Env
COMMERCIAL BASE PRICING

062S0008715281
FROM 29577



stamps.com
02/10/2017

PRIORITY MAIL 1-DAY™

HEATH CAUSEY
1705 N OAK STREET SUITE 2
MYRTLE BEACH SC 29577

0024

RECEIVED

FEB 15 2017

B012

SC Court of Appeals

SHIP
TO:

Jenny Abbot Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia SC 29211-1629



USPS TRACKING #



9405 5118 9956 4935 8428 65