

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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MAR 21 2017

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.

RETURN TO RESPONDENTS' MOTION FOR COSTS

Pursuant to Rule 240(e), SCACR, Clark D. Thomas, *pro se*, Appellant in the above-captioned appeal, respectfully requests that this Court deny Respondents' motion for costs. This return is based on one or more of the following grounds:

INTRODUCTION

Respondents consistently published the exact same defamatory matter in several articles about Appellant, and he testified under oath to the falsity of those articles with Respondent Glenn Smith in attendance to forewarn him against writing anymore stories before giving him an opportunity to establish the true facts and, sent him an email seeking to provide the documents supporting that truth. Respondents ignored the warnings to the fallacies in their articles and published the exact same defamatory matter in yet another article about Appellant. On September 17, 2013, Appellant filed an action for libel and the intentional infliction of emotional distress. The circuit court ruled that sworn testimony, Respondent's admissions to having been advised of the lies in their articles about Appellant and to his attempt to provide documents clarifying the facts, and 15 affidavits do not establish a genuine issue of material fact.

Appellant was seeking relief from the circuit court's order granting Respondents' motion for summary judgment when he filed a notice of appeal and a motion to proceed *in forma pauperis* on December 29, 2014, that this Court denied on February 4, 2015. Appellant was able to borrow the money to pay the filing fee of \$100 from a neutral party who shared the misguided belief that the laws apply to everyone and that justice would prevail. On July 6, 2015, Appellant filed his initial brief and designation of matter, and Respondents filed their initial brief and designation of matter on July 13, 2015. Appellant filed his initial reply brief on July 24, 2015, and served Respondents with the record on appeal on August 14, 2015.

Appellant served Respondents with his final brief and final reply brief, and filed same in this Court with the record on appeal on August 20, 2015. Respondents filed an untimely final brief on September 8, 2015, and Appellant filed a motion to strike Respondent's final brief and remand case to the lower court for trial by jury that this Court denied on November 25, 2015.

On November 23, 2016, this Court affirmed the lower court's order granting summary judgment without hearing oral arguments. On December 7, 2016, Appellant filed a petition for rehearing that this Court denied on February 1, 2017, and the remittitur was returned to the lower court on March 10, 2017. On March 13, 2017, Respondents filed a motion for costs, and this return to that motion follows:

I.

Constitutional Victimization

Appellant has time and time again endured the flagrant violation of his rights guaranteed by the United States Constitution by every court in this state with exception to the tribunal of administrative law, and that is only due to not having litigated in that forum where the same result is to be expected. In fact, even enemy combatants and terrorists held at Guantanamo Bay seem to have more privilege when it comes to the safe guards mandated by the Bill of Rights that Appellant is entitled to as a natural born citizen of this country. In other words, procedural due process of law and equal protection do not defend him against the tyranny of unremitting arbitrary, capricious, and deliberately erroneous, vindictive, and malicious decisions made in the executive and judicial branches of South Carolina's governing authority.

Consequently, Appellant did not petition the Supreme Court of South Carolina for discretionary review of this Court's arbitrary, capricious, and deliberately erroneous, vindictive, and malicious decision that he failed to submit even a scintilla of evidence to support a finding that a genuine issue of material fact exists because past experience has proven it would be a waste of time. Appellant also is not deluded with the belief that this Court will observe his rights to be free from the imposition of attorneys' fees. However, futility notwithstanding, Appellant is

arguing in opposition to Respondents' motion for costs to preserve his First Amendment right to petition the government for a redress of grievances on this issue, among other things, in the United States District Court.

II.

Attorneys' Fees

Appellant is a *pro se* layman litigant. Furthermore Appellant is indigent and will be incarcerated for the next eight years. Therefore, Appellant is not liable for or subject to costs or fees charged by an attorney. "A *pro se* litigant, whether an attorney or layperson, does not become liable for or subject to fees charged by an attorney." (Emphasis in original). Calhoun v. Calhoun, 529 S.E.2d 14, 17 (S.C. 2000). "Attorneys' fees have also been denied to *pro se* attorney/litigants for the policy reason that it would simply be unfair to allow *pro se* **attorneys** to recover fees, while denying such fees to *pro se* **Laymen**. (Emphasis in original). (Citation omitted). Hopkins v. Hopkins, 540 S.E.2d 454, 457 n.9 (S.C. 2000).

III.

Prayer for Relief

In light of the foregoing facts and binding authorities, this Court should deny Respondents' motion for costs in order that Appellant may enjoy his rights to procedural due process of law and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law.

WHEREFORE, Appellant prays that this Court grant the relief requested; and, for such other relief as this Court deems just and proper.

Respectfully submitted,

Clark D. Thomas

Clark D. Thomas, SCDC No. 187845

Allendale, C.I. / Barnwell B-11

Post Office Box 1151

Fairfax, SC 29827

March 20, 2017
Fairfax, SC

**AFFIDAVIT
OF
CLARK D. THOMAS**

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NOW COMES Clark D. Thomas, Appellant in the above-captioned appeal, and states, under oath, the following:

1. Pursuant to Rule 240(c)(3), SCACR, the facts I have stated by virtue of this return are true and correct to the best of my knowledge and belief.

Further affiant sayeth naught.

SUBSCRIBED AND SWORN TO before me

This 20th day of March, 2017

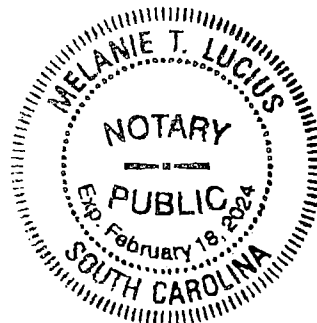
Melanie T. Lucius (L.S.)

Notary Public for South Carolina

My Commission Expires: February 18, 2024.

Clark D. Thomas

Clark D. Thomas, No. 187845
Allendale, C.I. / Barnwell B-11
Post Office Box 1151
Fairfax, SC 29827



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the document listed below has been sent
by U.S. Mail to:

Jay Bender, Esquire
P.O. Box 8057
Columbia, South Carolina 29202.

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1. Return to Respondents' Motion for Costs.

Clark D. Thomas
Clark D. Thomas, SCDC No. 187845
Allendale, C.I. / Barnwell B-11
Post Office Box 1151
Fairfax, SC 29827

March 20, 2017
Fairfax, SC

Clark D. Thomas, SCDC No. 187845
Allendale, CI / Barnwell B-11
Post Office Box 1151
Fairfax, SC 29827

March 20, 2017

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

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Re: **Clark D. Thomas v. Evening Post Publishing Co., et. al.**
Trial Case No. 2013-CP-10-5444
Court of Appeals Case No. 2014-002725

SC Court of Appeals

Dear Ms. Kitchings:

Please clock-stamp the original documents in the referenced case that are listed below, and return two (2) clock-stamped copies in the SASE provided:

1. Return to Respondents' Motion for Costs; and,
2. Copies (8).

With kindest regards,

I am



Clark D. Thomas

cc: Jay Bender, Esquire

Clark D. Thomas #187845
Allendale, C.F. / Barnwell B-11
P.O. Box 1151
Fairfax, SC 29827

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