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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017-001460
Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

James Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

Motion For the Court's Clarification

C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

For substantial justice affecting substantial rights, appellant respectfully submits this motion for the reasons set forth below.

Facts

The State Constitution and our elected officials in the State legislature mandate even-handedness and fundamental fairness by the clerk's office of the Court of Appeals. By letter dated September 8, 2017, the deputy clerk unilaterally without notice, without authority, and without meaningful opportunity to be heard issued essentially an ex parte order of dismissal of the appeal. On information and belief, based on impermissible ex parte contact by *pro se* legal malpractice defendants, untrustworthy officers of the court herein, the deputy clerk dismissed the appeal in violation of the plain language of the South Carolina Appellate Court Rules. The deputy clerk has no authority to unfile, undocket, and return the timely filed and served Rule 240(j), SCACR, motion/petition after negotiation of the check for the filing fee. Irregularities, lack of accountability, mishandling of fees, deprivation of meaningful opportunity to be heard, and/or denial of due process by the deputy clerk do not comport with even-handedness and fundamental fairness.

By correspondence dated September 8, 2017, the deputy clerk cites an order from an unrelated case with a different caption. With all due respect, the Appellant disputes the deputy clerk's interpretation of the law and submits that the deputy clerk's ministerial duties do not include interpretation of the law. It is respectfully submitted that interpretation of the law is a matter for the appellate courts, not for an unelected government employee, unauthorized by our cherished State Constitution, unauthorized by statutory law, unauthorized by the South Carolina Appellate Court Rules, and unauthorized by our elected officials in the State legislature.

Standard of Review

The issue of interpretation of statutes is a question of law for the court. *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). In a case raising a novel question of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court. *New York Times Co. v. Spartanburg County Sch. Dist. No. 7*, 374 S.C. 307, 309, 649 S.E.2d 28, 29 (2007). Moreover, Rule240(j), SCACR, review is appeal to a panel which does not include the Judge who issued the July 7, 2017, order (or to retirees) and that review is de novo. Questions of law are reviewed de novo. S.C. Const. art. V, § 5. Moreover, the Rule 240(j), SCACR, motion herein is an appeal of an order by an individual judge and the proper legal standard is de novo. S.C. Code § 14-8-220. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for review of decisions by a single judge for self-evident reasons. See Local Rule 27(e), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the case stands before the appellate court as if it had never been decided. Surely, the letter and spirit of Rule 240(j), SCACR, would include dismissal of appeal by a single unauthorized individual, the deputy clerk.

I. A contempt order is a final order that is immediately appealable.

Controlling precedent establishes the fact that the order on appeal which is a contempt order is a final appealable order. *Hooper v. Rockwell*, 334 S.C. 281, 513 S.E.2d 358 (1999). As such, the issues are different, and the appeal is unrelated to any previous matter. Accordingly, a contempt order like that

on appeal herein is a final order that is immediately appealable.

II. The money judgment exception to automatic stay does not apply because the matter herein does not constitute a "money judgment" in the underlying claim within the contemplation of S.C. Code Section 18-9-130; rather the matter is incidental to the underlying claim.

Under *State v. Cooper*, the money judgment exception to automatic stay does not apply because the matter herein does not constitute a "traditional money judgment" in the underlying claim within the contemplation of S.C. Code Section 18-9-130; rather the matter is incidental to the underlying claim. *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000); Toal *et al*, *Appellate Practice in South Carolina,* 3rd edition (2016), p. 341. In the instant case, the underlying claims ended with directed verdict for the defendants. Significantly and materially, there was no counterclaim. Accordingly, the matter herein is incidental to or collateral to the underlying claim, unrelated to any previous matter, and not subject to the *Doe v. Duncan* order.

III. The contempt order stands on its own, is separate and distinct from the underlying action, and does not relate to the hospital matter.

It is well-settled that a *party* can obtain review of the merits of a discovery order only after refusing to comply and being held in contempt. On appeal from the contempt order, the contemnor may argue that the contempt finding must be reversed because the underlying discovery order was itself improper. Grosshuesch v. Cramer, 377 S.C. 12,659 S.E.2d 112 (2008)The efficacy of the order of reference herein is challenged, and the discovery order was itself improper. Moreover, the case of *Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (2009), supports appeal of the contempt order because this appeal is based on denial of State and federal constitutional rights. See *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur

sent March 3, 2017). New case law in *Brooks*, *supra*, is controlling, supercedes *Doe v. Duncan*, and confirms State and federal constitutional and statutory rights to appear *pro se*.

IV. The deputy clerk's reliance on the December 2009 order is misplaced.

New case law in the *Brooks* case, *infra*, provides that the South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) ("[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."); *Washington v. Washington*, 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

V. *Doe v. Duncan* is unrelated and therefore, inapplicable.

In the correspondence dated September 8, 2017, the deputy clerk cites an order from an unrelated case, *Doe v. Duncan*, with a different caption. As such, *Doe v. Duncan* is inapplicable. The issues in that case are not the same and involve conflict of laws and the statute of limitations in two different states. It is not res judicata or collateral estoppel. That 2009 order relies on Footnote 2, but there is no citation, source, or authority for Footnote 2. In fact, Footnote 2 was lifted from the

Haynsworth order, which was then stayed on appeal and later superseded on appeal. It is obvious on the face of that *Doe v. Duncan* order, there is no record to support it. In fact, *Doe v. Duncan* was improperly based on the stayed *Haynsworth* order, and thereafter, *Doe v. Duncan* was improperly used to thwart and/or prevent meaningful judicial review and full and fair appeal of that very *Haynsworth* order. See former Chief Justice Pleicones' dissent in *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014). Novel issues of great public importance including the revised S.C. Code Section 15-36-10 are raised. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV.

VI. Rule 240(j), SCACR, provides for panel review of orders by a single judge.

Further, it is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for review of decisions by a single judge for self-evident reasons. See Local Rule 27(e), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the case stands before the appellate court as if it had never been decided. The South Carolina Appellate Court Rules provide for panel review of the order by a single judge. Surely, the letter and spirit of Rule 240(j), SCACR, would and should include review of dismissal of appeal by a single unauthorized individual, the deputy clerk.

VII. Irregularities, lack of accountability, and/or mishandling of fees after negotiation of the check for filing by the clerk's office is not authorized.

Irregularities, lack of accountability, and/or mishandling of fees after negotiation of the check for filing by the clerk's office is not authorized. The clerk's office unreasonably failed to forward the Rule 240(j), SCACR, motion to the Court of Appeals for its consideration. How many other hapless litigants have been subjected to wrongdoing by the clerk's office of the Court of Appeals? Clarification is respectfully requested for this matter of public importance, capable of repetition, and capable of evading judicial review. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV.

VIII. The clerk's office misconstrued *Doe v. Duncan* which is inapplicable and which does not authorize irregularities, lack of accountability, and/or mishandling of fees after negotiation of the check for filing.

Appellant respectfully submits that the plain language of *Doe v. Duncan* establishes that it is inapplicable because the appeal herein is unrelated to any previous matter. Even assuming there was a question of applicability, it is respectfully submitted that any interpretation of the law is a matter for the

court, not an unelected government employee of the clerk's office, unauthorized by our cherished State Constitution, unauthorized by statutory law, and unauthorized by our elected officials in the State legislature. *Doe v. Duncan* does not authorize irregularities, lack of accountability, and/or mishandling of fees after negotiation of the check for filing. The Court of Appeals, not the clerk's office, is an error-correction court. S.C. Const. art. V, § 9. The focus is on the propriety of rulings made by the circuit court. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal *et al., Appellate Practice in South Carolina*, (2002), p. 4. In this case, the lower court misconstrued *Doe v. Duncan* which is part of the appeal herein and which should be heard on full and fair record.

That erroneous, if not self-serving, interpretation by the clerk's office ignors the founding principles for government of the people, by the people, and for the people and ignors the incentive for the clerk's office to mishandle fees and dismiss appeals with lack of transparency evading judicial review. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998).

IX. When deciding a jurisdictional question based on facts, a reviewing court has the duty to review the entire record and find the jurisdictional facts within the entire record.

When deciding a jurisdictional question based on facts, a reviewing court has the power and the duty to review the entire record, find the jurisdictional facts within the entire record, and decide the jurisdictional question in accord with the preponderance of evidence. *Canady v. Chas. Cty. Sch. Dist.*, 265 S.C. 21, 216 S.E.2d 755 (1975). Appeal herein includes a jurisdictional challenge which is a matter

for the Court, not the clerk's office and should be heard on full and fair record. It is respectfully submitted there is no adequate record to make a finding on the jurisdictional question.

Moreover, it is respectfully submitted that jurisdiction is a matter for the court, not for an unelected government employee, unauthorized by our cherished State Constitution, unauthorized by statutory law, unauthorized by our elected officials in the State legislature, and unauthorized by the South Carolina Appellate Court Rules. *Doe v. Duncan* does not authorize irregularities, lack of accountability, and/or mishandling of fees after negotiation of the check for filing.

CONCLUSION

It is fair to say that the State Constitution and our elected officials in the State legislature mandate even-handedness and fundamental fairness by the clerk's office of the Court of Appeals. For the foregoing reasons and for substantial justice affecting substantial rights, appellant respectfully requests that this Court grant this motion with abeyance pending clarification.

Respectfully submitted,

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For Appellant

The South Carolina Court of Appeals

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September 08, 2017

Cynthia Holmes
PO Box 187
Sullivan's Island SC 29482

Re: Cynthia Holmes v. Haynsworth (4)
Appellate Case No. 2017-001460

Dear Ms. Holmes:

The Court received your petition for rehearing on July 26, 2017. We are returning the petition to you. The Court is prohibited from accepting any pro se filings from you in actions relating in any way to the revocation of your medical staff privileges. See Doe v. Duncan, S.C. Sup.Ct. order dated December 2, 2009.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Mary M Caskey, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017-001460
Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

James Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the foregoing on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed to Respondents on this date at 1201 Main St. #2200, Columbia, SC 29201.

Dated 9/23/17

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

Fax: 803.734.1839

Clerk, South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, SC 29201/29211

Re: Holmes v. Becker et al
App. Case No. 2017-01460

Dear Jenny:

Enclosed for filing is the original with abeyance request in the above case. Also, enclosed are the following:

1) The filing fee,
2) Seven copies,
3) Proof of Service and a copy, and
4) SASE for return.

Thank you for your kind attention to this matter. With best personal regards, I remain

Very truly yours,

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