

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2017-CP-23-08068

Lamont Jeremiah
McCauley, as Secured
Creditor of the Estate of
LAMONT JEREMIAH
MCCAULEY,

Appellant,

v.

Paul Wickensimer,
Greenville County Family
Court Clerk's
Office/Attorney Russell W.
Harter, Jr.

Respondent.

NOTICE OF APPEAL

Lamont Jeremiah McCauley appeals the ORDER OF DISMISSAL of the Honorable Perry H. Gravely dated March 26, 2018. Appellant received written notice of entry of this ORDER OF DISMISSAL on March 26, 2018.

The Plaintiff appeared in *Propria Persona* and notified court of standing during this hearing (*see attached transcript*). The Plaintiff contends that the Circuit Court erred on several lawful points in issuing the ORDER OF DISMISSAL pursuant to SCRCP Rule 12(b)(6).

To the first point, the Plaintiff states that the Defendant's Attorney Russell W. Harter, Jr.,

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sent a Motion for Dismissal on February 1, 2018, five days prior to the Defendant being legally served by the Plaintiff through a compliant and summons dated February 6, 2018. (*See Exhibit A*) This action was in direct violation of South Carolina Judicial Department's **Rule 12(a)**.

"A defendant shall serve his answer within 30 days After the service of the complaint upon him" and "The motion should be made before answer for early disposition of cases"

Furthermore, the Motion for Change of Venue was filed on January 16, 2018 and was placed on the Circuit Court docket for March 12, 2018. The Plaintiff contends that he was never legally notified by the court, the Defendant nor the Defendant's Attorney that the court was going to consider affidavits and hear a "Motion to Dismiss" during the court docketed Motion for "Change of Venue". This procedure to hear the Motion to Dismiss and the procedural defect were objected to by The Plaintiff's representative and noted during this hearing (*see transcript*).

The Plaintiff's representative further alleges that the Circuit Court Judge ignored material evidence which affirmatively showed that court had subject matter jurisdiction. It is the Plaintiff's contention that, the Circuit Court should not have considered other evidence outside of the facts in support of lack of subject matter jurisdiction and the Motion to Dismiss on a 12(b)(6).

Material evidence; On May 5, 2017 The Child Support Enforcement Division of the County of Greenville filed a "Notice of Filing and Registration of Foreign Support Order" with the Greenville County Family Court Clerk's Office and not an enforcement order from a Georgia tribunal. (*Exhibit 1*) The Plaintiff was sent notification of this filing on May 19, 2017 with instructions on the legal grounds and process to dispute the proposed establishment of "Foreign Support Order" or the order would be established and fully enforceable. (*Exhibit 2*) On June 2, 2017, well within the 20 day grace period, The Plaintiff lawfully filed a rebuttal to the County of

Greenville Child Support Enforcement Division's contract offer with The Greenville Family Court Clerk and he awaited a hearing date pursuant to *South Carolina's Code Law 63-17-750(A)(B) and South Carolina Judicial Department's Clerk of Court Manual Chapter 7 (7.1.2) (7.16)*. (Exhibit 3) The Plaintiff states that after two months, and harassing correspondence from the Defendant, no tribunal court date was scheduled to hear rebuttal to the establishment of a "Foreign Support Order". On August 10, 2018, The Defendant sent The Plaintiff's employer an Income Withholding Order for 107.00USD a week (see Exhibit 4). The Plaintiff contends that once he became aware of The Defendant's action, he immediately sent a certified letter to the Defendant requesting that he stop this enforcement action until a hearing was held to establish or dismiss the proposed "Foreign Order of Support". (Exhibit 5) The Plaintiff states that The Defendant ignored his request and continued to collect on the Income Withholding Order. (Exhibit 6) On October 23, 2017, a tribunal hearing dismissed the order to establish and enforce the original filed "Registration of Foreign Support Order".

The Plaintiff states that the fact that the tribunal dismissed the establishment of a "Registration of Foreign Support Order" affirmatively shows that the tribunal had not established jurisdiction to issue any order of Income Withholding, therefore, no enforcement should have been initiated through The Defendant's office according to *S.C. Code Ann. § 63-17-750 (A) (B) and South Carolina Judicial Department's Clerk of Court Manual Chapter 7 (7.1.2.) (7.16)*. Furthermore, the admittance by the tribunal in the Dismissal of the "Registration of Foreign Support Order" that monies had been collected by The Defendant gave material evidence that The Defendant acted outside of the scope of his duties, therefore, The Defendant is not immune to Civil action according to *SECTION 15-78-70 (b)* of the *South Carolina Code of Laws and the Tort Claims Act*.

It is the Plaintiff's contention that the Circuit Court erred in ruling for a Motion for Dismissal on 12(b)(6) by ignoring of material evidence presented affirmatively showing that The Plaintiff may have a valid claim and the Circuit Court had subject matter jurisdiction to move the claim to discovery.

The Plaintiff request that the Court of Appeals vacate the Order for Dismissal on 12(b)(6) issued by the Circuit Court based on the defect of notification of the Motion and the non-consideration of material-evidence giving the Circuit Court subject matter jurisdiction. The Plaintiff also requests that the court affirm the original Motion to "Change Venue" to ensure the public's trust in the integrity of South Carolina's Judicial System rules and the equal distribution of its written Laws.

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Russell W. Harter, Jr.
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Attorney for the Respondent

April 16, 2018

Lamont Jeremiah McCauley

Lamont Jeremiah McCauley

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Personal Representative for Appellant

NOTICE OF MAILING

I, Liamont Jeremiah McCauley, CERTIFY THAT I MAILED A NOTICE OF APPEAL TO THE RESPONDENT'S ATTORNEY RUSSELL W. HARTER, JR. AT P.O. BOX 10224, GREENVILLE, SC 29603 ON 4/16/, 2018.

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SWORN BEFORE ME THIS DAY April 16, 2018.

Victoria A. Slessman
NOTARY PUBLIC

Liamont Jeremiah McCauley
SIGNATURE OF AFFIANT

MY COMMISSION EXPIRES June 21, 20 27

Victoria A. Slessman
Notary Public South Carolina
Commission Expires June 21, 2027