

THE STATE OF SOUTH CAROLINA  
Court of Appeals

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APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

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Case No. 2017-CP-23-08068

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Lamont Jeremiah McCauley,  
representative for the Estate of  
LAMONT JEREMIAH  
MCCAULEY,

Appellant,

v.

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

Respondent.

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AUG 13 2018  
SC Court of Appeals

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BRIEF OF APPELLANT

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Lamont Jeremiah McCauley  
504 Bethel Drive  
Mauldin, SC 29662  
Appellant  
(404)862-0179

Brief of Appellant

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN PROPERLY AND LEGALLY NOTIFYING APPELLANT OF HEARING ON A MOTION FOR DISMISSAL?
2. DID THE TRIAL COURT ERR BY INGORING MATERIAL EVIDENCE THAT SUPPORTED THE DISMISSAL OF MOTION FOR DISMISSAL ON 12(B)6 RULE?

## STATEMENT OF THE CASE

PRELUDE TO CASE SPECIFICS: The estate of the Appellant/Plaintiff attempted to get the initial tribunal in Georgia to validate the alleged child support through the 1946 Administrative Process Act and pursuant to Fair Debt Collection Practice Act of 1977. On April 6, 2017, the initial tribunal was unable to validate the debt and the debt was removed from the estate.

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 (*Exhibit A*). This filing was not an existing enforcement order from a Georgia tribunal which was unable to validate the existence of a debt. The Plaintiff was sent notification of this filing on May 19, 2017. Instructions on the timeframe, legal grounds and administrative process to dispute the proposed establishment of “Registration of Foreign Support Order” were included in this filing. On June 2, 2017, 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 B)*. 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” in the State of South Carolina. On August 10, 2018, the defendant sent the plaintiff’s employer an Income Withholding Order for 107.00USD a week (*Exhibit C*). 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 due process and an administrative hearing was held to establish or dismiss the proposed “Registration of Foreign Order of Support” or that the defendant could prove a debt existed through legal means (*Exhibit D*). The Plaintiff states that the defendant ignored the request from the estate to discontinue this action and continued to collect on the Income Withholding Order to the tune 1,150.00usd (*Exhibit E*). On October 23, 2017, a tribunal hearing dismissed the order to establish and enforce the original filed “Registration of Foreign Support Order” on the grounds stated in the initial rebuttal filed on June 2, 2017(*Exhibit F*).

The Plaintiff states that the fact that the tribunal dismissed the establishment of a “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 from the defendant or his 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’s actions constituted no protection from

immunity to a civil action according to ***SECTION 15-78-70 (b)*** of the **South Carolina Code of Laws and the Tort Claims Act.**

## ARGUMENTS

I. BECAUSE RESPONDENT AND/OR COURT DID NOT LEGALLY NOTIFY APPELLANT OF MOTION TO HEAR DISMISSAL DURING COURT SCHEDULED MOTION FOR VENUE CHANGE PURSUANT TO SOUTH CAROLINA RULES OF CIVIL PROCEDURE, CIRCUIT COURT ERRED IN PROCEEDING TO HEAR MOTION FOR DISMISSAL.

## CITATION OF AUTHORITY

[In *Brown*, we found the trial court had not given notice to the parties that it was going to consider the affidavits and hear the 12(b)(6) motion as a motion for summary judgment. Thus, the supporting affidavits in *Brown* were improperly considered by the trial court in ruling on the 12(b)(6) motion. *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987)]

## DISCUSSION:

The Appellant states that the Respondent's Attorney Russell W. Harter, Jr., 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"*

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 clerk's office, 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 Appellant also contends that because of the Respondent's dual role as Greenville County's Clerk of Court and Greenville Family Court Clerk he has access to pertinent filings ,motions and

proceedings that could lead to bias and bending of court rules and procedures as they relate directly to this case. Appellant explains that improprieties and ethical questions such as; filings and procedural “conflicts of interest” with the defendant’s professional relationships in the Greenville Circuit Court was the reason for filing a Motion for Change of Venue and a request for a trial by jury.

II. BECAUSE CIRCUIT COURT IGNORED MATERIAL EVIDENCE PRESENTED BY ADMINISTRATIVE COURT IN ITS DISMISSAL OF THE REGISTRATION OF FOREIGN ORDER OF SUPPORT, WHICH STATED THAT PROPERTY WAS CONFISCATED BY RESPONDENT WITHOUT THE ESTABLISHMENT OF A SUPPORT ORDER, THE COURT ERRED IN HEARING EVIDENCE THAT FURTHER SUPPORTED LACK OF SUBJECT MATTER JURISDICTION AND THE SUBSEQUENT ISSUING A SUMMARY JUDGEMENT.

#### CITATION OF AUTHORITY

**[Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697; Higgins v. MUSC, 326 S.C. 592, 486 S.E.2d 269 (Ct.App.1997)]** (holding that the plaintiffs had not been “fairly apprised” that the trial court would consider material outside the pleadings in support of the defendant’s 12(b)(6) motion). Nevertheless, affidavits and other evidence outside the pleadings may, in certain circumstances, be considered in support of a motion to dismiss based on lack of jurisdiction. For instance, when the allegations of the complaint are factually sufficient under Rule 8(a)(1), SCRC, but do not affirmatively show subject matter jurisdiction, the motion to dismiss may be supported by, and the court may consider, affidavits or other evidence proving lack of jurisdiction. **Woodard v. Westvaco Corp., 315 S.C. 329, 433 S.E.2d 890 (Ct.App.1993)**, vacated on other grounds by 319 S.C. 240, 460 S.E.2d 392 (1995). However, the presentation of such evidence does not convert the motion to dismiss into one for summary judgment. Summary judgment is an adjudication on the merits of the case, whereas dismissal for lack of subject matter jurisdiction is not an adjudication on the merits. Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. The absence of a genuine issue of material fact]

### **DISCUSSION:**

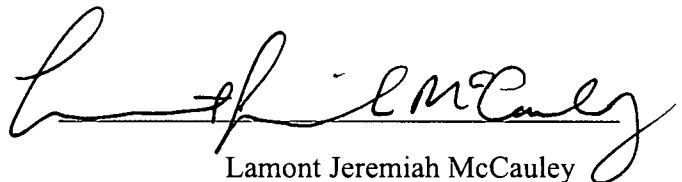
The plaintiff alleges that the Circuit Court Judge ignored material evidence which affirmatively showed that court had subject matter jurisdiction. It is the plaintiff's contention that, the Circuit Court should not have considered other evidence outside of the facts in support of lack of subject matter jurisdiction and the Motion to Dismiss on a 12(b)(6). 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 by the defendant in his role as Family Court Clerk. 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, giving Circuit Court subject matter jurisdiction to hear the case.

## CONCLUSION

For the reasons and facts stated, The Plaintiff request that the Court of Appeals reverse the Order for Dismissal on 12(b)(6) issued by the Circuit Court on the grounds of procedural defect in the legal notification of a Motion for Dismissal and the non-consideration of material evidence giving the Circuit Court subject matter jurisdiction. The plaintiff further request that the South Carolina Court of Appeals consider the compelling interest of the public with respect to professional conflicts of interest and the defendant's working relationship with Greenville County's Circuit Court and its proceedings. The Plaintiff also requests that the court affirm the plaintiff's request for a trial by jury and the 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.

Respectfully submitted,

August 5, 2018



Lamont Jeremiah McCauley  
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29662  
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Authorize Rep for Appellant

**SERVICE OF APPELLANT BRIEF**

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. 2018-000741

Lamont Jeremiah  
McCauley,

Appellant,

v.

Paul Wickensimer,  
Greenville County Family  
Court Clerk's Office

Respondents.

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**SC Court of Appeals**

**PROOF OF SERVICE**

I certify that I have served the Notice of Appellant Brief on Paul Wickensimer, by depositing a copy of it in the United States Mail, postage prepaid, on August 8, 2018, addressed to his attorney of record, Russell W. Hater, Jr., 14 Lavinia Avenue, Greenville, South Carolina 29601.

August 6, 2018

s/ Lamont Jeremiah McCauley

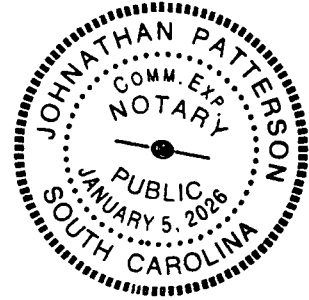
Lamont Jeremiah  
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504 Bethel Drive  
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Appellant

Sworn before me this Day of August 8<sup>th</sup>, 2018

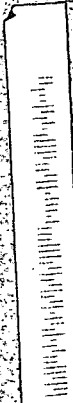
[Signature]  
Notary Public

[Signature]  
Signature of Affiant

My Commission expires 1/5 January 5, 2026



LAMONT JEROME Mc Cawley  
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