

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Lamont Jeremiah McCauley, Appellant,

v.

Paul Wickensimer, Greenville County Family
Court Clerk's Office, Respondents.

Appellate Case No. 2018-000741

INITIAL BRIEF OF RESPONDENTS

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Attorneys for Respondents

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STATEMENT OF THE CASE

This appeal arises out of an action filed by McCauley in the Greenville County Court of Common Pleas. McCauley alleges that he was a party to a family court proceeding that resulted in the Greenville County Family Court directing McCauley's employer to withhold wages for payment under a foreign support order from Georgia. The Plaintiff's Complaint has a number of attachments that include a notice filed with the Greenville County Family Court on May 5, 2017 requesting enforcement of the support order from the State of Georgia. The Plaintiff contends that the Defendant Clerk of the Greenville County Family Court prematurely issued a directive resulting in the Plaintiff's wages being withheld for a period of time in the total amount of \$1,150.00.

It appears further that the Greenville County Family Court issued an order dated October 24, 2017 which dismissed the Family Court action in Greenville County and suspended enforcement of the Georgia child support order. The Family Court Order of October 24, 2017 also provided that any funds which had been collected by the Greenville County Clerk of Court and disbursed to the State of Georgia would be subject to challenge in an action in the State of Georgia.

McCauley alleged that the wage garnishment was not in keeping with proper procedure and the Plaintiff alleges entitlement to monetary damages from the Clerk of Court.

The defendants filed a Motion to Dismiss asserting immunity pursuant to the South Carolina Tort Claims Act including S.C. Code Ann. §15-78-60 and subsections (1), (2), (3), (4), (5), and (23). The defendants asserted that the issues raised by the McCauley appear to be judicial and quasi-judicial actions and/or administrative actions of a judicial or quasi-judicial nature. Further, the defendants alleged that the claim is also one that relates to the institution or prosecution of a judicial and/or an administrative proceeding; and all acts alleged of the Clerk of Court were within the course and scope of the Clerk's official duties.

A hearing took place on March 12, 2018 with The Honorable Judge Gravely presiding at which time the Court granted Defendants' Motion to Dismiss on the above-mentioned grounds and specifically holding that the allegations set forth in Plaintiff's Complaint are barred by the South Carolina Tort Claims Act.

The plaintiff filed a Motion to Change Venue, which was set for March 12, 2018. The Court's ruling on the Defendants' Motion to Dismiss made the plaintiff's venue motion moot.

McCauley appeals the Order dismissing the action alleging that he did not receive proper notice of Defendants' Motion to Dismiss, that the Circuit Court ignored material evidence, and improperly heard argument from defense counsel concerning the grounds for dismissal.

STANDARD OF REVIEW

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Id.* If the facts alleged and inferences deducible therefrom would entitle the plaintiff to any relief, then dismissal under Rule 12(b)(6) is improper. *Sloan Const. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008).

SUMMARY OF ARGUMENT

1. McCauley was properly notified of the Defendant's Motion to Dismiss.

McCauley was served Defendants' Motion to Dismiss on January 31st, 2018. The hearing took place on March 12, 2018. At that time, McCauley was present and did not object to the Court hearing both motions.

Upon information and belief, McCauley was provided adequate time to prepare and did not object to the Court hearing both motions at the time of the hearing on March 12, 2018. In addition, McCauley did not ask the Court for more time and/or that the motion be continued; and even if the motion was not heard at that time, giving McCauley more time would not have changed the law or the arguments and the outcome would have, and should have, been the same.

2. The Court properly concluded that McCauley's Complaint failed to state a claim upon which relief can be granted.

Argument A

McCauley alleges that the 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)." (McCauley Initial Brief, p. 9.) Contrary to McCauley's allegations, the Court only considered what was set forth in the Plaintiff's Complaint which included numerous attachments and then applied the facts of the case to the law. The Plaintiff's Complaint incorporated a Family Court Order dated October 24, 2017 which provided that any funds which had been collected by the Greenville County Clerk of Court and disbursed to the State of Georgia would be subject to challenge in an action in the State of Georgia, not South Carolina.

Furthermore, the acts and/or omissions alleged in the Plaintiff's Complaint are clearly an administrative function of the Clerk of Court. Therefore, the Court properly found that Plaintiff's Complaint did not set forth facts sufficient to state a cause of action because plaintiff's claims are barred by the South Carolina Tort Claims Act.

Argument B

The claim of the plaintiff relates to the Clerk of Court's actions with respect to provisions of the Uniform Interstate Family Support Act. Pursuant to S.C. Code

Ann. §63-3-530, the Family Court has exclusive jurisdiction, and the Circuit Court therefore, lacks subject matter jurisdiction as to the issues raised by the argument in the Complaint.

3. Arguments of Counsel

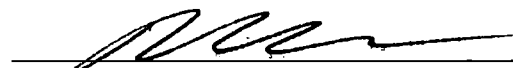
Contrary to McCauley's allegations the Court properly heard arguments from both parties and applied the law to the facts of this case. The dismissal of the Plaintiff's Complaint is based on the plaintiff's failure to plead facts sufficient to constitute a cause of action. The Court properly applied the law and McCauley's argument is without merit.

CONCLUSION

In view of the arguments and authorities set forth above and in Defendants' Motion to Dismiss, the appellees respectfully submit that McCauley's appeal is improper, and they are entitled dismissal of the Amended Complaint as a matter of law.

Respectfully submitted,

CHAPMAN, HARTER & HARTER, P.A.


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October 10, 2018
Greenville, South Carolina

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PROOF OF SERVICE

I certify that I have served the RESPONDENTS' INITIAL BRIEF and DESIGNATION OF MATTER on the above named pro se Appellant by mailing, first-class postage pre-paid, at the following addresses:

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

RE: *Lamont Jeremiah McCauley v. Paul Wickensimer and Greenville County Family Court Clerk's Office*
Case Number: 2017-CP-23-08068
Appellate Case Number: 2018-000741

Dear Ms. Kitchings:

I enclose herewith the original and two copies of the following on behalf of Respondents, Paul Wickensimer and the Greenville County Family Court Clerk's Office:

1. Initial Brief of Respondents;
2. Respondents' Designation of Matter; and
3. Proof of Service.

By copy of this letter, I am forwarding a copy of said documents to the Appellant as reflected on the Proof of Service. Upon filing being effectuated, I respectfully request that you return a filed copy to this law firm in the envelope that I have provided.

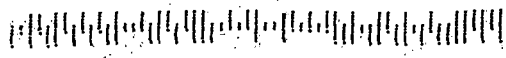
Should you have any questions, please feel free to call our office.

With kind regards, I remain

Very truly yours,
CHAPMAN, HARTER & HARTER, P.A.

Russell W. Harter, Jr.

RWH,jr:ccb
Enclosures



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