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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2014-CP-10-05407
2017-CP-10-04031

RECEIVED

NOV 16 2018

SC Court of Appeals

Churchill Park, Respondent

v.

Alan G. Nix, Norma J. Nix and the Estate of Norma J. Nix, Defendants,

Of which Alan G. Nix is the Appellant

Appellate Case Number 2018-000056 / 2018-000174

**APPELLANT'S MOTION TO CLARIFY AND RECONSIDER ORDERS DATED 2
NOVEMBER 2018**

BACKGROUND

In accordance with Rule 60(b), SCRCPP, Appellant Alan Nix submitted a motion on May 23, 2018 seeking leave of the SC Court of Appeals to file a Rule 60(b) motion in the Charleston County Court of Common Pleas for cases 2014-CP-10-05407 and 2017-CP-10-04031. On July 19, 2018, Appellant received notice of the Court of Appeals Order of July 17, 2018 denying Appellant's motion. Appellant filed a motion on July 24, 2018 asking for a reconsideration of and clarification of the Order of July 19, 2018 and this time, included a subset of grounds of which Appellant would include in a 60(b) motion. The Court filed a second Order on September

6, 2018 denying the motion for reconsideration, providing no clarification of the Order of July 17, 2018 as was specifically requested by the motion filed July 24, 2018 and likewise and of considerable concern, provided no rationale for the second denial. On October 27, 2018, Appellant filed a third motion requesting leave to file a 60(b) motion and requesting clarification of the denial from September 6, 2018. On November 2, 2018, Appellant received notification from the Clerk of Court, dated October 30, 2017, that the motion fee had increased from \$25 to \$50 on October 9, 2018 and that the Court would not consider the motion if Appellant did not provide the required \$50 motion fee within 10 days of the date of the letter. On November 3, 2018, Appellant amended the motion filed October 27, 2018 and resubmitted the motion via USPS on the same day. On November 7, 2018, Appellant received a letter from the Clerk dated November 2, 2018 which included an order of denial of Appellant's motion to remand dated September 1, 2018, which contained not clarification of the basis of the denial, in, a letter from the Clerk stating that an update related to the correction of transcripts had to be filed with the Court of Administration or the appeal would be dismissed, and a third denial of Appellant's request of leave of the court to file a 60(b) motion, this time specifying that due to Appellant's failure to provide sufficient grounds to support his "emergency" motion for leave, the third request for leave is denied. The order goes on to deny Appellant's second request for clarification of the previous two denials.

DISCUSSION

The Appellant, Alan Nix, files this motion for reconsideration and clarification based on the following observations, which gives rise to considerable concern of the operation of the Court of Appeals, and if these apparently conflicting orders are limited to the Appellant's appeals, or a very small subset of the Courts backlog, Appellant wishes to timely raise these concerns for proper consideration of the court as to the potential impression one may derive from this pattern of conduct by the court.

The motion to remand was accompanied by a subset of motions that have not been heard or ruled on by the lower court. The pattern of conduct by the lower court of hearing only the motions that it apparently deems in its best interest to hear and rule on, and not hearing and covertly closing the motions that it does not apparently want to hear or rule on, using the Master in Equity's case management system to close such motions while leaving them appearing to be

open on the main Clerk of Court's case management system provides the serious perception of impropriety. Furthermore, after Appellant reviewed the Court of Appeals order dated May 9, 2018, the Court's usage of the word "alleges" indicates that the Court of Appeals may have been aware of such conduct by the Charleston County Master in Equity as far back as April or May 2018. Clearly, it is improper and damaging to the Appellant to have unheard and unruled on motions pending in the lower court with which he cannot properly utilize in an appeal, or other motions in the lower court.

With respect to the pattern of denials of the Appellant's request for leave to file a simple 60(b) motion in the lower court in almost inexplicable at this point. The first denial appears to indicate that the denial was based on something the court considered, but the original denial does not state what that was, nor do the two follow on denials which were accompanied by a request of the court to clarify the apparent deficiency the Appellant was apparently making which was leading to the original, and subsequent denials. The second request of the Appellant's, without guidance of the Court, included a subset of grounds with which the 60(b) motion would be based, but nevertheless, the court, for a second time, denied Appellant's motion for leave without explanation. The Appellant submitted a third motion for leave, which was rejected on October 30, 2018 for not submitting the new motion fee of \$50, and during the period the Clerk's denial of the motion was in transit via USPS back to Appellant, the Court denies the motion, stating that the Appellant did not provide sufficient grounds for the motion, of which the Appellant did not provide any grounds because no previous denial stated any such grounds were necessary for the Court to grant leave. And like the two previous denial, the court refuses to clarify the rationale for the two previous denials, of which the second motion clearly laid out grounds for the motion to be based upon. Lastly, the timing of the Court of Appeals denials appears to be linked to hearings and proceedings in in the Charleston County Master in Equity Court.

At this juncture, Appellant argues that this pattern of conduct by the Court of Appeals raises serious issues related to the general operation of the Court, and more specifically related to the perception of bias against the Appellant, and more likely in favor of the Respondents, Respondents associates, and in favor of Judge Scarborough in an effort to protect him from being required to hear and rule on necessary motions which would likely expose him to additional scenarios that would be detrimental to his ability to continue being a judge in South Carolina.

WHEREFORE, Appellant Alan Nix respectfully requests this Court:

1. Explain, in detail, the basis of the Courts rulings on the Appellant's motions for leave to file a 60(b) motion in the lower court.
2. Explain the court's rationale for denying the Appellant's motion to remand.
3. Without a documented, thorough and appropriate rational of the court's continuous denials, grant Appellant's motion for leave and properly grant equitable tolling of the statue of limitations to all claims, counter claims and / or cross claims and motion deadlines that should have been allowed to have been included in these matters originally, or have accrued since the improper management of these matters beginning in February 2016.
4. Any other and further relief as the Court deems just, prudent, and proper.

Appellant will supplement this motion with a memorandum in support within fifteen days if the Court has not ruled in favor of the Appellant's motion filed November 3, 2018 and provided the requested clarification contained in this motion.

Dated: November 13, 2018

Respectfully submitted,



Alan G. Nix
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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

The Honorable Mikell R. Scarborough, Master in Equity

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Of which Alan G. Nix is the Appellant

Appellate Case Number 2018-000056 / 000174

PROOF OF SERVICE

The undersigned certifies that a copy of the Appellant's motion for clarification, reconsideration, etc. has been served upon the individuals listed below by mailing a copy of the same, postage prepaid, in the United States Mail, addressed as shown below this 13th day of November 2018 to:

Plaintiff Attorneys:
Stephanie Trotter, Esq.
McCabe, Trotter & Beverly, P.C.
P.O. Box 212609
Columbia, SC 29221

Todd M. Musheff, Esq.
Law Offices of Todd M. Musheff
1121 Park West Blvd., Ste. B 148.
Mount Pleasant, SC 29466

Judge Scarborough
Master in Equity, Charleston County
100 Broad St., Ste. 266
Charleston, SC 29401

Charleston County Attorneys
4045 Bridge View Dr.
North Charleston, SC 29405
(Judge Scarborough attorney)

Defendant Attorney:
Sally Newman, Esq.
Charleston Legal Access
1630 Meeting Street
Charleston, SC 29405
Norma J. Nix (2014-CP-10-05407) and
The Estate of Norma J. Nix (2017-CP-10-04031)

Sarah Schreiber
Charleston Legal Access
1630 Meeting Street
Charleston, SC 29405

Dated: November 12, 2018

Respectfully submitted,

By:



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12 November 2018

Alan Nix
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Mount Pleasant, SC 29466

Ms. Jennie Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

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SC Court of Appeals

RE: Churchill Park v Alan G. Nix, et al
S.C. Appellate Case Number 2018-000056 / 000174
Motion for Clarification, etc.

Ms. Abbott Kitchings,

In response to your letter dated, 2 November 2018, received 8 November 2018, please accept this motion related to several concerns the contents of the letter raises.

Please find enclosed for the file:

1. Appellant's Motion for clarification and reconsideration of orders dated 2 November 2018
2. Proof of Service.
3. check number 773 in the amount of \$50.00 for the motion filing fee
4. Copies of the Motion and Proof of Service to be returned with your clock stamp
5. Self-addressed and postage prepaid envelope to return the enclosed copies of the Motion and Proof of Service

All of the above are being mailed to you on the date of this letter, or the next available business day of USPS to ensure proper tracking and delivery.

Thank you very much for your assistance and please let me know if you require anything else related to this filing.

Best regards,



Alan Nix
(c) 843.991.4170
(e) alan.g.nix@gmail.com

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SC Court of Appeals

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 S.C. COURT OF APPEALS
 1220 SENATE ST

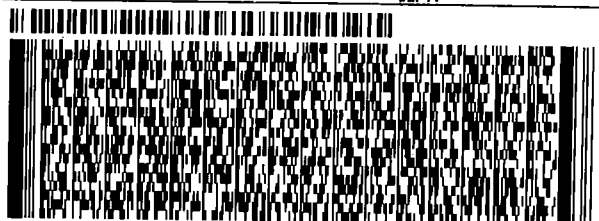
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