

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr, Master-in-Equity

Appellate Case No. 2018-001279

RECEIVED

DEC 21 2018

SC Court of Appeals

Michael Stehney, Jr., Respondents,

v.

Ronald E. Ferguson, Susan M. Ferguson, and Ronald J. Ferguson, Defendants,

Of whom Ron Ferguson, Ronald J. Ferguson, and Susan M. Ferguson are the Appellants.

MOTION TO VACATE

Defendants Ronald E. Ferguson and Susan M. Ferguson ("Defendants") moves for relief pursuant to Rule 11, 60, SCRCP, SC Code 15-36-10, and herein requests review of this Courts' granting Respondent's Motion to Dismiss in this matter, vactur of same and recalling the Remittitur.

The record demonstrates that a Motion to Dismiss was filed by Plaintiff on or about July 16, 2018. Thereafter, Plaintiff provided correspondence to the Court dated July 30, 2018 alleging that Defendants refused service of the Motion and sought to serve same a second time. In an Order dated August 9, 2018, the Court ruled on the Motion and dismissed Defendants from the appeal. Subsequent to this Plaintiffs again made allegations involving the postal service.

Defendants having spoken with employees of the the United States Postal Service have

determined that Plaintiff's Motion to Dismiss, contrary to their Certificate of Service, was mailed with insufficient postage and that caused the return of the parcel.

Defendants would submit the Court was misled by Plaintiffs and the Order dismissing same was an "abuse of discretion". "An abuse of discretion... occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." In re Estate of Weeks, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997). "[A] plaintiff need only show compliance with the rules." Roche v. Young Bros., Inc., 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995). When the rules are followed, it is presumed that service was proper. Id. It is incontrovertible that when Plaintiff(s) fail to follow the rules of process the judgment shall be set aside.

BACKGROUND

The underlying matter in the case on appeal alleges that Defendants were responsible for the actions of a licensed builder who constructed a residential dwelling on Defendants property and as a result Plaintiff suffered damages via runoff escaping the property and into a street drain that discharged into a pond Plaintiff developed within an easement on property he owns.

Despite numerous facts the Complaint was defective and withheld factual criminal elements, lower court judiciary repeatedly denied discovery on those elements. Plaintiff's counsel was one of several parties previously named in an action for legal malpractice in Civil Action No. 2013-CP-23-05022 which was dismissed by former Circuit Court Judge and current Court of Appeals Judge D. Garrison Hill as premature. Now that there is a judgment in the matter at bar, Judge Hill's thoughts on the matter being ripe for review and implicated himself in the process.

FRAUD UPON THE COURT

First, the motion presented to the Court of Appeals in and of itself is factually inaccurate. There

are multiple cases pending involving the same litigants, same period of time with varying claims. In some cases the Ferguson's were represented by counsel and others are pro-se. While the parties have been apprised by the Court regarding "practice of law", a review of the transcript from the hearing which Plaintiff references yields the presiding judiciary admonishing Ronald E. Ferguson and not Ronald J. Ferguson for conduct involving spouse Susan M. Ferguson. The judiciary, D. Garrison Hill, who now sits on the Courts on Appeals, is also implicated in the criminal complaint involving these matters.

Second, Plaintiff's counsel had personal knowledge that insufficient postage was affixed to the motion mailed to the Fergusons in July 2018 yet counsel submitted correspondence to the Court stating that service was refused. This was merely a veiled attempt to avoid scrutiny for his criminal actions on behalf of Michael Charles Stehney, Junior, in this matter. Something which gone unchecked for a number of years.

During the trial Plaintiff testified to hiring the prime witness to perform work involving excavation in the road easement, altering underground drains which extended to the land in question, and not obtaining any type of permit for the work. Plaintiff's witness went on to state he was licensed to and has performed plumbing work for Plaintiff, including the excavation of storm drains at the road and installing pipes that ran to the pond area. Without permits. Moreover, the witness detailed his engineering background and professional abilities to determine the damages allegedly owed to Plaintiff.

Pursuant to both state and federal law it is a criminal offense for the Plaintiff to perform the work or hire someone who was not qualified to perform the work within the easement. Contrary to Jones' assertions, the witness was not licensed at the time or now by the State of South Carolina as a plumber nor has the subject ever been licensed as an engineer in this state. His performing the work was a criminal offense, his testifying in court related to damages in the amount of \$26,500.00 involving engineering, plumbing and electrical work are additional criminal offenses.

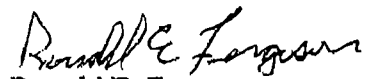
Plaintiff, by and through counsel, not only omitted all facts related to their criminal conduct in the original complaint, but failed repeatedly to disclose such during discovery, submitted documents to the government alleging his client unable to meet and discuss events, and failed to disclose to the Court, Defendants or other pertinent parties that Plaintiff and his witness had committed a crime or unqualified to testify about the damages. Instead, Plaintiff's counsel has looked to utilize the rules to prevent disclosure of his clients illegal activities.

While the substance of the case could have been dealt with in an appropriate manner, beginning with Judge Garrison Hill, the matter was allowed to drag on for over half a decade now. South Carolina Supreme Court precedent dictates that a lower court judgment is unenforceable when the facts underlying the judgment lacks facts which support same. It is without argument that a Plaintiff and prime witness who admitted to crimes which the complaint is based upon and further criminal offense to testify to damages would be upheld. In fact, it served as grounds for another court to address the matter under seal and involve government investigators.

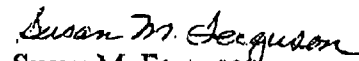
At this juncture the Ferguson have grounds to pursue additional litigation for redress, to include declaratory relief related to how Plaintiff's counsel presented the Motion and obtained the Order dismissing them from the action. That is in addition to the scrutiny afforded judge Garrison Hill who had a duty to report Plaintiff's counsel for violations in years past and has since ruled in the matters at the appellate court level.

Whereas there will be a judicial review of the actions related to Plaintiff's Motion to Dismiss and the subsequent Order issued, the Ferguson's prayerfully request this Court review the actions recall the remittitur, reinstate the Defendants on appeal, examine the facts of the matter and issue an opinion.

Respectfully submitted,



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Pro-se



Susan M. Ferguson
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PROOF OF SERVICE

I certify, that on this date, I served a copy of the Motion to Vacate, dated ^{12 20} ~~11 22~~ 2018 on Respondent's Attorney of record by mailing it to the address indicted by their counsel of record as follows:

Chace Campbell
12 East Stone Street
Greenville, SC 29609

²⁰¹⁸ This the ~~22nd~~ ^{December} day of ~~November~~, 2018.


Ronald E. Ferguson

Ronald E. Ferguson
103 Mill Creek Road
Piedmont, SC 29673

December 20, 2018
~~November 22, 2018~~

Hon. Jenny Abbott Kitchings
Clerk of Court
PO Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Stehney v. Ferguson, et al
Appellate No. 2018-001279

Dear Ms. Kitchings:

Please find enclosed an original and six copies of an Motion to Vacate in the above referenced matter along with a check in the amount of fifty-dollars (\$50.00) for the filing fee. Please do not hesitate to contact me if there are any questions or concerns.

Respectfully,


Ronald E. Ferguson

cc: Chace Damon Campbell