

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

CASE NO. 2008-CP-17-0180

Gary Weaver, BEA Wallenstein, and B.E.A. Wallenstein
Hospice Inter Vivos Trust,Plaintiffs,

Of Whom Gary Weaver is the >.....Appellant,

vs.

Progress Energy Carolinas, Inc., William
Johnson, and John Does 1-20.....Respondents.

**FINAL BRIEF OF RESPONDENT
PROGRESS ENERGY CAROLINAS, INC**

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STATEMENT OF ISSUES ON APPEAL

The Lower Court's Order of November 25, 2009 is supported in the record in this case and the sanctions imposed do not constitute an abuse of discretion. The Appellant's various arguments and statement of issues on appeal are without merit and not supported in the record of this action.

STATEMENT OF THE CASE

This matter involves a long-standing dispute between the *Pro Se* Appellant and the Respondent regarding the provision of electricity to the Defendants' residence at 1253 Harlees Bridge Road in Dillon County. After years of proceedings before the Circuit Courts in Florence, and Dillon Counties as well as numerous filings in the Public Service Commission the Parties entered into a Mutual Release and Settlement Agreement on September 18, 2007. Had the Appellant complied with the terms of the Settlement Agreement the dispute between these Parties would have ended. Instead the Appellant, in contravention of the Settlement Agreement, persisted in his case before the Public Service Commission just four (4) days subsequent to entering into the Settlement Agreement. Both the Appellant and the Respondent filed Motions to Compel Enforcement of the Settlement Agreement. Hearings on these Motions were heard initially by Judge Burch and subsequently re-addressed by Judge Lockemy. In each instance the lower court ordered the Appellant to comply with the clear terms of the Settlement Agreement. Each of the Orders of the lower court declared that the proceeding had ended and instructed the Appellant to seek Appellate review in the event he disagreed with the Orders. In his final Order in this case Judge Lockemy instructed the Plaintiff to cease and desist from filing additional matters

in the lower court regarding his dispute with the Respondent. Failing to heed Judge Lockemy's Order, and failing to take an appeal from the Order, the Appellant persisted in pursuing case number 2008-CP-17-180 in which he realleged the same arguments that he had been making before Judge's Burch and Lockemy regarding his contention that the Respondent failed to comply with the terms of the Settlement Agreement (R. pp. 20-53).

The Respondent filed a Motion to Dismiss the Complaint on the grounds of Improper Service of Process, and other grounds (R. pp. 226-227). The Appellant filed numerous Motions including a Motion for Default. The matter was ultimately heard before Judge Baxley on November 3, 2009. Judge Baxley, after reviewing the previously filed Orders and considering the Respondent's Motion as well as sworn arguments from Mr. Weaver, issued an Order dated December 1, 2009 (R. pp. 10-16) dismissing the action and granting sanctions against the Appellant for his continued repetitive and frivolous filings. In a subsequent Order of January 6, 2010 (R. p. 19), Judge Baxley denied the Appellant's Motion to Reconsider, Alter, or Amend Judgment and for Extension of Time to File Pleadings. In this Order the lower court "found this litigation to be successive, vexatious, and directly violative of previous Court Orders finding the issues raised in this lawsuit to be res judicata", and denied the Motion. The trial court was clearly within its discretion in issuing its Order and this Appeal should be dismissed.

STATEMENT OF THE FACTS

On or about June 20, 1994, the Appellant Weaver (hereafter "Weaver") contracted with then Respondent Progress Energy Carolinas, Inc. (also referred to as "CP&L", "Progress Energy" and/or "PEC") for electricity service to his residence. On or about April

11, 1996 the Weavers contracted with CP&L to provide outdoor lighting service on the property. Both the electricity and the outdoor lighting service were provided pursuant to tariffs filed with and approved by the Public Service Commission of South Carolina. Immediately following the initiation of CP&L's provision of the outdoor lighting service, Weaver began to complain. Despite repeated attempts by CP&L to resolve Weaver's concerns, Weaver remained dissatisfied and it became increasingly evident to CP&L agents that Weaver's complaints were directly related to Weaver's unwillingness and/or inability to pay his CP&L bill. Weaver refused to make full, timely payments to CP&L and used a variety of techniques to avoid payment including sending partial payments to CP&L with elaborate instructions regarding how the payment should be applied. A large deficiency quickly accumulated in Weaver's account. (SR. pp. 30-38).

On June 4, 2001, Weaver, still claiming dissatisfaction with CP&L's service, filed a formal complaint against CP&L with the Public Service Commission of South Carolina (hereinafter "PSC" or "the Commission"). In this PSC complaint, Weaver contended, among other things, that the area lighting service was malfunctioning and that CP&L had engaged in unfair trade practices, violated PSC regulations, breached its contract with Weaver, breached implied and express warranties, engaged in misleading advertising and sales representations, exhibited an aggressive abuse of monopolistic power, caused emotional distress to Weaver and his wife, caused Weaver to experience a serious exposure to a security risk and was negligent. (R. pp. 30-38).

On November 30, 2001, in response to Weaver's motion for partial summary judgment, the PSC issued Order Number 2001-1095 (R. pp. 30-38). In this Order, the

Commission declared it had no authority to determine whether CP&L had engaged in unfair trade practices and had no authority to award damages. The Commission did award relief. The Commission directed CP&L to eliminate the Area Light Service fees and charges in Weaver's account from August 2000 to November 27, 2001, due to his claims of unsatisfactory service. CP&L complied with this direction by crediting Weaver's electric service account on December 4, 2001.

On December 5, 2001, the Commission issued Order Number 2001-1095, entitled "Order Dismissing Complaint With Prejudice" dismissing the remainder of Weaver's complaints against CP&L (SR. pp. 30-38). Weaver then filed a Petition for Rehearing and Reconsideration of Commission Order Number 2001-1090, claiming a denial of procedural and substantive due process.

On January 16, 2002, the Commission issued Order Number 2002-27, "Order Denying Relief and Ruling on Memorandum and Petition", finding that Weaver was not denied substantive and procedural due process (SR. pp. 47-52). Again the Commission reiterated that it did not have authority to address damages or unfair trade practices. The Order denied Weaver's Motion for Rehearing. Subsequently, the Commission issued Order Number 2002-28, "Order Denying Reconsideration" (SR. pp. 53-56). Notwithstanding Order Numbers 2002-27 and 2002-28, Weaver filed a written Request/Alternative Motion to Compel the Production of Documents. On January 31, 2002, the Commission issued Order Number 2002-73, "Order Denying Motion", declaring that Weaver's Motion was not properly before the Commission as the matter was no longer pending. Weaver then filed an Objection to Order Number 2002-28. On February 25, 2002, General Counsel for the

Commission returned Weaver's objection with a letter explaining that Order Number 2002-73 prevented the Public Service Commission from considering his objection.

On February 28, 2002, Weaver filed a Notice of Appeal with the Public Service Commission. This appeal concerned the February 25, 2002 denial, PSC Order Number 2002-73, PSC Order Number 2002-27, PSC Order Number 2001-1090, PSC Order Number 2001-1095, and "any and all previous Orders." On the same day, Weaver filed a Notice of Appeal and Summons and Complaint in the Dillon Circuit Court (R. p. 42).

Although the PSC did not have authority to adjudicate Plaintiff's allegations of unfair trade practices and property damage, the Court of Common Pleas plainly had such authority. On April 19, 2002, the Honorable Paul Michael Burch issued an Order dismissing Weaver's Complaint with prejudice (R. p. 42). The Court noted that Weaver had failed to name the Public Service Commission as a party, failed to commence his action within 30 days and failed to direct the Court's attention to any abuse allegedly committed.

Approximately two years later, on or about April 15, 2004, Weaver filed another Summons and Complaint in the Florence County Court of Common Pleas, Case Number 2004-CP-21-703, captioned Gary Weaver vs. Carolina Power and Light Company (Progress Energy), John and Jane Does 1-20, realleging each of the issues previously addressed by the Public Service Commission and the Circuit Court in Dillon County (R. pp. 41-46). Weaver did not serve this complaint until August 16, 2004. On September 14, 2004, Defendant Progress Energy filed a Motion to Dismiss and Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss (SR. p. 39). On November 22, 2004, the day of the hearing, Weaver filed his Memorandum in Opposition to the Motion to Dismiss. The

Motion to Dismiss was heard before Judge James E. Brogdon, Jr. on November 22, 2004. By Order dated December 17, 2004 and filed December 20, 2004, Judge Brogdon granted Progress Energy's Motion to Dismiss in its entirety (SR. pp. 40-46).

On January 18, 2005, Weaver filed a Notice of Appeal with the South Carolina Court of Appeals. On May 24, 2005 the Appeal was dismissed due to Weaver's failure to file and serve the Appellant's Initial Brief and Designation of Matter.

On July 9, 2004, Progress Energy filed a Summons and Complaint in the Dillon County Court of Common Pleas, Case Number 2004-CP-17-232, captioned Progress Energy Carolinas, Inc. vs. Gary Weaver and Beatrice Weaver. This was an action seeking to collect the outstanding balance on Weaver's account (SR. pp. 57-60), including amounts which the PSC determined were due and owing to PEC.

On September 18, 2007, a Mutual Release was entered into between the parties with regard to Case Number 2004-CP-17-232 (SR. pp. 25-26). On October 1, 2007 Judgment was entered in the matter noting that the case had been settled (R. p. 3). The Plaintiff, Progress Energy Carolinas, Inc., filed a Motion to Enforce Settlement on October 25, 2007 (R. pp. 77-82). The Defendant Gary Weaver filed a Motion to Enforce Settlement on October 26, 2007. A hearing on the pending Motions was heard before Judge Burch on January 30, 2008. Judge Burch entered Judgment on a Form 4 Order on February 28, 2008 granting the Plaintiff's PEC's Motion to Enforce Settlement. (R. p. 4).

In a subsequent Order dated March 24, 2008 Judge Burch noted that the Defendant Gary Weaver had filed numerous post trial motions including a Request for Clarification dated March 7, 2008 and a Letter of Transmittal dated March 10, 2008. In his March 24,

2008 Order Judge Burch noted that “The Court construes the Request for Clarification and the Letter of Transmittal to be a Rule 59(e) Motion and finds that this is the only issue properly before the Court at this time.” Judge Burch then ordered that the Defendant Gary Weaver’s Rule 59(e) Motion to Reconsider or Amend be denied. (R. p. 5).

The Lower Court held another hearing in the matter on June 3, 2008. In Judge Lockemy’s Order of June 27, 2008 he stated that the case had “ended with the issuance of Judge Burch’s Order of March 24, 2008” and that “The Clerk of Court is directed not to accept any further pleadings or filings in this matter.” Judge Lockemy noted at the bottom of the June 27, 2008 Order that the Court had received a letter from Mr. Weaver dated June 19, 2008 and viewed it as a type of Rule 59(e) Motion and did not feel it was appropriate and was denied. Judge Lockemy once again ordered that Case Number 2004-CP-17-232 was over and if Mr. Weaver was dissatisfied, “then he should seek appellate relief.” (SR. pp. 67-70).

On May 30, 2008, Mr. Weaver filed what he purported to be a Verified Complaint: Summons (Contract). The Summons and Complaint were apparently accepted for filing; however, no case number was assigned when filed. On August 6, 2009, the Defendants filed a Motion pursuant to SCRCP Rule 12(b)(2), 12(b)(4) and 12(b)(5) requesting an Order of Dismissal based on the fact the Plaintiff had no affected service on either the individual Defendant, Mr. Johnson, or the Corporate Defendant Progress Energy Carolinas, Inc.¹ A review of the facts alleged indicate that Mr. Weaver was continuing to complain about the

¹ The Appellant’s 2008 Complaint is actually dated April 15, 2008, more than two months prior to Judge Lockemy’s final hearing in the matter.

identical issues being litigated in the 2004 case and repeatedly presented in filings submitted after the case was dismissed yet subsequently addressed by both Judges Burch and Lockemy.

Judge Lockemy entered Judgment on a Form 4 Order on August 12, 2008 denying the Plaintiffs' Motion to Consolidate Actions since Case Number 2004-CP-17-232 had ended and advising Weaver that if he disagreed with the dismissal he should seek appellate relief. (R. p. 8).

THE LAW OF THE CASE

During the protracted pendency of the various actions the Public Service Commission made numerous findings of fact. These rulings of the Public Service Commission were appealed to the Dillon County Court of Common Pleas in Case Number 2000-CP-17-090. Judgment was rendered on behalf of the Respondent in that case and the Court did not overturn any of the Commission's Findings of Fact or Conclusions of Law. As such, those Findings of Fact and Conclusions of Law are the law of this case.

Public Service Commission Docket Number 2001-249-E

In Public Service Commission Order Number 2001-1095, Order Dismissing Complaint with Prejudice, the Public Service Commission determined among other things:

- a) Weaver consistently made partial payments,
- b) Weaver was late in his payments to CP&L a total of 18 times out of 23 payments,
- c) The disconnection of Weaver's service was done with proper notices (emphasis added),

d) Since January, 1997, CP &L had accurately billed the complainant. Since January 1999, Weaver's bills have been prepared in accordance with CP&L's standard billing practices, procedures, and programs which are used to bill all of CP&L's customers.

e) Weaver failed to prove his case, and his testimony lacked credibility.

f) CP&L properly followed Commission Regulations 103-339(3), 103-340(5), 103-352(A), 103-352(B), 103-352(C).

g) Weaver had not met his obligations to pay the Company for the electric services he received as prescribed by Commission Regulation 103-341(2).

h) CP&L did not "harass" Weaver (SR. pp. 30-38).

Public Service Commission Docket Number 2004-219-E

In Public Service Commission Order Number 2007-298, Order Denying Motion to Continue and Dismissing Counterclaims, the Public Service Commission determined among other things:

a) That Mrs. Weaver was personally either unwilling or unable to litigate this matter to its conclusion by repeatedly requesting continuances due to her medical condition.

b) The Commission made reasonable efforts to accommodate her needs; however, it was not obligated to continue proceedings simply due to a request, it was up to the Commission's discretion.

c) The Commission denied Mrs. Weaver's fifth request for continuance.

d) Due to Mrs. Weaver's inability or reluctance to appear before a scheduled hearing to physically prosecute her counterclaims, Mrs. Weaver's counterclaims were dismissed without prejudice for lack of prosecution.

e) Progress Energy Carolinas Inc.'s Motion to Close Docket was dismissed as moot.

f) The matter was dismissed without prejudice (SR. p. 78).

In Public Service Commission Order Number 2007-835, Order Denying Motion for Reconsideration and Rehearing, the Public Service Commission determined among other things:

a) Mrs. Weaver's motion was untimely pursuant to S.C. Code Ann. §58-27-2150, and reiterated that the Commission acted properly within its discretion pursuant to S.C. Code Ann. Regs. 103-862 (renumbered as S.C. Code Ann. Regs. 103-838 on April 27, 2007) when it dismissed Mrs. Weaver's counterclaims without prejudice in Order Number 2007-298.

b) Order 2007-298 was a final order not subject to reconsideration by the Commission and that Mrs. Weaver needed to seek relief from the order only in the appellate courts of South Carolina.

c) None of Mrs. Weaver's arguments had merit and it was appropriate to dismiss Mrs. Weaver's counterclaims.

d) The motion of Mrs. Weaver to reconsider and vacate Order Number 2007-298 was denied in its entirety (SR. p. 82).

Public Service Commission Docket Number 2007-401-E

In Public Service Commission Order Number 2008-609, Final Order of Dismissal, the Public Service Commission determined among other things:

a) Mrs. Weaver failed to follow the Commission's regulation requiring her to pre-file testimony, failed to attend the hearing, and thereby failed to carry her burden of proof in seeking a change in electric service providers pursuant to S.C. Code Ann. §58-27-660.

b) Marlboro Electric Cooperative's (joined with Progress Energy Carolinas, Inc.) Motion to Dismiss was granted.

c) The matter was dismissed with prejudice.

ARGUMENT

I. The Lower Court did not abuse its discretion in dismissing the action and holding the Appellant in contempt for his successive and vexatious Court filings.

In finally ruling on Mr. Weaver's numerous and voluminous filings Judge Baxley found "this litigation to be successive, vexatious, and directly violative of previous Court Orders ..." (R. p. 19). Judge Baxley's ruling is supported in the record and within the lower court's discretion.

"An Appellate Court should reverse a decision regarding contempt 'only if it is without evidentiary support or the trial judge has abused his discretion'." Miller v. Miller, S.C. Ct. App. 2007, 375 S.C. 443, 652 S.E. 2d 754 2007 (quoting Stone v. Reddix Smalls, 295 S.C. 514, 516, 369 S.E. 2d 840 (1988)). "A determination of contempt is a serious matter and should be imposed sparingly; whether it is or is not imposed is within the discretion of the trial judge, which will not be disturbed on appeal unless it is without evidentiary support." Floyd vs. Floyd, 365 S. C. 56, 72, 615 S.E. 2d 465, 473 (Ct. App. 2005). A Court "has the inherent authority to punish offenses calculated to obstruct,

degrade, and undermine the administration of justice, and such power cannot be abridged.” State Ex Rel. McLeod v. Hite, 272 S.C. 303, 306, 251 S.E. 2d 746, 748 (1979). “Contempt results from the willful disobedience of an Order of the Court.” Bigham v. Bigham, 264 S.C. 101, 104, 212 S.E. 2d 594, 596 (1975). “The determination of contempt ordinarily resides in the sound discretion of the trial judge.” State v. Bevilacqua, 316 S.C. 122, 129, 447 S.E. 2d 213, 217 (Ct. App. 1994). “ Those who are imprisoned until they obey the Order, carry the keys of their prison in their own pockets. If the sanction is a fine, it is remedial and civil if paid to the Complainant even though the contemnor has no opportunity to purge himself of the fine or if the contemnor can avoid the fine by complying with the Court’s Order.” Floyd v. Floyd, 365 S.C. 56, 75-76, 615 S.E. 2d 465, 475-76 (Ct. App. 2005).

In this action Mr. Weaver “held the keys of his own prison in his pocket”. Judge Baxley was clearly acting within his discretion in finding Mr. Weaver in contempt for his violation of prior Court Orders. This was clearly a matter of civil contempt and within the lower court’s discretion in imposing the sanction.²

The Appellant was clearly in violation of the Lower Court Orders of Judges Burch and Lockemy and Contempt is a proper sanction. The September 18, 2007 Mutual Release between these parties was intended to finally end the dispute that existed between the Appellant and Respondent. The Mutual Release was entered into the week prior to the matter being scheduled for trial and was conducted in lieu of a deposition of Mrs. Weaver.

² The Respondent agrees with the Appellant insofar as the Respondent did not request sanctions either in its pleadings or in any argument before the Court. The Respondent did however direct the Court’s attention to the prior Orders, in particular Judge Lockemy’s Order instructing the Appellant to cease and desist from filing additional pleadings.

Paragraph 3 of the Agreement states “Beatrice Weaver, Gary Weaver and Progress Energy Carolinas will dismiss any Complaint and any response thereto relating to any matter currently pending before the South Carolina Public Service Commission” (R. pp. 74-75). Paragraph 2 of the Mutual Release required Progress Energy to reinstate service upon payment of the first One Thousand (\$1,000) Dollars of the Three Thousand One Hundred Ten and 44/100 Dollars (\$3,110.44) the Weavers’ agreed to pay as a condition of settling the suit which Progress Energy Carolinas brought on the open account. On September 21, 2007, rather than alerting the Commission that the matters had been settled, Mrs. Weaver addressed a letter to the Chief Clerk/Administrator of the South Carolina Public Service Commission in which she advised that she had not received a “formal response to the several pleadings I have filed in the subject case over some months duration now. Please expedite the Commissions’s formal responses to the outstanding pleadings which I require for the record, pending future proceedings.” (R. p. 82) On October 25, 2007 the Respondent presented its Motion to Enforce Settlement based primarily on the Appellant’s refusal to inform the Public Service Commission that the dispute had ended.

Following the September 17, 2007 Settlement Agreement Mr. Weaver filed the following:

1. Request to Make Deposit in Court pursuant to Rule 67 dated October 18, 2007 (SR. pp. 88-92).
2. “Notarized Supplemental Memorandum to Request for Information on Change of Providers dated September 27, 2007 and filed October 18, 2007 (SR. pp. 97-107).
3. Motion for Enforcement of Settlement and for Redress of Wrongs and for Equitable Relief filed October 25, 2007 (SR. pp. 110-112).

4. Defendant *Pro Se* Gary Weaver's Memorandum in Response to Plaintiff's Motion to Enforce Settlement and in Support of Defendant's Motion for Enforcement; Affidavit of Gary Weaver; Exhibits A-N; Notice of Memorandum and Certificate of Service dated November 29, 2007 (SR. pp. 113-145).
5. Defendant Pro Ser Gary Weaver's Supplemental Memorandum in Support of Defendant's Motion for Enforcement of Settlement and for Redress of Wrongs and for Equitable Relief filed October 25, 2007; Appendices A-D; Affidavit of Gary Weaver; Exhibits A-G; Notice and Certificate of Service (R. pp. 108-112).
6. Summary Status of the Case; Exhibits A-D and G-1, G-2; Certificate of Service (Certificate of Service dated December 7, 2007) (SR. pp. 161-165).
7. Motion to file Supplementary Argument, Law and Amendments for Defendant's Motion for Enforcement and Relief filed October 25, 2007; Affidavit of Gary Weaver; Exhibits A-R; Notice and Certificate of Service filed January 25, 2008 (SR. pp. 167-239).

In addition to the above pleadings Mr. Weaver prepared a document titled Offer of Proof with Defendant's Exhibits D-1 to D-56 which he attempted to file during the hearing before Judge Burch on January 30, 2008 (SR. pp. 242)

Judge Burch entered a Form 4 Order dated February 28, 2008. In the Order the Judge noted "that the Defendant (Gary Weaver *Pro Se*) shall in forty-five days of this date (2/28/08) come into compliance with the terms of Paragraph 3 and 4 of the Mutual Release Agreement." The Judge further admonished "failure to comply shall subject the parties to the contempt powers of the Court" (R. p. 4). Subsequent to this Order Mr. Weaver filed a "Request for Clarification" dated March 7, 2008 (R. pp. 122-132) and a "letter of transmittal" dated March 10, 2008 (SR. pp. 243-244). As Judge Burch noted in his Order of March 24, 2008 "the terms of this Court's Order dated February 28, 2008 are crystal clear

with no ambiguities.” And Judge Burch dismissed what he was construing as the Appellate’s Rule 59(e) Motion to Reconsider or Amend.

Again, without taking appeal of the Court’s Order, on April 14, 2008 Mr. Weaver filed a document which he titled “Notice of Plaintiff’s Non-Compliance in Toto with Court Order filed February 28, 2008 in contempt of Court” (R. pp. 144-147). “This particular document is addressed to the Dillon County Clerk of Court and bears the date of April 14, 2008. It was also filed with the South Carolina Public Service Commission on at least one occasion. On April 29, 2008 Mr. Weaver addressed a letter to Judge Lockemy with copies to Judge Burch objecting to the release of the funds on deposit with the Clerk of Court. In addition to the letter he submitted an eighteen page Affidavit which he entitled “Defendant Gary Weaver’s Formal Response to Plaintiff’s letter dated April 24, 2008 filed by Mr. Mark W. Buyck, III, Esquire” (R. pp. 148-176). On May 2, 2008 Mr. Weaver transmitted to the Clerk a pleading entitled Motion for Declaratory Judgment as to Status of Docket and for Sanctions for Plaintiff’s Non-Compliance with Court Order in Contempt of Court; Memorandum in Support; Affidavit of Gary Weaver; Exhibits A-D; Notice of Motion; Certificate of Service (R. pp. 177-184 without exhibits).

In the face of Mr. Weaver’s voluminous and persistent filings, which by this time were being addressed directly to the Court, Judge Lockemy conducted a hearing on June 3, 2008. In his Order Judge Lockemy noted that Judgment had been entered in the case on October 2, 2007 and that Mr. Weaver’s contention that the Plaintiff was in violation of the Settlement Agreement had previously been addressed by Judge Burch in the hearing on January 30, 2008, Judge Burch’s Order of February 28, 2008, and Judge Burch’s Order in

response to Mr. Weaver's Motion for Reconsideration dated March 24, 2008. The Court noted that Progress Energy "was ready, willing and able to reconnect service to the Weavers' residence," and that the Weavers had previously refused reconnection. The Court then ordered Mr. Weaver to provide Progress Energy with a list of three dates on which he would be willing to make the premises available for the purposes of reconnecting service. Progress Energy was then to have seven days to designate which of the three days it would perform the reconnection. In Paragraph 14 of the Order Judge Lockemy begins "this case is ended." Judge Lockemy then directed the Clerk of Court "not to accept any further pleadings or filings in this matter." In a handwritten addendum to the Order Judge Lockemy referenced a letter he received from Mr. Weaver subsequent to the hearing and denied any request for reconsideration. Judge Lockemy further advised Mr. Weaver that if he "is dissatisfied with any ruling of this Court, then he should seek appellate relief."

In spite of Judge Burch's admonishments and Judge Lockemy's directives Mr. Weaver persisted in pursuing his frivolous arguments that Progress Energy was in violation of the Settlement Agreement. Mr. Weaver did not seek appellate review but instead persisted in his filings all of which were predicated on his contention that Progress Energy had violated the terms of the Agreement. Judge Baxley clearly acted within his discretion when he dismissed the action and held Mr. Weaver in contempt of court.

CONCLUSION

The Defendant respectfully request that this court issue an order dismissing the Plaintiff's Complaint pursuant to S.C.R.C.P. Rule 12(b)(6) or S.C.R.C.P. Rule 56.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

CASE NO. 2008-CP-17-0180

Gary Weaver, BEA Wallenstein, and B.E.A. Wallenstein
Hospice Inter Vivos Trust,Plaintiffs,

Of Whom Gary Weaver is theAppellant,

vs.

Progress Energy Carolinas, Inc., William
Johnson, and John Does 1-20.....Respondents

**PROOF OF SERVICE AND
211(b) CERTIFICATION**

I certify that I have served the Respondent's Final Brief on Gary Weaver, Appellant, *Pro Se* by depositing a copy of same in the United States, via regular US Mail and via certified mail, return receipt requested, postage prepaid to his address at Post Office Box 539, Little Rock, SC, 29567, on October 3, 2012. I do also certify that my Final Brief complies with Rule 211(b) SCACR

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SC Court of Appeals

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