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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger M. Young, Circuit Court Judge

-----  
Case No. 2009-CP-10-4264  
-----

Harold Simmons, Jr.,

Appellant,

v

Charleston County Family  
Court, Paul W. Garfinkel and  
South Carolina Department of  
Social Services, Pamela Brown,

Respondents.

-----  
RECORD ON APPEAL  
-----

Harold Simmons, Jr.  
1182 King Street  
Charleston, South Carolina 29403  
(843) 554-7414  
*Pro se*

James A. Stuckey  
123 Meeting Street  
Charleston, South Carolina 29401  
(843) 577-9323  
Attorney for Respondents

**RECEIVED**  
DEC 17 2012  
**SC Court of Appeals**

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# Order of December 26, 2010

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
Case No. 2009-CP-10-4264

HAROLD SIMMONS, JR., )  
Plaintiff, )  
-versus- )  
CHARLESTON FAMILY COURT, )  
PAUL W. GARFINKEL and )  
SOUTH CAROLINA DEPARTMENT )  
OF SOCIAL SERVICES, )  
PAMELA BROWN, )  
Defendants. )

**ORDER**

FILED  
2011 JAN -5 PM 3:24  
JULIE J. FREESTRONG  
CLERK OF COURT

5

This is an action against Family Court Judge Paul W. Garfinkel and Department of Social Services attorney Pamela Brown for actual damages for alleged false imprisonment and negligent infliction of emotional distress. By Amended Complaint filed December 23, 2009, plaintiff alleges that the defendants are political subdivisions of the State of South Carolina and that he "was imprisoned after appearing before Defendant Charleston County Family Court, Paul W. Garfinkel." The defendants pleaded the defenses of judicial and quasi-judicial immunity and the defenses of the South Carolina Tort Claims Act, S.C. Code § 15-78-10 *et. seq.* The defendants moved for summary judgment supported by the affidavits of Judge Garfinkel and attorney Brown. No counter affidavits or evidence was served or filed by plaintiff.

On December 10, 2010, defendants' motion for summary judgment came on to be heard. Plaintiff Harold Simmons, Jr. appeared *pro se* and presented his case. The defendants were represented by James A. Stuckey, Esquire.

After reviewing the pleadings, considering the Affidavits of record, and hearing the

presentations of the parties it is evident that at all times the defendants dealt with plaintiff Family Court Judge Paul Garfinkel was acting in his judicial capacity with jurisdiction over plaintiff and the cases before the Court and that attorney Pamela Brown was representing the Department of Social Services as prosecuting attorney in cases against plaintiff.

At common law, since at least 1772, "Neither party, witness, counsel, jury or Judge can be put to answer, civilly or criminally, for words spoken in office." *King v. Skinner*, Lofft 55, 56, 98 Eng. Rep. 529, 530 (K.B. 1772), quoted in *Burns v. Reed*, 500 U.S. 478, 490 (1991).

Judicial immunity is one of the basic common law tenets upon which our modern system of justice is built. Generally, a judge is immune from a lawsuit for money damages. *Butz v. Economou*, 438 U.S. 478 (1978); *Stump v. Sparkman*, 435 U.S. 349 (1978). Judicial immunity is an absolute bar in the sense that it absolutely bars litigation against a judicial officer in certain circumstances. The U.S. Supreme Court has carved out three exceptions. First, no judicial immunity exists if a judge acts in the "clear absence of all jurisdiction." *Stump*, 438 U.S. at 357. Secondly, judicial immunity extends only to judicial acts. *Forrester v. White*, 484 U.S. 219 (1988). The third limitation, which is of no concern in this present case, is that judges cannot claim judicial immunity for suits seeking only prospective injunctive relief. *Pulliam v. Allen*, 466 U.S. 522, FN 2 (1984).

Accordingly, defendant Judge Paul W. Garfinkel is entitled to absolute judicial immunity. Additionally, Attorney Pamela Brown is entitled to absolute prosecutorial immunity because of her actions as staff attorney in prosecuting the Family Court cases against plaintiff.

Absolute prosecutorial immunity "is not grounded in any special 'esteem for those who perform these functions, and certainly not from a desire to shield abuses of office, but because any lesser degree of immunity could impair the judicial process itself.'" *Kalina v. Fletcher*, 522 U.S. 118, 127 (1997) (quoting *Malley v. Briggs*, 475 U.S. 335, 342 (1986)). Prosecutors are entitled to absolute

immunity from civil liability for conduct "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). Absolute immunity is afforded prosecutors when acting "within the advocate's role." *Buckley v. Fitzsimmons*, 509 U.S. 259, 278 (1993).

These immunities are preserved in the South Carolina Tort Claims Act, S.C. Code § 15-78-10 *et. seq.*, which provides:

The governmental entity is not liable for a loss resulting from:

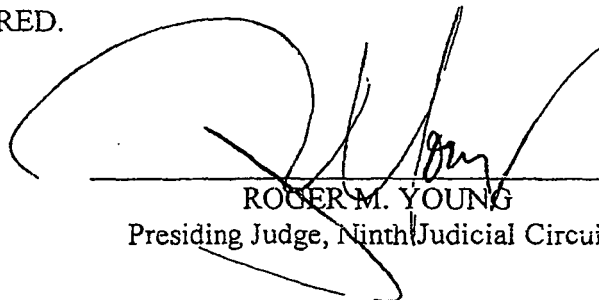
- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administration action or inaction of a legislative, judicial, or quasi-judicial nature.

S.C. Code § 15-78-60(1) and (2).

Accordingly, since the evidence before the Court is uncontradicted and there is no genuine issue as to any material fact, it is

ORDERED that the motion of the defendants for summary judgment is granted, and this action is dismissed except as to any motions which may be pending for sanctions under Rule 11, SCRPC, or S.C. Code § 15-36-10.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
ROGER M. YOUNG  
Presiding Judge, Ninth Judicial Circuit

December 24, 2010  
Charleston, South Carolina

# Summons and Complaint

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 09-CP-10-4204

Harold Simmons Jr.  
Plaintiff,  
Vs.

Charleston County Family Court, Paul W. Garfinkel  
100 Broad St, Charleston SC, 29401

**SUMMONS**  
(Jury Trial Requested)

South Carolina Department Of Social Services  
Pamela Brown, 3346 Rivers Ave  
North Charleston SC, 29405

Defendants

2009 JUL 10 AM 11:29  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

FILED

09-11307

TO: THE DEFENDANTS ABOVE-NAMED

**YOU ARE HERE BY SUMMONED** and required to answer the complaint herewith served

upon you and to serve a copy of your answer to the said Complaint on Plaintiff, Harold Simmons Jr. 1182  
King St, Charleston SC 29403, Within 30 days (30) days after the service hereof, Exclusive of the day of  
Such service.

**YOU ARE HEREBY GIVEN NOTICE FURTHER** that if you fail to appear and defend and  
fail to answer the complaint as required by this summons within thirty (30) days after the service hereof,  
Exclusive of the day of such service, judgments by default will be entered against you for the relief  
demanded in the complaint.

BY: Harold Simmons Jr.  
HAROLD SIMMONS JR.  
1182 King Street,  
Charleston SC 29403  
(843) 554-7414 (843) 723-7758

Charleston, South Carolina  
July 10, 2009

Submitting Party Signature: Paul Lewis Jr

Date: 7-10-2009

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Client Stated on May 8, 2006 he was arrested on a family court warrant on a rule to show cause. And on May 11, 2006 he was brought before Charleston County Judge Segars Andrews and South Carolina Department Of Social Services Attorney Pam Brown with also his workman Comp attorney Thomas White of Steinberg law firm. Who argue reasons why his client Harold Simmons Jr. should not be charged with contempt and to be release from jail. On May 11,2006 Harold Simmons was released and was told to come back to court on August 16, 2006 for a review just to give a workman comp update report. On August 16,2006 Harold Simmons Jr. Was wrongful imprisons by Charleston County Judge Paul Garfinkel and South Carolina Department of Social Services Attorney Pam Brown. This comes under the legal term "wrong", because of this Harold Simmons file this as follow:

Harold Simmons Jr.

Harold Simmons Jr.

2009 JUL 10 AM 11: 29  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

FILED

Harold Simmons Jr.  
1182 King Street  
Charleston SC, 29403  
(843) 554-7414 or (843) 723-7758

Vs.

Charleston County Family Court  
Paul W. Garfinkel  
100 Broad Street  
Charleston SC. 29401

AND

South Carolina Department of Social Services  
Pamela Brown  
3346 Rivers Ave  
North Charleston SC. 29405

The acts below are listed and are also found with legal definitions.

Validation of agreement held by Charleston County family court, South Carolina Department Of social Services

And

Harold Simmons Jr.  
On Date if May, 11 2006

False Imprisonment Dates from-  
August 16, 2006 through out October 20, 2006 to February 16, 2007

False Imprisonment- Intentionally restraining another person without having the legal right to do so. It's not necessary that physical force be used. False imprisonment is a tort (a civil wrong).

Torts-Violations under the Civil Law

Double Jeopardy-a common law and constitutional propitiation against a second trial for the same offense: Being tried twice for the same offense; prohibited by the 5th Amendment to the U.S. Constitution.

Double Jeopardy warrants

Double jeopardy rule to show cause

Disregard for sickness

Disregards for health

Disregards for finances

International Infliction of emotional distress

Disregards for medical update report

Disregards for update workman comp report

**COMPENSATION:**

Asking to be compensation-one hundred thousand dollars-100, 000,000 for each day of false imprisonment

One hundred fifty day (150) false imprisonment

Fifteen million dollars-15, 000,000,000

Pain and suffering Fifteen million dollars-15, 000,000,000

Punitive Damages fifteen million dollars-15, 000,000,000 Total Cost of law suite-Forty-five million Dollars

45,000,000,000.00.

  
Harold Simmons Jr.

## Amended Answer

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
Case No. 09-CP-10-4264

HAROLD SIMMONS, JR., )  
 )  
Plaintiff, )

-versus-

**AMENDED ANSWER**  
(Jury Trial Requested)

CHARLESTON FAMILY COURT, )  
PAUL W. GARFINKEL and )  
SOUTH CAROLINA )  
DEPARTMENT OF SOCIAL )  
SERVICES, PAMELA BROWN )  
 )  
Defendants )

Defendants, Charleston Family Court, Paul W. Garfinkel and South Carolina Department of Social Services, Pamela Brown answer the respective numbered paragraphs of the pro-se Plaintiff's Amended Complaint dated December 28, 2009 and stamped as filed in the Clerk of Court's office on December 23, 2009, thus:

**FIRST DEFENSE: QUALIFIED GENERAL DENIAL**

1. Admit so much of the allegations of Paragraph 1 of Plaintiff's Amended Complaint as allege that Plaintiff is a resident of Charleston County upon information and belief. Defendants' deny that all Defendants are political subdivisions of the State of South Carolina and demand strict proof thereof.
2. Deny Plaintiff experienced civil violations.
3. Defendants admit so much of paragraph 3 of Plaintiff's Amended Complaint as alleges the dates and persons involved, but deny the remaining allegations of said paragraph, demands strict proof thereof, and affirmatively state that plaintiff was found to be in contempt of court. Defendants crave reference to the transcript of this hearing entitled "Transcript of Hearing" dated August 16, 2006, Docket Numbers: 1992-DR-10-2995; 1993-DR-10-6999; and 1999-DR-10-2401 which was attached to plaintiff's original complaint.
4. Defendants re-allege and re-assert all facts and defenses as if fully reiterated in

Defendants' Answer and Amended Answer.

5. Deny.
6. Defendants re-allege and re-assert all facts and defenses as if fully reiterated in Defendants' Answer and Amended Answer.
7. Deny.
8. Deny.
9. Deny.
10. Deny.
11. Deny each and every allegation of Plaintiff's Amended Complaint not herein above specifically admitted, modified or denied.

**SECOND DEFENSE: FAILURE TO CONSTITUTE A CAUSE OF ACTION**

12. That the Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to Rule 12(b)(6), SCRPC.

**THIRD DEFENSE: QUALIFIED IMMUNITY**

13. The actions and conduct of defendants, in their individual capacity, to the extent they occurred as alleged, were objectively reasonable under the circumstances of which they were aware, did not violate any clearly established rights of which they reasonably should have been aware, and they are entitled to qualified immunity therefor.

**FOURTH DEFENSE: GOOD FAITH AND REASONABLE BELIEF**

14. The actions and conduct of defendants, their agents and employees, were undertaken in the good-faith performance of official duties, based upon reasonable cause, pursuant to just cause, not contrary to any law or regulation as made and provided, and proper under the circumstances.

**FIFTH DEFENSE: SOVEREIGN IMMUNITY**

15. At all times alleged the Charleston County Family Court and the South Carolina Department of Social Services were political subdivisions of the State of South Carolina, acting by and through designated employees within the scope of its official duties. Charleston County Family Court and the South Carolina Department of Social Services are such, and as such partakes and shares the SOVEREIGN IMMUNITY of the State of South Carolina, which they specifically plead, and especially all of the exceptions to the

South Carolina Tort Claims Act, S.C. Code § 15-78-10 *et. seq.*, including, but without limitation, these:

- a) "The governmental entity is not liable for a loss resulting from:...(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee."  
S.C. Code § 15-78-60(5)
- b) "The governmental entity is not liable for a loss resulting from:...(25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner" S.C. Code § 15-78-60(25), and such was not exercised in a grossly negligent manner.
- c) "No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment." S.C. Code § 15-78-120(b)
- d) When bringing an action against a governmental entity plaintiff "shall name as a party defendant only the agency or political subdivision for which the employee was acting....In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant."  
S.C. Code § 15-78-70(c)

**SIXTH DEFENSE: ABSOLUTE PUNITIVE DAMAGES IMMUNITY**

16. At all times alleged defendants are absolutely immune from punitive damages under Common Law, case law, and the South Carolina Tort Claims Act.

**SEVENTH DEFENSE: ADDITIONAL DEFENSE**

17. Defendants hereby give notice that they intend to rely upon such other affirmative 13 defenses as may become available or apparent during the course of discovery and thus reserve the right to amend their answer to assert any such defenses.

**EIGHTH DEFENSE: NEGLIGENT ACT OF OTHERS**

18. Plaintiff's claims, if any, are the result of negligent acts and omissions of other entities or persons over whom these defendants had no control, barring plaintiff's claims against these defendants.

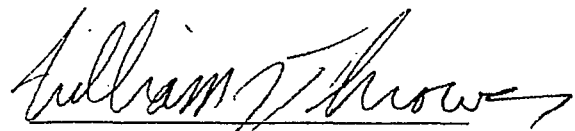
**NINTH DEFENSE: STATUTE OF LIMITATIONS**

19. The plaintiff's action and complaint was not timely filed, served or commenced within the requisite statute of limitations and defendants plead its provisions as a complete defense and bar thereto.

**TENTH DEFENSE: JUDICIAL IMMUNITY**

20. At all times alleged Paul W. Garfinkel and Pamela Brown were acting in a judicial and/or quasi-judicial capacity for the State of South Carolina and as such partake and share the JUDICIAL IMMUNITY of the State of South Carolina, which they specifically plead, and especially all of the exceptions to the South Carolina Tort Claims Act, S.C. Code § 15-78-60.

WHEREFORE, having fully answered the plaintiff's Amended Complaint, defendants pray that this matter be dismissed and that they recover all costs from the plaintiff.



William J. Thrower  
STUCKEY LAW OFFICES, LLC  
123 Meeting Street  
Charleston, SC 29401  
843-577-9323  
Facsimile: 843-577-3635  
Attorney for Defendants

1-5-10  
Charleston, South Carolina

## Request to Admit to Plaintiff

STATE OF SOUTH CAROLINA )  
 :  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
Case No. 09-CP-10-4264

HAROLD SIMMONS, JR., )  
 :  
Plaintiff, )  
 :  
-versus- )

**REQUEST TO ADMIT TO PLAINTIFF**

CHARLESTON FAMILY COURT, )  
 :  
PAUL W. GARFINKEL and )  
 :  
SOUTH CAROLINA )  
 :  
DEPARTMENT OF SOCIAL )  
 :  
SERVICES, PAMELA BROWN )  
 :  
Defendants )

Defendants pursuant to Rule 36, SCRPC, hereby request Plaintiff to admit the truth of the relevant matters of fact set forth hereinafter and to serve upon below signed counsel for Defendants such written admissions within thirty (30) days after service hereof pursuant to the stated rule:

1. Admit that plaintiff was hired as a longshoreman in 1998 and was working full time as a longshoreman in 1999 and 2000.
2. Admit that plaintiff made no child support payments in case 1999-DR-10-2404 until the year 2001.
3. Admit that payments plaintiff did make in the case 1999-DR-10-2404 in 2001 were less than the amount the plaintiff was required to pay.
4. Admit that plaintiff made no child support payments in case 1992-DR-10-2995 until the year 2003.
5. Admit that plaintiff made no child support payments in case 1993-DR-10-6999 until the year 2003.
6. Admit that plaintiff was found to be in contempt of court on August 16, 2006 by the

Honorable Judge Paul W. Garfinkel.

7. Admit that the Honorable Paul W. Garfinkel heard the plaintiff's Motion to reconsider on October 20, 2006.

**CERTIFICATE OF SERVICE**  
The undersigned certifies that a true copy of the foregoing pleading has been served on the opposing counsel by mailing a copy addressed to the party addressed with sufficient postage affixed thereto this 11 day of Jan, 2010.  
By: [Signature]  
STUCKEY LAW OFFICES, LLC

[Signature]

William J. Thrower  
STUCKEY LAW OFFICES, LLC  
123 Meeting St.  
Charleston, SC 29401  
843-577-9323  
Facsimile: 843-577-3635  
Attorneys for Defendants

Charleston, South Carolina  
January 11, 2010

G:\SCDSS-Simmons(09-3175)\Discovery\RTA to Pl.wpd

# Motion for Non-Response to Request for Admissions

STATE OF SOUTH CAROLINA )  
: )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
Case No. 09-CP-10-4264

HAROLD SIMMONS, JR., )  
: )  
Plaintiff, )

-versus- )

CHARLESTON FAMILY COURT, )  
PAUL W. GARFINKEL and )  
SOUTH CAROLINA )  
DEPARTMENT OF SOCIAL )  
SERVICES, PAMELA BROWN )

Defendants )

**MOTION FOR NON-RESPONSE**  
**TO REQUEST FOR ADMISSIONS**

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2010 FEB 19 PM 3:37

FILED

TO: HAROLD SIMMONS, JR., PRO SE PLAINTIFF

NOW COMES James A. Stuckey, attorney for defendants, and states and certifies thus:

1. That on January 11, 2010 a copy of the attached DEFENDANTS' REQUESTS TO ADMIT TO PLAINTIFF dated January 11, 2010, was duly served upon the Pro Se Plaintiff, Harold Simmons, Jr., pursuant to Rule 36, SCRCF, as evidenced by the attached Certificate of Service of C. W. Dillard dated January 11, 2010 and clearly marked on DEFENDANTS' REQUEST TO ADMIT TO PLAINTIFF.

2. That on January 11, 2010, attorney William J. Thrower, Attorney for the Defendants, did mail, via US 1<sup>st</sup> Class mail with appropriate postage, a cover letter enclosing Defendants' Motion for Summary Judgment, Interrogatories, Request to Produce, and Request to Admit to Pro Se Plaintiff addressed thus and attached hereto:

Mr. Harold Simmons, Jr.  
1182 King St.  
Charleston, SC 29403

3. That more than thirty (30) days have elapsed since service of the Requests for Admission and no answer, objection, or other response has been made and they are deemed admitted.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 17<sup>th</sup> day of Feb, 2010  
By: [Signature]  
STUCKEY LAW OFFICES, LLC

[Signature]

JAMES A. STUCKEY  
STUCKEY LAW OFFICES, LLC  
123 Meeting Street  
Charleston, SC 29401  
843-577-9323  
Email: [jstuckey@stuckeylaw.com](mailto:jstuckey@stuckeylaw.com)  
Facsimile: 843-577-3635  
Attorney for Defendants

2/17, 2010  
Charleston, South Carolina

# Motion for Summary Judgment

STATE OF SOUTH CAROLINA )  
 :  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
Case No. 09-CP-10-4264

HAROLD SIMMONS, JR., )  
 :  
Plaintiff, )

-versus-

**MOTION FOR SUMMARY JUDGMENT**

CHARLESTON FAMILY COURT, )  
PAUL W. GARFINKEL and )  
SOUTH CAROLINA )  
DEPARTMENT OF SOCIAL )  
SERVICES, PAMELA BROWN )  
 :  
Defendants )

TO: HAROLD SIMMONS, JR., PLAINTIFF

Defendants move under Rule 56, SCRCP, for summary judgment in their favor on the grounds that there is no genuine issue as to any material fact and they are entitled to judgment in this cause as a matter of law because:

- 1) Defendants, Paul W. Garfinkel and Pamela Brown were acting in a judicial and/or quasi-judicial capacity for the State of South Carolina and as such partake and share the JUDICIAL IMMUNITY of the State of South Carolina, which they specifically plead, and especially all of the exceptions to the South Carolina Tort Claims Act, S.C. Code § 15-78-60.
- 2) At all times alleged the Charleston County Family Court and the South Carolina Department of Social Services were political subdivisions of the State of South Carolina, acting by and through designated employees within the scope of its official duties. Charleston County Family Court and the South Carolina Department of Social Services are such, and as such partakes and shares the SOVEREIGN IMMUNITY of the State of South Carolina, which they specifically plead, and especially all of the exceptions to the South Carolina Tort Claims Act, S.C. Code § 15-78-10.
- 3) The actions and conduct of defendants, in their individual capacity, to the extent they occurred as alleged, were objectively reasonable under the circumstances of

which they were aware, did not violate any clearly established rights of which they reasonably should have been aware, and they are entitled to QUALIFIED IMMUNITY.

This motion is based upon the pleadings filed in this case, depositions, evidence to be submitted, and such case law and argument as may properly be presented to the Court at the time of the hearing.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 11 day of JAN 2010

STUCKEY LAW OFFICES, LLC

By: 



William J. Thrower

STUCKEY LAW OFFICES, LLC

123 Meeting Street

Charleston, SC 29401

(843) 577-9323

Attorney for Defendants

Charleston, South Carolina

January 11, 2010

11

G:\SCDSS-Simmons(09-3175)\Motions and Orders\Motion for SJ.wpd

# Affidavit of Pamela D. Brown for Summary Judgment

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
Case No. 2009-CP-10-4264

HAROLD SIMMONS, JR., )  
Plaintiff, )  
-versus- )  
CHARLESTON FAMILY COURT, )  
PAUL W. GARFINKEL and )  
SOUTH CAROLINA DEPARTMENT )  
OF SOCIAL SERVICES, )  
PAMELA BROWN, )  
Defendants. )

**AFFIDAVIT OF**  
**ATTORNEY PAMELA D. BROWN**  
**FOR SUMMARY JUDGMENT**

2010 AUG 11 PM 2:45  
JULIE J. ARMSTRONG  
CLERK OF COURT

After first being duly sworn PAMELA D. BROWN deposes and says:

1. I am Pamela D. Brown, a named defendant in this lawsuit. I am a practicing attorney and in good standing before the South Carolina Bar. I graduated from the University of South Carolina School of Law in 1983, was admitted to the South Carolina Bar on November 16, 1983, and have been a practicing attorney in good standing since then.

2. I am presently a staff attorney with the S.C. Department of Social Services in the Charleston County offices. In all my dealings and contact with plaintiff Harold Simmons, Jr. I was prosecuting and handling delinquent child support cases filed against him in the Charleston County Family Court which were assigned to me. Mr. Simmons was a named defendant involved in these three delinquent child support cases:

1. *Gwendolyn Brown v. Harold Simmons*, Case No. 92-DR-10-2995,
2. *Debra Palmer v. Harold Simmons*, Case No. 93-DR-10-6999, and

3. *Amanda Jager v. Harold Simmons*, Case No. 99-DR-10-2404.

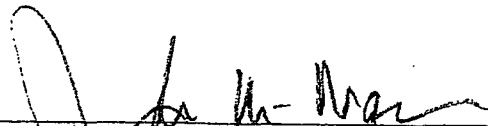
3. All of my dealings and contacts with plaintiff Harold Simmons, Jr., and all actions referenced in his Complaint, were in my capacity as an attorney for the S.C. Department of Social Services pursuing delinquent child support payments from Mr. Simmons and in initiating the prosecution and presenting the Department's cases before the Family Court of Charleston County. All of my actions and conduct were exclusively intimately associated with the judicial phase of the Family Court processes.

4. On two occasions, on August 16, 2006, and October 20, 2006, I appeared before the Honorable Paul W. Garfinkel, the presiding Family Court Judge in Charleston County, on the above cases. All of the proceedings were in open Court, judicial, and procedurally proper. Mr. Simmons appeared and was before the Court. He was afforded all just and proper legal protections. He was not falsely imprisoned nor was any emotional distress negligently inflicted upon him.

  
PAMELA D. BROWN

SWORN to before me this

9th day of August, 2010.

  
NOTARY PUBLIC OF SOUTH CAROLINA  
My Commission Expires: 8-27-17

# Affidavit of Paul W. Garfinkel for Summary Judgment

STATE OF SOUTH CAROLINA )  
: )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
Case No. 2009-CP-10-4264

FILED  
2010 AUG 11 PM 2:15  
CLERK OF COURT  
300 N. MARKET STREET

HAROLD SIMMONS, JR., )  
: )  
Plaintiff, )  
: )  
-versus- )

AFFIDAVIT OF

CHARLESTON FAMILY COURT, )  
: )  
PAUL W. GARFINKEL and )  
: )  
SOUTH CAROLINA DEPARTMENT )  
: )  
OF SOCIAL SERVICES, )  
: )  
PAMELA BROWN, )  
: )  
Defendants. )

JUDGE PAUL W. GARFINKEL

FOR SUMMARY JUDGMENT

Defendant PAUL W. GARFINKEL, after first being duly sworn, deposes and says:

1. I am Paul W. Garfinkel. I am a named defendant in this action and submit this Affidavit in support of my motion for summary judgment.
2. I am a duly elected and serving Judge of the Family Court of the Ninth Judicial Circuit. I was duly elected by the South Carolina Legislature on May 25, 1995, and have been continually serving since.
3. Any and all dealings and contact I have had with plaintiff Harold Simmons, Jr. was through my position as a presiding Judge in the Family Court of Charleston County dealing with delinquent child support cases. The cases were brought against Mr. Simmons by the South Carolina Department of Social Services. It was represented on each occasion by its staff attorney, defendant Pamela D. Brown, who prosecuted the cases on behalf of DSS.

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4. On each occasion when Harold Simmons, Jr. appeared before me as Judge in the Family Court, Charleston County Courthouse, I had jurisdiction of both the case and subject matter under SC Code § 63-3-530. JURISDICTION IN DOMESTIC MATTERS. My hearings served the judicial function of hearing and deciding three child support cases brought by the South Carolina Department of Social Services, which were

1. *Gwendolyn Brown v. Harold Simmons*, Case No. 92-DR-10-2995,
2. *Debra Palmer v. Harold Simmons*, Case No. 93-DR-10-6999, and
3. *Amanda Jager v. Harold Simmons*, Case No. 99-DR-10-2404.

5. On August 16, 2006, I held a hearing in the case of *SCDSS v. Harold Simmons, Jr.* concerning the above three docket numbers. Pamela D. Brown, Esquire, appeared for and represented DSS. Harold Simmons, Jr. appeared *pro se*. It appeared that Mr. Simmons owed back delinquent child support of \$4,101.15, \$4,429.52, and \$15,316.58 on the three cases. Mr. Simmons was found in civil contempt and sentenced to six months in the Charleston County Jail without good time or work credits, but was permitted to purge the contempt by paying \$5,506.39 on 1992-DR-10-2995 (Gwendolyn Brown), \$3,829.97 on 1993-DR-10-6999 (Debra Palmer), and \$2,004.34 on 1999-DR-10-2405 (Amanda Jager).

6. On October 20, 2006, I held another hearing in the case of *SCDSS v. Harold Simmons, Jr.*, Docket No. 2006-DR-10-3051 on a motion to reconsider filed by attorney Michael H. Murphy, III, on behalf of Mr. Simmons. Attorney Murphy and Tom White, Esquire, appeared for Mr. Simmons. Pamela D. Brown, Esquire, once again appeared for DSS via closed circuit telephone. Mr. Simmons' counsel stated that Mr. Simmons was injured on September 20, 2003, and was pursuing a workers compensation claim. It was stated that he was receiving \$240 a

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week but had not received any payment since April, 2004.

7. Examination of Mr. Simmons revealed that he was working regularly as a longshoreman in 1999 and 2000 but made no payments on either his 1992 or 1999 cases. Between September, 2003, and April, 2004, he was receiving about \$240 a week but made very few payments.

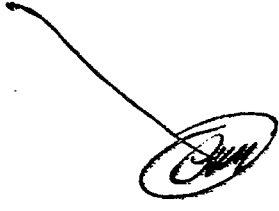
8. DSS attorney Pamela Brown stated that in the 1993 case Mr. Simmons made no payments until 2003, and in the 1992 case he didn't make any payments again until 2003. She stated he had a very poor history of payments. Mr. Simmons stated that he did not make payments when he was supposed to because he was trying to pay rent and was going through depression and not really focusing on everything, but was not on depression medicine; however, he was not taking any medicine for his depression.

9. The Court determined that, after an IRS payment which was made, that Mr. Simmons still owed a total of about \$11,400 on the three cases. The Court stated that Mr. Simmons would be placed on work release and if his family could come up with a significant amount of money something could be worked out. The motion for reconsideration was denied.

10. All my dealings and contacts with Harold Simmons, Jr. were in my judicial position as a Family Court Judge. In that capacity I had jurisdiction of the cases and parties under S.C. Code § 63-3-530, which provides for Family Court jurisdiction in domestic matters. All of my decisions were discretionary and based on the facts presented and applicable law. I believe myself entitled to absolute judicial immunity in all of my dealings with plaintiff Harold Simmons, Jr. and submit this Affidavit in support of my motion for summary judgment.

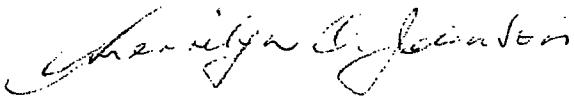
11. Harold Simmons, Jr. was not falsely imprisoned nor was any emotional distress negligently inflicted upon him.

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PAUL W. GAREINKEL

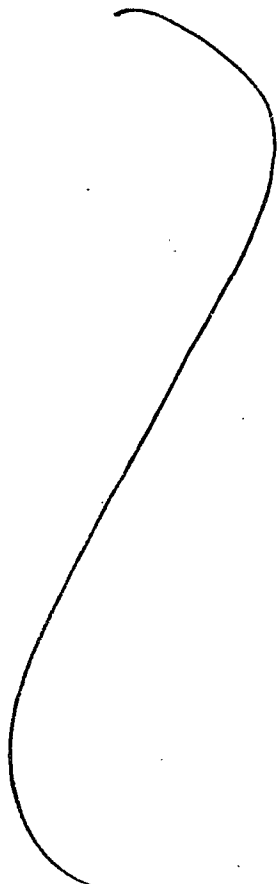
SWORN to before me this


11<sup>th</sup> day of August, 2010.



NOTARY PUBLIC OF SOUTH CAROLINA  
My Commission Expires: \_\_\_\_\_

**MY COMMISSION EXPIRES  
MAY 18, 2015**



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# Defendants' Memorandum for Summary Judgment

STATE OF SOUTH CAROLINA )  
 :  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
Case No. 09-CP-10-4264

HAROLD SIMMONS, JR., )

Plaintiff, )

-versus- )

CHARLESTON FAMILY COURT, )

PAUL W. GARFINKEL and )

SOUTH CAROLINA )

DEPARTMENT OF SOCIAL )

SERVICES, PAMELA BROWN )

Defendants )

**DEFENDANTS'**  
**MEMORANDUM FOR**  
**SUMMARY JUDGMENT**

TO: THE HONORABLE ROGER M. YOUNG  
Presiding Judge, Ninth Judicial Circuit

**OVERVIEW**

*Pro se* Plaintiff Harold Simmons, Jr. is suing Family Court Judge Paul W.

Garfinkel and Pamela Brown, a staff attorney for DSS, because he alleges that he was falsely imprisoned by Judge Garfinkel after he was jailed following a Rule to Show Cause for his failure to pay a total of \$23,847.25 delinquent child support to three mothers in the three cases which had been pending since 1992, 1993, and 1999. Judge Garfinkel and Attorney Brown are before the Court on their Motions for Summary Judgment on the grounds of judicial and S.C. Tort Claims Act immunity supported by their Affidavits. Plaintiff Harold Simmons has not submitted any counter affidavits.

## FACTS OF CASE

This is an alleged false imprisonment action against Family Court Judge Paul Garfinkel and DSS staff attorney Pamela Brown because *pro se* plaintiff Harold Simmons was ordered jailed by Judge Garfinkel for his failure to pay ordered child support.

On May 11, 2006, plaintiff and his attorney, Thomas White, appeared before the Honorable Judge Segars-Andrews for non-payment of child support in three (3) cases. Those cases were: *Brown v Simmons*: CA#: 92-2995; *Palmer v Simmons*: CA#: 93-6999; and *Jager v Simmons*: CA# 99-2404. Judge Segars-Andrews noted that plaintiff owed these amounts:

\$15,316.58 in arrears with \$4,325.14 out of compliance with the last court order;

\$4,429.52 in arrears with \$3,357.47 out of compliance with the last court order;

\$3,943.65 in arrears with \$1,815.34 out of compliance with the last court order.

(May 11, 2006 Transcript of Record, page 3).

The Court ordered plaintiff to be released from jail and a lien placed on the proceeds of pending state and federal Workers' Compensation cases. She also ordered the plaintiff to return to court on August 16, 2006 for a "review" of his Workers' Compensation claims (May 11, 2006 Transcript of Record, page 8). The plaintiff and attorney Thomas White were advised by the court that bench warrants are issued if arrears are over \$500.00 (May 11, 2006 Transcript of Record, page 10).

On August 16, 2006, plaintiff appeared before Judge Garfinkel. (August 16, 2006 Transcript of Record). Defendant Pamela Brown was present. Attorneys Thomas White and

Michael H. Murphy were *not* present. It was determined that the Workers' Compensation cases were unresolved and plaintiff had made no attempts to pay child support since 2005 (August 16, 2006 Transcript of Record, page 3 and 5). Plaintiff was found to be in civil contempt and sentenced to 6 (six) months without time served (August 16, 2006 Transcript of Record, page 7).

On October 20, 2006 Judge Garfinkel heard plaintiff's Motion to Reconsider filed by Mr. Murphy. Present were the Plaintiff, Pamela Brown, and Attorneys Michael H. Murphy and Thomas White. At this hearing plaintiff admitted he had not sought an attorney for his 2001 WCC claim (page 15). He admitted that he had made no child support payments in 2000 when he had a paycheck (page 19); that in the 1999 case plaintiff made no payments until 2001 and 4 of those payments were incorrect; in the 1992 case he made no child support payments until 2003; in the 1993 case he made no child support payments until 2003 (page 20). Judge Garfinkel denied the Motion to Reconsider and ruled that if plaintiff could meet the conditions of work release, then he could be placed on work release (page 26).

### **LAW AND ARGUMENT**

Judge Garfinkel and Attorney Pamela Brown are entitled to have this action against them dismissed on the grounds of judicial immunity and under the S.C. Tort Claims Act because at all times alleged, based on the Affidavits of Judge Garfinkel and Attorney Brown, they were acting within the scope of their duties as prosecuting attorney and presiding judge.

### **JUDICIAL IMMUNITY**

At common law, since at least 1772, "Neither party, witness, counsel, jury or Judge can

be put to answer, civilly or criminally, for words spoken in office.” *King v. Skinner*, Lofft 55, 56, 98 Eng. Rep. 529, 530 (K.B. 1772), quoted in *Burns v. Reed*, 500 U.S. 478, 490 (1991).

Judicial immunity is one of the basic common law tenets upon which our modern system of justice is built. Generally a judge is immune from a lawsuit for money damages. *Butz v. Economou*, 438 U.S. 478 (1978); *Stump v. Sparkman*, 435 U.S. 349 (1978). Judicial immunity is an absolute bar in the sense that it absolutely bars litigation against the judicial officer in certain circumstances. The U.S. Supreme Court has carved out three exceptions. First, no judicial immunity exists if the judge acts in the “clear absence of all jurisdiction.” *Stump*, 438 U.S. at 357. Secondly, judicial immunity extends only to judicial acts. *Forrester v. White*, 484 U.S. 219 (1988). The third limitation, which is no concern in our instant case, is that judges cannot claim judicial immunity for suits seeking only prospective injunctive relief. *Pulliam v. Allen*, 466 U.S. 522, FN 2 (1984).

A good summary of judicial immunity is provided in the case of *O’Laughlin v. Windham*, 330 S.C. 379, 498 S.E.2d 689 (1998), in which the South Carolina Supreme Court stated:

As the United States Supreme Court has articulated:

Whether an act by a judge is a ‘judicial’ one relate[s] to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity. *Stump v. Sparkman*, 435 U.S. 349 (1978). More recently, the Court has elaborated, stating:

But if only the particular act in question were to be scrutinized, then any mistake of a judge in excess of his authority would become a ‘nonjudicial’ act, because an improper or erroneous act cannot be said to be normally performed by a judge . . . . Accordingly, as the language in *Stump* indicates, the relevant inquiry is the ‘nature’ and ‘function’ of the act, not the ‘act itself.’ *Mireles v. Waco*, 502 U.S. 9, 12-13 (1991).

Attorney Pamela Brown is entitled to absolute prosecutorial immunity because of her actions as staff attorney in prosecuting the Family Court cases against Harold Simmons, Jr.

Absolute prosecutorial immunity “is not grounded in any special ‘esteem for those who perform these functions, and certainly not from a desire to shield abuses of office, but because any lesser degree of immunity could impair the judicial process itself.” *Kalina v. Fletcher*, 522 U.S. 118, 127 (1997) (quoting *Malley v. Briggs*, 475 U.S. 335, 342 (1986)). Further, prosecutorial abuses are subject to criminal and professional sanction. *Imbler v. Pachtman*, 424 U.S. 409, 429; *Malley*, 475 U.S. at 343, n.5.

“Prosecutors must often make decisions that could produce a colorable cause of action for deprivations of constitutional rights, and ‘[d]efending these decisions, often years after they were made, could impose unique and intolerable burdens upon a prosecutor responsible annually for hundreds of indictments and trials.”

*Carter v. Burch*, 34 F.3d 257 (4th Cir. 1994), citing *Imbler*, 424 U.S. at 425-26 (1976).

Prosecutors are entitled to absolute immunity from civil liability for conduct “intimately associated with the judicial phase of the criminal process.” *Imbler*, 424 U.S. at 430.

Absolute immunity is afforded prosecutors when acting “within the advocate’s role.” *Buckley v. Fitzsimmons*, 509 U.S. 259, 278 (1993).

“Acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity.” *Buckley*, 509 U.S. at 273.


Additionally, under the South Carolina Tort Claims Act, S.C. Code § 15078-10 *et. seq.* both defendants have these defenses:

- a) "The governmental entity is not liable for a loss resulting from:...(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee."  
S.C. Code § 15-78-60(5)
- b) When bringing an action against a governmental entity plaintiff "shall name as a party defendant only the agency or political subdivision for which the employee was acting....In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant."  
S.C. Code § 15-78-70(c)

### CONCLUSION

For the reasons stated, based on their submitted Affidavits, which are uncontradicted by plaintiff, Family Court Judge Paul W. Garfinkel and DSS attorney Pamela Brown are entitled to summary judgment and to have this action against them dismissed.

Respectfully submitted,

  
\_\_\_\_\_  
JAMES A. STUCKEY  
STUCKEY LAW OFFICES, LLC  
123 Meeting St.  
Charleston, SC 29401  
843-577-9323  
Email: [jstuckey@stuckeylaw.com](mailto:jstuckey@stuckeylaw.com)  
Facsimile: 843-577-3635

Charleston, South Carolina  
December 10, 2010

Attorneys for Defendant

**Transcript of Proceedings: May 11, 2006 (p. 8)**

1 THE COURT: Ms. Brown?

2 MS. BROWN: (VIA TELEPHONE) Yes, Your Honor. I  
3 certainly have no objection to a lien being placed on any  
4 settlement proceeds or -- or any money that would come  
5 about as a result of any judicial hearings held with  
6 regard to the workers' comp case.

7 I would like to schedule the matter for a review  
8 in a couple of months, just to determine what the status  
9 of the cases are that are pending with the Workers' Comp  
10 Commission.

11 And it looks like, Your Honor, let's see -- about  
12 two months from now would be roughly -- let's say around  
13 August -- can we set a review in August -- on August 16th?

14 THE COURT: Okay. The Defendant shall be released.  
15 There will be a lien placed on any Federal or State  
16 proceeds received from his claims. And there will be a  
17 review on August 16th at 11:00 a.m. If the Defendant  
18 fails to appear, a bench warrant will be issued for his  
19 arrest.

20 MR. WHITE: Your Honor, just one clarification.  
21 There is a 2001 claim that I'm not representing Mr.  
22 Simmons on. I didn't get involved in that until a couple  
23 of years later. So, just for the record, the order should  
24 show that there should be a lien on the 2001 case also.  
25 But let the record reflect I'm not handling that case,

Transcript of Proceedings: August 16, 2006 (p. 6-7)

(p.5)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
 )  
SOUTH CAROLINA DEPARTMENT )  
OF SOCIAL SERVICES )  
 )  
Plaintiff )  
 )  
VS. )  
 )  
HAROLD SIMMONS, JR. )  
 )  
Defendant )  
 )  
\_\_\_\_\_ )

IN THE FAMILY COURT  
DOCKET NO. 1992-DR-10-2995  
1993-DR-10-6999  
1999-DR-10-2404

TRANSCRIPT OF RECORD

August 16, 2006  
Charleston, South Carolina

B E F O R E:

THE HONORABLE PAUL W. GARFINKEL, JUDGE

A P P E A R A N C E S:

PAMELA BROWN, ESQ.  
Attorney for the Plaintiff

HAROLD SIMMONS, JR.  
Pro se Defendant

JOYCE C. HUCK  
Court Reporter

1 THE COURT: I don't see where you are making any  
2 payments, sir. The last payment was back in January  
3 '05.

4 MR. SIMMONS: I'm currently not working. This is  
5 the paperwork that my lawyer sent me.

6 THE COURT: How are you supporting yourself?

7 MR. SIMMONS: I'm still under doctor's care because  
8 of what happened ---

9 THE COURT: --- who's paying your bills?

10 MR. SIMMONS: My brothers. They're helping me out.

11 THE COURT: Where does your brother live?

12 MR. SIMMONS: My brother ---

13 THE COURT: --- who's helping you out?

14 MR. SIMMONS: He's right out there.

15 THE COURT: Where does he live?

16 MR. SIMMONS: Well he's moving to a new apartment.

17 And brother Toby who lives up in North Charleston. And  
18 my mom is trying to help me out.

19 THE COURT: Sir, you've got to pay some money on  
20 this. This has gone on long enough. This has been a  
21 long, long time in coming. You got anything to pay on  
22 it?

23 MR. SIMMONS: My brother can get -- I can get \$100  
24 from my brother Joe.

25 THE COURT: Sir, like I said, you owe \$24,000. You

1 got any serious money to pay on it?

2 MR. SIMMONS: Except what my attorney is getting  
3 out of my workers comp.

4 THE COURT: Is there a lien on ---

5 MR. SIMMONS: --- and I'm still under doctor's care.

6 THE COURT: Is there a lien on the worker's comp,  
7 Ms. Brown?

8 MS. BROWN: Yes, Your Honor, the Judge ordered a  
9 lien at the last hearing.

10 THE COURT: And you're not getting any money coming  
11 in, Mr. Simmons?

12 MR. SIMMONS: When worker's comp sent me to a  
13 Doctor Jones -- Doctor Jones been treating me but the  
14 treatment he was doing wasn't making me feel better --  
15 get any better so I complained so he decided he didn't  
16 want to treat me anymore if that's ---

17 THE COURT: --- did you understand the question?  
18 Do you have any money coming in at all?

19 MR. SIMMONS: No.

20 THE COURT: On one of the cases, like I said, the  
21 first case I see is the '92 case you haven't made a  
22 payment in over a year and a half. On the '93 case, the  
23 same thing; a year and a half. And on the current case  
24 not a payment in over a year and a half.

25 MR. SIMMONS: I had an accident in 2001 that kept

1 me out of work. I tried to go back to work in 2003 and  
2 as soon as I got from the doctor to try to work a truck  
3 ran into the truck I was driving and I was again ---

4 THE COURT: --- well, sir, I think today is judgment  
5 day. I find you in civil contempt sentence you to 6  
6 months in the Charleston County Jail without good time  
7 or work credits. You can purge by paying the out of  
8 compliance amount on each of the cases.

9 On the '92 case \$5,506.39, on the '93 case  
10 \$3,829.97, and on the '99 case \$2,004.34. So that will  
11 be about a little over \$11,000 and a \$150 in court costs  
12 on each one, the lien on the worker's comp case will  
13 continue.

14 MR. SIMMONS: I'm still under doctor's care and I  
15 still got to see my doctor's and stuff because ---

16 THE COURT: --- all right, you get us a schedule of  
17 your doctor appointments and we'll have you transported  
18 to your doctor.

19

20 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*

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**Transcript of Proceedings: October 20, 2006**  
**(pp. 18, 19, 20, 21 and 24)**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
 )  
SOUTH CAROLINA DEPARTMENT )  
OF SOCIAL SERVICES )  
 )  
Plaintiff )  
 )  
VS. )  
 )  
HAROLD SIMMONS, JR. )  
 )  
 )  
Defendant )  
 )  
\_\_\_\_\_ )

IN THE FAMILY COURT  
DOCKET NO. 2006-DR-10-3051

TRANSCRIPT OF RECORD

October 20, 2006  
Charleston, South Carolina

B E F O R E:

THE HONORABLE PAUL W. GARFINKEL, JUDGE

A P P E A R A N C E S:

PAMELA BROWN, ESQ.  
Attorney for the Plaintiff

MICHAEL H. MURPHY, III, ESQ.  
Attorney for the Defendant

TOM WHITE, ESQ.  
Attorney for the Defendant

JOYCE C. HUCK  
Court Reporter

1 THE COURT: You worked there in '99 and everything  
2 was okay, is that right?

3 MR. SIMMONS: Yes, sir.

4 THE COURT: 2000 everything was okay?

5 MR. SIMMONS: Yes, sir.

6 THE COURT: So, for those 2 years there's no  
7 question you were working regularly and getting a  
8 regular paycheck, right?

9 MR. SIMMONS: Well, actually when you first become  
10 a longshoreman you got to first -- it's like a process  
11 of getting hours ---

12 THE COURT: --- you build up but you were getting a  
13 paycheck is what I'm saying, right?

14 MR. SIMMONS: Yes, when I worked. But I didn't  
15 catch work every single day. It was like if work was  
16 out there we would get it and once we build up hours and  
17 we get on the floor then we get to work more often and  
18 as we move up we move to a different classification ---

19 THE COURT: --- did you ever move into a regular  
20 work force?

21 MR. SIMMONS: Sir?

22 THE COURT: Did you ever move into a regular job  
23 assignment? Build up enough hours that you were one of  
24 the regular guys?

25 MR. SIMMONS: Yes, in 2000.

1 THE COURT: 2000?

2 MR. SIMMONS: Yes.

3 THE COURT: So, in 2000 no question you got paid?

4 MR. SIMMONS: Yes, I made money in 2000.

5 THE COURT: You made money in 2000. Now, Madame  
6 Clerk, can you tell me what he paid in the year 2000?

7 MADAME CLERK: On his '99 case, Your Honor, we show  
8 no payments for the year 2000.

9 THE COURT: No payments on that case, okay. And  
10 how about on the other case?

11 MADAME CLERK: His '92, 2995 case, no payments.

12 THE COURT: No payments. All right, that's where I  
13 think we have the problem. When he was working by his  
14 own testimony he didn't make payments. Now, no  
15 question, now he can't. But he didn't make payments  
16 when he even was working. Now, that having been said,  
17 Ms. Brown, I'll give you a chance to respond to Mr.  
18 White, and to Mr. Murphy's comments and to any questions  
19 that you've heard me ask Mr. Simmons and his responses.

20 MS. BROWN: All right, Your Honor, I wanted to  
21 basically kind of refresh your memory about this case  
22 because when he appeared before you on August the 12<sup>th</sup> he  
23 provided the information concerning the fact that Mr.  
24 White was representing him on the worker's comp claim  
25 and he did indicate that there was a 2001 claim and that

1 Mr. White was not representing him on that claim. Your  
2 concern at that hearing basically was that he did not  
3 provide any additional updated information on the case  
4 other than to say that the worker's comp claim was still  
5 pending and that Mr. White had been representing him.  
6 And your concern was that this had been going on, I  
7 think, since 2002 and that there had not been any  
8 considerable process because you didn't have anything  
9 before you to show the court that the matter had gone  
10 before the full commission and what have you.

11 My concern, Your Honor, about the case is that the  
12 testimony basically is that he was paid some money  
13 between September of 2003 to April of 2004 at the rate  
14 of about \$240 a week and in my review of the records in  
15 each one of these cases he made very few payments during  
16 that time frame. And as you indicated when each one of  
17 these orders went into existence he did not make any  
18 child support payments until he appeared before court.

19 He made a few payments but let me just give you an  
20 example. In the '99 case he didn't start paying until  
21 2001 and when he did start paying in 2001 he only made 4  
22 payments that were not the correct amounts. In the '93  
23 case he made no payments until 2003. And that's a '93  
24 case. And then in the '92 case he didn't make any  
25 payments again until 2003. So, my concern is that he's

1 had a very poor history of payments. Albeit though that  
2 Judge Segars-Andrews when she heard the case actually I  
3 felt kind of gave Mr. Simmons a break by indicating  
4 because the worker's comp case was pending she would  
5 place a lien but he was to keep us updated on what the  
6 status of that claim was.

7 So, I guess my position and my concern is really  
8 that he really has a poor history of payments so  
9 primarily that during the time that he was receiving the  
10 worker's comp benefits he did not make any payments.  
11 His payments were very sporadic and very poor and in a  
12 limited amount. So, he really was not making an effort  
13 to comply with the order.

14 I certainly understand Mr. White's position. They  
15 are doing all that they can, of course, to try to assist  
16 Mr. Simmons, of course, in his worker's comp claim and I  
17 was looking on the court screen, Your Honor, and I see  
18 that the Defendant -- that you signed an order for work  
19 release on October the 12<sup>th</sup>.

20 So I think I heard that Mr. White had indicated  
21 that he has now been released to some sort of limited  
22 work capacity and I was just wondering, my question  
23 would be, it looks like he has signed up for work  
24 release. Does he have the ability to work now to be  
25 able to pay off some of these arrears via work release?

1 Social Services and say I've got depression problems and  
2 I'm going to see a doctor about it?

3 MR. SIMMONS: Yes, they told me the only way they  
4 could help me was I would have to be on total disability  
5 in order to get Medicaid and all that.

6 THE COURT: Are you on medication for your  
7 depression?

8 MR. SIMMONS: Yes, as a matter of fact I just  
9 started getting ---

10 THE COURT: --- no back then were you on  
11 medication?

12 MR. SIMMONS: No, I was not on medication.

13 THE COURT: Okay ---

14 MR. SIMMONS: --- not on depression medicine like  
15 that.

16 THE COURT: It sounds like, all right, it sounds to  
17 me like Mr. Simmons is now coming in, no question he is  
18 hurt now, no question. But he didn't do what he was  
19 supposed to do when he could do something. He said he  
20 could have sent in some money every week. He didn't do  
21 it. Okay. He said -- you know, I feel sorry for him  
22 now. You going to sign up for work release now?

23 MR. SIMMONS: Yes.

24 THE COURT: You can make work release?

25 MR. SIMMONS: I can manage it.

# Transcript of Proceedings: December 10, 2010



1 THE COURT: Okay. Let's see what. What do  
2 we have here? This is Simmons versus Charleston Family  
3 Court?

4 THE PLAINTIFF: Yes, sir.

5 THE COURT: Are you Mr. Simmons?

6 THE PLAINTIFF: Yes, sir.

7 THE COURT: All right. Well, Mr. Stuckey,  
8 these are your motions; is that right?

9 MR. STUCKEY: That's correct, Your Honor.

10 THE COURT: All right. What you got?

11 MR. STUCKEY: Thank you, Your Honor. May it  
12 please the Court: We are glad to have Mr. Harold  
13 Simmons, Jr., who is the plaintiff in this case, with us  
14 this morning. It's been rather difficult to get him into  
15 court. As a matter of fact, based on the facts of this  
16 case, you would almost think that Mr. Simmons has been  
17 willing to snub his nose at the judicial system.

18 These cases originally arose, Your Honor, in  
19 the Family Court, and that's the reason that Judge Paul  
20 Garfinkel is a defendant and the reason why Pamela Brown,  
21 who is a prosecuting attorney in the Family Court,  
22 representing the Department of Social Services, is also  
23 named as a defendant.

24 Mr. Simmons was ordered to pay a total of at  
25 that time \$23,000 in arrears for child support. One of

1 the child support cases was filed in 1992, another one  
2 was filed in 1993, and another was filed in 1999.

3 And Mr. Simmons did not see fit to make the  
4 payments as required by the Court, and apparently, as I  
5 read the record, apparently three different mothers must  
6 have been involved, which, of course, means three  
7 different children in the cases.

8 He appeared before Judge Charlie  
9 Segars-Andrews, and she remanded him to the jail and so  
10 forth, and I think they gained a stay on that. They came  
11 back before Judge Garfinkel. Judge Garfinkel heard the  
12 case, found him in contempt of Court on a rule to show  
13 cause, and committed him to the common jail. That case  
14 was prosecuted by the defendant Pamela Brown.

15 Mr. Simmons has now elected, while still not  
16 paying the child support, to get out of Family Court and  
17 come over to Common Pleas and file a lawsuit against  
18 Judge Paul Garfinkel for his actions in the cases in  
19 ruling as he did and adjudging that Mr. Simmons was  
20 entitled to a period of incarceration and also the  
21 prosecuting attorney, Pamela Brown.

22 We are before the Court today on our motion  
23 for summary judgment, and I would point out to the Court  
24 that our motion, we assert, is amply supported by the  
25 final affidavits of both Judge Garfinkel and Pamela

1 Brown, copies of which were served on Mr. Simmons back on  
2 August the 12th of 2010. Motion for summary judgment was  
3 filed with the Court on August -- the affidavit of Judge  
4 Garfinkel was filed with the Court on August 11 of 2010.  
5 The affidavit of attorney Pamela Brown was filed the same  
6 day, both in support of the motion for summary judgment.  
7 Copies were served on Mr. Simmons on August 12, 2010.

8 Motion for summary judgment was served on him  
9 way back on January the 11th, 2010, and, again, in our  
10 letter of transmittal serving our affidavits on August  
11 12, 2010, served another copy of the motion for summary  
12 judgment.

13 We are before the Court on an unverified  
14 amended complaint by Mr. Simmons. Mr. Simmons has not  
15 introduced or asserted any contra affidavits, so the  
16 affidavits of Judge Garfinkel and Attorney Brown stand  
17 uncontradicted. We have asserted the defenses, Your  
18 Honor, that go all the way back to the oldest principles  
19 under the common law and under our law that judicial  
20 immunity and prosecutorial immunity and also provisions  
21 in the South Carolina Tort Claims Act asserting the  
22 judicial immunity and also the fact that the parties  
23 cannot be sued for an alleged abuse of discretion.

24 So we would submit that our motion is based  
25 on clear, established, long-established legal grounds,

1 and it's uncontradicted, the facts of this case, and we  
2 would ask the Court to grant summary judgment for the  
3 defendants and dismiss this action.

4 THE COURT: All right.

5 MR. STUCKEY: Thank you.

6 THE COURT: Mr. Simmons, would you like to be  
7 heard?

8 THE PLAINTIFF: Yes, sir.

9 THE COURT: All right. What would you like  
10 to tell me?

11 THE PLAINTIFF: When I filed this action --

12 THE COURT: Would you stand?

13 THE PLAINTIFF: When I filed this action, I  
14 filed this action on the grounds of wrongful  
15 imprisonment. Segars-Andrews -- well, Pam Brown, on May  
16 the 11th asked the Court -- asked the Court for a review  
17 of my workmen's comp. Judge Segars-Andrews already ruled  
18 on the case that was decided before her on the 11th, and  
19 she placed it as an order for a review to be -- to take  
20 place on August 16th.

21 When I went to the review on August 16th,  
22 Judge Garfinkel was presiding. It was only supposed to  
23 be a review to determine -- as part of the transcript,  
24 May 11th transcript where the Court addressed Pam Brown,  
25 and Pam Brown said, I would like to schedule this matter

1 for a review in a couple of months, just to determine  
2 where the status of the case or that are pending with the  
3 workmen's comp issue.

4 Besides that, the Court okayed it. The Court  
5 addressed it, saying the defendant shall be relisted.  
6 There will be a review on August 16, 11:00, and on May  
7 the 11th -- on page 11, the Court addressed again that  
8 will be the Court's order. Okay. That was an order for  
9 me just to have a review on August 16th. Okay?

10 My argument is when I went to the review, it  
11 was, like, I was expecting just a review to discuss my  
12 worker's comp. My worker's comp attorney gave me the  
13 review papers for the judge who was presiding at that  
14 time to review it, or to review my workmen's comp status.  
15 When I went inside the court on August 16, Judge  
16 Garfinkel was presiding.

17 Judge Garfinkel, for whatever reasons, I  
18 don't know if he turned the review into a hearing or a  
19 trial, I'm not sure, but I wasn't expecting to go to jail  
20 that day, because Segars-Andrews, on the 11th, already  
21 ruled, put a lien against my worker's comp and the lien  
22 against my worker's comp -- she had a lien against my  
23 worker's comp on May the 11th, and she released me from  
24 jail.

25 I had already been in jail on May the 11,

1 already been in jail three days, so when I went before  
2 Segars-Andrews, whatever warrant was issued at that time,  
3 Segars-Andrews released me. That warrant was dead,  
4 because when my attorney Tom White came into court, Tom  
5 White argued for my freedom.

6 He came as to give -- to highlight what I was  
7 going through at the time, as far as being injured on my  
8 job and going through worker's comp, getting ready for  
9 surgery and all this kind of stuff. The reason was I  
10 wasn't able to pay was because workmen's comp, over a  
11 period of time, cut off my benefits. Okay?

12 So when Tom White show up on May the 11th  
13 when I called him and let him know that I was  
14 incarcerated, he came down, spoke with Segars-Andrews.  
15 He argued for me to be released so I could continue with  
16 my worker's comp -- my medical treatment and all this  
17 kind of stuff, medical treatment and everything. That is  
18 when Segars-Andrews -- I used to have a copy of that  
19 transcript too. Segars-Andrews requested the Court to  
20 schedule a review in a couple months. Segars-Andrews  
21 went on, ordered my release and scheduled a review, just  
22 to determine the status of my worker's comp.

23 When I went from Paul Garfinkel -- Paul  
24 Garfinkel wasn't listed in anything. Paul Garfinkel  
25 turned the review into, I'm assuming, a hearing.

1 Garfinkel decided to sentence me to six months, based on  
2 the fact that -- at the review that was turned into the  
3 hearing -- let me back up for a second. Okay?

4 At first, the order from Segars-Andrews was  
5 for me to have a review, and when I go on August 16 and  
6 Judge Garfinkel was presiding, Judge Garfinkel didn't  
7 exercise the order of the review, and from the Casemaker,  
8 State of South Carolina case law, it states that one  
9 family court judge may not ignore an order of another  
10 Family Court judge, Cook vs. Taylor.

11 And that is exactly what Garfinkel did at the  
12 time. Garfinkel fell under the abuse of discretion, and  
13 on top of that, he violated my constitution rights  
14 because he locked me up. He locked me up based on what  
15 Segars-Andrews said. I went before Segars-Andrews, and I  
16 was arrested back for the same warrant.

17 That make it double jeopardy of the South  
18 Carolina constitution act declaration of rights section  
19 12: No man shall be subject for the same offense to be  
20 twice put in jeopardy of life and liberty. Wrongful  
21 imprisonment, section 19: No man shall be imprisoned  
22 over a debt except in the case of fraud.

23 I wasn't trying to fraud nobody. He also  
24 violated the silver act of deprivation of rights, and on  
25 top of that, he also violated the constitution tort, the

1 violation of one constitution rights by a government  
2 officer, witnessed by a sober act, filed directly against  
3 the officer, a constitution tort as amended under color  
4 of state law, such as a law that Silver Act Violation is  
5 actionable under 42 USCA 1983.

6           Going from that to August 16, Judge Garfinkel  
7 didn't even take up the status report from my workmen's  
8 comp attorney that I brought in that was ordered by  
9 Segars-Andrews, to bring an update of my worker's comp  
10 status, and after Garfinkel ruled on August 18 to  
11 imprison me for six months, my attorney, Tom White, and  
12 Mike Murray refiled a reconsideration.

13           So we went back in October of 2006, and at  
14 the reconsideration, Judge Garfinkel -- okay. On August  
15 16, 2006, Garfinkel's explanation he gave, that is  
16 recorded in the Court's record, that the reason I was in  
17 prison is because I didn't pay any money since January of  
18 2005, over the course of a year and a half. That was his  
19 estimation. That is on record with the Court.

20           In October 2006, after the reconsideration  
21 hearing, put it on the record at the court, the  
22 explanation Garfinkel gave then is that I didn't pay any  
23 money in the year 2000, and on that same day, on August  
24 26th, Judge Garfinkel asked the court clerk to check and  
25 see since I testified, saying that on my job as a

1 longshoreman, we have to work in order to create hours in  
2 order to get on the floor in order to start making --  
3 earning a paycheck, and he asked me when I got on the  
4 floor.

5 I said 2000. I'm a 2000 classification. He  
6 asked the court clerk to look on the computer, see if  
7 Mr. Simmons paid any money in the year 2000.

8 The clerk came back and said, No, Your Honor,  
9 he didn't.

10 So Garfinkel, which is in the court record,  
11 say, That is where I think our problem is at, is that I  
12 didn't pay any money in the year 2000.

13 I also have documents of me going in front of  
14 Judge Garfinkel twice in the year 2002, 2003, and in  
15 front of Judge Cate in 2003 when I went in front of Judge  
16 Garfinkel in 2002. Because I didn't pay any money prior  
17 to 2002, Garfinkel sentences me to one year, 365 days, if  
18 I got my days correct. He sentences me in 2002 to a  
19 whole year.

20 In 2003 I went in front of Judge Cate. Judge  
21 Cate found that the case that was tendered before 2002, I  
22 was found not guilty because that case was never filed  
23 against me. In 2003, I went back in front of Judge  
24 Garfinkel. Garfinkel sentences me to 30 days for not  
25 paying money from the time he sentences me to 2002 to

1 2003.

2 Garfinkel -- oh, shucks. Chain of thought.  
3 At that time, he sentences me to 30 days, and at that  
4 same day, Garfinkel acknowledged my other two cases,  
5 other than the one I went in front of him for that same  
6 day, in 2002. So any money that I was supposed to pay  
7 before in the year 2000 I was already sentenced for that  
8 money.

9 Going back to May the 11th, my workmen's  
10 comp, attorney Tom White, explained to the Court any and  
11 all of the money that is owed will be paid when my  
12 workmen's comp is settled. That's when Segars-Andrews  
13 decided she was going to go ahead and put the case, order  
14 a new lien, order my release, and order a review because  
15 Pam Brown asked the Court for a review, just to determine  
16 the status of my workmen's comp.

17 Going back to the reconsideration, if on  
18 August Garfinkel's order was, which is on record, that I  
19 didn't pay money in a year and a half and then we get to  
20 the reconsideration and then he claim I didn't pay the  
21 money in the year 2000, that is where our problems is at.  
22 That's like contradicting himself, and then on top of  
23 that, after the reconsideration, Garfinkel, he didn't  
24 know -- he hadn't -- from what I'm seeing, from what is  
25 on the court records, that Garfinkel had to find a reason

1 to justify him imprisoning me for six months. And for us  
2 filing a review, we was trying to get Garfinkel a chance  
3 to correct abuse of discretion, and Garfinkel still  
4 refused to correct abuse of discretion.

5 Today we came here for the fact that my  
6 understanding is Garfinkel ignored the order of  
7 Segars-Andrews. Segars-Andrews ordered a review. It's  
8 on the record that Segars-Andrews ordered a review. It's  
9 on the record that Pam Brown requested a review.

10 Pam Brown, when we went in front of Judge  
11 Garfinkel, she did not -- I don't know how they do things  
12 behind the desk, but Pam Brown knew I came in here just  
13 for a review.

14 Pam Brown allowed me to get sentenced. At  
15 the reconsideration, Garfinkel did the exact same thing  
16 again, so my grounds on this is by lawmaker, State of  
17 South Carolina law, Garfinkel ignored the order of  
18 another judge, and I do have -- the reason why I didn't  
19 answer back then when they requested the interrogatory  
20 and the production papers is I was trying to regain my  
21 health.

22 THE COURT: Let me stop you, because if I  
23 grant this motion, the other two become irrelevant. Did  
24 you ever appeal any of Judge Garfinkel's orders?

25 THE PLAINTIFF: Well, that is why we did the

1 reconsideration. Garfinkel denied it.

2 THE COURT: I know, but then you can appeal  
3 to the appellate court in Columbia, the Court of Appeals.

4 THE PLAINTIFF: I've been in jail for six  
5 months.

6 THE COURT: Well, you still had a lawyer who  
7 could have --

8 THE PLAINTIFF: My lawyer came on behalf of  
9 my worker's comp, explaining why I haven't had any funds  
10 coming in.

11 THE COURT: Well, you still have the ability  
12 to file an appeal pro se, just like you're filing this  
13 lawsuit pro se, if you didn't like the outcome. What we  
14 don't allow is you just -- well, if you don't like the  
15 way a judge rules, then you can appeal to an appellate  
16 Court, and they can say, well, yes, we agree. The judge  
17 did ignore the other judge's orders, and they reversed  
18 them.

19 But what you don't, generally speaking, do  
20 is, say, well, I don't like the way the judge ruled, so  
21 I'm going to sue him. The court system would break down  
22 if we allowed that to be the law, but we have a process  
23 so if you don't like the outcome, you get to appeal, and  
24 another set of judges will review it. But we don't allow  
25 you just to sue the judge because you didn't like the way

1 he ruled, and so that's the problem that have you, is you  
2 should have appealed Judge Garfinkel as opposed to turn  
3 around and sued Judge Garfinkel.

4           And Mr. Stuckey's right. That is the law.  
5 It's called judicial immunity, so we just don't have  
6 litigants who don't like the judge's ruling to be allowed  
7 to sue the judge. You are allowed to appeal the judge's  
8 rulings, but you don't just get to turn around and sue  
9 them, and you don't get to sue the prosecutor who brought  
10 the case.

11           Again, we have a system of rules, and they're  
12 called appeals, and that generally people then sift  
13 through it, listen to what you have to say, listen to  
14 what the other side has to say, and then they rule.

15           THE PLAINTIFF: But I only have 30 days to  
16 file the appeal.

17           THE COURT: You do have 30 days.

18           THE PLAINTIFF: Instead of six months.

19           THE COURT: Well, we have people file appeals  
20 from the jail all the time.

21           THE PLAINTIFF: But, you know, with  
22 Charleston County, they don't allow you access to any of  
23 your papers.

24           THE COURT: I don't know about that. I get  
25 stuff from the jail filed all the time. They have to

1 allow that. Same thing with SCDC. We got people in here  
2 all the time that file appeals or file some sort of court  
3 actions, so I don't know that I buy that they don't allow  
4 you that. They have to allow you that, so I'm going to  
5 have to grant their motion.

6 Now, in this case, if you don't agree with my  
7 ruling, you have 30 days to appeal. And so I'll sign an  
8 order on this, and then you can -- once it's filed, you  
9 have 30 days to appeal it in Columbia. Okay?

10 THE PLAINTIFF: Yeah, definitely.

11 THE COURT: All right. Mr. Stuckey, draw me  
12 up an order.

13

- - -

14

(Whereupon, the proceedings were concluded.)

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Certificate of Counsel

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to included by any of the parties and not any other material.

*Harold Simmons Jr*  
*Harold Simmons Jr.*

March 16, 2012

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DEC 17 2012

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 2009-CP-10-4264

Harold Simmons, Jr.,

Appellant,

v.

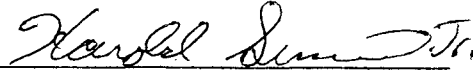
Charleston County Family  
Court, Paul W. Garfinkel and  
South Carolina Department of  
Social Services, Pamela Brown,

Respondents.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Charleston County Family Court, Paul W. Garfinkel and South Carolina Department of Social Services, Pamela Brown by depositing a copy of it in the United States Mail, postage prepaid, on March 19, 2012, addressed to their attorney of record, James A. Stuckey, 123 Meeting Street, Charleston, South Carolina 29401.

March 19, 2012

  
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I certify that I have served the Record on Appeal on Charleston County Family Court, Paul W. Garfinkel and South Carolina Department of Social Services, Pamela Brown by depositing a copy of it in the United States Mail, postage prepaid, on December 12, 2012, addressed to their attorney of record, James A. Stuckey, 123 Meeting Street, Charleston, South Carolina 29401.

December 12, 2012



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Certificate of Counsel

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*Harold Simmons Jr.*  
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# December 12, 2012

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