THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Circuit Court
The Honorable Daniel D. Hall, Circuit Court Judge

Case No. 2015-CP-10-4166
Appellate Case No. 2018-001125

Theodore Wagner,

Appellant,

versus

Designa Print and Mike Davis including anyone who is Complicit or Enabled protecting Mike Davis,

Respondent.

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SC Court of Appeals

BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES

1. Did the trial court abuse its discretion by dismissing Appellant's case, *sua sponte*, under Rule 41(b) of the South Carolina Rules of Civil Procedure?

2. Was it improper for Judge Deadra Jefferson to not recuse herself from presiding over motion hearings between Appellant and Respondent?

3. Can counsel for Defendant demand a second set of records be supplied by Plaintiff that he previously received?

STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

This matter was commenced by the Appellant against the Respondent, by filing a complaint in the Court of Common Pleas for Charleston County on July 29th, 2015, titled Complaint Against Civil Rights. Appellant is pro se litigant, and did not draft his complaint to list specific causes of action, which is in part what led the trial court to dismiss his action for failure to prosecute. In his eight page complaint, he alleges conduct of the Respondent to include stalking, terrorizing, and lying. The Appellant checks the box on his civil action coversheet as Assault/Slander/Libel. The facts giving rise to the Appellant's case stem from a relationship Respondent had with Appellant's roommate. That relationship ended badly when Appellant's roommate decided he no longer wished to be in a relationship with Respondent. Respondent engaged in conduct towards Appellant's roommate that led to a stalking charge by the ninth circuit solicitor's office. Appellant was not a victim in that case, and Appellant's roommate did not join in Appellant's filing against the Respondent, nor did Appellant's roommate appear on behalf of Appellant at trial. Appellant essentially claims in his complaint he has suffered emotional distress due to the conduct of the Respondent towards the Appellant's roommate. Appellant also contends that Respondent slandered his name on the internet by using Designa Print's Facebook message to send a message

that stated Appellant was a homosexual to another individual. Designa Print has since gone out of business, and does not contain any assets.

The matter proceeded through discovery, with Interrogatories, Request for Production and Subpoenas being issued by both parties. No depositions were taken, and the matter was exempt from mediation due to Appellant's *In Forma Pauperis* status. During and in the course of the pendency of litigation, the Appellant filed several filings to include constitutional challenges that allege among other things that his criminal plea of guilt to sexual conduct charges and child pornography charges against minors was unlawful and that the government, among others to include the Respondent and myself, were conspiring against him. The only other motions filed by either party were motions to compel, motion for a scheduling order, motion to allow video taken by the Plaintiff in as depositions, and motions to quash subpoenas. A scheduling order was entered into and this matter was scheduled for trial on May 7th, 2018. The matter was dismissed *sua sponte* by the trial court under Rule 41(b), SCRCP on May 8th, 2018. Appellant did not file for reconsideration or to alter or amend the judgment under Rule 59, SCRCP, and served his notice of appeal on June 13, 2018.

Much of the Appellant's argument and memoranda focuses on his criminal convictions, which he pled guilty to in state and federal courts in 2002. In 2002 Appellant was charged with two counts of sexual exploitation of a minor, two counts of contributing to the delinquency of a minor, in General Sessions Court for Charleston County, and sexual exploitation of children and possession of child pornography in United States District Court, District of South Carolina. He pled guilty to some State charges, which were overturned at a post conviction relief hearing, after he obtained a default order of common law marriage to his victim Andrea Crisel. He then pled guilty to his Federal charges in exchange for his State charges to be nol prossed. It is important for

the court to understand the background of Appellant's criminal charges, because of history of trying to prove his innocence of those charges, and part of the trial courts reasoning in reaching its disposition.

Summary of Argument

The trial court's decision to dismiss this action under Rule 41(b); SCRCP was made after a full day of hearing pre-trial motions and diligent attempts by the court to determine what it was that the Appellant sought in a trial of his matter. After several hours of oral argument and the review of some of the Appellant's proposed exhibits, the trial court properly determined the clear intentions of the Appellant was to use the trial of its complaint against Respondent to illicit testimony from a witness that is also a victim of a crime he was formerly convicted of, in an effort to use her testimony in efforts to overturn his conviction and remove himself from the sexual registry. After several inquiries by the trial judge, Appellant only affirmatively stated the relief he desired was to be removed from the sexual offender registry, which he was placed on by a federal court. Appellant did not raise facts to support such relief in the complaint, nor did he ask for such relief in his complaint; notwithstanding, such relief could not arise from allegations against the Respondent, nor could the state trial court relieve the Appellant from his placement on the sex offender registry ordered by the Federal Court. In addition to and in support of the trial court's decision, the Appellant subpoenaed several witnesses that would only support his innocence of his criminal conviction and not further his case in chief. Appellant used threats of retaliation in those subpoenas to coerce certain witnesses to testify. Appellant constantly and consistently focused on his innocence of his former criminal convictions, often rambling on about irrelevant and incoherent sexual events from his past. The transcript clearly shows the Appellant's focus was to prove his past criminal conviction was a conspiracy by the courts, the investigative agencies, and all

attorneys involved. Appellant even claims the Respondent and Respondent's attorney were part of this conspiracy that he alleges began twenty years ago. In doing so the Appellant often refers to his attorneys and judges by slurs, and even claimed one trial judge kidnapped him and caused him to plead guilty. Appellant was never able to show the trial judge how any of his argument was relevant to his case in chief against the Respondent. In the interest of judicial economy, integrity of the trial courts, the burden on the plaintiff in defending this matter further, and after due consideration given by the trial courts and the discretion and authority vested therein, the decision of the trial court to dismiss this matter was proper and should be affirmed and upheld.

ARGUMENT

1. Did the trial court abuse its discretion by dismissing Appellant's case, *sua sponte*, under Rule 41(b) of the South Carolina Rules of Civil Procedure?

The trial court appropriately dismissed Appellant's action under 41(b), SCRCP. The dismissal was within the sound discretion of the trial and should not be overturned.

Rule 41(b) of the South Carolina Rules of Civil Procedure, titled Involuntary Dismissal, states in relevant part, "For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief". SCRCP. Although the rule states that a dismissal under the rule may be made upon the defendant's motion, the Supreme Court of South Carolina has long held that "trial judges possess the inherent power to dismiss actions *sua sponte* for a party's failure to prosecute relevant claims." *Crestwood Golf Club, Inc. v. Potter*, 493 S.E.2d 826, 832 (1997) (citing *Small v.*

Mungo, 175 S.E.2d 802, 803 (1970) (noting that "it is within the inherent power of the court to dismiss an action for failure to prosecute.") citing also 24 Am.Jur.2d *Dismissal, Discontinuance, and Nonsuit 48* (1983) ("Provision is made in federal and state statutes or rules of practice for dismissal of civil actions for failure of prosecution by the plaintiff. However, the power of the trial courts to dismiss a case for failure to prosecute with due diligence is generally considered inherent and independent of any statue or rule of court. Such power is deemed to be necessarily vested in trial court to manage their own affairs so as to achieve orderly and expeditious disposition of cases.")) If a trial judge exercises his discretion under Rule 41(b) by dismissing a case, "his [or her] decision will not be disturbed except upon a clear showing of an abuse of discretion." *Small v. Mungo*, 175 S.E.2d 802, 804 (1970). A judge has not abused their discretion when the facts used to support a civil cause of action has not been satisfied by the Appellant. *Thomas & Howard Company v. Fowler* states that, "The plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with his cause. This is necessary if the courts are to control and efficiently manage an ever-expanding docket". *Thomas & Howard Company v. Fowler, et al.*, 238 S.C. 46, 119 S.E.2d 97 (1961); *Small v. Mungo*, 254 S.C. 438, 175 S.E.2d 802 (1970).

While most of the cases cited for a trial courts action under Rule 41;SCRCP, deal with undue delay of a plaintiff, including not being present for trial after proper notice, the Courts have recognized a broader discretion provided to the Courts to manage the disposition of cases under the rule and the inherent powers of the Court to manage its affairs and maintain integrity of the judicial system. *See Crestwood.*

The Court in *Crestwood* recognizes the trial court's "discretion and authority to manage their own affairs so as to achieve orderly and expeditious disposition of cases" by citing the

language in *Am. Jur.*. *Crestwood* at 832 (citing 24 Am.Jur.2d *Dismissal, Discontinuance, and Nonsuit 48* (1983)). In Justice Anderson's dissenting opinion in *McComas v. Ross*, he too recognizes the *Crestwood* opinion as giving a trial court authority to dismiss an action *sua sponte* and that such authority "emanates both from Rule 41, and from the inherent power of the court . . ." *McComass*, 626 S.E.2d 902, 907 (Ct. App. 2006). In its majority opinion, the Court in *McComass* also referenced the Fourth Circuit Court of Appeals opinion in *McCargo v. Hedrick*, where the Court held "[d]ismissal is generally permitted only in the face of clear record of delay or contumacious conduct by the plaintiff." *Id.* at 904 (citing *McCargo v. Hedrick*, 545 F.2d 393, 396 (4th Cir. 1976)) Contumacious is defined by Merriam Webster Dictionary as stubbornly disobedient, rebellious. Merriam-Webster https://www.merriam-webster.com/dictionary/contumacious. The Fourth Circuit Court of Appeals has a similar Rule 41, but has adopted a four factor test to apply in reviewing a trial court's dismissal of an action under that rule, which has not been adopted by the state courts. *McComass* at 904.

Appellant's brief does not dispute the trial judge abused his discretion, nor does he provide supporting case law that supports the trial judge abused his discretion by dismissing his action. (Appellant Br. 32 and 33). The Appellant only states that Rule 41; SCRCP is unconstitutional, which was never raised with the trial court and thus not ripe for appeal. Rule 59, SCRCP; Rule 201, SCACR; *Bean v. SC Central Rail Co., Inc.*, 709 S.E.2d 99, 111 (Ct. App. 2011) ("When an appellant neither raises an issue at trial nor through a Rule 59(e), SCRCP, motion, the issue is not reserved for appellate review."); *Id.*

The trial record is replete with Appellant's failure to prosecute his claims, as well as his persistent pursuit of fighting his criminal conviction. Starting with Appellants' complaint, his filings with the trial court, testimony contained in the transcript, and even in the Appellant's brief

filed with this Court, the Appellant puts forth a consistent theory, unrelated to any cause against the Respondent, that he is innocent of his criminal convictions. The Appellant attempts to confuse the issues, so that he may pursue his efforts to affect his guilty plea through his case against the Respondent. The Appellant is also a conspiracy theorist, and attempts to claim Respondent and Respondent's counsel are part of a conspiracy against him, further attempting to confuse the issues and failing to define a clear case against the Respondent. Appellant has a history of putting forward a conspiracy theory that he has been conspired against by state and federal government agencies, its subdivisions, and by all attorneys that have ever represented him or been adverse to him, and by the Respondent, to wrongfully charge, convict and maintain his guilt of charges, which he pled guilty to. (*See* Appellant's Brief). The former criminal charges Appellant refers to are sexual in nature, with more than one victim that were minors at the time of the conduct he pled guilty to. *Id.* One of those victims, Andrea Crisel, Appellant contends was his wife and of age at the time he had a relationship with her. (Transcript of Record pgs. 5, 7, ; App.'s Br. pg. 7) As admitted by his own testimony, Appellant attempts to use the lawsuit against the Respondent, to subpoena the victim, Andrea Crisel, and have her testify and put, what he believes would be exonerating testimony of his criminal charges on the record, in an effort to overturn his convictions in a later lawsuit. (Tr. of R. pg. 7, lns.17 – 20). Appellant never offers argument of how her testimony is necessary to prove his case against Respondent, and only offers argument of how her testimony would prove his innocence of his criminal charges.

The trial court attempts to understand Appellants complaint and what relief is sought by Appellant, as the complaint does not list causes of actions. (Transcript of Record pg. 4-6). Despite Respondent acknowledging on record that it assumed the causes of action sought by Appellant against Respondent were emotional distress and defamation, Appellant never acknowledges those

causes of actions, but rather makes his case for his wrongful conviction of his criminal charge, how he can prove his victim was of age at the time he had a relationship with her, and how his attorneys, law enforcement, the courts, and all else involved with his criminal conviction joined in a conspiracy against him, describing those involved by slurs such as "public pretenders" (referring to Public Defenders), "Guy Vendetta" (referring to one of his attorneys Guy Vitetta), "Officer Bogus" (referring to Sgt. Steven Bose), and even claims that Circuit Court Judge, The Honorable Deardra Jefferson, kidnapped him and influenced him into pleading guilty. (Tr. of R. pgs. 5-9) (Appellants response to trial court as to the relief he seeks, stating only that he wishes to be removed from the sexual offender registry) (Tr. of R. 5:24, Tr. of R. 7:11, Tr. of R. 55:20, Tr. of R. 56:12-14). While the Appellant does not make his argument in furtherance of proving the causes of action of emotional distress and defamation, he does attempt to use the defamation cause of action as justification to present evidence of his wrongful conviction argument, including subpoenaing Andrea Crisel, the victim of his criminal charge, with the intention of eliciting testimony from her regarding the conduct he pled guilty to in 2002. (Tr. of R. 12:4-24) Appellant does not argue his need for Andrea Crisel's testimony is to further his cause of action of defamation, but only argues that her testimony will create a record that he can then use in another lawsuit to attempt to be removed from the sexual offender registry. (Tr. of R. 13:7-22) (Tr. of R. 25:1-2) (Appellant arguing for allowing Andrea Crisel's testimony, "But it can put the truth on the record and show that the state search warrant was falsely got.") (*See* Tr. of R. 34:2 – 37:16) (Appellant's response to Respondent's motion to quash subpoena of Andrea Crisel). Appellant never makes a direct argument that Andrea Crisel's testimony is necessary to prove his defamation case against Respondent, but only makes the contention or connection that her testimony should come in because he needs to have her look at evidence that he also showed Respondent, and that

Respondent told him he believed in his innocence. (Tr. of R. 34:2-17). Notwithstanding the fact that Appellant's theory of proving his innocence is irrelevant and relies on hearsay and favorable testimony of Respondent and Andrea Crisel, Appellant fails to argue in his case in chief why her testimony furthers his case on either cause of action against the Respondent, or specifically any element thereof. Appellant's argument in vast majority focuses on his innocence of his criminal charges and not on prosecuting or putting forward an intelligible case against Respondent. His lack of ability to define the scope of his case required the trial judge to persistently attempt to maintain a focus on what it was the Appellant sought from the Respondent and from a jury. At one point, the trial judge attempts to stop the Appellant in his argument due to Appellant's continued argument about his innocence of his criminal conviction; nevertheless, Appellant goes into a denial on record that he had sexual relations with a 22 year old escort. (Tr. of R. 37:14 – 38:19). This escort is unknown, is not a party or witness to Appallant's case against the Respondent and is wholly irrelevant to his case. Despite the trial court's call for order, Appellant continues about "the things that keep him on the registry", how Andrea Crisel "is not a victim", how "[he] never had sex with her when she was underage", and how his attorneys conspired against him. (Tr. of R. 37:14 – 38:19). None of these statements have to do with his case against the Respondent. The entire record is full of the same type ramblings by the Appellant.

Appellant only articulates an argument of proving his innocence of the criminal charges he pled guilty to, and he is attempting to use the case against Respondent as a catalyst to do so. The Appellant commences and concludes the pre-trial hearing by arguing to the court of his innocence of his criminal charges. When the trial court first allows him to speak, Appellant opens by stating "[he has] been trying from the beginning" to clear his name that he was innocent of his criminal charges. (Tr. of R. 5:19). When the trial court allows Appellant to make final remarks in concluding

the day, Appellant only focuses on his professed innocence by stating, "she can't say she wasn't 20 years old. They were her friends. I didn't know them. I never allowed them to ever do [sex parties] again in my house. And they did it all the time, but it was Andrea's house too. They could come over. She could bring anybody over. I just didn't want the freakiness at the house." (Tr. of R. 68:20-25). Based on the totality of Appellants statements, he made it very clear his intentions and pursuit were focused on his criminal convictions and proving his innocence of those, rather than furthering any cause he may have against the Respondent. Appellant even acknowledges his persistence of proving his innocence of his criminal convictions by stating Judge Duffy, of the United States District Judge, asked him to stop attempting to place Andrea on the stand or put his innocence on the record, to which he allegedly replied, "I am not going to stop. I didn't do it. I didn't commit any crime." (Tr. of R. pg. 8:16 – 23).

Based on the foregoing, the trial transcript, and essentially all of the filings by Appellant with the trial court, and those filed with this court, dismissal of Appellant's action was proper, was in the sound discretion of the trial court, and necessary to manage the affairs and uphold the integrity of the judicial process. In *Georganne Apparel, Inc. v. Todd*, the court held that a dismissal under Rule 41;SCRCP, was proper: stating "The relief granted was not too harsh under the totality of the circumstances. Plaintiff has been given an abundant opportunity to litigate. There is a limit beyond which the court should not allow a litigant to consume the time of the court and to prolong unnecessarily time, effort, and costs to defending parties. The granting of the order was a discretionary matter". *Georganne Apparel, Inc. v. Todd*, 399 S.E.2d 16, 19 (Ct. App. 1990).

The Court in *Georganne* dismissed an action against the Defendants on Plaintiff's Motion, without prejudice, but with an order that only allowed a re-filing based on the same causes of actions. The Plaintiffs later refiled a Complaint, naming two new parties and new causes of action

against those parties. The trial court then dismissed with prejudice the action under Rule 41; SCRCP, stating a "blatant violation" of the previous order dismissing the case without prejudice. *Id.* at 18. This Court upheld that trial court's decision. *Id.* at 19. While the present case does not fit squarely to the facts of the cases decided by the courts of South Carolina, the cases, such as *Georganne* do speak to the broad discretion vested in the trial courts to manage their affairs and maintain the integrity of the judicial system. *Id.*

Aside from the argument stated before, the Appellant clearly did not appear at the trial of this matter prepared to pursue his case against the Respondent, but was readily prepared to attempt to present evidence and illicit testimony that he believes would prove the innocence of his criminal convictions. He presented discovery documents to the Respondent at the day of trial, and claimed that Respondent was already in possession of them, without providing a proof of service. (*See* App. Designation of Matters on Appeal; Statement of Iss. No. 8) In fact, Respondent asked for the records in discovery, subpoenaed the records from the medical provider, and then received a court order to protect those mental health records and subpoenaed them a second time, when the mental health provider informed the Respondent that they did not keep records on the Appellant. No healthcare provider was present to testify at trial on behalf of the Appellant, which would be necessary to his case had the trial court ever made a decision that emotional distress was in fact a cause of action sought by the Appellant[1]. Much of the Appellant's contentions brought before the trial court in the present matter against Respondent, mirror the same contentions he claimed in a

[1] This matter arises from a relationship between Respondent and the roommate of the Appellant. Appellant contends that he suffered emotional distress from the conduct that occurred between Respondent and his roommate during the time they were separating. Appellant does not contend Respondent's conduct was directed towards him, requiring him to prove Respondent's conduct toward the roommate actually resulted in bodily harm to the Appellant, thus requiring proof from a medical provider. Michael G. Sullivan et al. *Elements of Civil Causes of Action* 220 (5th Ed. 2015) *citing Upchurch v. New York Times Co. [d/b/a Spartanburg Herald]*, 431 S.E.2d 558 (1993). The Appellant did not make this argument to the trial court despite ample opportunity, nor did the trial court ever find sufficient information provided from the Appellant to make such a determination.

former lawsuit *Theodore Wagner v. State of South Carolina*, (Docket No. 2015-CP-10-1303), which was dismissed. The dismissal of that lawsuit led Appellant to use the case against the Respondent in an effort to achieve the same goals of eliciting testimony and presenting evidence relevant only to his criminal conviction. Most of the witnesses subpoenaed in the present matter, would have been subpoenaed had his former lawsuit not been dismissed. Appellants irrelevant subpoenaed witnesses required Respondent to file a motion to quash each one on the grounds of relevancy and on the grounds they each contained threatening language of retaliation if the witnesses did not appear and testify. The Appellant has disregarded the rules of court and abused the judicial system in an effort to relitigate his criminal convictions which he pled guilty to. Appellant acknowledges his repeated efforts over the years to use the courts as a means to relitigate his criminal convictions, by his own statements about his conversation with The Honorable Judge Duffy. (Tr. of R. pg. 8:16 – 23) Allowing him to continue to do so prejudices not only the respondent, but is an immense and immoral burden on the victim of his crimes. Dismissal of his action by the trial court was the proper use of its discretion to maintain the integrity of the judicial system and is the only remedy available in this matter. As the trial court properly recited, "we can't go forward with a jury on assumptions". (Tr. of R. 4:21-22)

2. **Was it improper for Judge Deadra Jefferson to not recuse herself from presiding over motion hearings between Appellant and Respondent?**

The Appellant contends that the trial judge during a motion hearing, The Honorable Deadra Jefferson, did not act with impartiality. Under Canon 3B(1), it states that: "(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required. South Carolina Appellate Court Rules: Rule 501, Cannon 3(B)(1), SCACR. Canon 3 states:

"(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding

(iv) is the Judge's knowledge likely to be a material witness in the proceeding."

Id.

If a judge does not disqualify themselves from presiding over a matter, some form of challenge would have to be made by either party. The Appellant did not raise the issue of impartiality with the Court, and did not file a motion under Rule 59, SCRCP preserving this issue for appeal.

The United States District Court in *Duplan Corp v. Deering Milliken, Inc.,* citing *Chafin v. United States*, states, "The United States Court of Appeals for the Fourth Circuit has repeatedly stated that a reasonable challenge against a trial judge for bias and prejudice 'must be made at the first opportunity after discovery of the facts…(allegedly requiring) disqualification". *Duplan Corp v. Deering Milliken, Inc.*, 400 F.Supp. 497, 509 (1975). In the Appellant's Amended Designation and Brief, there is no supporting facts that show Judge Jefferson acted impartially in this matter, and no argument that a law was violated by Judge Jefferson not recusing herself. The Appellant only makes an assertion or claim that Judge Jefferson did act impartially or should have recused herself. The Appellant also fails to assert how he was prejudiced by Judge Jefferson presiding over the motion hearings. Much of the information put forward by Appellant is irrelevant and deals with his past criminal conviction, which he fails to provide it relevancy to his appeal or case against the Respondent. Appellant also contends Judge Jefferson denied him everything at the hearing he is referring to and gave the Respondent "whatever he wanted." (App.'s Br. pg. 31) This is not true, and Appellant does not provide any proof to support it. The motion hearings referred to by the Appellant were for a protective order over his mental health records, a motion for a scheduling order, both filed by Respondent, and a motion for a speedy trial and a motion to have video evidence submitted as deposition testimony, both filed by the Appellant. Appellant's motion before Judge Jefferson was to take the tape recordings he had of several individuals and have them submitted as depositions, which among other evidentiary violations, is clearly a violation of Respondent's right to cross examination. Judge Jefferson had no option but to deny his motion. Appellant's motion for a speedy trial was denied, because necessary discovery, including but not limited to the retrieval of mental health records, was still being conducted. Appellant's contention that Respondent got "whatever he wanted" is purely inaccurate and out of touch with reality.

Judge Jefferson did not act with impartiality, and her presiding over the motion hearing did not prejudice the Appellant's case, and should have no affect on the rulings of the lower court. In addition, the Appellant did not raise this issue to the lower court or preserve it under Rule 59, SCRCP and thus it is not ripe for review by this Court.

3. Can counsel for Defendant demand a second set of records be supplied by Plaintiff that he previously received?

Appellant provides this statement of issue, without providing any supporting argument in his brief. (*See* App.'s Br.) Appellant does not provide proof of service, or any other supporting documentation showing that Respondent received the records he refers to. Appellant further did not raise this issue with the trial, or preserve it by filing a motion under Rule 59, SCRCP, thus it is not ripe for this appeal. Rule 201; SCACR.

Respondent does provide the following response: Appellant was served with a request for production on September 29th, 2015, requesting the records he refers to. Appellant did not provide the records. On July 16th, 2016, Respondent served a subpoena on Compass Carolina Healthcare Systems, requesting such records. Compass Carolina responded with a letter stating the Appellant was a patient, but did not release any records. On January 18, 2017, Respondent issued a subpoena with an attached order of protection, and a representative from Compass Carolina contacted Respondent's attorney and informed they do not keep records on the Appellant. Appellant was under a continuing duty to provide Respondent with discovery, and failed to do so. Instead of recognizing his continuing duty under Rule 34; SCRCP to provide discoverable materials to Respondent, Appellant blames the health provider for providing counsel for Respondent records and not providing them to him, when that too was not true. (Tr. of R. 65:16-24). *See CFRE, LLC v. Greenville County Assessor*, 716 S.E.2d 877, 885 (2011) ("An affirmative duty does exist to answer interrogatories and respond to request for production.").

This issue was not preserved for appeal, nevertheless, the Appellant's contentions are factually inaccurate, and his analysis is not supported by law. No part of this issue should affect the decision of the lower court's ruling.

CONCLUSION

All other issues on appeal by Appellant, were not raised with the lower court and not ripe for review or appealable under Rule 201; SCRAC. Therefore, Respondent does not provide a response to those remaining issues put forward by Appellant.

Based on the clear misuse of the judicial system, the failure of the Appellant to articulate or present to the trial court the relief he sought from Respondent, requesting relief not relievable or prayed for in his complaint, and misuse of the court and its rules to intimidate and attempt to put irrelevant testimony on the record, the trial court properly exercised its discretion and dismissed Appellant's action. Appellant does not contend abuse of the trial courts discretion, and unless abuse is shown, the decisions of the trial court should not be overturned on appeal. The burden on the Respondent in continuing to defend a case that has not been properly articulated or supported by the Appellant, is not only impossible for the Respondent to defend, but is also highly prejudicial and expensive. The Appellant has not put forward any argument of how the Respondent is not prejudiced by continuing to defend the action against him. Not only is the continued litigation of the Appellant's case prejudicial to the Respondent, but the continued conduct and filings of the Appellant clearly reflect and demonstrate his desire to use his case in an effort to relitigate criminal charges he willfully and voluntarily pled guilty to in 2002. In doing so, the Appellant has misused the trial court and the rules provided therein, to summons the former victims and investigating agencies involved in his criminal convictions to attempt to prove his innocence and pursue his conspiracy theory. This is the focus of the Appellant, not his case against the Respondent. There

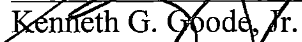
is no greater immorality or burden than having the victim come to court and have her relive the sex acts committed against her, which the Appellant pled guilty to. Whether his guilt is true or not, Appellant has failed to provide a basis for such testimony in his case against Respondent, because he does not have one.

Appellant has also put forward statements of issues that are factually inaccurate, and Appellant does not provide any supporting evidence to show otherwise. Specifically responded to above in Respondent's Statement of Issues number 2 and 3. Despite Appellant's inaccuracies, Respondent is forced to endure the time, costs and other expense in defending against Appellant's baseless arguments. Appellant's arguments are consistent with the pattern of conspiracies and baseless assertions he puts forward throughout this matter, and other matters he has filed with the trial court's before.

The trial court accurately observed Appellant's lack of preparation in pursuing a case in chief against Respondent. The trial court accurately observed the Appellant's desired relief was not based on his relationship with Respondent. The trial court accurately observed Appellant's misuse of the devices provided under the South Carolina Rules of Civil Procedure to attempt to pursue other theories of relief, not related to the case against Respondent. The burden on the Respondent were apparent, and the burden on the victim of Appellant's sex crimes is immoral, and the Appellant's opportunity to pursue a case against the Respondent was allocated to his pursuit of a conspiracy theory against the state and federal government. The trial court had no other choice, based on the totality of the circumstances but to dismiss the Appellant's case under Rule 41(b), after giving the Appellant ample opportunity to provide his case in chief against the respondent. Respondent asks this court to uphold the decision of the trial court.

Respectfully Submitted,

LAW OFFICE OF KENNETH G. GOODE, JR., LLC



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ATTORNEY FOR RESPONDENT

Charleston, South Carolina
April 30th, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Circuit Court
The Honorable Daniel D. Hall, Circuit Court Judge

RECEIVED
MAY 03 2019
SC Court of Appeals

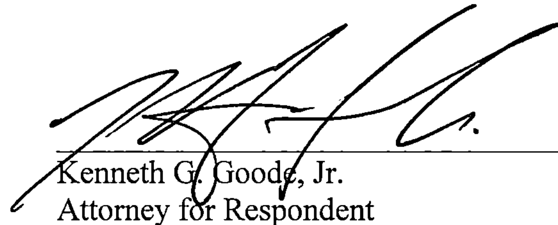
Case No. 2015-CP-10-4166
Appellate Case No. 2018-001125

THEODORE WAGNER v. DESIGNA PRINT AND MIKE DAVIS INCLUDING ANYONE WHO IS COMPLICIT OR ENABLED PROTECTING MIKE DAVIS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of May 2019, I provided Appellant, Theodore Wagner, a copy of Respondent's Designation of Matters to be Included on the Record on Appeal and Brief of Respondent by email and, by mailing a copy USPS to the following:

Theodore Wagner
557 East Bay Street
Charleston, South Carolina 29403
Theodorewagner65@yahoo.com



Kenneth G. Goode, Jr.
Attorney for Respondent

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RECEIVED
MAY 03 2019
SC Court of Appeals

May 1, 2019

The Honorable V. Claire Allen
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Theodore Wagner v. Designa Print and Mike Davis Including Anyone who is Complicit or Enabled Protecting Mike Davis
Case No.: 2015-CP-10-4166
Appellate Case No.: 2018-001125

Dear Ms. Allen:

Please find enclosed the original and one copy of Respondent's Designation of Matters to be Included in the Record on Appeal, Brief of Respondent and Certificate of Service. I have also included a self addressed stamped envelope for the return of the "filed"-stamped copy to me.

Thank you in advance for your attention to this request, and please do not hesitate to contact me with any questions, concerns or further instructions.

Sincerely,

Kenneth G. Goode, Jr.

KGG
w/enclosure

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29201

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SC Court of Appeals

The Honorable V. Claire Allen
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201