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

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

**The Honorable Mikell R. Scarborough, Master in Equity**

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



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**Churchill Park, Respondent**

**v.**

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

**Of which Alan G. Nix is the Appellant**

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**Appellate Case Number 2018-000056 &**
**2018-000174**

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# MOTION TO PLEASE DO YOUR JOB PROPERLY

## FACTS

On 5 April 2018, an order signed by Judge Lochemy was filed for appellate case 2018-000056, dismissing the appeal without prejudice pursuant to Hudson v. Hudson.

On 5 April 2018, an order signed by Judge Lochemy was filed for appellate case 2018-000174, dismissing the case for failure to timely serve the notice of appeal. (Rule 203(b)(1))

The afternoon of 7 May 2018, Appellant filed the Memorandum in Support of Rule 60(b) with the Charleston County Small Claims Court, North Area. In short, the motion laid out the

grounds for attorneys and their clients in the small claims case and case 2014-CP-10-05407 being involved in a conspiracy to defraud, etc.

Approximately 3.25 hours later, Appellant emailed a scanned copy of the Memorandum to the Defendant's attorneys in the small claims case.

Approximately eight mins after the copy was mailed to Defendant's attorneys, Appellant forwarded the same scanned copy to the SC Office of Disciplinary Counsel's office. Given the Memorandum filed a few hours earlier laid out a prima fascia case of conspiracy between the attorneys involved in the small claims case and attorney's involved in cases 2014-CP-10-05407 and 2017-CP-10-04031, notifying the Office of Disciplinary Counsel seemed appropriate.

On 11 May 2018, Appellant received a copy of an order from Judge Turner, the Charleston County Small Claims judge involved in the case which the Memorandum had been filed less than four days earlier. Judge Turner cited reasons such as "the court finds a failure to demonstrate the requisite particularized showing of the reason listed in 12(B)(1)" and "That no new evidence which by due diligence could not have been discovered was presented to the court.

Judge Turner's denial contains, as appears to be standard operating procedure, minor incorrect assertions, intended to create the appearance of a rational reason to deny the motion. .

Ironically, on the very same day, 11 May 2018, Appellant received an order from the SC Court of Appeals reinstating case number 2018-00056 and consolidating it with appeal case 2018-00174. Apparently Judge Lochemy had an epiphany during the previous 36 hours or so and decided he needed to review the lower court's filings to apparently determine he had made an awful mistake five weeks earlier when he had dismissed the case without prejudice so the outstanding motions could be heard. Given Judge Lochemy states he reviewed the "Appellant's post-trial motions that he alleges are pending", **Judge Lochemy surely must have recognized the multiple improper actions Judge Scarborough had engaged in, including but not limited to, the closing all of the Appellant's outstanding motions filed prior to the appeal being filed, without having a hearing or entering an order**. Clearly improper judicial conduct and I will argue done with a corrupt motive.

During the period late May 2018 through November 2018, Appellant made five separate motions to be granted leave to file a rule 60(b) motion in the lower court. Each were denied, for

various and in some cases, misrepresentative reasons. Clearly, the SC Court of Appeals knew in general a 60(b) motion would look much like what was submitted to the Charleston County Small Claims court on the afternoon of 7 May 2018, and took all steps remotely possible to ensure that did not occur... much like the hurried attempt to reinstate of the appeal in an attempt to prevent the Rule 60(b) motion filed in the small claims case from being filed in cases 2014-CP-10-05407 and 2017-CP-10-04031.

On 6 Nov 2018, Appellant recognized the relationship between the Office of Disciplinary Counsel's offices location and the SC Court of Appeals location. Given that close physical proximity, compounded with the sudden attempted reinstatement of the appeal on or about 8 May 2018 as well as the SC Court of Appeals obvious intent to prevent a 60(b) motion from being filed in the lower court, Appellant forwarded for a second time the email from the afternoon of 7 May 2018.

In the same email, Appellant pointed out that the order allegedly filed in May 2018 attempting to quickly restore the case, lacked a date and Clerk of Court stamp.

On 10 Nov 2018, Appellant received a letter from the SC Court of Appeals, Deputy Clerk of Court, dated 7 Nov 2018, stating that the email sent on the morning of 6 Nov 2018 had been forwarded to her and stating "No further actions will be taken on your filing".

Despite the SC Court of Appeals multiple denials to grant Appellant the right to file a 60(b) motion, Appellant went ahead and filed a 60(b) motion for case 2017-CP-10-04031 on 9 Nov 2018 and for case 2014-CP-10-05407 on 13 Nov 2018.

The Court of Appeals issued an order dated 21 Dec 2018 giving Appellant 20 days to file their initial brief and designation of matter or the case would be dismissed.

Appellant filed a motion on 13 January 2019 asking the Court to properly restore the appeal, essentially a follow up and expansion of the 6 Nov 2018 email.

By letter dated 13 March 2019, Ms. Allen, the Deputy Clerk, stated that the appeal was restored in May 2018, that the lack of a stamp was just a clerical error and gave Appellant 20 days to file his initial brief and designation of matter or the case would be dismissed.

Judge Williams, by order dated 16 May 2019, denied any motions to remand and stated the Appellant's motion of 12 January 2019 was moot, without providing any explanation or

evidence to support his questionable assertion. Likewise, Judge Williams also gave the Appellant 20 days to file the initial brief and designation of matter or the appeal would be dismissed.

Given multiple Court of Appeals judges, and Ms. Allen, the Deputy Clerk have avoided dealing with the obvious for more than seven months, Appellant saw no alternative but file a motion on 28 May 2019 attempting to compel the Court of Appeals, more accurately its judges and court personnel, to produce at least a scintilla of evidence and logic to support their various explanations as to why the case was so clearly restored, despite it being posted without a Clerk stamp or written date during the period of time from early May 2019 until whenever Ms. Allen and/or Ms. Kitchings finally decided to correct it after February 2019.

Despite that very focused and specific motion of Appellant, dated 28 May 2019 and received 30 May 2019, Judge Lockemy issued an order dated 27 June 2019 that said "Appellant has failed to serve and file his initial brief and designation of matter as required by the court's order of May 16, 2019. Accordingly, this appeal is dismissed. The remittitur will be sent as provided in Rule 221, SCACR," Notice there is not any mention of the motion dated 28 May 2019 nor the issue of Judge Williams avoidance on ruling on the January 2019 motion or the overarching and controlling issue of whether it was logically possible to dismiss appeal 2018-000056 if it had never been properly restored.

## ARGUEMENT

First, and most crucial, if appeal 2018-000056 was never properly restored in May 2018, nor at any point thereafter, with particular focus on the period starting with the email of 6 Nov 2018, at which point Judge Lockemy and Ms. Allen, at a minimum, was on notice of the issue, then clearly there is not an appeal 2018-000056 to be dismissed.

Second, given Judge Lockemy apparently reviewed Judge Scarborough's records, assuming Judge Lockemy is competent, then he clearly had first hand knowledge of Judge Scarborough's misconduct in the management of the case(s) starting at least by 23 March 2016.

Third, the Court of Appeals was on clear notice that the validity of at least two transcripts were called into question. The first, dated 21 March 2016, is known to be highly inaccurate. Given Judge Scarborough's and Charleston County's conduct in this matter, most likely

intentionally fraudulent with the purpose of attempting to conceal the fraud involved with his order of 23 March 2016, alleging to dismiss case 2014-CP-10-05407 for a 40(j) agreement. The second, raising serious questions about Ms. Smith's inclusion of generic language in a transcript to conceal the fact that no witnesses were sworn in on 26 Sept 2017. Hence, not only was a motion to remand proper to allow these key issues to be vetted and corrected, but also, since the Appellant returned the transcripts for verification and correction, the Appellant has not received any verified transcript with which to generate an accurate record on appeal. The court of appeals conduct in repeated denials to remand can only be construed as knowing and willful improper conduct meant to protect Charleston County, Judge Scarborough, Ms. Smith, etc.

In respect to number two and three above, given the period of time which has lapsed since the Court of Appeals has been aware of these issues, and the obvious misconduct by Judge Scarborough, it appears Judge Lockemy and the other Court of Appeals judges have failed to properly report the misconduct of Judge Scarborough, thereby committing attorney judicial misconduct themselves. This issue, compounded by Judge Lockemy's, Ms. Allen's and Judge William's conduct with respect to the ongoing dispute of the obvious facts about if, and if so, when, 2018-000056 was ever restored, lays the foundation which required Judge Lockemy to recuse himself, and given his position on the Court of Appeals, compounded with the fact that it appears none of his associate justices have reported his misconduct, could be easily argued that the remaining eight judges have placed themselves in a position requiring voluntary recusal as well.

Additionally, given the case and intent Appellant laid out in his 28 May 2019 motion, specifically asserting that due to the case not being properly restored, I intended to pursue legal action against the court and at least one judge (Lockemy) and most likely Ms. Allen, under the premise that they did not have jurisdiction since 5 April 2019 and therefore could not assert judicial immunity, it is obvious that Judge Lockemy, at the time he signed the order of 27 June 2019, knew, or should have known, he was in a personally conflicted situation and had no choice but to recuse himself. The concept is not very difficult to grasp. If someone has made the same case, based on facts and evidence, similar to the one I included in my motion of 28 May 2019, then clearly Judge Lockemy knew that to admit the appeal was not properly restored, or to rule on any of the allegations made in motions filed by me since mid January 2019 related to the appeal not being properly restored, would only further jeopardize his position legally. I would

assert that his lack of even minimally addressing the issue in his order of 27 June 2019 could be construed as evidence of his consciousness of guilt at the time he signed the order and at the time he filed the order.

More to the point, South Carolina case law related to misconduct in office lays out three different types of misconduct of which public officers may commit: malfeasance, misfeasance and nonfeasance. Based just on the facts laid out above, it appears there is a high likelihood that Judge Lockemy, at a minimum, has engaged in nonfeasance, defined as substantial failure to perform the duty of good faith and accountability, as well as potentially misfeasance. State v Hess.

I am substantially more aware of the political influence the Tomlin's and their associates have in Columbia and South Carolina than I was even a year ago. It is totally understandable the State would like to avoid another huge, embarrassing political / governmental scandal. However, this ongoing knowing and willful improper conduct and perversion of the judicial system by multiple South Carolina local, county and State persons and Persons, to conceal the conduct, delay the prosecution of, and ultimately use the power of the State to coerce an innocent citizen into forgoing their lawful rights to pursue justice, is, has been, and will forever be completely intolerable and counter to anything that resembles or supports a democracy or a republic. Likewise, the corruption of what appears to be a substantial number of licensed attorneys in South Carolina, either directly or indirectly, to protect the wealthy and powerful at all costs and without even the most minor regard for the principals set out in the Rules of Professional Conduct, can only be construed as leaving no doubt that the legal industry is not only not the solution, but substantially the foundation of the majority of the problem, and consequently, are not only not capable of self governance.

Specifically to the order dated 9 August 2019, which would obviously also relate to the previous two orders of May and June 2019 as well, so that the Court doesn't have to carefully misconstrue any of the Appellant's requests:

1. "Appellant has now filed a motion and correspondence, which we construe together as a petition to rehear the dismissal of this appeal."
    a. The crux of this issue has been addressed in multiple motions, as well as again above, but, to point out the obvious yet again to ensure the Court is not

somehow confused, to dismiss an appeal, this appeal, any appeal, logically means that there was an appeal to be dismissed. What the Court should have (easily) construed, based on multiple motions dating back to mid January 2019, and back to 6 November 2018 via email, is the Appellant clearly requested the Court to properly restore the case and abide by the rules of the Court.

2. "After careful consideration, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is not a basis for reinstating this appeal or granting a rehearing.
    a. Please identify all items/facts/isuess/etc. the Court carefully considered.
    b. As to the "material fact", please clarify, precisely, how the Court did not find the fact the case(s) was not properly restored not to be material.
    c. During the Court's apparently careful process of consideration, please clarify how the Court apparently forgot about the Appellant's very clear request to "***provide a complete response to the motion received by the court on 30 May 2019, and based on the facts, logic and evidence the court and / or your attorneys make in that response, amend the order dated 27 June 2019 accordingly***."
    d. Perhaps, Judge Lockemy, you should review your email from 6 November 2019. You most likely have at least one email on that day that most reasonable persons might consider to be a material fact.
    e. The Appellant, after careful consideration of the Court's conduct for over fourteen months, construes multiple of the Court's actions, including but not limited to the intentional avoidance of addressing the issue the Appellant raised related to properly restoring the appeal, as the Court's / individual judges, knowing and willful misconduct in intentionally avoiding addressing / ruling on any material fact and/or issue that the Court could reasonable perceive as creating legal jeopardy for the Court / the individual judges of the SC Court of Appeals, or other members of the South Carolina judicial system, such as, but not limited to, Judge Scarborough.

i. Please provide a detailed explanation by the Court as to why the Appellant's assessment is incorrect. .

3. Please donate a portion of your recent salary increases to the State / Clerk of Court for the Court of Appeals, so they can:
    a. Purchase an automated date/time stamp clock machine. Appears the cost is between $450 and $1200, which equates to between $50 and $133.34 per judge.
    b. Please explain why the Court never found it appropriate / proper to procure an automated date/time stampe clock machine.
    c. Purchase some business process consulting services to assist with the implementation of the same, as well as ensure there is a highly repeatable process in place to avoid this type of issue in the future. Perhaps $100 to $200 per judge.
    d. Any other investments in the judicial system that the Court believes is appropriate / warranted.
4. "***provide a complete response to the motion received by the court on 30 May 2019, and based on the facts, logic and evidence the court and / or your attorneys make in that response, amend the order dated 27 June 2019 accordingly***."
5. Please have Ms. Kitchings respond to my letter dated 18 July 2019.

Anything else the Court truly believes, or knows, it should do that is just, proper and prudent. (Even though I am a simple layman, and fortunately didn't go to the University of South Carolina / University of South Carolina Law School, I highly recommend y'all seriously think about those words "just", "proper" and "prudent".

Dated: August 17, 2019

Respectfully submitted,

Alan G. Nix
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Mount Pleasant, SC 29466
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**Of which Alan G. Nix is the Appellant**

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**Appellate Case Number 2018-000056 &**
**2018-000174**

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**PROOF OF SERVICE**

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The undersigned certifies that a copy of the Appellant's Motion to Please Do Your Job Properly has been served upon the individuals listed below by mailing a copy of the same, postage prepaid, in the United States Mail, addressed as shown below this 19th day of August 2019 to:

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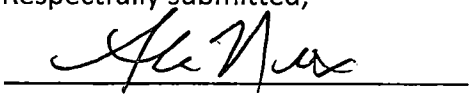
Dated: August 17, 2019

Respectfully submitted,

By: 

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