

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**RECEIVED**  
OCT 14 2019  
SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
In the Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

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Appellate Case No. 2019-001501

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James John Todd Kincannon..... Appellant,

v.

Ashely Suzanne Griffith, Moore Taylor Law  
Firm, P.A., Vance Stricklin, and Amber  
Fulmer,.....

Respondents.

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**APPELLANT'S MEMORANDUM IN SUPPORT OF MOTION  
FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

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Appellant James John Todd Kincannon respectfully submits the following memorandum in support of his motion for leave to proceed in forma pauperis pursuant to Rule 240(c)(2), SCACR.

Other Counsel of Record:

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Appellant Pro Se  
October 9, 2019

**APPELLANT'S MEMORANDUM IN SUPPORT OF MOTION  
FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

*Application of Rule 240(d), SCACR to Appellant's Motion*

Although no rule of the South Carolina Appellate Court Rules establishes the general standard by which South Carolina appellate courts should review motions for leave to proceed in forma pauperis, Rule 240(d), SCACR states that “In extraordinary cases, the appellate court may relieve a party from paying the filing fee.” Though that rule provision is located in a section of the South Carolina Appellate Court Rules governing motions, Appellant assumes—due to the lack of any countervailing rule, statute, or published decision—that the “extraordinary cases” standard applies not only to motion filing fees but also to the general filing fee applicable to civil appeals in South Carolina. If the Court should find that another standard applies—which is not apparent from either the rules, statutes, or reported South Carolina decisions applicable to motions for leave to proceed in forma pauperis—Appellant respectfully requests leave to resubmit this motion with argument based on whatever standard the Court deems to be correct if it is not the “extraordinary cases” standard.

*Analysis Under the “Extraordinary Cases” Standard*

Rule 240(d), SCACR does not define “extraordinary cases,” and Appellant respectfully submits that an appellate litigant’s indigency is an “extraordinary case” which justifies a South Carolina appellate court allowing the litigant to proceed in forma pauperis. “Extraordinary” is not a term of art in this context, therefore the dictionary definition applies. “Extraordinary,” as defined by Dictionary.com, a commonly used

English dictionary<sup>1</sup>, is an adjective defined as “beyond what is usual, ordinary, regular, or established.” It is certainly the case that an indigent litigant is an extraordinary litigant, since usual, ordinary, and regular civil litigants in South Carolina courts are non-indigent and are able to pay court filing fees. Appellant, however, is indigent and, therefore, is not a “usual,” “ordinary,” or “regular” civil litigant. Appellant’s indigency classifies him as an extraordinary civil litigant, which means that Appellant’s request for leave to proceed in forma pauperis is an “extraordinary case” per Rule 240(d), SCACR, which means the Court is required by Rule 240(d), SCACR to relieve Appellant of the obligation to pay filing fees so long as his indigency persists.

Any other interpretation of Rule 240(d), SCACR would pose grave constitutional concerns both under the United States Constitution and under the South Carolina Constitution and must be avoided under the canon of constitutional avoidance. If the drafters of the “extraordinary case” provision of Rule 240(d), SCACR did not intend for that provision to apply to the extraordinary situation where a good faith appellate litigant cannot afford an appellate filing fee, the only constitutional solution is for the Court to grant Appellant’s motion by way of a reported opinion that asks the South Carolina Supreme Court and the South Carolina General Assembly to enact a clarification to Rule 240(d), SCACR specifically stating whether indigency is within or not within the “extraordinary case” provision. By the dictionary definition of “extraordinary,” indigency is necessarily an extraordinary situation that justifies the Court’s granting of Appellant’s motion.

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<sup>1</sup> Dictionary.com is probably the most commonly used English dictionary at the present time, for obvious reasons.

*The Absence of Due Process in the Trial Court Hearing  
and Disproportionate Nature of the Filing Fee*

DUE PROCESS VIOLATIONS BELOW

Even if no South Carolina state statute or other enactment (such as Rule 240(d), SCACR) allowed Appellant to proceed in forma pauperis, the United States Supreme Court's rulings in United States v. Kras, 409 U.S. 434 (1973) and Ortwein v. Schwab, 410 U.S. 656 (1973) would require the Court to grant Appellant's motion for two reasons: (1) this appeal is premised, in principal part, on the trial court's refusal to rule on five critically important requests timely presented by Appellant in oral argument at the hearing on the Rule 12(b)(6) motion or in timely filings appurtenant thereto: (a) Appellant's timely request for leave to submit an amended complaint curing all defects alleged by Respondent, which was ignored by the trial court and functionally denied by the trial court's granting of a Rule 12(b)(6) motion with prejudice, an unusual judicial act under any circumstances; (b) an objection to Respondent's submission of an untimely and improper affidavit in support of a Rule 12(b)(6) motion; (c) an objection to Respondent's submission of untimely and improper court orders in unrelated or, at best, tangentially related legal proceedings after the hearing on the Rule 12(b)(6) motion which Appellant had no notice of or opportunity to respond to; (d) a timely petition by Appellant to disqualify the trial judge because of the trial judge's apparent reliance on, and knowledge of, facts and proceedings outside those properly presented to the trial court by Appellant and Respondent in a timely manner prior to and at the hearing on the Rule 12(b)(6) motion; (e) the trial court's improper reliance on untimely material included in a

memorandum in support of the Rule 12(b)(6) motion filed by Respondent that was outside the scope of the Rule 12(b)(6) motion itself.<sup>2</sup>

The Supreme Court of the United States suggested in dicta in Ortwein v. Schwab, 410 U.S. 656 (1973) that an appeal founded on a denial of due process by a trial-level tribunal occupies a different constitutional significance than an appeal founded on a claim that a trial-level tribunal was merely wrong in its rulings despite affording due process to the appellant. Id. Because this appeal involves a situation where Appellant contends—with reasonable justification—that a trial court refused to afford him due process by failing to rule on critically important, outcome-determinative issues, this appeal is exactly the sort of appeal that should qualify for in forma pauperis treatment under both United States v. Kras, 409 U.S. 434 (1973) and Ortwein v. Schwab, 410 U.S. 656 (1973). Appellant simply has no other way to vindicate his rights to fundamental due process (and equal protection) in this matter other than an appeal as of right to this Honorable Court, and Appellant contends in good faith that if the trial court had afforded him due process by actually ruling on the matters he timely raised to the court, then the outcome of Respondent's Rule 12(b)(6) motion would have been different.

Appellant obviously cannot predict with certainty that the Court of Appeals will agree with him that his due process rights were violated, but the record on appeal and materials that Appellant is able to submit at this juncture—while still awaiting a transcript of the hearing below—do tend to show that Appellant's contention as to due process violations is correct. The trial court refused to rule on Appellant's timely

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<sup>2</sup> The majority of these matters were presented to the trial court at oral argument. Appellant is presently awaiting preparation of a transcript of the oral argument. Appellant will file the transcript as soon as it is received. The remaining issues were raised by way of Appellant's post-trial motion which is attached as an Exhibit to this memorandum, and the orders

objections and motions relating to the material that the court considered in connection with Respondent's Rule 12(b)(6) motion, recusal issues, and—perhaps most critically—Appellant's request for leave to file amended pleadings to cure whatever pleading errors the Court in Appellant's Complaint after hearing Respondent's Rule 12(b)(6) motion.

Appellant also respectfully submits that an appeal founded on a trial court's improper refusal to rule on matters properly placed before it by the Appellant—including a motion to amend pleadings and a motion for judicial disqualification—constitutes an “extraordinary case” which justifies an appellate court's relieving the appellant of paying filing fees. Appellant's fundamental request of this Court is to either compel the lower court to rule on things it should have ruled on in the first instance or rule on those things itself and remand the case for further proceedings consistent with the appellate rulings. When a trial court refuses to issue rulings on matters properly before it in a case involving an indigent litigant, the indigent litigant cannot be constitutionally required to pay a filing fee that he or she cannot afford in order to obtain a ruling in the first instance on such matters from an appellate court, or a remand with instructions to the trial court to rule in the first instance, because any requirement of that nature would violate the indigent litigant's right of access to a court's ruling on matters within its original jurisdiction, a fundamental constitution right that would be denied if Appellant were not granted leave to proceed in forma pauperis on appeal.

#### DISPROPORTIONATE FILING FEES

The U.S. Supreme Court also indicated in dicta in Ortwein v. Schwab, 410 U.S. 656 (1973) that disproportionate appellate filing fees would be unconstitutional as applied to indigent appellants, a position that is plainly correct as a matter of

constitutional law (both federal and state) even though the remark was made only in dicta in the Ortwein case. Appellate respectfully contends that South Carolina's current appellate filing fee structure is unconstitutionally disproportionate because the filing fee for appeals and for motions made in South Carolina appellate courts are both higher than the filing fee for lawsuits and motions made in South Carolina trial courts.

The filing fee for a notice of appeal is now \$250 by order of the South Carolina Supreme Court dated October 9, 2019, and the filing fee for appellate motions is now \$50 by virtue of the same order, as compared to a case filing fee of \$150 for lawsuits filed in the South Carolina Court of Common Pleas and a filing fee of \$25 for Common Pleas motions. These fees are disproportionate and therefore unconstitutional both under the federal and state constitutions. South Carolina appellate proceedings require less staff time and expense than South Carolina trial court proceedings since appellate proceedings tend to focus on narrow issues that remain for appeal whereas trial court proceedings involve the entire gamut of issues presented by the parties in litigation. Appellate court motions are likewise less taxing on state resources than trial court motions because appellate court motions are decided without oral argument and entirely on written submissions, whereas trial court motions require substantial additional staff time in setting up and holding oral arguments, which nearly always accompany motions made in the South Carolina Court of Common Pleas.

This is precisely the sort of unconstitutional disproportionality referenced in dicta by the United States Supreme Court in Ortwein v. Schwab, 410 U.S. 656 (1973) that requires a state appellate court to grant leave to proceed in forma pauperis when an indigent appellant cannot afford the disproportionate fees. The Court need not determine

whether the appellate court filing fees are unconstitutionally disproportionate as applied to ordinary litigants who can afford them, despite their disproportionate nature, but the Court necessarily must determine that South Carolina's appellate court filing fees as currently set by the South Carolina Supreme Court's order of October 9, 2018 are unconstitutional as applied to an indigent litigant like Appellant.

*Separation of Powers Issues*

The collection of government revenues is a function of the Executive Branch of the Government of the State of South Carolina, not the Judicial Branch. The current South Carolina process for motions for leave to proceed in forma pauperis is unconstitutional to the extent it places judges in the position of sua sponte opposing motions to proceed in forma pauperis by indigent litigants without an appearance by a representative of the Executive Branch presenting the state government's position as to whether or not South Carolina laws requiring the payment of filing fees in a particular case are valid and enforceable under the United States Constitution and the South Carolina Constitution. In the event the Court is inclined to deny Appellant's motion for leave to proceed in forma pauperis, Appellant respectfully requests the Court issue an order compelling the Executive Branch of the State of South Carolina to advise the Court of its position as to whether or not it opposes Appellant's contentions regarding the constitutionality of the filing fee as applied to Appellant and, if it does oppose Appellant, to appoint counsel to appear in this matter and present argument in opposition to Appellant so that the Court will have a bona fide controversy to rule upon. Any other scenario unconstitutionally places the Court as Appellant's opponent in this matter and requires the judges of the South Carolina Court of Appeals to formulate arguments

against Appellant's motion and then rule on those arguments, which obviously violates both the United States Constitution and the South Carolina Constitution. Any sua sponte ruling against Appellant's motion, without the concurrence and participation of the Executive Branch of the State of South Carolina, would violate the separation of powers doctrine and place the judges of this Honorable Court in the untenable and constitutionally improper position of being the functional equivalent of Executive Branch lawyers and judges in the same case or controversy.

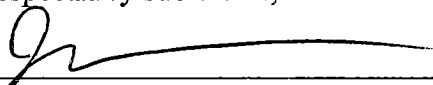
*Conclusion*

Appellant respectfully requests this Honorable Court grant the motion for leave to proceed in forma pauperis for the foregoing reasons.

October 9, 2019

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Respectfully submitted,

  
\_\_\_\_\_  
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Appellant Pro Se

## **Exhibit**

# **Appellant's Motion for Reconsideration Below**

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

JAMES JOHN TODD KINCANNON,

Case No. 2019-CP-32-1168

Plaintiff,

**PLAINTIFF'S MOTION FOR  
RECONSIDERATION OF ORDER  
GRANTING DEFENDANTS'  
MOTION TO DISMISS AND FOR  
ADDITIONAL RELIEF**

v.

ASHELY SUZANNE GRIFFITH, MOORE  
TAYLOR LAW FIRM, P.A., VANCE  
STRICKLIN, and AMBER FULMER,

Defendants.

2019 JUL 25 PM 3:05  
JAMES J. KINCANNON  
COURT REPORTER

FILED

**RECONSIDERATION**

Plaintiff respectfully submits the following motion for reconsideration of the Courts' Order of Dismissal entered July 2, 2019. Plaintiff received written notice of the entry of the Order of Dismissal on July 10, 2019.<sup>1</sup> This motion is made pursuant to Rules 59(e), 52(b), 60(a), and 60(b), SCRCP and the inherent power of trial courts to reconsider, alter, and amend erroneous prior rulings is based on the following grounds:

1. The Court did not rule on Plaintiff's unopposed objections to grounds for dismissal first appearing in Defendants' memorandum in support of their motion to dismiss, served and filed less than two full business days prior to the hearing, that did not appear in the Motion to Dismiss itself. The Court should have sustained Plaintiff's objections because Plaintiff did not have adequate notice of the additional grounds for dismissal and should have further sustained Plaintiff's objections because Defendants offered no argument in response to Plaintiff's objections. The portions of the Court's order granting Defendants' Motion to Dismiss on these particular grounds violate the

<sup>1</sup> This motion is being served and submitted for filing on July 22, 2019, ten days after July 10, 2019. July 20th was a Saturday and July 21st was a Sunday.

South Carolina Rules of Civil Procedure and unfairly surprised Plaintiff and further violated Plaintiff's federal and state constitutional due process rights.

2. The Court did not rule on Plaintiff's unopposed objection to the Affidavit of Defendant Vance Stricklin yet evidently relied upon portions of it in the dismissal order. The Court should have sustained Plaintiff's objections because the Affidavit in question did not fit within the very narrow grounds for which affidavits may be filed in support of Rule 12(b)(6) motions, because the affidavit was untimely and should have been filed with the Motion to Dismiss itself per the South Carolina Rules of Civil Procedure. Plaintiff was unfairly surprised and had no opportunity to file a counteraffidavit. The Court should have further sustained Plaintiff's objections because Defendants offered no argument in response to Plaintiff's objections. Because the Court improperly relied on this untimely and improper affidavit, the dismissal order must be vacated, the affidavit ruled improper, and the Motion to Dismiss should be reheard without consideration of the untimely and improper affidavit.

3. The dismissal order improperly relies on void temporary orders and appellate proceedings that were later determined to be void for lack of subject matter jurisdiction by the Lexington County Family Court's final order in the divorce proceeding between Plaintiff and Defendant Griffith.

4. The dismissal order improperly relies on Plaintiff's alleged failure to plead that the criminal proceedings against him, referenced in the Complaint, were not instituted without probable cause. The absence of probable cause is not an element of abuse of process nor of any of the other causes of action asserted by Plaintiff and it was error for the Court to consider Plaintiff's "failure" to plead a non-element of his causes of action in

the dismissal order. Further, Plaintiff would plead the absence of probable cause by amendment of the Complaint if the Court would allow amendment of the pleadings, as it must at this stage of the proceedings per Rule 15, SCRCP—the only reason Plaintiff did not include that particular allegation is that it is not an element of any causes of action Plaintiff has asserted and is instead an element of the unpleaded cause of action for malicious prosecution, a claim Plaintiff cannot bring until the conclusion of the criminal case in his favor.

5. The dismissal order improperly relies on public policy in ruling that Plaintiff's Complaint must be dismissed. No South Carolina public policy exists which supports Defendants' conduct in this matter, nor does any South Carolina public policy exist which supports the actions of the criminal prosecution which were procured, aided, abetted, and ratified by Defendants. South Carolina public policy is actually to the contrary: the South Carolina Rules of Professional Conduct and South Carolina criminal and civil law prohibiting blackmail and extortion barred Defendants and their affiliated criminal prosecutor from demanding that Plaintiff surrender to Defendants in an unrelated civil proceeding in exchange for the abandonment of the criminal domestic violence prosecution.

6. The dismissal order is apparently based, in part, on the Court's independent research into the procedural history of Plaintiff's divorce litigation and other civil and criminal litigation, although the order fails to identify which parts of these other cases were relied on by the Court with the exception of the aforementioned void orders in the divorce case which are not and never have been part of the record in the case at bar. This is error, and the conclusions that the Court drew from this apparent review are also error.

The Court concluded, gratuitously, that Plaintiff is an “obsessive” litigant, a conclusion which is improper in a Rule 12(b)(6) dismissal proceeding—which must be based only on the pleading standards of the causes of action asserted—and is also erroneous. 100% of the prior litigation involving Plaintiff and Defendants was instituted by, or at the instance of, Defendants, or reflected a defensive filing by Plaintiff because Defendants had instituted a proceeding in a court without subject matter jurisdiction and Plaintiff responded by instituting a proceeding in the proper court.

7. The Court erred by refusing to grant or even rule on Plaintiff’s request for an opportunity to amend the Complaint to cure any defects the Court might find in its order on Defendants’ Motion to Dismiss. Per Rule 15, SCRCP, Plaintiff should have been given an opportunity to amend the Complaint because none of the pleading defects found by the Court in its dismissal order are incurable.

8. The Court erred by considering the void orders from Plaintiff’s divorce case with Defendant Griffith, submitted by email to the Court without permission after the hearing on Defendants’ Motion to Dismiss, without giving Plaintiff an opportunity to respond to that submission by submitting additional information regarding those proceedings and argument which would conclusively demonstrate that the orders submitted by Defendants after the hearing are void for lack of subject matter jurisdiction and entirely irrelevant to the question of whether Plaintiff properly pleaded, or could properly plead after amendment, the abuse of criminal process and other causes of action asserted in the Complaint.

9. The Court erred in its identification of the “process” that Plaintiff alleges Defendants abused. Plaintiff specifically alleges that the “process” abused by Defendants

was the plea bargain process incident to the criminal domestic violence prosecution itself, not the entirety of the criminal domestic violence prosecution. The order incorrectly indicates that Plaintiff alleged the entire criminal domestic violence prosecution was infected by Defendants' alleged abuse of process, an error. The only allegation Plaintiff made in the Complaint, and clarified by way of his amended memorandum in opposition to Defendants' Motion to Dismiss, was that the plea bargain process was abused by Defendants because they convinced the criminal prosecutor in the CDV matter to attach an unlawful condition to the offer to discontinue the CDV prosecution: the condition that Plaintiff surrender to Defendants in a civil matter entirely unrelated to the criminal prosecution in exchange for the offer to drop the CDV prosecution.

10. The Court's factual conclusion that the Eleventh Circuit Solicitor's Office was involved in the prosecution of the criminal domestic violence case is erroneous, as explained in Plaintiff's memoranda.

11. The Court's conclusion that Plaintiff's Complaint fails to state a cause of action for abuse of process is erroneous as explained in the argument and analysis portions of Plaintiff's memoranda, Plaintiff's presentation at the hearing, and Plaintiff's proposed order, all of which are incorporated herein by reference.

12. Because a review of the dismissal order indicates the Presiding Judge evidently had or sua sponte gained personal knowledge of matters relating to the case that are not part of the record and intended to rely on such knowledge in the ruling, the Presiding Judge had a duty to recuse. The Presiding Judge should also recuse at this juncture due to multiple, apparently intentional, violations of Plaintiff's due process rights incident to the consideration of the Rule 12(b)(6) motion filed by Defendants. The record of proceedings

in this matter and the dismissal order itself indicate that the Presiding Judge's ruling was based, in whole or in part, on personal prejudice against the Plaintiff entirely unrelated to the sole issue before the Court, i.e. whether or not Plaintiff's Complaint adequately stated facts sufficient to constitute a cause of action for abuse of process and the other causes of action asserted in the Complaint. The dismissal order in particular indicates that the Presiding Judge considered numerous matters that were entirely improper in the context of the one-issue Rule 12(b)(6), SCRCP motion made by Defendants and the Presiding Judge should vacate the dismissal order and recuse from further proceedings in this matter due to the realistic possibility that future rulings in this case by the Presiding Judge will be tainted by matters outside the record that the Presiding Judge became personally familiar with and, in whole or in part, animated his decision-making process at the Rule 12(b)(6) stage. Plaintiff respectfully submits that non-recusal at this point would violate Plaintiff's rights to a judge whose rulings are untainted by outside-the-record personal research secured by South Carolina common law, the South Carolina Constitution, and the United States Constitution.

13. The Court erred by sua sponte ruling on public policy grounds that Plaintiff's Complaint failed to state a cause of action. Defendants' Motion to Dismiss does not raise public policy grounds as a basis for dismissal and by engrafting a public policy rationale onto the dismissal order, the Court erroneously violated Plaintiff's due process rights to notice and an opportunity to be heard and, unfortunately, became an actual partisan in the case creating and advancing arguments for dismissal not even contemplated by Defendants and not included in their motion. Even if public policy did support dismissal of Plaintiff's Complaint (it does not), it was error for the Court to dismiss on that basis

without even being asked to do so by way of defense motion, and this additionally supports Plaintiff's position that the Presiding Judge lacked impartiality and should have recused.

14. Despite concluding that none of the named causes of action included in Plaintiff's Complaint stated facts sufficient to constitute a cause of action, the dismissal order contains no analysis as to whether or not Defendants' conduct is independently actionable under an unnamed tort theory or heretofore unrecognized theory of actionability under South Carolina law. Defendants' alleged conduct in this matter was plainly unlawful in that Defendants persuaded a criminal prosecutor to violate the South Carolina Rules of Professional Conduct and criminal and civil laws prohibiting blackmail and extortion by the manner in which she conducted a plea bargain negotiation in the criminal prosecution against Plaintiff referenced in the Complaint. A general principle of South Carolina law and equity is that law, equity, and basic principles of due process and equal protection generally do not permit a wrong to exist without a remedy, and the Court's dismissal order in this matter must not only analyze whether the allegations of Plaintiff's Complaint successfully set forth the named causes of action in Plaintiff's Complaint but also whether Defendants' conduct is actionable under South Carolina law despite not falling within any particular heretofore named cause of action. In this regard, Plaintiff notes that the dismissal order appears to express finds that Plaintiff has been harmed by Defendants' conduct yet denies him any opportunity for relief.

#### **ADDITIONAL RELIEF**

1. As stated above in part, the Court erroneously granted Defendants' Motion to Dismiss *with prejudice* and failed to rule on Plaintiff's request for an opportunity to

amend the Complaint to cure any pleading defects the Court identified at the Rule 12(b)(6) stage, which is not proper in this case. Rule 15, SCRCF permits pleading amendments whenever the opposing party will not be prejudiced, and it is axiomatic that Defendants will not be prejudiced by the Court giving Plaintiff a single opportunity to prepare, file, and serve an amended the Complaint in this action in an effort to cure the pleading defects found by the Court in the dismissal order.

2. As stated above in part, the Court erred by not offering to recuse, or sua sponte recusing, upon doing outside-the-record research into other litigation involving these parties that was not part of the record in this case and, therefore, not properly before the Court. Certain of the Court's other errors also mandate recusal, such as the apparent intentional denial of Plaintiff's due process rights with respect to the manner in which Defendants' Motion to Dismiss was heard and adjudicated. The Court improperly permitted Defendants to surprise Plaintiff with an untimely and substantively improper memorandum in support, an untimely and substantively improper supporting affidavit, and untimely and improper post-hearing submissions of void interlocutory orders, contradicted by the final order, in the divorce action involving Plaintiff and Defendant Griffith without providing any opportunity for Plaintiff to respond with any countersubmission of record material in the divorce action or argument as to why the void interlocutory orders in the divorce action are entirely irrelevant to the Court's consideration of Defendants' Rule 12(b)(6) motion in this action, which has no substantive connection to the divorce case whatsoever. The Presiding Judge's recusal should also be required by personal prejudice given the various improper findings in the dismissal order which indicate the Presiding Judge's ruling was based in whole or in part

on findings that Plaintiff is an “obsessive” litigant, a finding which is entirely improper in the context of a Rule 12(b)(6) Motion to Dismiss.

3. To whatever extent the Court finds that the South Carolina Rules of Civil Procedure permit the various procedural hijinks by Defendants complained of above, and the Court’s post-hearing research into other cases involving the parties which Plaintiff was given no opportunity to respond to prior to the Court issuing ruling, Plaintiff asks the Court to declare the South Carolina Rules of Civil Procedure unconstitutional under both the state and federal constitutions as applied to these particular matters. Plaintiff asks that this ruling include, but not necessarily be limited to, a finding that it is unconstitutional to permit a civil movant to file a “supporting” memorandum on the eve of a motion hearing that includes grounds for the motion not included in the timely-filed motion itself. If parties can include additional grounds for motions in eve-of-hearing memoranda then the notice-of-motion provisions of the South Carolina Rules of Civil Procedure are dead letters and their application to this particular case unconstitutional under the due process clauses and other provisions of the state and federal constitutions. Plaintiff makes the parallel argument with respect to Defendants’ unauthorized and wholly improper post-hearing submission of void and irrelevant interlocutory orders from the substantively unrelated divorce action involving Plaintiff and Defendant Griffith.

4. To whatever extent there are additional errors in the dismissal order, including but not limited to errors in the findings of fact and conclusions of law supporting dismissal grounds outside Defendants’ one-substantive-sentence Motion to Dismiss, Plaintiff requests additional time to identify such errors and present them to the Court by way of independent motion based on unfair surprise pursuant to Rule 60(b), SCRPC or an

amendment of this motion pursuant to Rule 59(e) and other authority. Rule 60(b), SCRCP establishes a one year time limit for reconsideration motions based on unfair surprise, and Plaintiff asks the Court to conclude that the ten day time limit established by Rule 59(e) and similar rules is unconstitutional under the state and federal constitution as applied to Plaintiff in this case and the Americans with Disabilities Act because of the manner in which the proceedings in this case were held, the numerous and extensive errors in the dismissal order, and Plaintiff's need for additional time over and above the standard rules-based time limits caused by his untreatable attention deficit disorder, which cannot be controlled by prescription medications due to a conflict with Plaintiff's comorbid bipolar disorder which is treated by prescription medications. Plaintiff is perfectly capable of handling all litigation tasks incident to this litigation but not necessarily within the time limitations established by state court rules due to his disability status, and due process and equal protection clauses of the state and federal constitution and the Americans with Disability Act require the Court to grant Plaintiff reasonably brief extensions of time as needed to complete litigation tasks. Plaintiff will be happy to submit verifying documentation of his disability status and medical conditions, with an appropriate protective order, as the Court may require in order to rule on this particular matter.

5. Plaintiff had no meaningful opportunity to be heard on many of the foregoing matters at the hearing on Defendants' Motion to Dismiss. Many of the Court's errors were entirely unforeseeable by Plaintiff at the hearing, and on many others Plaintiff had no meaningful opportunity to be heard because of Defendants' litigation-by-surprise tactics with respect to the untimely and improper memorandum in support and supporting

affidavit. Plaintiff respectfully demands the Court hold a hearing on this Motion for Reconsideration and for Other Relief and not decide the matter solely on written submissions. If the Court does, however, elect to rule based solely on written submissions, Plaintiff demands notice and an opportunity to prepare and file a supporting memorandum, a reply memorandum in response to whatever is submitted by Defendants, and such other material as is appropriate to support this motion prior to the Court's issuance of a ruling without a hearing. This request for hearing and a request for a full and fair opportunity to present Plaintiff's position on this matter is based on the South Carolina Rules of Civil Procedure, South Carolina common and statutory law applicable to these matters, and the state and federal constitutional provisions applicable to these matters, including but not limited to the due process clauses of both constitutions.

Respectfully submitted,



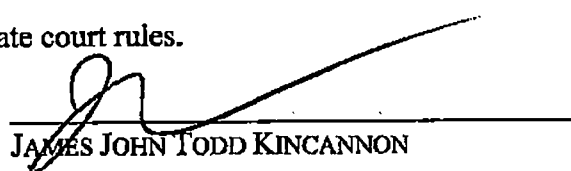
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ToddKincannon@gmail.com  
Plaintiff Pro Se

July 22, 2019

#### CERTIFICATE OF SERVICE

The undersigned Plaintiff hereby certifies service by first class mail on the date below indicated in accordance with Rule 5, SCRPC on all Defendants by and through their counsel of record, Ward Bradley of the Moore Taylor Law Firm, P.A., at the correct mailing address listed for Mr. Bradley and his firm. Plaintiff has also sent a copy to the Presiding Judge as required by applicable state court rules.



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JAMES JOHN TODD KINCANNON

July 22, 2019

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
In the Court of Common Pleas

**RECEIVED**

Robin B. Stilwell, Circuit Court Judge

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**SC Court of Appeals**

Appellate Case No. 2019-001501

James John Todd Kincannon..... Appellant,

v.

Ashely Suzanne Griffith, Moore Taylor Law  
Firm, P.A., Vance Stricklin, and Amber  
Fulmer,..... Respondents.

**CERTIFICATE OF SERVICE**

I, the undersigned James John Todd Kincannon, the Appellant Pro Se, certify that I have on the date below indicated served Respondents with the foregoing and this proof of service by first class mail to Respondents' counsel of record at the address indicated below. I further certify that this service has been made in accordance with the South Carolina Appellate Court Rules and any other legal rules that govern this matter.

WARD BRADLEY  
MOORE TAYLOR LAW FIRM, P.A.  
1700 Sunset Boulevard  
West Columbia, SC 29169

October 9, 2019

  
\_\_\_\_\_  
JAMES JOHN TODD KINCANNON  
Appellant Pro Se

**RECEIVED**

OCT 14 2019

**SC Court of Appeals**

South Carolina Court of Appeals

Attn: Clerk's Office

P.O. Box 11629

Columbia, SC 29211

ADDITIONAL OUNCE - USA

ADDITIONAL OUNCE - USA

FOREVER / USA