

registration and financial information of Defendant Churchill Park.¹

On February 24, 2017, Plaintiff initiated this lawsuit by filing a Complaint in the Charleston County Small Claims Court, North Charleston Division, under Case No. 2017CV1011500354. A pre-trial conference was held on April 18, 2017; wherein, the Honorable James A. Turner dismissed this action. Plaintiff filed a motion to clarify the April 18, 2017 order and restore the case to an active docket on April 18, 2018. A motion hearing was held on April 30, 2018, and the court issued a written order on May 9, 2018 denying the motion and delineating the grounds for denial. On May 21, 2018, Plaintiff filed a motion for reconsideration of the denial of the Magistrate Court order, which was denied on May 31, 2018. Plaintiff filed another motion for clarification of the previous orders, which was denied on June 20, 2018. Plaintiff filed a Notice of Civil Appeal on June 28, 2018. The Magistrate's Return was filed on July 11, 2018.

On September 19, 2018, the Honorable Roger M. Young, acting as Chief Administrative Judge in Charleston County, executed an Order of Substitution for defense counsel. On November 1, 2018, Plaintiff filed a Motion to Set Aside, or in the Alternative, Amend Order dated 19 September 2018. On November 19, 2018, Judge Young denied Plaintiff's Motion. On November 21, 2018, Plaintiff filed a second Motion to Set Aside and Clarify Order of 19 Sept 2018, Reconsider Order of 19 November 2018 and Continuance of Hearing Scheduled for 29 November 2018. Plaintiff submitted a subpoena *duces tecum* request directed to Judge Young on November 30, 2018 for "any and all physical and electronically stored documents, including but not limited to, emails, electronic notes and archived documents pertaining to the orders filed in the above captioned case on 25 September 2018 and 19 November 2018[.]" Plaintiff filed a Motion for Judicial Recusal, Return Case to Judge McCoy's Roster and Continue the Appeal Hearing Until

¹ Additionally, Plaintiff filed a police report against Defendant Churchill Park's counsel, Stephanie Trotter, accusing Ms. Trotter of misdemeanor notary fraud.

the Order Substituting Counsel was Properly Resolved, on December 4, 2018. On December 7, 2018, Judge Young filed an Order Denying Plaintiff's Motion to Reconsider/Clarify.

Following the December 7, 2018 hearing, Plaintiff issued subpoenas to: G. Troy Thames – counsel for Defendants Brown; Joseph Kaiser – former counsel for Defendants Brown; Lyndsay Luthringer – law clerk to Judge Young; Caroline Leonard – Charleston County Common Pleas Docket Manager; and Julie Armstrong – Charleston County Clerk of Court, for “any and all physically and electronically stored documents, including but not limited to, emails, electronic notes and archived documents pertaining to the orders filed by Judge Roger Young in the above captioned case on 25 September 2018[.]”

On December 17, 2018, a Motion to Quash Plaintiff's Subpoena of Lyndsay Luthringer, was filed. On December 21, 2018, a Motion to Quash Subpoenas issued to G. Troy Thames and Joseph Kaiser, was filed. On December 28, 2018, Plaintiff filed a Rule 59 Motion. On December 31, 2018, Defendant David Brown and Catherine Brown filed this Motion for Sanctions against Plaintiff. On May 24, 2019, Plaintiff filed a Request for Continuance and Change of Venue; Defendants filed a Motion to Quash Subpoenas Issues to G. Troy Thames, Joseph Kaiser, Kevin Mims, Roger M. Young, and Lyndsay Luthringer. On May 29, 2019, a Motion to Quash Plaintiff's Subpoenas to Appear Issued to James A. Turner, Julie L. Armstrong, Johanna S. Gardner, and Caroline C. Leonard, was filed.

On June 4, 2019, the Honorable Grace Gilchrist Knie heard arguments concerning Plaintiff's Request for Continuance and Change of Venue. On July 7, 2019, Judge Knie denied Plaintiff's Request for a Change of Venue.

STANDARD OF REVIEW

The South Carolina Frivolous Civil Proceedings Sanctions Act (FCPSA) allows for

imposition of sanctions for the initiation and prosecution of civil claims without merit where the court finds, by a preponderance of the evidence, that:

- (a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
- (b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
- (c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

S.C. Code Ann. § 15-36-10(C)(1).

In determining if a pro se litigant has violated provisions of the FCPSA, Section 15-36-10(E) sets forth the following factors the court should consider:

- (1) the number of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
- (4) information disclosed or undisclosed to the attorney, party, or pro se

- litigant through discovery and adequate investigation;
- (5) previous violations of the provisions of this section;
- (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
- (7) other factors the court considers just, equitable, or appropriate under the circumstances.

The decision of whether to award sanctions under the FCPSA is treated as one in equity. *Pee Dee Health Care, PA v. Estate of Thompson*, 418 S.C. 557, 563, 795 S.E.2d 40, 43 (Ct. App. 2016). The Court has wide discretion when ordering sanctions, to include: (1) reasonable costs and attorneys' fees; (2) a reasonable fine to the court; or (3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action brought in bad faith. S.C. Code Ann. § 15-36-10(G),

DISCUSSION AND ANALYSIS

Defendants move for this Court to impose sanctions upon Plaintiff, pursuant to the FCPSA, for continuing to make frivolous claims in an attempt to harass and injure the other parties and this Court. Defendants request that Plaintiff be enjoined from filing additional pleadings until Plaintiff has consulted with, and hired, legal counsel, licensed in the State of South Carolina. This Court finds that such remedies are within the inherent authority of the Court, and are appropriate under these circumstances.

This Court acknowledges that Plaintiff is *pro se*; however, lack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney. *Hill v. Dotts*, 345 S.C. 304, 310, 547, S.E.2d 894, 897 (Ct.App.2001). The applicable law specifically provides that *pro se* plaintiffs are subject to FCPSA, and "sanctions may be

awarded regardless of whether or not the case has been tried to verdict so long as the trial court finds by a preponderance of the evidence that the party should be sanctioned.” *Holmes v. East Cooper Community Hospital, Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2012).

Pursuant to Section 15-36-10, a *pro se* litigant, participating in a civil action may be sanctioned for filing a frivolous pleading, motion, or document, if:

a reasonable attorney in the same circumstances would believe that his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law; a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party ... is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based ... making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts.

S.C. Code Ann. § 15-36-10(C)(1)(a)-(c). South Carolina courts have acted on this statute and awarded sanctions against *pro se* litigants when the case was frivolous in nature; the *pro se* litigant could not substantiate claims with facts; and *pro se* litigants engage in tactics to delay proceedings, including appeals of interlocutory matters. *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014)(holding sanctions are proper against *pro se* appellant for frivolous and dilatory litigation tactics).

This Court finds that Plaintiff has violated the FCPSA. Specifically, Plaintiff has filed three motions in regard to the September 19, 2018 Order of Substitution, which allowed Defendants Brown to substitute counsel. These motions have been denied each time. After the

first two motions had been denied by the court, any reasonable plaintiff in these “circumstances would understand that under the fact his claim was clearly not warranted under existing law.” S.C. Code Ann. § 15-36-10(A)(4)(a)-(c).

In the current instance, Plaintiff proceeded to make additional motions and filings associated with the denial of the September 19, 2018 Order, as well as a series of subpoenas to parties and non-parties of the underlying case. This Court finds that there are no facts or issues in this matter to support a subpoena to former and current counsel associated with this action. Further, Plaintiff has filed subpoenas for Charleston County Judicial staff, pertaining to orders issued by Judge Young. Judge Young has not heard any of the merits of this case, and Charleston County Judicial staff has relayed all pertinent information to Plaintiff’s requests prior to the issuance of these subpoenas.

It is important to note, the September 19, 2018 Order is a minor, interlocutory matter, which has no overall effect on Plaintiff. Plaintiff has continued to harass this Court, as well as past and present counsel, and the Charleston County Judicial staff with subpoenas *duces tecum*. The subpoenaed information has already been discussed, argued, decided, and ruled upon by this Court. Plaintiff’s continued motions and filings have demonstrated a pattern which shows a clear disdain for the judicial process, as Plaintiff continues to ignore the Court’s direction. Further, Plaintiff’s continued filings regarding a minor, interlocutory matter waste the Court’s resources, and frivolously subject Defendants to costs and fees to defend the repetitive litigation.

The Court finds that this is a prime example of a scenario where sanctions are appropriate. At this point, Plaintiff’s recalcitrant efforts to continue to litigate motions that have been repeatedly denied are undoubtedly frivolous, and potentially malicious. This Court will not allow Plaintiff to continue to abuse and harass the Judicial System and subject Defendants to the unnecessary burden

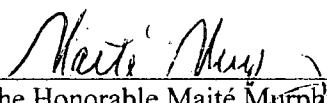
and expense of continuing to re-litigate these matters. Therefore, this Court hereby **GRANTS** the Defendants request for sanctions, and hereby imposes an Injunctive Order preventing the Clerk of Court from hereafter filing any pleadings from Plaintiff, acting pro se, regarding the matters set forth in Civil Action No. 18-CP-10-03315. The Clerk of Court may only accept further pleadings regarding the matters set forth in Civil Action No. 18-CP-10-03315 when filed by licensed, legal counsel, retained by Plaintiff.

CONCLUSION

Based on the pleadings, affidavits, and arguments of counsel, the Court finds that the Defendants have made the requisite showing that Plaintiff's motions and filings are frivolous and unduly burdensome acts.

IT IS THEREFORE ORDERED that the Clerk of Court of Charleston County shall refrain from filing any additional Complaints or other Pleadings related to the matters set forth in Civil Action No. 18-CP-10-03315, until such time that Plaintiff has retained legal counsel, licensed in the State of South Carolina.

IT IS SO ORDERED.


The Honorable Maité Murphy

Sept - 20, 2019.

J. George, South Carolina