

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Doyet A. Early, Circuit Court Judge

Appellate Case No. 2019-000648
Civil Action No. 2018-CP-40-02425

Jefferson Davis, Jr..... Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reams, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Dept. of Revenue, South Carolina Dept. of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40.....

Respondents.

INITIAL BRIEF OF RESPONDENT ACCESS OPPORTUNITY SOUTH CAROLINA

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I. THE TRIAL COURT PROPERLY DISMISSED MR. DAVIS’ CLAIMS AGAINST ACCESS OPPORTUNITY SOUTH CAROLINA BECAUSE MR. DAVIS VIOLATED THE TRIAL COURT’S AMENDED ORDER BY FAILING TO SERVE THE AMENDED COMPLAINT ON AOSC WITHIN THE TIME FRAME REQUIRED BY THE TRIAL COURT’S PRIOR ORDER AND BY FAILING TO PROPERLY SERVE AOSC PURSUANT TO RULE 12(B)(5), SCRCP..... 3

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TABLE OF AUTHORITIES

In the interests of judicial economy and the prevention of redundant briefing, Access Opportunity of South Carolina (AOSC) incorporates by reference all applicable authorities cited in the Table of Authorities section of the Brief of co-Respondents Cato Institute and Howard S. Rich. Additional authorities cited in this brief are listed below.

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COUNTER-STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court properly dismiss Mr. Davis' claims against AOSC because Mr. Davis violated the trial court's Amended Order by failing to serve the Amended Complaint within the time frame required by the trial court's prior order?
2. Was the dismissal of Mr. Davis' claims against AOSC further supported by the additional sustaining ground that the Amended Complaint fails to state a claim upon which relief can be granted because the Amended Complaint fails to assert factual allegations capable of supporting such claims?

STATEMENT OF THE CASE

In the interest of economy and efficiency, AOSC adopts and incorporates by reference the Statement of the Case found in the brief of co-Respondents Cato Institute and Howard S. Rich pursuant to Rule 208(b)(6), SCACR.

STATEMENT OF THE FACTS

In the interests of judicial economy and the prevention of redundant briefing, AOSC adopts and incorporates by reference the Statement of the Facts found in the brief of co-Respondents Cato Institute and Howard S. Rich.

STANDARD OF REVIEW

AOSC hereby adopts and incorporates by reference the Standard of review found in the brief of co-Respondents Cato Institute and Howard S. Rich.

ARGUMENT

AOSC hereby incorporates by reference the Arguments found in the Brief of co-Respondents Cato Institute and Howard S. Rich, which are applicable to AOSC as well, and any other applicable arguments asserted by other co-Respondents. In addition, AOSC asserts one additional sustaining ground upon which this Honorable Court should affirm the decision of the Circuit Court.

- I. The trial court properly dismissed Mr. Davis' claims against AOSC because Mr. Davis violated the trial court's Amended Order by failing to serve the Amended Complaint on AOSC within the time frame required by the trial court's prior order and by failing to serve AOSC in accordance with Rule 12(b)(5), SCRCP.**

The Circuit Court's order dismissing the claims against AOSC should be affirmed

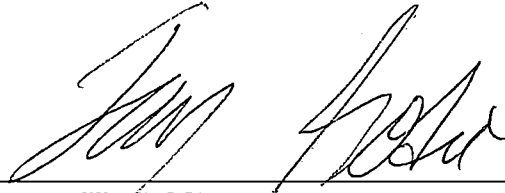
because Appellant Davis failed to serve his Amended Complaint upon AOSC within the time frame required by the Circuit Court's October 30, 2018 order. Specifically, and in addition, as of the date of this Initial Brief of Respondent, AOSC still has not been properly served with the Amended Complaint. AOSC's Answer to the Amended Complaint, asserts as a defense that he has not been properly served and moved the Court to dismiss the claim based on Rules 12(b)(1), 12(b)(2), 12(b)(4), and 12(b)(5) of the South Carolina Rules of Civil Procedure. As it stands, nearly one year has passed since Appellant filed his Amended Complaint, AOSC still has not been properly served. Based on Appellant's failure to comply with the Circuit Court's October 30, 2018, and by virtue of Appellant's failure to properly serve AOSC, the decision below should be affirmed.

CONCLUSION

Appellant Davis failed to comply with the Circuit Court's Order requiring Amendment and Service of the Amended Complaint within 15 days in regard to AOSC. Further, Appellant Davis failed to properly serve AOSC with the Amended Complaint at all. For this reason, AOSC respectfully requests that this Honorable Court affirm the judgment below and dismiss AOSC from the case with prejudice.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James H. Goldin", written over a horizontal line.

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November 8, 2019

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Jefferson Davis, Jr. v. Ellen Weaver, et al.
Appellate Case No. 2019-000648
Civil Action No. 2018-CP-40-02425
Our File No. 033999.02278

Dear Ms. Kitchings:

Enclosed are the original and one copy of Initial Brief of Respondent Access Opportunity South Carolina and Designation of Matter for the Record on Appeal. Please file the original and return a clocked-in copy to us via our courier. The current deadline is October 9, 2019.

We are serving a copy of same to all parties of record.

Very truly yours,

A handwritten signature in cursive script that reads 'James H. Goldin'.

James H. Goldin

JHG:jc
Enclosures

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November 8, 2019
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