

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

Karen Irby, Appellant,

v.

Augusta Lawson, Respondent.

Appellate Case No. 2010-171346

Appeal From Laurens County
J. Mark Hayes, II, Circuit Court Judge

Unpublished Opinion No. 2012-UP-600
Heard October 1, 2012 – Filed October 31, 2012

AFFIRMED

Andrew M. Jones, Jr., of Jones & Jones, LLC, of
Greenville, for Appellant.

Edward D. Sullivan, of Sullivan Law Firm, of Columbia
for Respondent.

PER CURIAM: Augusta Lawson moved for sanctions against Karen Irby under the South Carolina Frivolous Civil Proceedings Sanctions Act¹ (the Act) and Rule 11, SCRCP. The trial court granted attorneys' fees and costs of \$5,143 to Lawson.

¹ S.C. Code Ann. §§ 15-36-10, to -50 (2005 & Supp. 2011).

Irby appeals, arguing (1) the trial court erred in ruling on the issue of sanctions because a prior trial judge retained exclusive jurisdiction to hear the matter, (2) the filing of an action for damages against Lawson was reasonable, and (3) no evidence supported the award of attorney's fees. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the trial court erred in ruling on the motion for sanctions: Rule 43(l), SCRCP ("If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action."); S.C. Code Ann. § 15-36-10(C) (Supp. 2011) (providing the *court* shall determine if a claim or defense is frivolous under the Act at the conclusion of a trial or a case that has been dismissed upon the motion of the prevailing party); *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 454, 661 S.E.2d 81, 88 (2008) (finding no merit to the appellant's argument that one circuit judge overruled another when the first judge never ruled on the precise issue).

2. As to whether it was reasonable for Irby to file her action against Lawson: *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (stating *res judicata* bars a litigant from raising any issues, which were *or might have been*, adjudicated in a prior action).

3. As to whether there was evidence to support the award of attorney's fees: *Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 104, 713 S.E.2d 650, 653-54 (Ct. App. 2011) (explaining an appellate court applies an equitable standard of review of actions for sanctions under the Act and Rule 11, SCRCP; however, when the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions under an abuse of discretion standard); *id.* ("Under the abuse of discretion standard, the imposition of sanctions will not be disturbed on appeal unless the decision is controlled by an error of law or is based on unsupported factual conclusions."); *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 244, 616 S.E.2d 431, 436 (Ct. App. 2005) (finding an affidavit provided sufficient evidentiary support for an award of attorney's fees).

AFFIRMED.

SHORT, KONDUROS, and LOCKEMY, JJ., concur.

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

Karen Irby, Appellant,

v.

Augusta Lawson, Respondent.

Appellant Case No. 2010-171346

RECEIVED

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SC Court of Appeals

Appeal from Laurens County
J. Mark Hayes, II, Circuit Court Judge

Unpublished Opinion No. 2012-UP-600
Heard October 1, 2012 – Filed October 31, 2012

APPELLANT'S REQUEST FOR REHEARING

Andrew M. Jones, Jr., of Jones & Jones, LLC, of
Greenville, for Appellant.

Edward D. Sullivan, of Sullivan Law Firm, of Columbia,
for Respondent.

The Appellant requests a Rehearing based on the following reasons:

1. It is the Appellant's position that the Respondent Augusta Lawson, sister of her attorney Edward Sullivan, sought attorney fees and costs before Judge Goldsmith in her written Notice of Motion to Dismiss. R. pp. 35-38 and 94. The Respondent repeated her request for sanctions. R. pp. 94 and 96. Judge Goldsmith did not grant the Respondent's request for sanctions.

Rule 43(L) SCRPC should control this issue. "If any motion is made to any Judge and be denied in whole or in part or be granted conditionally no subsequent motion up on the same states facts shall be made to any other Judge in the action."

It is the Appellant's position that any relief specifically sought and not granted is denied. Therefore, Judge J. Mark Hayes should not have granted the Respondent's Motion for Sactions or, at the very least, refer the matter to Judge Goldsmith for his further consideration.

2. As to whether the Appellant's present action against the Respondent was barred by res judicata, the Appellant's claim for malicious prosecution could only have arisen after the favorable termination of the case of Augusta S. Lawson v. Karen Irby, 2004-UP-148 in Defendant Karen Irby's favor.

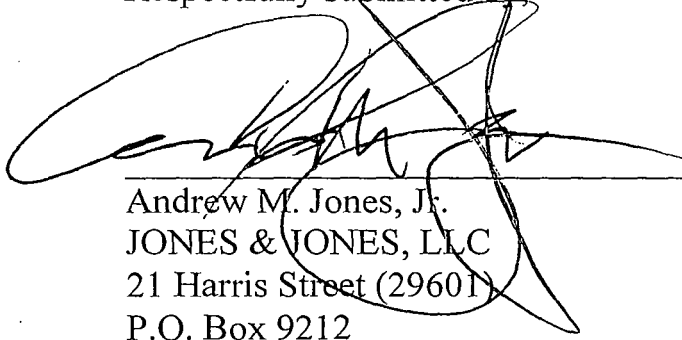
The Respondent Augusta S. Lawson at that time stated in her Memorandum in support of Plaintiff's Motion to Dismiss Counterclaim in the case of August S. Lawson v. Karen Irby, 2004-UP-148, "In addition, there can be no accrual of liability until and unless there is determination that an injunction was wrongful."

The Counterclaim in the case of Augusta Lawson v. Karen Irby can only be assumed to be dismissed because it was not ripe for adjudication and would not be so until and unless there was a determination that the injunction was wrongful as August Lawson states in her Memorandum in support of her Motion to Dismiss Counterclaim, thereby being only the Court's Form Order indicating Augusta Lawson's Motion to Dismiss is granted, dated on June 6, 2001, in Laurens, South Carolina. It would appear that the merit of the matter was not and should not have been reached until the issue whether the injunction was wrongfully obtained.

3. There was no competent evidence presented that Augusta Lawson incurred attorney fees. No testimony, retainer agreement, cancelled check, ledger, receipt, letter or any other document was produced at the hearing before Judge J. Mark Hayes that established that the Respondent incurred an obligation to pay attorney fees to her brother, Edward Sullivan.

The South Carolina Court of Appeals in the case of Dan F. Williamson and Dan F. Williamson and Company v. Middledton, Alfred D., No. 4135 held that "in South Carolina there must be an agreement between counsel and client in order for a court to award attorney's fees."

Respectfully submitted by,

A large, stylized handwritten signature in black ink, appearing to read 'AJ Jones', is written over a horizontal line.

Andrew M. Jones, Jr.
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Greenville, South Carolina
November 15, 2012

The South Carolina Court of Appeals

Karen Irby, Appellant,

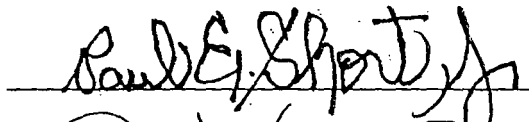
v.

Augusta Lawson, Respondent.

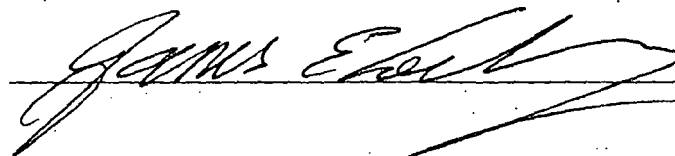
Appellate Case No. 2010-171346

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

cc:

Edward D. Sullivan

Andrew M. Jones, Jr.

FILED

18 Dec 2012

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No: 2006-DR-30-547

KAREN IRBY,

Appellant,

V.

AUGUSTA LAWSON,

Respondent.

RECORD ON APPEAL

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Columbia, SC 29211
Attorney for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Karen Irby,

Plaintiff,

vs.

Augusta S. Lawson,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 06-CP-30-0547

**ORDER AWARDING ATTORNEYS'
FEES AND COSTS TO DEFENDANT**

LYNN W. LANCASTER
JUN 20 11:55
LAURENS COUNTY
CLERK OF COURT

This matter came before the Court on October 13, 2008 and March 10, 2009 for hearings on Defendant Augusta S. Lawson's motion for sanctions filed pursuant to Rule 11, SCRCP, and the South Carolina Frivolous Civil Proceedings Sanctions Act ("the Act"), S.C. Code Ann. § 15-36-10 et. seq. Present were Andrew M. Jones, Jr., Esquire, counsel for Plaintiff, and Edward D. Sullivan, Esquire, counsel for Defendant. After consideration of the arguments and memoranda submitted by both parties, the Court concludes Lawson is entitled to an award of the attorneys' fees and costs, in the amount of Five Thousand One Hundred and Forty-Three (\$5,143.00) Dollars, representing the fees and costs incurred defending against this case in the Circuit Court, as a sanction against Irby and her counsel for violation of the Act and Rule 11.

FACTUAL/PROCEDURAL BACKGROUND

In 2001, Lawson brought an action seeking to enjoin Irby and her agents from violating the covenants and restrictions prohibiting temporary structures as residences in the subdivision in which they reside. On February 15, 2001, the Honorable G. Thomas Cooper, Jr. issued a temporary restraining order precluding Irby from placing the structure, which had been hauled into the subdivision in two pieces on transport trailers, on the subdivision property.

On March 8, 2001, the Honorable Gary E. Clary issued a preliminary injunction enjoining Irby from placing, constructing, and/or erecting the structure on property in the subdivision and from allowing such a structure to remain in the subdivision pending trial. Irby made no motion to request security for the issuance of the preliminary injunction.

During the 2001 litigation, Irby filed a counterclaim against Lawson alleging that "upon the arrival of said modular home at [Irby's] property or home site, [Lawson] thereupon instituted a civil action in this Court to prevent [Irby] from placing [Irby's modular home upon [Irby's] property." Irby further alleged she suffered damages as a result of Lawson's interference with the peaceful enjoyment of her property. Lawson moved to dismiss Irby's counterclaim pursuant to Rule 12(b)(6), SCRCP, for failure to state a cause of action for which relief can be granted. Judge Clary granted Lawson's motion and the counterclaim was dismissed. Judge Clary's order was not appealed.¹

Five years later, on July 21, 2006, Irby filed an action alleging damages as a result of Lawson's interference with the peaceful enjoyment of her property by instituting a civil action to prevent her from placing the structure on her property. Lawson filed a Motion to Dismiss the Complaint. On March 27, 2007 the Honorable Brooks P. Goldsmith issued an Order granting Defendant's motion to dismiss. Judge Goldsmith ruled Irby's proper course of action, rather than commencing suit, "should have been to appeal the temporary restraining order and/or injunction and ask that a bond be posted for the payment of costs or damages should she be found to have been wrongfully enjoined."

On April 5, 2007, Lawson filed the instant motion for sanctions requesting she be awarded attorneys' fees and costs incurred in defending against the 2006 suit.

¹ Subsequently at a hearing on the merits, Judge Johnson found that Irby's structure did not violate the restrictive covenants. His decision was upheld on appeal.

FINDINGS OF FACT/CONCLUSIONS OF LAW

I. The Instant Action Violates the Act and Rule 11

S.C. Code Ann. § 15-36-10 addresses the imposition of sanctions for frivolous lawsuits.

Section 15-36-10(A)(4)(a) states a court may impose sanctions against an attorney for filing a frivolous pleading if:

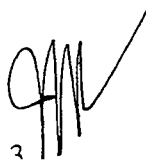
(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) 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; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document 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;

S.C. Code Ann. § 15-36-10(A)(4)(a), see also § 15-36-10(C) (stating a court may enter sanctions against an attorney if after the dismissal of a case, an attorney brings a claim that falls within the conditions stated in subsections (ii),(iii), or (iv) of § 15-36-10(A)(4)(a)).

To sanction an attorney or party, the court must find by a preponderance of the evidence that the attorney or litigant advanced a frivolous claim or defense. S.C. Code Ann. § 15-36-10(C)(2). S.C. Code Ann. § 15-36-10(E) delineates several factors that the court should take into account in determining if a party or attorney has violated the provisions of the Act including, the number of parties, the complexity of the claims and defenses, the length of time available to the attorney or party to investigate the law and circumstances, the information known by the attorney or party, the response, if any, of the attorney or party to the allegation that he violated the



provisions of the Act, and other factors the court considers just, equitable, or appropriate under the circumstances.

The criteria for awarding sanctions pursuant to Rule 11 are essentially the same as those for sanctions under the Frivolous Civil Proceedings Act. Father v. SCDSS, 353 S.C. 254, 262, 578 S.E.2d 11, 15 (2003). Furthermore, under both the Act and Rule 11, an award of attorneys' fees and costs is an appropriate sanction. S.C. Code Ann. § 15-36-10(G)(1), Rule 11(a), SCRCF.

The Court finds by a preponderance of the evidence that the instant action constitutes a frivolous proceeding because a reasonable attorney would believe the action was clearly not warranted under existing law. In the 2001 litigation, Lawson sought a temporary restraining order and then a preliminary injunction against Irby. Rule 65(c), SCRCF, provides "no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." When defending against a claim, a reasonable attorney would research both statutes and case law to determine the best defense for the client.

When Judge Clary granted the preliminary injunction in March 2001, Irby did not request security. Instead of requesting the injunction be accompanied by security or appealing the issuance of the temporary restraining order and preliminary injunction without security, Irby filed a counterclaim for loss of enjoyment of property. Several years after the counterclaim was dismissed for failure to state a claim, instead of going back to the applicable statutes, Irby filed the 2006 Complaint again claiming damages suffered as a result of loss of enjoyment of her property. This Complaint likewise was dismissed for failure to state a claim.



Application of the factors listed in § 15-36-10(E) weighs in favor of a determination that this action was frivolous. First, this case was simple. There were two parties. Irby's remedy, if any, was to seek security in 2001 when Lawson obtained the temporary injunction pursuant to Rule 65, SCRCF. The 2001 action, which contained allegations almost identical to those made in the instant case, was dismissed for failure to state a claim. Prior to commencing the instant action in 2006, Irby and her counsel had complete information and access to all the facts and law, including the dismissal of the 2001 action. They had years to investigate and evaluate the merit, or lack thereof, of their claim. As Judge Goldsmith ruled, the appropriate method for Irby to seek redress for damages she allegedly suffered as a result of the TRO and preliminary injunction was not to file suit against Lawson, but was to appeal the issuance of the injunction without adequate security. Accordingly, the Court finds Irby and her counsel violated the Act and Rule 11 by filing the 2006 Complaint.

The Court further finds that although mention was made of a potential motion for sanctions by counsel for Lawson at the hearing on the motion to dismiss the 2006 Complaint, a review of the transcript of that hearing shows the hearing was confined to the merits of Defendant's motion to dismiss. Therefore, because Judge Goldsmith did not entertain or rule on the present motion for sanctions, his ruling does not preclude this Court's consideration of the present motion.

II. The Attorneys' Fees and Costs Incurred by Lawson in Defending Against This Action in the Circuit Court are Reasonable

Prior to the 2005 revisions to the Act, the standard for determining the propriety of an award of attorney's fees and costs was included within the terms of the Act. However, the current version of the Act, which is applicable to this motion, does not contain a method for assessing an award of fees.

Therefore, because the Act and Rule 11 do not contain a separate test to assess the reasonableness of an award of attorney's fees, the Court should apply the six-factor test typically applied to determine a reasonable attorney's fee when such an award is authorized by contract or statute. See Father v. SCDSS, 345 S.C. 57, 545 S.E.2d 523 (Ct. App. 2001) (stating standard for Rule 11 sanctions and sanctions under the Act are essentially the same).

The following six factors should be considered by the trial court in determining a reasonable award of attorney's fees: (1) the nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. Hardaway Concrete Co. v. Hall Contracting Corp., 374 S.C. 216, 647 S.E.2d 488 (2007). "[W]hen a contract or statute authorizes an award of attorney's fees, the trial court must make specific findings of fact on the record for each of the required factors to be considered." Griffith v. Griffith, 332 S.C. 630, 506 S.E.2d 526 (Ct. App. 1998). Consideration should be give to all six factors and none of the factors is controlling. Taylor v. Medenica, 331 S.C 575, 503 S.E.2d 458 (1998).

Two of the above-stated factors are to be considered in determining whether an award should be made—the contingency of compensation and the beneficial results obtained. Regarding the contingency of compensation factor, the contingency to be considered is whether the party on whose behalf the services were rendered will be able to pay the attorney's fee if the award is not made. Glasscock v. Glascock, 304 S.C. 158, 403 S.E.2d 313 (1991). The factor examining the beneficial results obtained aids in deciding whether an award is proper when considering whether the services of a lawyer brought about a favorable result. Id.



The remaining four factors are to be considered in determining the amount of the fee to be awarded. The professional standing of counsel and the customary legal fees for similar services should be examined in determining the reasonableness of the hourly rate. Id. The reasonableness of the number of hours billed shall be determined based on the nature, extent, and difficulty of the case and the time necessarily devoted to the case. Id.

Lawson requests the amount of attorneys' fees and costs she incurred over the entire course of the 2006 litigation, including during the appellate process. In support of her request, Lawson has submitted an affidavit of her counsel, as well as his billing statements. However, the Court finds an appropriate sanction would include only those fees and costs incurred in defending the action prior to the filing of Irby's Notice of Appeal. In the instant case, the above-cited factors weigh in favor of awarding attorney's fees and costs in the amount of Five Thousand One Hundred and Forty-Three (\$5,143.00) Dollars to Lawson, representing the amount of attorney's fees and costs reasonably and necessarily incurred during the defense of this action in the Circuit Court, prior to the filing of Irby's Notice of Appeal.

Factors (4) and (6), which go to whether an award of fees is warranted, weigh in favor of an award of fees in the instant case. The amount of attorney's fees incurred by Lawson to defend this frivolous suit is significant and would work a substantial hardship on her if she is required to pay them. Payment of these fees by Lawson would be particularly unfair in light of the fact that she previously defended against the identical allegations in the form of a counterclaim brought by Irby in the 2001 litigation. In addition, the beneficial results obtained support an award of



fees and costs for Lawson. Defense counsel was successful in obtaining dismissal of the case based on Plaintiff's failure to state a claim for which relief could be granted.²

The remaining four factors support a finding that the amount of the attorney's fees outlined on defense counsel's billing statements incurred prior to Irby's appeal to the Court of Appeals, Five Thousand One Hundred and Forty-Three (\$5,143.00) Dollars, constitutes a reasonable award of fees in the instant case. The rates of \$225 per hour for Of Counsel and Senior Shareholders, \$180 per hour for Associates, and \$95-\$100 per hour for Paralegals are representative of rates customarily charged for such services. In addition, these rates are reasonable in light of the experience of the counsel chiefly involved in the defense of this case. All counsel are members in good standing of the South Carolina Bar. Lead counsel, Edward Sullivan, is experienced in the areas of real estate and commercial litigation. Accordingly, the hourly rates charged by the attorneys and staff involved in this case are reasonable in light of the rates typically charged in such cases and the professional standing of counsel.

The nature, extent, and difficulty of the case, as well as the time necessarily devoted to the case, also justify an award of the attorney's fees and costs incurred in defending this action before the Circuit Court. As detailed on the billing statement of Lawson's counsel, the attorneys' fees Lawson incurred before the Circuit Court primarily represent time spent by her counsel researching, drafting, and arguing the motion to dismiss and brief in support thereof. To accomplish these tasks, counsel expended a total of 24 hours. This is an appropriate amount of time to achieve the necessary tasks in light of the nature of the litigation and motion. Furthermore, these tasks were necessary to the defense of the instant case and were not duplicative. Accordingly, the approximately 24 hours of work put into this case by defense

² The Court notes this result was affirmed by the Court of Appeals. Irby v. Lawson, Op. No. 2008-UP-134 (S.C. Ct. App. filed February 27, 2008).

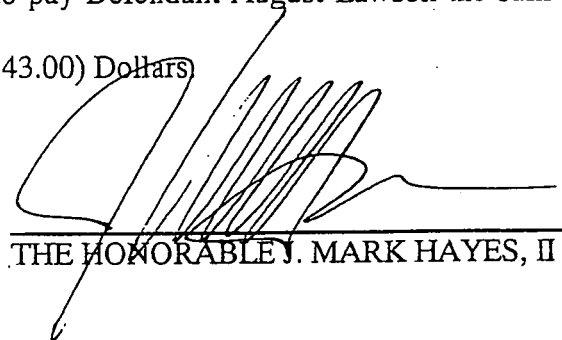
counsel and their staff in defending the case in the Circuit Court were necessarily and reasonably incurred in light of the nature, extent, and difficulty of the case.

Therefore, the Court holds the Glasscock factors weigh in favor of awarding attorney's fees and costs in the amount of Five Thousand One Hundred and Forty-Three (\$5,143.00) Dollars to Lawson pursuant to both Rule 11 and the Act.

CONCLUSION

Irby and her counsel, Andrew M. Jones, Jr., Esquire, violated the Act and Rule 11 by commencing this frivolous proceeding. As sanctions for these violations, Lawson is entitled to an award of the attorneys' fees and costs reasonably and necessarily incurred in defending against this action in the Circuit Court. Therefore, Plaintiff Karen Irby and her counsel, Andrew M. Jones, Jr., Esquire, are hereby jointly ordered to pay Defendant August Lawson the sum of Five Thousand One Hundred and Forty-Three (\$5,143.00) Dollars.

IT IS SO ORDERED.



THE HONORABLE MARK HAYES, II

Spartanburg, South Carolina

June 19, 2009

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2006 -CP-30-00547

Irby

LYNN W. LANCASTER

Lawson

A TRUE COPY OF ORIGINAL

PLAINTIFF(S)

2010 JUN 29 P 12:31

DEFENDANT(S)

Lynn W. Lancaster

Lynn W. Lancaster

Laurens County CCCP & GS

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

This addresses a motion for reconsideration filed by the plaintiff to review an award of attorneys fees made in favor of the defendant. After considering the arguments presented and my prior ruling, the court is not persuaded that a reconsideration of its prior decision is warranted. Also the court does not believe oral arguments will aid the court in making the decision and thus denies the motion without oral arguments.

I request Mr. Sullivan prepare a formal order for my signature. The formal order, once signed will be the final order in this matter.

Thank you all for your attention.

Dated at Spartanburg, South Carolina, this 25 day of June, 2010.

[Signature]
THE HONORABLE J. MARK HAYES, II
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows: _____

Andrew M. Jones
PO Box 9212
Greenville, SC 29604

Edward Sullivan
PO Box 12487
Columbia, SC 29211

LAURENS COUNTY
COURT

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS)

2006 JUL 26 P 2:54

EIGHTH JUDICIAL CIRCUIT

Karen Irby,)

CIVIL ACTION NUMBER: 2006-CP-30-547

Plaintiff,)

VS.)

ORDER

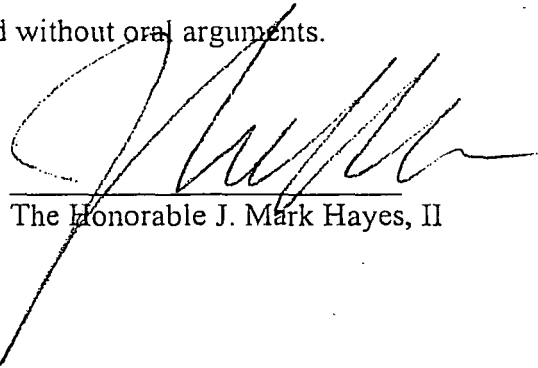
vs.)

Augusta Lawson,)

Defendant.)

This matter is before the Court on Plaintiff's Motion for Reconsideration of this Court's Order Awarding Attorney's Fees and Costs to Defendant. Defendant has filed Defendant's Memorandum in Opposition to Plaintiff's Motion for Reconsideration. After considering the arguments presented as well as this Court's prior decision, reconsideration is not warranted. Oral arguments are not necessary in aiding the Court in making this ruling. Accordingly, it is ordered that Plaintiff's Motion for Reconsideration is denied without oral arguments.

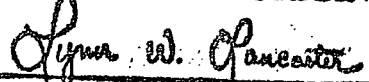
IT IS SO ORDERED.


The Honorable J. Mark Hayes, II

Gotly, South Carolina

July 17, 2010

A TRUE COPY OF ORIGINAL


Lynn W. Lancaster
Laurens County CCCP & GS

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-30-547

Karen Irby,)
Plaintiff,)
vs.)
Augusta S. Lawson,)
Defendant.)

ORDER

This matter comes before the court on Defendant Augusta S. Lawson's Motion to Dismiss pursuant to SCRCP Rule 12(b)(6). Counsel for both the Plaintiff and Defendant were heard on the motion.

SCRCP Rule 65(c) states, in part, that "no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." Generally, damages may be assessed against the party improperly obtaining a restraining order or temporary injunction, but they are limited to the amount of the bond.

On February 15, 2001, a temporary restraining order was issued by Judge G. Thomas Cooper, Jr. and on March 8, 2001, a temporary injunction was issued by Judge Gary E. Clary. Both the temporary restraining order and the temporary injunction served to enjoin Plaintiff Karen Irby and all persons holding under or aiding or assisting her from placing, constructing, and/or erecting on property in the Subdivision the structure which was the subject of the hearing. However, neither the temporary restraining order nor the temporary injunction was issued upon the requirement or giving of security, as required by SCRCP Rule 65(c).

As stated above, the purpose of the posting of security in the form of a bond serves to protect a wrongfully enjoined or restrained party. As such, when Plaintiff Karen Irby was temporarily restrained and enjoined, her proper course of action should have been to appeal the temporary restraining order and/or injunction and ask that a bond be posted for the payment of costs or damages should she be found to have been wrongfully enjoined. No bond was ever required or posted.

The Court finds that because there was no giving of security by the applicant for neither the temporary restraining order nor the temporary injunction, there is no bond on which to assess any damages. Accordingly, Defendant Augusta S. Lawson's Motion to Dismiss pursuant to SCRCP Rule 12(b)(6) is GRANTED.

AND IT IS SO ORDERED.

March 25, 2007
Lancaster, South Carolina


BROOKS P. GOLDSMITH, JUDGE
EIGHTH JUDICIAL CIRCUIT

Exh. 1.4(3)

The Supreme Court of South Carolina

Karen Irby,

Petitioner,

v.

Augusta S. Lawson,

Respondent.

The Honorable Brooks P. Goldsmith
Laurens County
Trial Court Case No. 2006-CP-30-00547

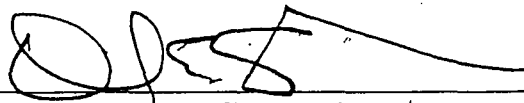
ORDER of DISMISSAL

By order of this Court dated May 20, 2008, petitioner was granted an extension of time until June 18, 2008 to serve and file a Petition for a Writ of Certiorari and Appendix in the above entitled matter. By letter dated June 24, 2008, counsel has informed the Court that the petitioner has decided not to file a Petition for a Writ of Certiorari and Appendix.

IT IS ORDERED that the above captioned matter be and hereby is dismissed.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

June 25, 2008

cc: Andrew M. Jones, Jr., Esquire
✓ Edward D. Sullivan, Esquire
The Honorable Kenneth A. Richstad

The Supreme Court of South Carolina

Karen Irby,

Petitioner,

v.

Augusta S. Lawson,

Respondent.

The Honorable Brooks P. Goldsmith
Laurens County
Trial Court Case No. 2006-CP-30-00547

ORDER

For good cause having been shown, the time for serving and filing the
Petition for Writ of Certiorari and Appendix in the above entitled matter is
hereby extended until June 18, 2008.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Dwenda J. Shealy*
CHIEF DEPUTY CLERK

Columbia, South Carolina

May 20, 2008

cc: Andrew M. Jones, III, Esquire
Edward D. Sullivan, Esquire
The Honorable Kenneth A. Richstad

The South Carolina Court of Appeals

Karen Irby,

Appellant,

v.

Augusta S. Lawson,

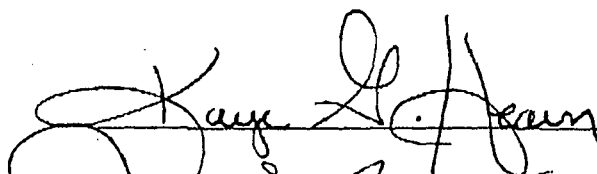
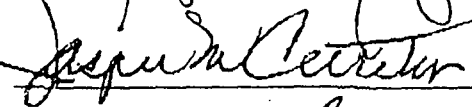
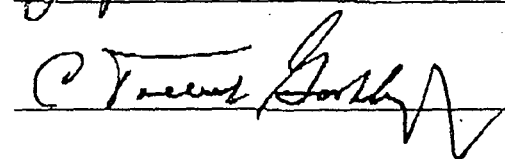
Respondent.

The Honorable Brooks P. Goldsmith
Laurens County
Trial Court Case No. 2006-CP-30-00547

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

 C.J.
 A.J.
 A.J.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(D)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Karen Irby,

Appellant,

v.

Augusta S. Lawson,

Respondent.

Appeal From Laurens County
Brooks P. Goldsmith, Circuit Court Judge

Unpublished Opinion No. 2008-UP-134
Submitted February 1, 2008 – Filed February 27, 2008

AFFIRMED

Andrew M. Jones, III, of Greenville, for Appellant.

Edward D. Sullivan, Christian Stegmaier, both of
Columbia, for Respondent.

PER CURIAM: Karen Irby brought suit against Augusta Lawson for damages Irby suffered due to a temporary injunction that prevented her from using her property. Irby appeals the circuit court's order granting Lawson's motion to dismiss pursuant to Rule 12(b)(6), SCRCPP. We affirm¹ pursuant to Rule 220(b)(2), SCACR, and the following authorities: Glasscock, Inc. v. U.S. Fidelity and Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."); and Harris v. Bennett, 332 S.C. 238, 245, 503 S.E.2d 782, 786 (Ct. App. 1998) ("[A]n issue may not be raised for the first time on appeal, but must have been raised to and ruled upon by the court below to be preserved for appellate review.").

AFFIRMED.

HEARN, C.J., CURETON, A.J., and GOOLSBY, A. J., concur.

¹ Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina^{STER} Court of Appeals

2008 FEB 15. P 4: 28

Karen Irby,

Appellant,

Augusta S. Lawson,

Respondent.

The Honorable Brooks P. Goldsmith
Laurens County
Trial Court Case No. 2006-CP-30-00547

ORDER

Appellant Karen Irby filed a Petition to Reinstate her appeal. Our Court previously dismissed the appeal. After a careful consideration of the Appellant's motion and filings, we grant her Petition to Reinstate.

AND IT IS SO ORDERED.

Karen E. Ham C.J.

James A. Carter A. J.

C. Talbot Goolley / A.J.

AND IT IS SO ORDERED.

Columbia, South Carolina

2/5/2008

cc: Andrew M. Jones, III, Esquire
Edward D. Sullivan, Esquire
Christian Stegmaier, Esquire

FILED

2/14/08 dlp

The South Carolina Court of Appeals

Karen Irby,

Appellant,

v.

Augusta S. Lawson,

Respondent.

The Honorable Brooks P. Goldsmith
Laurens County
Trial Court Case No. 2006-CP-30-00547

ORDER

Respondent filed a motion to dismiss the above-captioned appeal due to Appellant's failure to comply with the South Carolina Appellate Court Rules as well as the conclusory nature of Appellant's arguments. After careful consideration of the motion, return, and reply, Respondent's motion to dismiss is hereby granted. Because this Court dismisses the appeal, Appellant's subsequently filed motion to file her Designation of Matter out of time is rendered moot.

AND IT IS SO ORDERED.


Kaye G. Hearn

Columbia, South Carolina

September 27, 2007.

FILED

9/28/07 dlp

BARBARA T. WASSON

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS)

FOR THE EIGHT CIRCUIT

Augusta S. Lawson,)

CASE NO: 01-CP-30-105

Plaintiff)

vs.

LAURENS COUNTY
CLERK OF COURT

ORDER

Karen Irby,)

Defendant)

This is an action seeking to enjoin the Defendant and her agents from violating covenants and restrictions in a subdivision. Plaintiff now moves for a temporary injunction. The motion is granted.

The motion of Plaintiff, Augusta S. Lawson, for a temporary injunction was heard by me on February 22, 2001, pursuant to a duly noticed motion filed by Plaintiff on February 15, 2001. Plaintiff appeared by and through her counsel, Edward D. Sullivan, and Defendant, Karen Irby, appeared by and through her counsel, Robert W. Whitesides.

Plaintiff lives in Green Acres Subdivision (the "Subdivision"). The Subdivision is restricted by Covenants and Restrictions, including, among others, a restriction prohibiting temporary structures as residences, either as a temporary residence or a permanent residence. Section C-5 of the Covenants and Restrictions provides as follows:

Temporary Structure: No structure of a temporary character (trailer, basement, tent, shack, garage, barn, or other out-building) shall be used on any lot at any time as a residence, either temporarily or permanently.

A TRUE COPY OF ORIGINAL

ccc
#1.

Barbara T. Wasson

22

BARBARA T. WASSON
Laurens County CCCP & GS

EXHIBIT

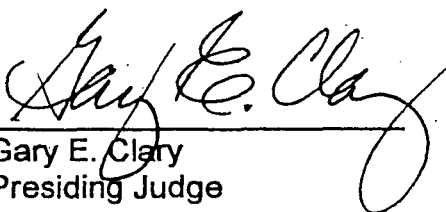
Defendant is attempting to place onto a restricted lot in the Subdivision a structure that has been hauled into the Subdivision in two pieces on transport trailers. Plaintiff seeks to enforce the restrictions and moves for a temporary injunction enjoining Defendant and/or her agents from placing the structure, or allowing the structure to remain, in the Subdivision.

The matter having been argued and the court having considered the affidavits and evidence presented, including pictures of Defendant's structure, and it appearing to the court that Plaintiff will suffer irreparable injury absent a temporary injunction, now therefore

IT IS HEREBY ORDERED that Defendant and all persons holding under or aiding or assisting Defendant be enjoined and restrained from placing, constructing, and/or erecting on property in the Subdivision the structure now placed, or being placed, or intended to be so placed by Defendant, or such similar structure, and from allowing such a structure to so remain in the Subdivision pending the trial of this action.

AND IT IS SO ORDERED.

March
February 8, 2001



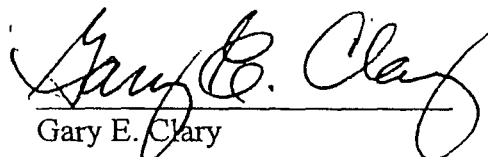
Gary E. Clary
Presiding Judge

STATE OF SOUTH CAROLINA	)	BARBARA T. WASSON	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)		EIGHT JUDICIAL CIRCUIT
Augusta S. Lawson,	)	2001 MAR 29 P 4:15	
Plaintiff,	)		
v.	)	LAURENS COUNTY	
Karen Irby,	)	CLERK OF COURT	
Defendant.	)	ORDER	
	)	Civil Action No.: 01-CP-30-105	

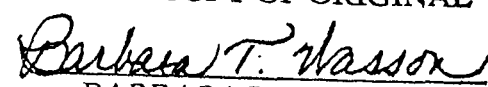
This matter is before the Court on the Defendant's Motion to Reconsider Temporary Restraining Order. The Defendant's argument on the Motion was presented to the Court through written brief and this Court finds that there is no necessity for oral arguments.

This Court finds that the Defendant's Motion to Reconsider Temporary Restraining Order is denied. It is therefore,

ORDERED, that the Defendant's Motion to Reconsider Temporary Restraining Order is Denied.


 Gary E. Clary
 Presiding Judge

March 29, 2001
 Laurens, South Carolina

A TRUE COPY OF ORIGINAL

 BARBARA T. WASSON
 24 Laurens County CCCP & GS

FYN.B.T

BARBARA T. WASSON
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS) FOR THE EIGHT CIRCUIT

Augusta S. Lawson, 2001 FEB 15 P M: 36
Plaintiff)

CASE NO:

vs.

Karen Irby,

LAURENS COUNTY
CLERK OF COURT
Defendant)

ORDER GRANTING
TEMPORARY RESTRAINING ORDER

2001-CP-30-105

On February 15, 2001, the court considered the Plaintiff's Motion and Application for a Temporary Restraining Order on her verified Complaint. Having reviewed the verified Complaint, it clearly appears from the special facts stated therein that immediate and irreparable injury will result to Plaintiff. The court finds that Plaintiff is entitled to the temporary restraining order, the verified Complaint showing that Defendant is in the process of placing a structure in a restricted subdivision in violation of the recorded Covenants and Restrictions on the lots in the subdivision, the effect of which would be to devalue Plaintiff's property. This Order is granted without notice because the structure has been parked in the road fronting the lots in the Subdivision, and it appears that it is going to be moved onto the lots at any time.

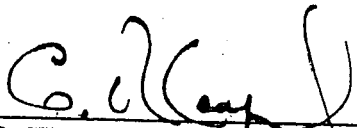
It is therefore

ORDERED that the temporary restraining order requested by Plaintiff be and it is hereby granted as requested as of this 15 day of February, 10:30 o'clock A m. This Order shall expire in 10 days.

A TRUE COPY OF ORIGINAL

Barbara T. Wasson
BARBARA T. WASSON
Laurens County CCCP & GS

AND IT IS SO ORDERED.



G. Thomas Cooper, Jr.
Presiding Judge

February 15, 2001

Exhibit (5)

BARBARA T. WASSON

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

2001 JUN - 7 A 11:53

CASE NO. 01-CP-30-105

Augusta Lawson

Karen Irby

LAURENS COUNTY

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other-
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Other-

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

H's Motion to Dismiss is GRANTED.

Dated at Laurens, South Carolina, this 6th day of June, 2001

James B. Clay
PRESIDING JUDGE

This judgment was entered on the 7 day of JUNE, 2001 and a copy mailed first class this 7 day of JUNE, 2001 to attorneys of record or to parties (when appearing pro se) as follows:

Edward J. Sullivan
Esq.

James A. Duckett
Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC FORM 4 A TRUE COPY OF ORIGINAL
(Rev. 8/99)

Barbara T. Wasson
BARBARA T. WASSON
Laurens County CCCP & GS

Barbara T. Wasson
CLERK OF COURT

BARBARA T. WASSON

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

THE EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

2006 JUL 2 } A 10: 39

Case No. 2006 - Cp - 30 - 547

Karen Irby,
Plaintiff,

vs.

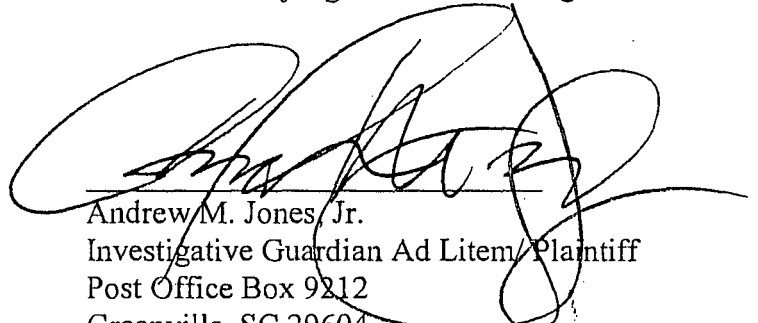
LAURENS COUNTY
CLERK OF COURT

SUMMONS

Augusta Lawson,
Defendant

TO THE ABOVE NAMED DEFENDANT (S):

You are hereby summoned and required to Answer the Complaint in this action, a copy of which is attached hereto and herewith served upon you, and to serve a copy of your Answer to same upon the subscriber at Post Office Box 9212, Greenville, South Carolina, 29601, within thirty (30) days of service of the same, exclusive of the day of such service of the same, exclusive of the day of such service. If you fail to Answer the Complaint within the thirty day period, Plaintiff will apply to the Court for the relief demanded therein and judgement be taken against you in default.


Andrew M. Jones, Jr.
Investigative Guardian Ad Litem/Plaintiff
Post Office Box 9212
Greenville, SC 29604
tel: (864) 271-1230/ fax: (864) 271-1286

July 15, 2006
Greenville, South Carolina

BARBARA T. WASSON

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

THE EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

2006 JUL 21 A 10:40

Case No. 2006-Cp-30-547

Karen Irby,
Plaintiff,

vs.

LAURENS COUNTY
CLERK OF COURT

COMPLAINT

Augusta Lawson,
Defendant

The Plaintiff would respectfully show upon this Honorable Court the following:

I.

This Court has jurisdiction to hear and determine all issues herein and the parties are properly before this Court. The Plaintiff is a citizen and resident of Laurens County, South Carolina, and the Defendant, upon information and belief, is likewise a citizen and resident of Laurens County.

II.

The Plaintiff is the owner of certain real property designated as Lots 10 and 12 of Green Acres Subdivision located at 4307 Jared Drive, Laurens, South Carolina.

III.

The Defendant, upon information and belief, is the owner of real property situated in Green Acres Subdivision located at 100 Blair Road, Laurens, South Carolina.

IV.

The Green Acres Subdivision, wherein the above-referenced properties belonging to the Plaintiff and Defendant are located, is a community in the County of Laurens containing a number of lots that are largely improved with private residences.

V.

The Green Acres Subdivision has certain Covenants and Restrictions granted by a common grantor which run with the land and designate the real property in the subdivision subject to the Covenants and Restrictions. The Plaintiff, and the Defendant have taken title to

their respective parcels of land subject to the Covenants and Restrictions.

VI.

The Green Acres Subdivision's Covenants and Restrictions provide the following:

Temporary Structures: No structure of a temporary character (trailer, basement, shack, garage, barn or other outbuilding) shall be used on any lot at any time as a residence, either temporarily or permanently.

VII.

In 2001, the Plaintiff attempted to place a modular home to be used as her private residence, on the aforementioned parcels of land owned by her in the Green Acres Subdivision.

VIII.

The Plaintiff's modular home had been certified as a modular home by the State of South Carolina, and was not a trailer, mobile home, shack, garage, barn, or any other temporary building which violated Green Acres's Covenants and Restrictions.

IX.

The Plaintiff's modular home was transported to her property in Green Acres Subdivision by truck and trailer. Green Acres's Restrictive Covenants do not prohibit moving a house into the subdivision and several other houses located in the community have been moved into Green Acres from other lots.

X.

The Plaintiff's home did not have any axles, wheels, or iron rails beneath it. Moving the Plaintiff's home after it has been erected would require the same procedures as required to move most of the other houses in the subdivision.

XI.

The Plaintiff's home was to be placed on a house foundation the same foundation required for any site built house in this County, and once placed on the foundation the Plaintiff's would be secured as any house is required to be secured to its foundation by local codes.

XII.

The Plaintiff's home once erected and assembled on its foundation would have an

exterior vinyl siding finish. Green Acres's Restrictive Covenants do not prohibit vinyl siding and several other houses located in the community have vinyl siding.

XIII.

Upon the arrival of the Plaintiff's home, to the her property site, the Defendant instituted a civil action to prevent the Plaintiff from placing her home upon her property.

XIV.

The Defendant in his Complaint filed against the Plaintiff to prevent her from placing her home upon her property, alleged that the Plaintiff was attempting to place on her property a trailer, mobile home, or a so-called modular home in violation of Green Acres's Covenants and Restrictions.

XV.

On February 15, 2001, The Honorable G. Thomas Cooper Jr., issued a Temporary Restraining Order valid for ten (10) days, that prohibited the Plaintiff from moving her home onto her property.

XVI.

On March 2001, The Honorable G. Thomas Cooper Jr. issued a Temporary Injunction, enjoining the Plaintiff from moving her home onto her property, pending the trial of this action.

XVII.

On July 22, 2002, The Honorable James W. Johnson, issued an Order pursuant to the non-jury civil trial, vacating the temporary injunction and denying the Defendant's request for a permanent injunction prohibiting the Plaintiff from moving her home on her property. The Honorable James W. Johnson held that the Plaintiff's home was not temporary in nature and was not in violation of Green Acres's Covenants and Restrictions.

XVIII.

The Defendant appealed the decision to the South Carolina Court of Appeals, wherein the Court of Appeals on March 2, 2004, affirmed the decision of The Honorable James W. Johnson. The Court of Appeals specifically stated:

"Green Acres' restrictions prohibit the use of any structure of temporary character (trailer, basement, shack, garage, barn or other outbuilding) but they do not prohibit the use of modular homes.

XIX.

The Defendant appealed the decision of the Court of Appeals to The Supreme Court of South Carolina, wherein the Petition for Writ of Certiorari was denied by The Honorable Chief Justice Jean Toal on August 18, 2005.

XX.

The Defendant has caused damage to the Plaintiff by interfering with the Plaintiff quiet and peaceful use of her property.

XXI.

The Plaintiff is informed and believes that as a result of the Defendant's conduct which interfered with the quiet enjoyment of her property for nearly seventeen (17) months, she is entitled to be remedied.

XXII.

The Plaintiff is informed and believes that she is entitled to actual damages, in an amount to be determined by the Court, as a result of the Defendant's interfering with the her quiet and peaceful use of her property.

XXIII.

The Defendant knew or should have known that the Plaintiff's home was not a mobile home or trailer as he alleged in the civil action instituted by him. Furthermore, the Defendant knew or should have known that the Plaintiff's home was not a basement, shack, garage, barn, or other outbuilding which are specifically prohibited by the Green Acres's Restrictive Covenants.

XXIV.

The Plaintiff is informed and believes that she is entitled to punitive damages, in an amount to be determined by the Court, as a result of the Defendant's conduct which interfered with the Plaintiff's quiet and peaceful use of her property.

WHEREFORE, the Plaintiff prays that this Honorable Court grant the following relief:

1. That this Honorable Court award the Plaintiff actual and punitive damages, as a result of the Defendant interfering with the Plaintiff's peaceful and quiet enjoyment of her property.

XIX.

The Defendant appealed the decision of the Court of Appeals to The Supreme Court of South Carolina, wherein the Petition for Writ of Certiorari was denied by The Honorable Chief Justice Jean Toal on August 18, 2005.

XX.

The Defendant has caused damage to the Plaintiff by interfering with the Plaintiff quiet and peaceful use of her property.

XXI.

The Plaintiff is informed and believes that as a result of the Defendant's conduct which interfered with the quiet enjoyment of her property for nearly seventeen (17) months, she is entitled to be remedied.

XXII.

The Plaintiff is informed and believes that she is entitled to actual damages, in an amount to be determined by the Court, as a result of the Defendant's interfering with the her quiet and peaceful use of her property.

XXIII.

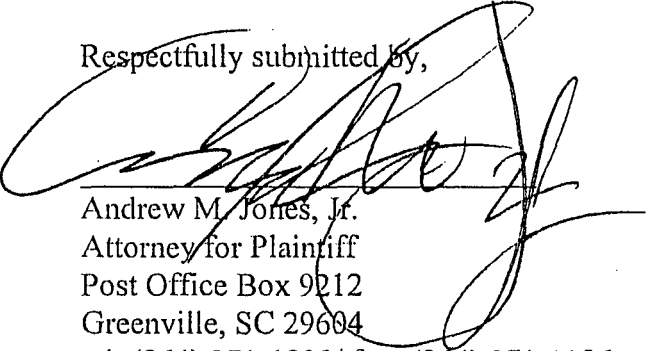
The Plaintiff is informed and believes that she is entitled to punitive damages, in an amount to be determined by the Court, as a result of the Defendant's conduct which interfered with the Plaintiff's quiet and peaceful use of her property.

WHEREFORE, the Plaintiff prays that this Honorable Court grant the following relief:

1. That this Honorable Court award the Plaintiff actual and punitive damages, as a result of the Defendant interfering with the Plaintiff's peaceful and quiet enjoyment of her property.
2. That this reasonable costs and attorney fees associated with this action.
3. That this Court provide such further relief it deems just and proper.

July 15, 2006
Greenville, South Carolina

Respectfully submitted by,



Andrew M. Jones, Jr.
Attorney for Plaintiff
Post Office Box 9212
Greenville, SC 29604
tel: (864) 271-1230/ fax: (864) 271-1286

BARBARA T. WASSON

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS)
10 CP 10) A 10 FOR THE EIGHT CIRCUIT

Karen Irby,) CASE NO: 06-CP-30-547

Plaintiff)

vs.)

Augusta S. Lawson,)
Defendant)

NOTICE OF MOTION AND
MOTION TO DISMISS

TO: ANDREW M. JONES, JR., ATTORNEY FOR PLAINTIFF KAREN IRBY,
AND PLAINTIFF KAREN IRBY

YOU WILL PLEASE TAKE NOTICE THAT THE DEFENDANT AUGUSTA S. LAWSON, by and through her undersigned counsel, will move before the presiding Judge ten days from the date hereof, or as soon thereafter as may be heard, at the Laurens County Judicial Center for an Order dismissing the Defendant's counterclaim pursuant to SCRCP 12(b)(6) for failure to state facts sufficient to constitute a cause of action. In addition, Plaintiff Irby's claim is barred by the doctrine of res judicata since the same exact claim was previously made in previous litigation between these parties and the claim was dismissed by the Honorable Gary E. Clary (See certified true copy of Order dated June 6, 2001 attached as Exhibit A.) Judge Clary's order was not appealed. This Motion to Dismiss is supported by the attached copies of the Orders rendered in the previous litigation, such other items of record as may be presented, and the law of South Carolina.

This is the second action between these parties arising out of the same facts. In 2001, Defendant Lawson brought an action against Plaintiff (Case No.

Exhibit (1)

01-CP-30-105) seeking to enforce Covenants and Restrictions by enjoining Irby and her agents from placing a structure, and/or allowing such structure to remain, in a restricted Subdivision in violation of the Covenants and Restrictions concerning structures of temporary character, such as trailers. Based on Lawson's Complaint, and Motion and Application for Temporary Restraining Order, the Honorable G. Thomas Cooper, Jr., issued a Temporary Restraining Order on February 15, 2001 (See certified true copy of Order attached as Exhibit B). Lawson moved for a temporary injunction, and on March 8, 2001, Judge Clary issued an Order of Temporary Injunction against Defendant (See certified true copy of Order attached as Exhibit C). On March 29, 2001, Judge Clary denied Irby's Motion to Reconsider Temporary Restraining Order (See certified true copy of Order attached as Exhibit D). Thereafter, Irby filed a responsive pleading to the Complaint containing a counterclaim against Plaintiff seeking damages, fees and costs allegedly arising out of Plaintiff's action to enforce the Covenants and Restrictions. (See Answer and Counterclaim attached as Exhibit E). Lawson moved to dismiss this counterclaim pursuant to SCRCP 12(b)(6), and the Court granted Lawson's motion to dismiss on June 6, 2001 (See Exhibit A).

At a bench trial on the merits, Judge Johnson held that Irby's structure did not violate the covenants and restrictions. Lawson appealed Judge Johnson's ruling, but Judge Johnson's ruling was upheld. Irby did not appeal any of the previous orders.

In the present action, Irby now claims that Lawson, in seeking to enforce the covenants and restrictions, interfered with Plaintiff's quiet and peaceful use of

her property. This Court should dismiss the Complaint because Lawson, as a resident of the subdivision, had a right to seek judicial enforcement of the Covenants and Restrictions on the subdivision, including that of injunctive relief. Judge Clary granted a temporary injunction against Irby. Lawson's justified actions in seeking to enforce the Covenants and Restrictions does not constitute a cause of action for interfering with the use of property. Her claim has no merit whatsoever, and should therefore be dismissed.

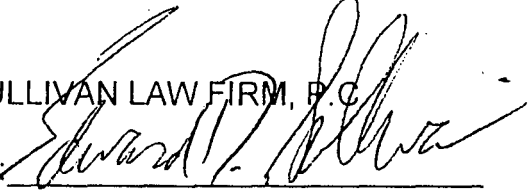
Irby's remedy, if any, was a bond at the time the temporary injunction was granted. No bond was ordered. Thereafter, Irby filed a Motion to Reconsider Temporary Restraining Order. An order was issued denying that motion, and no appeal was taken. At that point in the previous litigation, Irby responded by filing the counterclaim asserting that Lawson's injunction interfered with Irby's "quiet and peaceful use of her property" (Section VIII of the Answer and Counterclaim dated March 7, 2001 attached as Exhibit E). Irby's counterclaim was dismissed by Judge Clary. No appeal of Judge Clary's order granting Lawson's motion to dismiss Irby's counterclaim was ever taken. Irby now brings this action against Lawson contending that Lawson has "interfered with the quiet enjoyment of her property" (Section XXI of the Complaint dated July 15, 2006). In doing so, Irby seeks to re-litigate the exact same claim that was previously made. In addition to having no merit, her claim is barred by the doctrine of res judicata.

The complaint fails to state facts sufficient to state a cause of action, has been previously litigated, and is barred by the doctrine of res judicata.

WHEREFORE, the Defendant Augusta S. Lawson prays that Plaintiff's

Complaint be dismissed pursuant to SCRPC 12(b)(6) for failure to state facts sufficient to state a cause of action against this Defendant, for attorney fees and costs incurred in making this Motion, and for such other relief as the Court may deem just and proper.

SULLIVAN LAW FIRM, P.C.

By: 

Edward D. Sullivan

P. O. Box 11714

Columbia, SC 29211-1714

(803) 748-7485

Attorney for Defendant

Columbia, South Carolina
September 13, 2006

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS

CASE NO. 06-CP-30-547

Karen Irby,

Plaintiff,

vs.

PLAINTIFF MEMORANDUM IN
OPPOSITION TO DEFENDANT
12(b)(6) MOTION

Augusta S. Lawson,

Defendant.

In response to the Defendant's SCRCP 12(b)(6) styled Notice of Motion and Motion to Dismiss.

The Plaintiff's action is a new action, not a Counterclaim, as the Defendant alleges in her Motion to Dismiss.

The Plaintiff alleges the elements of a cause of action for malicious prosecution (1) the institution or continuation of original judicial proceedings, either civil or criminal; (2) by, or at the instance of, the defendant; (3) the termination of such proceedings in Plaintiff's favor; (4) maliciousness in instituting such proceedings; (5) want of probable cause; and (6) resulting injury or damage. *Batson vs. Davis Mountain Water Co.*, 53 S.E. 500 and *South Carolina Jurisprudence*, Vol. 1, Page 178, Section 77, with the possible exception of using the word malicious in referring to the Defendant's actions in this matter.

Plaintiff claim for malicious prosecution could only have arisen after the favorable termination of the case of *Augusta S. Lawson vs. Karen Irby*, Case No. 01-CP-30-105, in Plaintiff Karen Irby's favor.

The Defendant Augusta S. Lawson stated in her Memorandum in Support of Plaintiff's Motion to Dismiss Counterclaim in the case of *Augusta S. Lawson vs. Karen Irby*, Case No. 01-CP-30-105, page 3, line 22 and page 4, lines 1 and 2:

"In addition there can be no accrual of liability until and unless there is a determination that an injunction was wrongful."

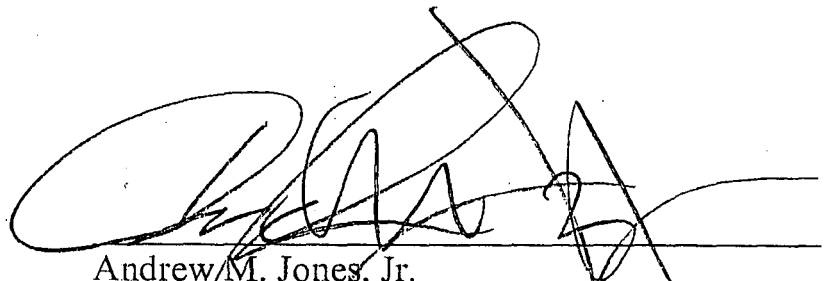
The Counterclaim in the case of *Augusta Lawson vs. Karen Irby* can only be assumed

Dismissed, because it was not ripe for adjudication and would not be so until and unless there was a determination that the injunction was wrongful as Augusta Lawson states in her memorandum in support of her Motion to Dismiss Counterclaim, thereby being only the Court's Form Order indicating Augusta Lawson's Motion to Dismiss is granted, dated on June 6, 2001, in Lauren, South Carolina. It would appear that the merit of the matter was not reached until the issue whether the injunction was wrongfully obtained.

The Plaintiff, Karen Irby, also is informed and believes that she has a cause of action for tortious interference with a contract (1) the existence of a valid contract; (2) the wrongdoer's knowledge of the contract; (3) here intentional procurement of its breach; (4) absence of justification and resulting damages, South Carolina Jurisprudence Vol. 30, Page 232, Section 18:

"A ruling on a Rule 12(b)(6) Motion to Dismiss must be based solely upon the allegations set forth on the face of the Complaint. The Motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the Plaintiff to any relief on any theory of the case. The question is whether in the light most favorable to Plaintiff, and with every doubt resolved in her behalf, the Complaint states any valid claim for relief. The Complaint should not be dismissed merely because the court doubts the Plaintiff will prevail in the action." *Dye v. Gainey*, 320 S.C. 65, 67-68 463 S.E.2d 97, 98-99 (Ct. App. 1995).

In the event the Court deem Plaintiff Complaint insufficient. She requests an opportunity to amend her Complaint to make it more definite and certain as to the causes of Section stated hereinabove.



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Greenville, South Carolina

March 9, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHT CIRCUIT

Karen Irby,)
Plaintiff)

CASE NO: 06-CP-30-547

vs.)

NOTICE OF MOTION AND
MOTION FOR SANCTIONS

Augusta S. Lawson,)
Defendant)

TO: ANDREW M. JONES, JR., ATTORNEY FOR PLAINTIFF KAREN IRBY,
AND PLAINTIFF KAREN IRBY

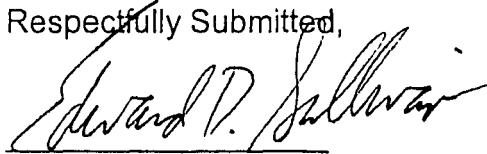
YOU WILL PLEASE TAKE NOTICE THAT THE DEFENDANT AUGUSTA
S. LAWSON, by and through her undersigned counsel, will move before the
presiding Judge ten days from the date hereof, or as soon thereafter as may be
heard, at the Laurens County Judicial Center for an Order of Sanctions
pursuant to Rule 11 of the South Carolina Rules of Civil Procedure and the South
Carolina Frivolous Proceedings Sanctions Act, S.C. Code Annotated §15-36-12
et. seq.

The above captioned action was dismissed by Order of Judge Brooks P.
Goldsmith dated March 25, 2007 and clocked March 27, 2007. Defendant will
show the that this action had no merit, was clearly not warranted under existing
law, that a good faith or reasonable argument did not exist for the extension,
modification, or reversal of existing law and/or that the procurement, initiation and
continuation of this civil cause was intended merely to harass or injure the
moving party. Based on the foregoing, Defendant requests the Plaintiff and/or
the Plaintiff's attorney to pay Defendant for all reasonable costs and attorney's

fees resulting from this frivolous proceeding, and other relief this Court deems just and proper.

Defendant will rely upon the pleadings, relevant case and statutory law, and any memorandum of law or affidavit of counsel submitted in support hereof.

Respectfully Submitted,



Edward D. Sullivan
Collins and Lacy, PC
PO Box 12487
Columbia, South Carolina 29211
(803) 255-0459
ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
April 5, 2007

IN THE COURT OF COMMON PLEAS
CASE NO. 06-CP-30-547

PLAINTIFF'S MEMORANDUM
IN OPPOSITION TO DEFENDANT'S
MOTION FOR SANCTIONS

VS.

Augusta S. Lawson,
Defendant,

HISTORY OF THE CASE

The Plaintiff Karen Irby, a property owner in the Green Acres Subdivision of Laurens County, South Carolina, brought an action against the Defendant Augusta S. Lawson, the sister of her attorney Edward Sullivan seeking punitive and actual damages, as a result of the Defendant Augusta S. Lawson interfering with the Plaintiff Karen Irby's quiet and peaceful use of her property.

On February 15, 2001, on Motion and Application for Temporary Restraining Order Judge G. Thomas Cooper, Jr., granted an Order temporarily restraining the Plaintiff Karen Irby from placing her modular home on her lots in said subdivision.

On March 8, 2001 Judge Gary E. Clary issued a temporary injunction and dismissed the Plaintiff Karen Irby's Counterclaim for damages. It appears that the Temporary Restraining Order and the Temporary Injunction were issued without security being provided by the Defendant Augusta S. Lawson.

In a written decision issued July 22, 2002, the trial court held that the Plaintiff Karen Irby was attempting to place a modular home on her property and that her home was not temporary in nature.

The Defendant Augusta S. Lawson filed a motion to alter or amend the judgement pursuant to Rule 59 (e). The court denied the motion by Order dated September 12, 2002.

The Defendant Augusta S. Lawson appealed the decision to the South Carolina Court of Appeals, where in the Court of Appeals on March 2004, affirmed the decision of the Honorable James W. Johnson.

The Defendant Augusta S. Lawson appealed the decision of the Court of Appeals to the Supreme Court Of South Carolina, wherein the Petition of Writ of Certiorari was denied by the Honorable Chief Justice Toal on August 18, 2005.

The Plaintiff Karen Irby filed a claim against the Augusta Lawson on July 21, 2006 alleging that the Defendant Augusta S. Lawson has caused damage to the Plaintiff by interfering with the Plaintiff's quiet and peaceful use of her property.

On September 15, 2006 Defendant filed a Motion to Dismiss based upon South Carolina Rule of Civil Procedure 12 (b) (6), in which the Honorable Brooks P. Goldsmith granted on March 25, 2007.

ARGUMENTS

What if any effect does Judge Goldsmith's prior ruling in this case have on the Defendant's present request for attorneys fees and cost.

The Defendant Augusta S. Lawson the sister of her attorney Edward Sullivan seeks attorney fees and cost incurred in bringing her written Notice of Motion and Motion to Dismiss before the Court. See Exhibit (1) page 4 line 2 and 3 and Exhibit 2 page 17 lines 3 through 10 of the Transcript of Record dated March 6, 2007.

"I think, quite frankly Your Honor that this is a waste of your time, of this Court's time, and it is frivolous. I think it is border line frivolous or it was when they filed a counterclaim to start with, because it didn't survive 12B 6.

Here today, it is clearly res judicata Your Honor and I would as for fees and cost and that the cause of action be dismissed and not be brought again."

The trial court in its wisdom did not grant or address sanction in it's Order dated March 25, 2007, the matter was clearly brought before the trial court by the Defendant in her written Motion to Dismiss and during argument before the trial court on March 6, 2007.

It is Plaintiff's position that any relief specifically sought and not granted is denied.

Plaintiff is informed and believes that SCRCF 43 (L) is controlling in this matter.

"If any motion is made to any Judge and be denied in whole or in part or be granted conditionally, no subsequent motion upon the same stated facts shall be made to any other Judge in that action."

The Defendant motion should be denied for the above stated reasons alone.

Upon reading the trial court's Order dated March 25, 2007 granting the Defendant Augusta S. Lawson's Motion to Dismiss pursuant to SCRCP Rule 12 (b) 6 the Plaintiff finds no reference to any action or inaction on her part that would call for sanctions. See Exhibit 3 the Order of the trial court granting the Defendant's SCRCP Rule 12 (b) (6) Motion to Dismiss.

The Defendant herself in the prior case of Augusta S. Lawson vs Karen Irby Case No. 01-CP-30-105 stated that:

"In addition there can be no accrual of liability until and unless there is a determination that an injunction was wrongful."

See line 23 of page 3 and line 1 and 2 of page 4 of Defendant Augusta S. Lawson's Memorandum in Support of Plaintiff's Motion to Dismiss Counterclaim attached hereto as Exhibit 4.

It was reasonable for the Plaintiff Karen Irby to assume that her Counterclaim in the case of Augusta S. Lawson vs Karen Irby could have only been dismissed because it was not ripe for adjudication and would not be so until and unless there was a determination by the courts that the injunction was wrongful as Augusta S. Lawson stated in her Memorandum in Support of Plaintiff's Motion to Dismiss Counterclaim, there being only the Court's Form Order indicating Augusta S.

Lawson's Motion to Dismiss is granted, date June 6, 2001, in Laurens, South Carolina. It would reasonably appear that the merits of the Counterclaim was not reached and could not have been reached until the issue whether the injunction was wrongful was adjudicated by the courts. The Counterclaim was not dismissed with prejudice. See Exhibit 5 and 6 attached hereto.

The Plaintiff's action was a new action, not a Counterclaim as the Defendant Augusta S. Lawson alleged in her Motion to Dismiss pursuant to SCRPC Rule 12 (b)(6).

The Plaintiff alleged the elements of a cause of action for malicious prosecution (1) the institution or continuation of original judicial proceedings, either civil or criminal; (2) by or at the instance of, the defendant; (3) the termination of such proceedings Plaintiff's favor; (4) maliciousness in instituting such proceeding; (5) want of probable cause, and (6) resulting injury or damage. Batson vs Davis Mountain Water Co. 53 S. E. 500, and South Carolina Jurisprudence, Vol. 1, Page 178, Section 77, with the possible exception of using the word malicious in referring to Defendant Augusta S. Lawson actions in this matter. See Plaintiff's Complaint attached here to as Exhibit 7.

Plaintiff claim for malicious prosecution could only have arisen after the favorable termination of the case of Augusta S. Lawson vs Karen Irby, Case No. 01-CP-30-105 in Plaintiff Karen Irby's favor.

Plaintiff is informed and believes that if the Defendant Augusta S. Lawson Motion for Sanctions survived Judge Brooks P. Goldsmith Order dated March 25, 2007 and the South Carolina Court of Appeal opinion in Irby vs Lawson 2008 UP-134 (S.C. Ct App. filed February 27, 2008)

affirming his Order on procedure grounds, the Honorable Mark Hayes does not have subject matter jurisdiction to hear the Defendant Motion for Sanctions, that it should be heard by Judge Brooks P. Goldsmith pursuant to S.C. Code section 15-36-10 (c)(1); William v Middleton 649 S. E. 2nd 57 (SC2007) and Russell vs Wachovia Bank 633 S. E. 2nd 722.

If this Court can award attorney's fees and cost, what is the proper amount to be awarded, including the method to be used to calculate the award?

The South Carolina Court of Appeals had jurisdiction of the case of Karen Irby vs Augusta S. Lawson 2006-CP-30-547 from April 18, 2007, the date of the filing of Plaintiff's Notice of Intent to Appeal through July 23, 2008, with the receipt and review of the Remittitur. The SC Court of Appeals awarded cost and attorney fee pursuant to SCACR 222.

It appears that the Defendant and her attorney are seeking to obtain cost and fee from this court for matter that were clearly under the jurisdiction of the SC Court of Appeals which they were compensated for in the amount of One thousand Sixteen & 50/100 pursuant to SCARCR 222. See Exhibit 8 and 9 attached hereto.

During the period from April 18, 2007 through July 23, 2008 the Court of Appeals pursuant to SCACR 240 could have on its own motion determined that Plaintiff's appeal was frivolous, it did not do so in it's initial decision or in response to Plaintiff's Motion for a Rehearing.

Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

The Defendant Augusta S. Lawson is the sister of her attorney Edward D. Lawson. He stated in his affidavit that he is the retained counsel for the Defendant in this matter; but he does not produce the Retainer Agreement, a canceled check, ledger, receipt, letter, or any other document establishing that his sister Augusta S. Lawson paid any or became liable for compensation to him from February 19, 2007 through October 23, 2008 the period he states that provided services to her for a fee. In fact the only payment acknowledge by Edward D. Sullivan is the one forwarded to him by the Plaintiff's attorney pursuant to the SC Court of Appeals awarding cost and attorney Fees pursuant to SCACR 222 in the amount of One Thousand Sixteen and 50/100.

The Defendant or her brother Edward D. Sullivan has produced no documentation stating or implying that the Defendant actually incurred attorney fee and costs. Therefore Plaintiff request that the Defendants Motion be dismissed with prejudice. Hopkins vs Hopkins, 540 S. E. 2nd 454 (2008) and Calhoun vs Calhoun 529 S. E. 2d 14, 17 (2000)

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Greenville, South Carolina
December 24, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	FOR THE EIGHT CIRCUIT
	)	
Karen Irby,	)	CASE NO: 2006-CP-30-547
Plaintiff	)	
	)	MEMORANDUM IN SUPPORT
vs.	)	OF PLAINTIFF'S MOTION
	)	FOR SANCTIONS
Augusta S. Lawson,	)	
Defendant	)	
	)	

In July 2006, Plaintiff Karen Irby ("Irby"), thru her counsel Andrew M. Jones, Jr., brought this action against Defendant Augusta S. Lawson ("Lawson") for "interfering with the Plaintiff(sic) quiet and peaceful use of her property." Essentially Irby sued Lawson because Lawson had earlier successfully temporarily enjoined Irby from moving a so-called modular home into a restricted subdivision which prohibited trailers. In March 2007, the Honorable Brooks P. Goldsmith granted Lawson's Rule 12(b)(6) motion to dismiss Irby's 2006 action for failure to state a claim for which relief can be granted. Irby appealed Judge Goldsmith's order but his ruling was upheld by the SC Court of Appeals which essentially held that Irby's case had no merit. Lawson now moves this Court for an Order of Sanctions pursuant to Rule 11 of the South Carolina Rules of Civil Procedure and the South Carolina Frivolous Proceedings Sanctions Act, S.C. Code Annotated §15-36-10 *et. seq.*

FACTS

In February 2001, Lawson brought an action seeking to enjoin Plaintiff Karen Irby (Irby) and her agents from violating covenants and restrictions in a subdivision. Lawson lives in Green Acres Subdivision (the "Subdivision"). The

Subdivision is restricted by Covenants and Restrictions, including, among others, a restriction prohibiting temporary structures as residences, either as a temporary residence or a permanent residence. Section C-5 of the Covenants and Restrictions provides as follows:

Temporary Structure: No structure of a temporary character (trailer, basement, tent, shack, garage, barn, or other out-building) shall be used on any lot at any time as a residence, either temporarily or permanently.

Using transport trailers, Irby hauled a structure in two separate pieces into the Subdivision. Irby attempted to place these pieces onto a restricted lot in the Subdivision. Lawson brought an action seeking to enforce the Covenants and Restrictions of the Subdivision. On February 15, 2001, the Honorable G. Thomas Cooper, Jr. issued a temporary restraining order. Judge Cooper required no security for the issuance of the temporary restraining order and Irby made no motion to request such security.

On March 8, 2001, the Honorable Gary E. Clary issued a preliminary injunction enjoining Irby and all persons holding under or aiding or assisting Irby from placing, constructing, and/or erecting on property in the Subdivision the structure now placed, or being placed, or intended to be so placed by Irby, or such similar structure, and from allowing such a structure to so remain in the Subdivision pending the trial of this action. Judge Clary required no security for the issuance of the preliminary injunction and again Irby made no motion to request such security.

Thereafter, Irby filed a Motion to Reconsider the preliminary injunction. Judge Clary issued an order denying this motion on March 29, 2001.

During the above discussed litigation, Irby filed a counterclaim against Lawson alleging that "upon the arrival of said modular home at [Irby's] property or home site, [Lawson] thereupon instituted a civil action in this Court to prevent [Irby] from placing [Irby's modular home upon [Irby's] property" and "preventing . . . enjoying its quiet and peaceful possession." See, Exhibit A. Lawson moved to dismiss Irby's counterclaim pursuant to SCRCP 12(b)(6) for failure to state a cause of action for which relief can be granted. Judge Clary granted Lawson's motion and the counterclaim was dismissed. Judge Clary's order was not appealed.¹

On July 21, 2006, five (5) years later, Irby filed an action on the same basis as her counterclaim (2006 Complaint). See, Exhibit B. Lawson filed a Motion to Dismiss the Complaint. On March 27, 2007 the Honorable Brooks P. Goldsmith issued an Order Granting Defendant's Motion to Dismiss. See, Exhibit C.

On April 18, 2007 Irby filed a Notice of Appeal in which she sought to appeal Judge Goldsmith's March 27, 2007 Order. Throughout the Appellate proceedings, Irby repeatedly missed deadlines, did not comply with the Court's demands, and showed a blatant disregard for the Appellate Court Rules of Procedure. In fact, there are more than a half dozen different documented instances in which Irby's attorney either missed deadlines, or failed to comply with the Court's directions and court procedure. See, Exhibit D, Chronology of Events.

¹ Subsequently at a hearing on the merits, Judge James W. Johnson, Jr. found that Irby's

Irby's appeal was dismissed on September 27, 2007 and Petition for Rehearing denied on April 18, 2008. On June 24, 2008, Irby notified the Court by letter she no longer wished to file the Writ of Certiorari. On June 25, 2008 the Appellate Court issued its final Order Dismissing the Appeal.

After Lawson filed the 2006 Complaint and prior to Judge Goldsmith dismissing it, Lawson sent Irby two letters stating the claim was frivolous based on it being meritless and prohibited by res judicata. See, Exhibit E and F. The second letter, dated February 23, 2007, was sent via certified mail and clearly stated Lawson's position that, "This matter is grossly frivolous. I will ask the Court for fees and costs at the conclusion of the hearing." See, Exhibit F. Irby did not respond to either of these letters and did not withdraw the complaint. Based on Irby's non-responsiveness, Lawson filed a Motion for Sanctions against Irby and Irby's counsel on April 11, 2007. After the Appellate Court issued its final Order Dismissing the Appeal on June 25, 2008 the case was remanded to the lower Court and a hearing on the Defendant's Motion for Sanctions was scheduled.

LAW/ANALYSIS

Irby is subject to sanctions as a result of the frivolous claim brought in 2006. Irby's counsel is subject to sanctions for the frivolous pleadings filed in conjunction with the frivolous claim. See, Exhibit B.

structure did not violate the restrictive covenants. His decision was upheld on appeal.

S.C. Code Annotated Section 15-36-10 addresses frivolous lawsuits and the imposition of sanctions. §15-36-10(A)(4)(a) specifically states a court may enter sanctions against an attorney for filing a frivolous pleading if:

(ii) 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;

(iii) 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; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document 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;

§15-36-10(C) states a court may enter sanctions against an attorney if after the dismissal of a case, an attorney brings a claim that falls within the conditions stated in subsections (ii),(iii), or (iv) of 15-36-10(A)(4)(a). In the case at bar, a reasonable attorney in the same circumstances would believe the claim brought in 2006 by Irby was clearly not warranted under existing law.

When defending against a claim, a reasonable attorney would research both statutes and case law to determine the best defense for the client. Lawson sought a temporary restraining order and then a preliminary injunction against

Irby. Under SCRCP Rule 65(c), "no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained."

When Judge Clary granted the preliminary injunction in March 2001, Irby did not seek or receive security pursuant to Rule 65. Thereafter, Irby moved for reconsideration which was denied. Next Irby filed a counterclaim based on loss of enjoyment of property. This claim was dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. The order dismissing Irby's counterclaim was not appealed.

Several years later, after the conclusion of the initial lawsuit, Irby, thru her counsel Andrew M. Jones, Jr., filed the 2006 Complaint. Lawson provided Irby and Irby's counsel notice of Lawson's position that the 2006 Complaint was frivolous, the basis for this position, and ample opportunity to respond. See, Exhibit E and F. Irby chose not to respond.

In granting Lawson's 12(b)(6) motion and dismissing the 2006 complaint, Judge Goldsmith stated Irby's proper course of action "should have been to appeal the temporary restraining order and/or injunction and ask that a bond be posted for the payment of costs or damages should she be found to have been wrongfully enjoined." See, Exhibit C. Judge Goldsmith continued by finding "that because there was no giving of security by the applicant for neither the

temporary restraining order nor the temporary injunction, there is no bond on which to assess any damages." Id.

Irby brought a frivolous claim under §15-36-10(C) because a reasonable attorney would believe the 2006 Complaint was clearly not warranted under existing law. Irby's attorney filed frivolous pleadings under §15-36-10(A)(4) because a reasonable attorney would believe all the pleadings associated with the 2006 Complaint were clearly not warranted under existing law.

In addition, Lawson is entitled to recover legal fees and costs under Rule 11 of the South Carolina Rules of Civil Procedure. Claims which are not made in good faith are subject to sanction pursuant to Rule 11, SCRPC *Chewning v. Ford Motor Co.*, 354 S.C. 72, 86, 579 S.E.2d 605, 613 (2003).

The standard for sanctions under Rule 11 is essentially the same as under the Frivolous Civil proceedings Sanctions Act. *Father v. S.C. Dept. Soc. Services*, 353 S.C. 254, 262, 578 S.E.2d 11, 15 (2003). Rule 11 allows "an award of attorney's fees when the court finds the opposing party has filed pleadings that were made in bad faith and/or frivolous." *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 176-77, 557 S.E.2d 708, 711 (Ct. App. 2001).

SC Code Section 15-36-10(E) provides several factors that the court should take into account in determining if a party or attorney has violated the provisions of the Frivolous Proceedings Statute including, among other, the number of parties, the complexity of the claims and defenses, the length of time available to the attorney or party to investigate the law and circumstances, the information known by the attorney or party, the response, if any, of the attorney

or party to the allegation that he violated the provisions of the Act, and other factors the court considers just, equitable, or appropriate under the circumstances. This case was simple. There were two parties. The defense was clear. Irby's remedy, if any, was to seek security in 2001 when Lawson obtained the temporary injunction pursuant to SCRCP 65. Irby and her counsel had complete information and access to all the facts and law. They had years to investigate the merit, or lack thereof, of their claim. Irby and her attorney Jones were twice put on notice by Lawson's counsel immediately after their lawsuit was served on Lawson by written correspondence, one a certified letter, that Lawson would seek sanctions if this claim was pursued. Irby and her attorney chose not to respond at all.

There is no question that the lawsuit is frivolous. The claim was in fact dismissed because Irby's complaint failed to state a cause of action for which relief can be granted pursuant to SCRCP 12(b)(6). Their appeal was dismissed by the SC Court of Appeals citing Appellate Rule 220(b) which provides the Court need not address a point which is manifestly without merit. See, Exhibit G.

In short, Irby and her attorney have no excuse whatsoever for bringing this frivolous claim.

The Frivolous Civil Proceedings Act provides that sanctions may include an order for the party to pay the reasonable costs and attorneys fees, including time, expenses, mileage, and any additional consequential expenses. It also provides that the attorney may be ordered to pay a reasonable fine to the court as well as injunctive relief.

Lawson's fees and costs are substantial, in excess of Twenty Thousand (\$20,000) dollars and are detailed in an accompany Affidavit of Counsel. Irby and her attorney should be ordered to pay these fees and costs. See, Exhibit H, Affidavit of Edward D. Sullivan. In addition, Irby should be enjoined from bringing further litigation against Lawson.

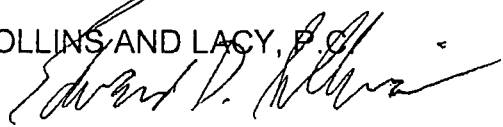
Further sanctions are left to the discretion of the court.

CONCLUSION

Irby and her attorney Jones have violated the SC Frivolous Proceedings Act by pursuing a claim against Lawson, which clearly had absolutely no merit. Irby's attorney failed to act as a reasonable attorney and blatantly disregarded the SCRPC 11 and the Appellate Court Rules of Procedure. Therefore, we respectfully request this honorable court issue an order requiring Irby and Irby's attorney to pay Lawson's reasonable costs and attorney's fees. In addition, we request that the court enjoin Irby and her attorney from bringing further litigation against Lawson.

Respectfully Submitted,

COLLINS AND LACY, P.C.

By 

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(803) 748-7485
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
October 23, 2008

66 449

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS) EIGHTH JUDICIAL CIRCUIT

Karen Irby,) CIVIL ACTION NUMBER: 06-CP-30-0547

Plaintiff,

vs.

Augusta S. Lawson,

Defendant.

**DEFENDANT'S REPLY TO PLAINTIFF'S
MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SANCTIONS**

Defendant Augusta S. Lawson has moved for sanctions against Plaintiff Karen Irby pursuant to Rule 11, SCRCF, and the South Carolina Frivolous Civil Proceedings Sanctions Act ("the Act"), S.C. Code Ann. § 15-36-10 et. seq. At the directive of The Honorable Mark Hayes, the parties have submitted memoranda addressing: (1) the impact, if any, of Judge Goldsmith's prior ruling in this case on Defendant's present request for attorney's fees and costs; and (2) the proper amount and method of calculation of any award of attorney's fees and costs.

Defendant submits the following memorandum in reply to Plaintiff's memorandum in opposition to the motion for sanctions.

LAW/ANALYSIS

I. Rule 43(l) is Inapplicable to the Instant Motion

Plaintiff contends Defendant's motion for sanctions is controlled by Rule 43(l), SCRCF. This rule provides "[i]f any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action." Rule 43(l), SCRCF.

For the reasons detailed in Defendant's supplemental memorandum in support of its motion for sanctions, Plaintiff's argument regarding the applicability of Rule 43(l) is manifestly

without merit. It is evident from a review of the record that the only motion before Judge Goldsmith during the hearing was Defendant's motion to dismiss pursuant to Rule 12(b)(6). Defense counsel's comments that it was his opinion Plaintiff's action was so unfounded that it justified sanctions in the form of an award of attorney's fees and costs to Defendant do not amount to a motion pursuant to Rule 11, SCRCP, or § 15-36-10. Furthermore, such a motion is not ripe until after the court dismisses the case. See S.C. Code Ann. § 15-36-10(C)(1) (stating prevailing party may move for sanctions after case has been dismissed); Russell v. Wachovia Bank, N.A., 370 S.C. 5, 633 S.E.2d 722 (2006) (holding proper timeframe for bringing motion for sanctions is same as that for bringing post-trial motions, within ten days of the notice of entry of judgment). Therefore, because no motion for sanctions was before Judge Goldsmith at the hearing, he could not have issued an order denying such a motion. Accordingly, Rule 43(l) is inapposite to the instant motion for sanctions.

II. The Authorities Cited By Plaintiff Do Not Support to Proposition That This Court Lacks Subject Matter Jurisdiction to Adjudicate Defendant's Motion for Sanctions

Plaintiff additionally argues the circuit court does not possess the subject matter jurisdiction necessary to decide Defendant's motion for sanctions. In support of this contention, Plaintiff relies on § 15-36-10(C)(1), Williamson v. Middleton, 374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007), cert. granted; and Russell v. Wachovia Bank, N.A., 370 S.C. 5, 633 S.E.2d 722 (2006).

These authorities do not support the proposition that the instant court lacks subject matter jurisdiction to adjudicate Defendant's motion for sanctions. Subject matter jurisdiction is "the court's power to hear and determine cases of the general class to which the proceedings in question belong." Dove v. Gold Kist, 314 S.C. 235, 442 S.E.2d 598 (1994). The Circuit Court

unquestionably possesses the power to hear and rule upon a motion for sanctions arising in the context of a frivolous civil proceeding commenced in the circuit court.

Nothing in the Act requires such a motion be heard by the same judge who dismissed the action. Rather, § 15-36-10(C)(1) simply addresses the timing of a motion for sanctions and the necessary findings to be made by the court in ruling on a motion for sanctions. The Williamson Court was not addressing an award of attorney's fees in the context of Rule 11 or the Act, but merely mentions in dicta the appropriate standard of review of an award of attorney's fees pursuant to Rule 11 and the Act. See 374 S.C. at 426 n.2, 649 S.E.2d at 61 n.2. Finally, Russell does not deal with subject matter jurisdiction, but the timing in which a motion for sanctions must be made after a decision by the Circuit Court in order for the court to have jurisdiction over the motion. 370 S.C. at 20-21, 633 S.E.2d at 730. In fact, the Russell Court explicitly noted it was not referring to subject matter jurisdiction, but "the trial court's authority to retain jurisdiction over the case." Id. at 20 n.10, 633 S.E.2d at 730 n.10. Accordingly, none of the authorities cited by Plaintiff stand for the proposition that the instant Court lacks subject matter jurisdiction to decide Defendant's motion for sanctions.

III. This Court Has Jurisdiction to Award Attorney's Fees and Costs Incurred Defending Plaintiff's Appeal of Her Frivolous Action

Plaintiff argues the Circuit Court lacks jurisdiction to award Defendant's attorney's fees and costs incurred in defending the appeal. However, the South Carolina Supreme Court has explicitly stated a Circuit Court has jurisdiction to determine the amount of attorneys' fees to award a party after an appellate court affirms the decision to award attorneys' fees. Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 414-15, 438 S.E.2d 248, 250 (1993).

In Muller, a circuit court decision in favor of the plaintiff was reversed by the Court of Appeals and the case was remitted to the trial court. Thereafter, the defendant petitioned the

Supreme Court for fees and costs pursuant to Rule 222, SCACR. Id. at 414, 438 S.E.2d at 249. The appellate court advised it no longer had jurisdiction because the remittitur had been issued. Id. Subsequently, the defendant's petition for an award of trial, appellate, and post-appellate attorneys' fees and costs was denied by the circuit court on the basis that it lacked jurisdiction to make such an award in the absence of a directive of the Supreme Court. Id.

Defendant appealed, and the Supreme Court held the following on the issue of attorneys' fees and costs:

The holding of [the] Circuit Court that it was without jurisdiction to adjudicate the issue of attorney's fees was erroneous. **Once the remittitur is sent down from this Court, [the] Circuit Court acquires jurisdiction to enforce the judgment and take any action consistent with the Supreme Court ruling.** Hamm v. S. Bell, 305 S.C. 1, 406 S.E.2d 157 (1991); State v. Wise, 33 S.C. 582, 12 S.E. 556 (1891); Brooks v. Brooks, 16 S.C. 621 (1881).

...

Second, as the appellate costs, Rule 222, SCACR. Provides an automatic attorney's fee award of \$750 for the prevailing party on appeal, which is "taxed in the appellate court." [Defendant] waived his right to this award since he failed to file an itemized statement of costs with the court prior to the issuance of the remittitur. Rule 222(c) & (f), SCACR. However, **Rule 222 "does not preempt an award of attorney's fees to which one is otherwise entitled."** McDowell v. S.C.D.S.S., 304 S.C. 539, 543, 405 S.E.2d 830 (1991). Therefore, although [the defendant] may not recover the \$750 fee under Rule 222, he may recover appellate costs under [the applicable statute authorizing an award of fees].

Id. at 414 & 416, 438 S.E.2d at 250 (emphasis added).

Similarly, in McDowell v. S.C.D.S.S., 304 S.C. 539, 405 S.E.2d 830 (1991), the Court held that if a party is permitted the opportunity to pursue attorneys' fees for appellate costs under another mechanism, such as statute or common law, Rule 222 does not preclude that pursuit.

In the instant case, § 15-36-10 authorizes a prevailing party to pursue sanctions against the opposing party, including the award of a reasonable attorney's fees and costs. Accordingly,

Rule 222 does not preempt Defendant's ability to pursue an award of appellate attorney's fees and costs as a sanction for commencing and appealing a frivolous action.¹

IV. The Act Does Not Require the Party Seeking an Award of Attorney's Fees Be Responsible for Payment of Its Attorney's Fees

Relying on Hopkins v. Hopkins, 343 S.C. 301, 540 S.E.2d 454 (2000) and Calhoun v. Calhoun, 339 S.C. 96, 529 S.E.2d 14 (2000), Plaintiff argues Defendant should not be awarded attorney's fees and costs because she has not actually incurred any such expenses.

However, Hopkins and Calhoun are easily distinguishable from the instant case. In Calhoun, attorney's fees were sought pursuant to a statute authorizing an award of attorney's fees "incurred" in maintaining an action for divorce. Calhoun, 339 S.C. at 99, 529 S.E.2d at 16 (emphasizing that fees must be incurred to be awarded). In deciding a pro se litigant may not receive an award of attorney's fees, the Supreme Court agreed with the Court of Appeals "that the cardinal criterion for an award of attorneys fees under § 20-3-130(H) is that the party claiming a right to a fee has paid or owes another person money for legal services rendered and that an attorney who appears on his or her behalf does not incur such an obligation." Id. at 100, 529 S.E.2d at 17. The Court reasoned that "because a pro se litigant does not become liable for or subject to fees charged by an attorney, he is not entitled to attorney's fees under § 20-3-130(H)." Id.

Similarly, in Hopkins, the Court interpreted the language used in Calhoun requiring a litigant to become "liable for or subject to fees charged by an attorney." 343 S.C. at 306-07, 540 S.E.2d at 457. Because the litigant seeking fees did not show he was liable to pay fees to his

¹ Defendant acknowledges the Court of Appeals awarded her, and Plaintiff has paid, \$1,016.50 in appellate attorney's fees and costs. However, as indicated by the Affidavit of Edward Sullivan and the billing statement of Collins & Lacy, P.C. previously submitted by Defendant, the amount of attorney's fees and costs which Defendant seeks has been reduced by this award.

attorney-wife, who represented him, the Court held the family court properly denied his request for an award of attorney's fees. Id.

The statute authorizing an award of attorney's fees in the instant case, § 15-36-10(G), does not require that the attorney's fees be "incurred" in order for an award to be made. This section simply states sanction under the Act may include:

[A]n order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section. Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding.

S.C. Code Ann. § 15-36-10(G)(1).

Accordingly, unlike in Hopkins and Calhoun, the Act does not require the party seeking sanctions be liable for or subject to fees charged by an attorney for an award of attorney's fees to be made.

Furthermore, the previous version of the Act explicitly required attorney's fees be incurred to be recoverable. S.C. Code Ann. § 15-36-30 (2005) stated "[w]hen the essential elements of this chapter have been established . . . , a person is entitled to recover his attorney's fees and court costs reasonably incurred in litigating the proceedings." However, in revising the Act, the legislature omitted this language from the new section authorizing an award of attorney's fees as a sanction for violation of the Act.² Had the legislature meant to require the

² S.C. Code Ann. § 15-36-10(G)(1) states:

[A]n order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section. Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable

attorney's fees be actually incurred or that the party be liable for payment of them before an award is justified, it could have easily reprised the language of the prior Act in the revised Act. See Spoone v. Newsome Chevrolet-Buick, 309 S.C. 432, 435 & n.2, 424 S.E.2d 489, 490 & n.2 (1992) (stating the absence of language in a statute evidences the legislature's intent to draw a distinction and the Court will not "judicially legislate an answer" in such situations); Ingram v. Bearden, 212 S.C. 399, 47 S.E.2d 833 (1948) (reasoning the language of prior sections must yield to conflicting language in later provisions because South Carolina Courts presume the legislature had knowledge of all pertinent sections and did not act in vain). Because such a requirement is not included in the version of the Act applicable to the instant motion, Plaintiff's argument's that Defendant should not be awarded attorney's fees because she is not be liable for their payment is unavailing.

Moreover, to permit Plaintiff to escape the payment of an award of attorney's fees and costs as she urges would undermine the Act's "fundamental objective of deterring egregious misuses of the court system." See Father v. S.C.D.S.S., 345 S.C. 57, 67, 545 S.E.2d 523, 528 (stating objective of the Act).

Regardless, there exists ample evidence from which the Court could hold Defendant has incurred attorney's fees in the defense of this frivolous action. Although no formal written fee agreement exists, the lack of such an agreement is not fatal to an attorney's claim for fees. See Williamson v. Middleton, 374 S.C. 419, 430, 649 S.E.2d 57, 63 (Ct. App. 2007), cert. granted. While Defendant is the sister of defense counsel Edward Sullivan, co-counsel Christian Stegmaier and Amy L. Neuschafer have no prior relationship with Defendant. Id. (finding it is reasonable to believe second-chair attorney with no prior relationship with client would not have

consequential expenses of the prevailing party resulting from the frivolous proceeding.

volunteered her time without an expectation of being paid). Attorneys Stegmaier and Neuschafer have never agreed to provide their services gratis and have the full expectation of being paid for their work. Since Collins & Lacy became engaged as defense counsel, its attorney's and legal staff have kept detailed billing records outlining the time and activities undertaken. Accordingly, evidence exists in the record that defense counsel intended to collect a fee for their services.

CONCLUSION

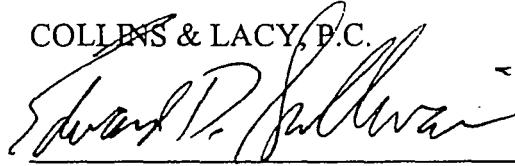
Plaintiff's arguments that Defendant's motion for sanctions is barred by Rule 43(l) and that Judge Goldsmith must make any award of attorney's fees and costs are without merit. In addition, as described in Muller and McDowell, the Circuit Court possesses jurisdiction to award appellate attorney's fees and costs to which Defendant is entitled by operation of Rule 11 and the Act. Finally, the Act does not require Defendant actually be liable for the payment of attorney's fees for an award to be made. Accordingly, Defendant respectfully requests this Court award fees and costs to Defendant in the total amount of \$22,152.42, of which \$21,805.00 is attorney's fees and \$347.42 is costs, representing the total amount of attorney's fees and costs arising from the defense of the instant action. Defendant further requests the Court issue an Order enjoining Plaintiff and her counsel from commencing future actions based on the same facts and circumstances as the instant litigation and the 2001 litigation.

[Signature Page to Follow]

Respectfully submitted,

COLLINS & LACY, P.C.

By:



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ATTORNEYS FOR DEFENDANT

**DEFENDANT'S REPLY TO
PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SANCTIONS**

Columbia, South Carolina
January 2, 2009

STATE OF SOUTH CAROLINA CLERK IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS JUDGE EIGHTH JUDICIAL CIRCUIT
Karen Irby,)
) CIVIL ACTION NUMBER: 06-CP-30-0547
))
Plaintiff,)
))
vs.) **DEFENDANT'S SUPPLEMENTAL**
) **MEMORANDUM IN SUPPORT OF**
) **MOTION FOR SANCTIONS**
Augusta S. Lawson,)
))
Defendant.)
_____)

INTRODUCTION

On October 13, 2008, the Court, the Honorable Mark Hayes presiding, held a hearing on Defendant's motion for sanctions filed pursuant to Rule 11, SCRCP, and the South Carolina Frivolous Civil Proceedings Sanctions Act ("the Act"), S.C. Code Ann. § 15-36-10 et. seq. Thereafter, Judge Hayes directed the parties to submit additional memoranda addressing the following issues:

- 1) What, if any, effect does Judge Goldsmith's prior ruling in this case have on Defendant's present request for attorney's fees and costs?
- 2) If this Court can award attorney's fees and costs, what is the proper amount to be awarded, including the method to be used to calculate the award?

Accordingly, Defendant submits the following brief in response to the Court's request.

LAW/ANALYSIS

I. Judge Goldsmith's Prior Ruling Does Not Impact the Present Request for Attorney's Fees and Costs

A review of the record in this case, particularly the transcript of the hearing conducted on Defendant's motion to dismiss, reveals a motion for attorney's fees and costs was not before Judge Goldsmith. When the hearing commenced, Judge Goldsmith inquired whether the only

motion before him was Defendant's motion to dismiss, and the parties clarified that was the only pending motion. (Transcr. p. 4, lines 6-13, attached hereto and incorporated herein as Exhibit A). The parties then proceeded to argue their respective positions on this motion, with Defendant's counsel ultimately stating he believed Defendant was entitled to an award of attorney's fees and costs because the action fell within the Act. (Exhibit A, Transcr. p. 7, lines 10-15; p. 14, lines 7-9; p. 17, lines 8-10). However, no argument was presented by either party regarding the propriety of an award of attorney's fees and costs. At the conclusion of the hearing, Judge Goldsmith directed Plaintiff's counsel to submit a brief in response to Defendant's memorandum in support of the motion to dismiss. (Exhibit A, Transcr. p. 18, lines 19-23). Judge Goldsmith made no mention of an award of attorney's fees and costs. Accordingly, because the hearing was confined to the merits of Defendant's motion to dismiss, it was not necessary for Judge Goldsmith to rule on an award of fees and costs in the order granting Defendant's motion to dismiss and his ruling has no impact on the present motion.

Moreover, a motion for sanctions under the Act, is not ripe until after the Court issues a decision terminating the case. See S.C. Code Ann. § 15-36-10(C)(1) (stating prevailing party may move for sanctions after case has been dismissed); Russell v. Wachovia Bank, N.A., 370 S.C. 5, 633 S.E.2d 722 (2006) (holding proper timeframe for bringing motion for sanctions is same as that for bringing post-trial motions, within ten days of the notice of entry of judgment). Accordingly, Defendant could not properly move for sanctions and the Court could not properly rule upon such a motion until after Judge Goldsmith issued the order granting Defendant's motion to dismiss. To comply with this requirement, Defendant filed her motion for sanctions on April 5, 2007, within ten days of entry of the order dismissing the action. Therefore, Judge

Goldsmith's prior ruling had no effect on Defendant's instant motion for attorney's fees and costs.

Furthermore, Judge Goldsmith did not entertain and rule on a motion for sanctions because to entertain such a motion would have required compliance with the procedural framework established by § 15-36-10. Subsection D states that the moving party must notify all parties of the conduct constituting a violation and explain the basis for the potential sanction. The party against whom sanctions are sought is then afforded thirty days to respond to the allegations. § 15-36-10(D). These procedures were not implemented in the instant case prior to the hearing before Judge Goldsmith, nor did Judge Goldsmith request the parties brief the issue of sanctions. Thus, it is evident the parties were not litigating a motion for sanctions before Judge Goldsmith. As such, his order granting Defendant's motion to dismiss has no bearing on Defendant's instant motion for sanctions.

Finally, Defendant's instant motion for fees and costs is based on two independent grounds: (1) violation of the Act; and (2) violation of Rule 11, SCRPC. While defense counsel did state during the hearing that Plaintiff's lawsuit was frivolous under the South Carolina Frivolous Civil Proceedings Sanctions Act, Rule 11 was never mentioned as a basis for awarding fees and costs. Accordingly, a motion based on violation of Rule 11 was not before Judge Goldsmith and, therefore, it was not necessary for his order to incorporate a ruling on such a motion.

II. Attorneys Fees are Properly Awarded in this Case Pursuant to the Applicable Six-Factor Test

Prior to the 2005 revisions to the Act, the standard for determining the propriety of an award of attorney's fees and costs was included within the terms of the Act. However, the

current version of the Act, which is applicable to this motion, does not contain a method for assessing an award of fees. Rather, the Act merely states that sanctions may include:

[A]n order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section. Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding.

S.C. Code Ann. § 15-36-10(G)(1). Likewise, Rule 11 authorizes "an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, . . . including a reasonable attorney's fee." Rule 11(a), SCRPC.

Therefore, because the Act and Rule 11 do not contain a separate test to assess the reasonableness of an award of attorney's fees, the Court should apply the six-factor test typically applied to determine a reasonable attorney's fee when such an award is authorized by contract or statute. See Father v. SCDSS, 345 S.C. 57, 545 S.E.2d 523 (Ct. App. 2001) (stating standard for Rule 11 sanctions and sanctions under the Act are essentially the same).

The following six factors should be considered by the trial court in determining a reasonable award of attorney's fees: (1) the nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. Hardaway Concrete Co. v. Hall Contracting Corp., 374 S.C. 216, 647 S.E.2d 488 (2007). "[W]hen a contract or statute authorizes an award of attorney's fees, the trial court must make specific findings of fact on the record for each of the required factors to be considered." Griffith v. Griffith, 332 S.C. 630, 506 S.E.2d 526 (Ct. App. 1998). Consideration

should be give to all six factors and none of the factors is controlling. Taylor v. Medenica, 331 S.C 575, 503 S.E.2d 458 (1998).

Two of the above-stated factors are to be considered in determining whether an award should be made—the contingency of compensation and the beneficial results obtained. Regarding the contingency of compensation factor, the contingency to be considered is whether the party on whose behalf the services were rendered will be able to pay the attorney's fee if the award is not made. Glasscock v. Glascock, 304 S.C. 158, 403 S.E.2d 313 (1991). The factor examining the beneficial results obtained aids in deciding whether an award is proper when considering whether the services of a lawyer brought about a favorable result. Id.

The remaining four factors are to be considered in determining the amount of the fee to be awarded. The professional standing of counsel and the customary legal fees for similar services should be examined in determining the reasonableness of the hourly rate. Id. The reasonableness of the number of hours billed shall be determined based on the nature, extent, and difficulty of the case and the time necessarily devoted to the case. Id.

In the instant case, the above-cited factors weigh in favor of awarding attorney's fees and costs in the amount of \$22,152.42¹ to Defendant, representing the full amount of attorney's fees and costs reasonably and necessarily incurred during the defense of this action. Factors (4) and (6), which go to whether an award of fees is warranted, weigh in favor of an award of fees in the instant case. The amount of attorney's fees incurred by Defendant is significant and would work a substantial hardship on Defendant if she is required to pay them. Payment of these fees by

¹ Of this total, \$21,805.00 is attorney's fees and \$347.42 is costs. The costs are detailed on the billing records submitted as Exhibit H to Defendant's Memorandum in Support of Motion for Sanctions. These records show such costs were reasonably and necessarily incurred during the course of this litigation. Furthermore, the costs incurred of are the type explicitly delineated as recoverable under S.C. Code Ann. § 15-36-10(G)(1).

Defendant would be particularly unfair in light of the fact that she previously defended against the identical allegations in the form of a counterclaim brought by Plaintiff in the 2001 litigation.² In addition, the beneficial results obtained support an award of fees and costs for Defendant. Defense counsel was successful in obtaining dismissal of the case based on Plaintiff's failure to state a claim for which relief could be granted. Defendant also prevailed on appeal, with the Court of Appeals affirming the dismissal pursuant to Rule 220, SCACR, based on Plaintiff's abandonment of the issues briefed and failure to properly preserve the issues raised on appeal.

The remaining four factors support a finding that the amount of the attorney's fees outlined on defense counsel's billing statements, \$22,805.00, constitutes a reasonable award of fees in the instant case. The rates of \$225 per hour for Of Counsel and Senior Shareholders, \$180 per hour for Associates, and \$95-\$100 per hour for Paralegals are representative of rates customarily charged for such services. In addition, these rates are reasonable in light of the experience of the counsel chiefly involved in the defense of this case. All counsel are members in good standing of the South Carolina Bar. Lead counsel, Edward Sullivan, is experienced in the areas of real estate and commercial litigation. During the appeal of the grant of Defendant's motion to dismiss, Attorney Sullivan was aided by Christian Stegmaier and Amy L. Neuschafer, who routinely practice in the area of appellate advocacy and were formerly employed by South Carolina appellate courts. Accordingly, the hourly rates charged by the attorneys and staff involved in this case are reasonable in light of the rates typically charged in such cases and the professional standing of counsel.

The nature, extent, and difficulty of the case, as well as the time necessarily devoted to the case, also justify an award of attorney's fees in the full amount detailed on the billing

² The 2001 litigation is discussed in more detail in Defendant's Memorandum in Support of Motion for Sanctions, filed October 23, 2008.

statement of Defendant's counsel. Although the instant case was dismissed pursuant to Rule 12(b)(6), SCRCP, Plaintiff pursued a baseless appeal, as evidenced by the Court of Appeals' refusal to address the merits of the appeal. See Exhibit G to Defendant's Memorandum in Support of Motion for Sanctions. However, the appellate process did not go smoothly. Plaintiff's repeated and consistent failure to comply with the Appellate Court Rules required the filing of several appellate motions and responses to motions filed by Plaintiff seeking to make filings out of time. The complicated procedural history of the appeal is outlined in Exhibit D to Defendant's Memorandum in Support of Motion for Sanctions. In short, not only was the appeal unfounded, but the appellate process was unnecessarily slowed and complicated by Plaintiff's failure to comply with the Appellate Court Rules. As a result of the complications caused by Plaintiff, the approximately 127 hours of work put into this case by defense counsel and their staff were necessarily and reasonably incurred in light of the nature, extent, and difficulty of the case.

Furthermore, defense counsel's billing records (submitted as Exhibit H to Defendant's Memorandum in Support of Motion for Sanctions) plainly detail the tasks performed in connection with this case, the majority of which involved drafting and arguing the motion to dismiss, motion for sanctions, and various appellate motions and filings. All these tasks were necessary to the complete and zealous defense of the instant case and were not duplicative. Accordingly, an award of attorney's fees and costs in the amount of \$22,152.42 is warranted as sanctions in the instant case pursuant to both Rule 11 and the Act.

III. Injunctive Relief is Also a Proper Sanction in the Instant Case

Defendant has additionally requested the Court issue an Order enjoining Plaintiff from bringing another lawsuit based on the same facts and circumstances as the instant litigation and

the 2001 litigation. The Act specifically provides that appropriate sanctions may include "a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or action in bad faith." S.C. Code Ann. § 15-36-10(G)(3). Rule 11 leaves it to the discretion of the trial judge to fashion "an appropriate sanction." Rule 11(a), SCRCP. By the commencement of the instant action, which: (1) had no merit; and (2) was previously litigated based on the identical set of facts underlying the 2001 action, Plaintiff has demonstrated her desire to harass and injure Defendant through the use of legal process. Plaintiff is not fully sanctioned for her conduct, and Defendant is not fully protected from such conduct, without an Order enjoining Plaintiff from the future pursuit of any legal action based on the same facts and circumstances as the instant case and the 2001 case.

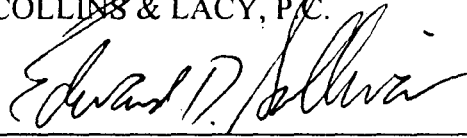
CONCLUSION

For the foregoing reasons, Defendant respectfully requests this Court award fees and costs to Defendant in the total amount of \$22,152.42, of which \$21,805.00 is attorney's fees and \$347.42 is costs, representing the total amount of attorney's fees and costs reasonably and necessarily incurred by Defendant during the course of defending the instant action. Defendant further requests the Court issue an Order enjoining Plaintiff from commencing future actions based on the same facts and circumstances as the instant litigation and the 2001 litigation.

[Signature Page to Follow]

Respectfully submitted,
COLLINS & LACY, P.C.

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ATTORNEYS FOR DEFENDANT

**DEFENDANT'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION FOR SANCTIONS**

Columbia, South Carolina
December 3, 2008

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS
8th Judicial Circuit

Karen Irby,

Plaintiff,

Augusta S. Lawson,

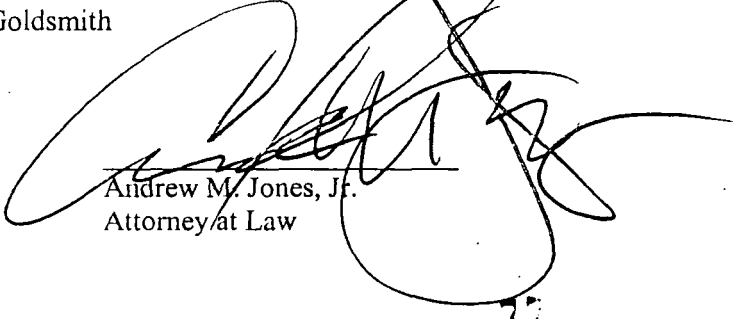
Defendant,

2006-CP-30-547

MOTION FOR RECONSIDERATION

The Plaintiff comes before this Honorable Court and moves for reconsideration of the Order dated June 19, 2009 and deny the Defendant attorney fees and cost upon the following grounds:

1. That the Defendant has not provided the Court evidence of a fee agreement between the Defendant and her brother Edward Sullivan; (see Williamson vs Middleton Op. No 26689 S.C. Sup. Ct Filed July 27, 2009)
2. That it appears that same stated facts were previously ruled on by Judge Goldsmith by Order dated March 25, 2007;
3. That the amount of the award of attorney fees and cost were excessive;
4. That the Court Order of June 19, 2009 regarding a frivolous claim is against the weight of the evidence;
5. That if the Defendant motion survived Judge Goldsmith's Order of March 25, 2007 subject matter still resided with Judge Goldsmith


Andrew M. Jones, Jr.
Attorney at Law

October 30, 2009

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Karen Irby,

Plaintiff,

vs.

Augusta S. Lawson,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 2006-CP-30-547

**DEFENDANT'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR RECONSIDERATION**

Plaintiff Karen Irby has moved this Court for Reconsideration of the Order Awarding Attorneys' Fees and Costs to Defendant Augusta S. Lawson filed June 24, 2009. Defendant opposes Plaintiff's Motion on the grounds that she has presented no basis supporting reconsideration of the Court's decision to award attorneys' fees and costs to Defendant in the amount of Five Thousand One Hundred and Forty-Three (\$5,143.00) Dollars as a sanction for Plaintiff's violation of Rule 11, SCRCP, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et. seq.

The first basis on which Plaintiff seeks reconsideration of the award of attorneys' fees and costs in favor of Defendant is that Defendant has not presented evidence of a fee agreement between Defendant and her counsel. In support of this ground, Plaintiff cites Williamson v. Middleton, 383 S.C. 490, 681 S.E.2d 867 (2009), which was issued subsequent to this Court's issuance of the Order Awarding Attorneys' Fees and Costs. However, Williamson does not stand for the proposition that a fee agreement must exist between the party seeking an award of fees and her counsel in order for an award of attorneys' fees to be proper.

The pertinent issue in Williamson was whether the party seeking an award of attorneys' fees had actually "incurred" any fees, as required by S.C. Code Ann. § 39-65-20 (2008), the

statute authorizing the award in Williamson. Moreover, the South Carolina Supreme Court has held that lack of a fee agreement does not preclude an award of attorneys' fees. See Singleton v. Collins, 251 S.C. 208, 210-11, 161 S.E.2d 246, 247 (1968). The Court of Appeals' opinion in Middleton, 374 S.C. 419, 430, 649 S.E.2d 57, 63 (Ct. App. 2007), recognized this proposition and that aspect of the Court of Appeals' decision was not overturned by the Supreme Court in its subsequent opinion. Accordingly, the lack of a fee agreement does not provide a basis for reconsideration of the Court's award of attorneys' fees and costs in favor of Defendant.

The remaining four grounds for reconsideration set forth in Plaintiff's Motion are as follows: (1) the issues previously were ruled on by Judge Goldsmith's March 25, 2007 Order; (2) the amount of the award is excessive; (3) the award of attorneys' fees and costs for a frivolous claim is against the weight of the evidence; and (4) subject matter jurisdiction of these issues continues to reside with Judge Goldsmith. These grounds previously were presented to the Court in ruling on the Motion for Sanctions. In response to these grounds for reconsideration, Defendant hereby incorporates by reference the arguments made in her Memorandum in Support of the Motion for Sanctions, Supplemental Memorandum in Support of the Motion for Sanctions, and Reply to Plaintiff's Memorandum in Opposition to the Motion for Sanctions. Plaintiff has offered no compelling basis on which this Court should reconsider or reverse its decision granting the Motion for Sanctions. Therefore, Defendant requests the Court issue an Order denying Plaintiff's Motion for Reconsideration.

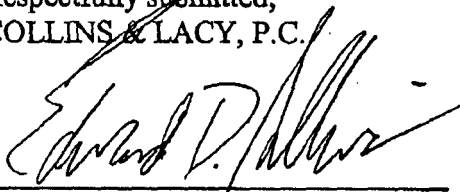
CONCLUSION

Plaintiff has failed to show that the Court has overlooked or misapprehended any of the arguments made by Plaintiff in opposition to Defendant's Motion for Sanctions. Therefore, Defendant respectfully requests the Court deny Plaintiff's Motion for Reconsideration and Order

her to pay Defendant as instructed by the Order Awarding Attorneys' Fees and Costs to Defendant filed June 24, 2009.

Respectfully submitted,
COLLINS & LACY, P.C.

By:


EDWARD D. SULLIVAN
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660
(803) 771-4484 (f)

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

November 17, 2009

BARBARA T. WASSON

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS)
2001 FEB 15 P 11:39 FOR THE EIGHT CIRCUIT

Augusta S. Lawson,

Plaintiff

vs.

Karen Irby,

Defendant

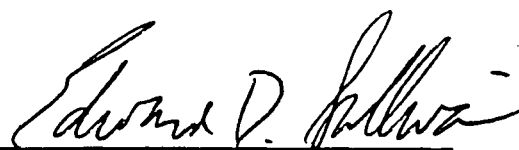
CASE NO:

SUMMONS

2001-CP-30-005

TO: KAREN IRBY, DEFENDANT

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber at PO Box 11714, Columbia, South Carolina 29211, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


Edward D. Sullivan
Sullivan Law Firm, PC
1200 Main Street, Suite 803
PO Box 11714
Columbia, SC 29211
(803) 748-7485
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
February 15, 2001

BARBARA T. WASSON

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS) FOR THE EIGHT CIRCUIT

2011 FEB 15 P 11:39

Augusta S. Lawson,
Plaintiff
vs.

Karen Irby,
Defendant

CASE NO:

COMPLAINT

2011-CP-30-105

The above-named Plaintiff, Augusta S. Lawson, complaining of and against the Defendant herein, alleges:

1. Plaintiff is and at all times mentioned was a resident of the County of Laurens, South Carolina.
2. Defendant is and all times mentioned was a resident of the County of Laurens, South Carolina.
3. Plaintiff is the owner of real property situated in Green Acres Subdivision located at 100 Blair Road.
4. Upon information and belief, Defendant is the owner of real property situated in Green Acres Subdivision located at 4307 Jared Drive and designated as Lots 10 and 12 of Green Acres Subdivision (See Exhibit A).
5. The tract in which the above-described lots are located is a subdivision of lands known as Green Acres Subdivision (the "Subdivision") containing a large number of lots and blocks situate in the County of Laurens. The subdivision is located in a portion of the county suitable and adaptable to residences, and the lots in that tract are largely improved with private residences.

6. In the subdivision of that tract of land, the owners and subdividers, in order to induce the purchase of lots for residences to maintain the subdivision as a desirable residential district, adopted a general scheme for the restriction of the improvement of the lots, and the use of the lots. In order to impose the same restrictions on all the lots in the tract, the owners and subdividers adopted and recorded Covenants and Restrictions on Real Estate Property containing the conditions, reservations, covenants and restrictions (See Covenants and Restrictions attached hereto as Exhibit B and made a part hereof.) The Covenant and Restrictions are and have been granted by a common grantor, designate the land subject to the Covenants and Restrictions, and run with the land in accordance with such Covenants and Restriction. The Covenants and Restrictions expressly prohibit temporary structures as residences such as trailers.

7. The Plaintiff and the Defendant have taken title to the respective parcels of land which they own subject to the above-mentioned Covenants and Restrictions. All other purchasers of lots in the in the Subdivision have taken title to their property subject to the same Covenants and Restrictions.

8. Plaintiff has constructed and completed on her premises a private residence. Plaintiff is now occupying that residence and has done so since 1976. Plaintiff's residence is a brick house, and in each and every particular agrees with and conforms to the Covenants and Restrictions.

9. Upon information and belief, the Defendant is in the process of placing on her property in the Subdivision a trailer, mobile home or a so-called "modular home" in violation of the Covenants and Restrictions. This structure has been

delivered on a trailer in parts and has now been parked in the roadway fronting Defendant's lot (See pictures attached as Exhibit C). Placing and maintaining this structure in the Subdivision is in violation of the Covenants and Restrictions under which Defendant acquired title to the property, unless restrained and enjoined by the court.

10. The Subdivision was begun in 1967. Substantially all of the lots have been sold and construction of residences in compliance with the Covenants and Restrictions have been completed. A large majority of the homes are brick. A tremendous amount of time, money, and effort have been invested into the development of the Subdivision by the subdividers and property owners. In reliance on the Covenants and Restrictions, no other trailers, mobile homes, so-called "modular homes" or any temporary residences have been placed in the Subdivision.

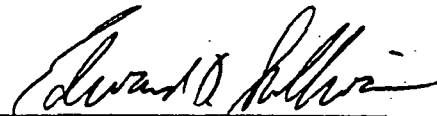
10. The Plaintiff has no adequate remedy at law and the placement and maintenance of the structure in the Subdivision would cause irreparable injury in that allowing a structure of this type would permanently devalue Plaintiff's residence and property and investment in her home and property and lead to other violations of the Covenants and Restriction. The Covenants and Restrictions expressly and/or by implication disallow temporary structures such as Defendant's structure which has been delivered to the site in pieces and has every appearance of being a temporary structure, thereby violating Plaintiff's rights and defeating the reasonable expectations of Plaintiff and other homeowners in the Subdivision who have relied on the Covenants and Restrictions.

WHEREFORE, Plaintiff prays that the Court inquire into the matter set forth herein and grant the following relief:

1. Defendant and all persons holding under or aiding or assisting Defendant be enjoined and restrained from placing, constructing and/or erecting on Defendants property in the Subdivision the structure now being or intended to be placed by Defendant, or any structure other than the type permitted by the Covenants and Restrictions.

2. Costs of this action.

3. Such other and further relief as the court may be deem just and proper.



Edward D. Sullivan
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PO Box 11714
Columbia, South Carolina 29211
(803) 748-7485
ATTORNEY FOR PLAINTIFF

February 15, 2001
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

)
) IN THE COURT OF COMMON PLEAS
) 2001 CP-30-105

AUGUSTA S. LAWSON,
PLAINTIFF,

VS.

) ANSWER AND COUNTERCLAIM
) (JURY TRIAL DEMANDED)

KAREN IRBY,

DEFENDANT.

The Defendant named above would respectfully show as follows:

FOR FIRST DEFENSE

I.

That Defendant denies each and every allegation of the complaint unless specifically admitted or otherwise plead herein below.

II.

That Defendant admits the allegations of paragraphs two (2), four (4), and five (5) of Plaintiff's complaint.

III.

That Defendant has no specific knowledge of the remaining allegations of the complaint and accordingly denies said allegations and demands strict proof of said remaining allegations.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM

IV.

That Defendant respectfully restates and realleges each and every denial, allegation or averment set forth herein above and incorporates same into this SECOND DEFENSE AND COUNTERCLAIM by way of reference.

ANSWER AND COUNTERCLAIM-AUGUSTA S. LAWSON VS. KAREN IRBY

V.

That Defendant is a resident of this County and State and the owner of a certain parcel of property in said County and State known and designated as lots ten (10) and twelve (12) of Green Acres Subdivision.

VI.

That Plaintiff, upon information and belief, is likewise a resident of this County and State and subject to the jurisdiction of this Court.

VII.

That Defendant, as a result of many years of diligent work and sacrifice, purchased for her residence a modular home to place upon the aforementioned lots owned by Defendant.

VIII.

That upon the arrival of said modular home at Defendant's property or home site, Plaintiff thereupon instituted a civil action in this Court to prevent Defendant from placing Defendant's modular home upon Defendant's property.

IX.

That Plaintiff's actions in doing so are reckless, malicious, abusive, without justification and in bad faith, instituted for the sole purpose of keeping Defendant and her home out of the subdivision.

ANSWER AND COUNTERCLAIM—AUGUSTA S. LAWSON VS. KAREN IRBY

X.

That Defendant's home is in fact a modular home. It meets all of the legal requirements for classification as a modular home, and Plaintiff knew well that the home is not a trailer, mobile home or temporary building.

XI.

That since Defendant's home is not a trailer or mobile home, it does not violate any covenants or restrictions of record pertaining to the subject property.

XII.

That since Defendant's home is not temporary in any manner, but in fact it is as permanent and as grounded as any other home in the subdivision upon completion, it does not violate any covenant or restriction pertaining to the subject property.

XIII.

That as a result of Plaintiff's willful, malicious, reckless, abusive action interfering with Defendant's quiet and peaceful use of her property, Defendant has suffered damages and continues to suffer damages each and every day she is prevented from placing her home on her property and enjoying its quiet and peaceful possession.

XIV.

That Defendant believes that because of the outrageous conduct of Plaintiff, she is entitled not only to actual damages but also to punitive damages.

ANSWER AND COUNTERCLAIM—AUGUSTA S. LAWSON VS. KAREN IRBY

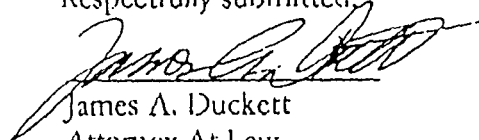
WHEREFORE, having fully responded, Defendant prays as follows:

1. That Plaintiff's complaint is dismissed;
2. That the Temporary Restraining Order is lifted;
3. That Defendant is awarded damages, both actual and punitive;
4. That Defendant is awarded her reasonable costs and attorney fees; and
5. Such other relief as may be just and proper.

March 7, 2001

Greenville, South Carolina

Respectfully submitted,


James A. Duckett
Attorney At Law
294 South Pleasantburg Drive
Greenville, South Carolina 29607
South Carolina Bar Number 1765
(864) 271-9219

Attorney for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	FOR THE EIGHT CIRCUIT
	)	
Augusta S. Lawson,	)	CASE NO: 01-CP-30-105
Plaintiff	)	
	)	NOTICE OF MOTION AND
vs.	)	MOTION TO DISMISS COUNTERCLAIM
	)	
Karen Irby,	)	
Defendant	)	

TO: JAMES A. DUCKETT, ATTORNEY FOR DEFENDANT KAREN IRBY,
AND DEFENDANT KAREN IRBY

YOU WILL PLEASE TAKE NOTICE THAT THE PLAINTIFF AUGUSTA S. LAWSON, by and through her undersigned counsel, will move before the presiding Judge ten days from the date hereof, or as soon thereafter as may be heard, at the Laurens County Judicial Center for an Order dismissing the Defendant's counterclaim pursuant to SCRCP 12 (b) (6) for failure to state facts sufficient to constitute a cause of action. This motion is supported by the verified Complaint of Plaintiff, the relief granted to Plaintiff as provided by the attached copies of the Orders rendered in this case, such other items of record as may be presented, and the law of South Carolina.

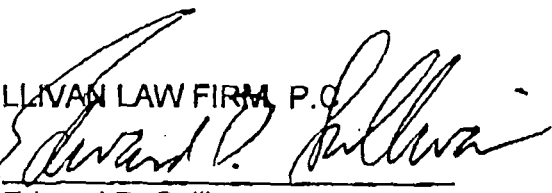
This is an action brought by Plaintiff to enforce Covenants and Restrictions by enjoining Defendant and her agents from placing a structure, and/or allowing such structure to remain, in a restricted Subdivision in violation of the Covenants and Restrictions. Based on Plaintiff's Complaint, Motion and Application for Temporary Restraining Order, and Motion for Temporary Injunction, the Court has issued an Order Granting Temporary Restraining

Order, issued an Order of Temporary Injunction against Defendant, and denied Defendant's Motion to Reconsider Temporary Restraining Order, copies of which Orders are attached.

Defendant's responsive pleading to the Complaint contains a counterclaim against Plaintiff seeking damages, fees and costs allegedly arising out of Plaintiff's action to enforce the Covenants and Restrictions. However, Defendant's sole remedy, if any, is limited to such security as may be deemed proper by the Court in granting a temporary injunction as provided by SCRCP 65 (c). The Court, having heard and granted Plaintiff's Motion for Temporary Injunction in accordance with SCRCP 65, and further having denied Defendant's Motion to Reconsider Temporary Restraining Order, has not required any such security in this matter as per the attached Orders.

WHEREFORE, the Plaintiff Augusta S. Lawson prays that Defendant's counterclaim be dismissed pursuant to SCRCP 12 (b) (6) for failure to state facts sufficient to state a cause of action against this Plaintiff, for attorney fees and costs incurred in making this Motion, and for such other relief as the Court may deem just and proper.

SULLIVAN LAW FIRM, P.C.

By: 

Edward D. Sullivan
P. O. Box 11714
Columbia, SC 29211-1714
(803) 748-7485
Attorney for Plaintiff

Columbia, South Carolina
April 3, 2001

EXHIBIT LAUNCASTER

1 STATE OF SOUTH CAROLINA) 5 A 10:39
2 COUNTY OF LAURENS) COURT OF COMMON PLEAS
3) No. 2006 CP 30 547

4 KAREN IRBY
5 Plaintiff

6 versus) TRANSCRIPT OF RECORD
7)
8)

8 AUGUSTA LAWSON
9 Defendant)

10 Laurens, South Carolina
11 March 6, 2007

11 B E F O R E :

12 HONORABLE BROOKS GOLDSMITH, Judge
13

14 A P P E A R A N C E S:

15 For the Plaintiff: ANDREW M. JONES, JR., Esq.

16 For the Defendant: EDWARD D. SULLIVAN, Esq.

17
18 Reporter: NANCY MONTEITH

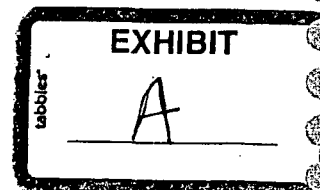
19

20

21 HARRIET P. BENNETT
22 Reporter, S. C. Court Administration
23 P. O. Box 86
24 Ladson, S. C. 29456
25

Exhibit (2)

92



1 (The within matter came before the Court on March 6th,
2 of 2007, at 10:00 A.M.)

3 THE COURT: This must be the case of Irby versus
4 Lawson.

5 MR. JONES: Yes, sir, it is.

6 THE COURT: And I have before me the Defendant's
7 motion to dismiss.

8 Is that correct?

9 MR. SULLIVAN: That's right, Your Honor.

10 THE COURT: And is that the only motion that I have
11 before me at this time?

12 MR. JONES: Yes, sir. That's the only motion that I
13 am aware of.

14 THE COURT: All right, Mr. Jones. Excuse me, I mean,
15 Mr. Sullivan.

16 MR. SULLIVAN: Yes, sir. I'm Ed Sullivan, Your Honor,
17 here on behalf of the Defendant, Ms. Lawson.

18 Your Honor, in 2001 the Defendant in this action her-
19 self brought an action against the Plaintiff, Ms. Irby,
20 seeking to enforce some restrictive covenants in a subdi-
21 vision here in Laurens County.

22 Then in March of 2001, almost six years ago to the
23 date, this Court ordered a preliminary injunction against
24 Ms. Irby pursuant to Rule 65.

25 On that day, no security was ordered by the Court,

1 won.

2 Your Honor, this case is clearly -- our remedy, if
3 any, under Rule 65 six years ago -- no security was re-
4 quired by the Court.

5 So it does not constitute a cause of action, and it
6 should be dismissed.

7 Also, it is barred by the doctrine of res judicata
8 -- same parties, same issues.

9 It has been adjudicated, Your Honor.

10 And, Your Honor, I think this is clear -- is clear --
11 and I think it falls within the South Carolina Civil Pro-
12 ceedings Sanctions Act.

13 So I would ask Your Honor, first of all, to dismiss
14 this law suit with prejudice, and, further, to order fees
15 and costs be paid to the Defendant, Ms. Lawson.

16 Further, Your Honor, I would ask that you enjoin Ms.
17 Irby from getting another lawyer and bringing this law suit
18 again.

19 Thank you, Your Honor.

20 THE COURT: All right. Thank you, Mr. Sullivan.

21 MR. SULLIVAN: Yes, sir.

22 THE COURT: Mr. Jones?

23 MR. JONES: Thank you, Your Honor. May it please the
24 Court?

25 The way I understand Rule 12 B Six, it would not --

1 Well, 12 B Six -- that's a final decision, Your Honor,
2 with the same arguments, same issues. It is clearly res
3 judicata.

4 I am going to ask the Court again to dismiss the
5 action since the matter has already been adjudicated by
6 the Court.

7 We ask that it be dismissed with costs, and an in-
8 junction to prevent them from bringing the same or a similar
9 cause of action again.

10 Thank you, Your Honor.

11 THE COURT: Let me go back and ask Mr. Jones a
12 question here.

13 Mr. Jones, it seems to me at first blush at any
14 rate that the Defendant's argument about res judicata --
15 that the Defendant's argument fits the res judicata scen-
16 ario.

17 Do you have any authority for your position, or
18 at least the part of your position being that the counter-
19 claim was premature or the issues were not ripe for the
20 counterclaim to be litigated?

21 MR. JONES: Your Honor, I don't have any authority,
22 but only relying on basically the 12 B Six -- relying
23 on the -- not 12 B Six, but relying on the fact that once
24 the case had been decided in my client's favor, then she
25 would -- if there had been a bond posted, then she would

14

1 Your Honor, I think 12 B Six applies. This is
2 clearly res judicata.

3 I think, quite frankly, Your Honor, that this is a
4 waste of your time -- of this Court's time, and it is a
5 frivolous -- I think it is borderline frivolous or it
6 was then when they filed a counterclaim to start with,
7 because it didn't survive 12 B Six.

8 Here today, it is clearly res judicata, Your Honor,
9 and I would ask for fees and costs, and that the cause of
10 action be dismissed and not be brought again.

11 Thank you, sir.

12 MR. JONES: Your Honor, . .

13 THE COURT: Yes, sir.

14 MR. JONES: If ever there was a frivolous action
15 it was the bringing of the action or the claim against
16 the modular home.

17 Clearly there is authority in South Carolina for recog-
18 nizing a modular home as being different from a trailer,
19 Your Honor.

20 THE COURT: Thank you. I haven't read the Batson
21 versus Parris Mountain Water Company case, but I under-
22 stand that case stands for the proposition that you can-
23 not sue someone or bring a cause of action against someone
24 because they sought an injunction.

25 I believe that is what Mr. Sullivan says the case
holds.

1 Now, I haven't had the opportunity to read that case
2 as yet.

3 MR. JONES: I haven't had an opportunity to read the
4 case either, but I will be more than happy to draft a
5 response after I read that case.

6 THE COURT: I don't know if you have a copy of his
7 memorandum.

8 MR. JONES: I received a memorandum this morning,
9 Your Honor.

10 THE COURT: Yes, sir.

11 MR. JONES: But I haven't really had a chance to
12 really develop any response to it, Your Honor. I am
13 not sure whether it is a denial to a bond that is readily
14 available.

15 The Court basically has required Plaintiffs to post
16 bond, and I haven't found any . .

17 THE COURT: All right. I'll tell you what I will
18 do.

19 Gentlemen, I will give you until noon on Monday to
20 fax to me a response to the brief that you received today
21 from Mr. Sullivan, and which I guess would also be a re-
22 sponse to the Batson versus Parris Mountain Water Company
23 case.

24 You may do that by faxing it to my office in
25 Lancaster, and I don't know the fax number but it is in

CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for the Office of South Carolina Court Administration, do hereby certify that the foregoing Transcript was prepared from records of Nancy Monteith.

That the matter was heard in the Court of Common Pleas for Laurens County on March 6, 2007.

FURTHER, that it was prepared to the best of my ability, and that I am not of kin or of counsel to any party to the action, nor do I have any interest in the same.

Dated: ~~June 27, 2007~~

Copy sent 1-15-08

Harriet P. Bennett

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

) COURT OF COMMON PLEAS
) 2006-CP-30-0547

KAREN IRBY
vs.

AUGUSTA LAWSON
DEFENDANT

) TRANSCRIPT OF RECORD
)
)
)

October 23, 2008
Laurens, South Carolina

B E F O R E:

HONORABLE J. Mark Hayes, II; JUDGE.

A P P E A R A N C E S:

Andrew M. Jones, Jr., Esq.
Attorney for the Plaintiff

Edward D. Sullivan, Esq.
Attorney for the Defendant

JOY E. HOLSTON
Official Court Reporter

1 THE COURT: We will go on the record on the matter of
2 Irby versus Jones. This is a motion hearing, motion
3 related to a request for sanctions.

4 MR. SULLIVAN: Yes sir, my name is Ed Sullivan. Your
5 Honor, I am moving for sanctions against, it is Irby
6 versus Lawson is the name of the case, I think you said
7 Irby versus Jones.

8 THE COURT: I might have.

9 MR. SULLIVAN: Mr. Jones represents Ms. Irby. Your
10 Honor, as I said motion for sanctions under Rule 11 and
11 the South Carolina Frivolous Civil Proceedings Sanctions
12 Act. Your Honor, we are here today because in 2006 Ms.
13 Irby and her lawyer, Mr. Jones, sued Ms. Lawson for no
14 other reason that in 2001 Ms. Lawson successfully,
15 temporarily enjoined Ms. Irby from moving, what they call
16 a modular home into a restricted subdivision that did not
17 allow house trailers. I told Mr. Jones when he brought
18 the action in 2006 that there was no valid, there is no
19 merit to that claim. That their relief in 2001 when Ms.
20 Lawson got the injunction was pursuant to Rule 65, a bond
21 for security. And they didn't get that for whatever
22 reason in the early lawsuit. But he went ahead, I sent
23 him two letters, one certified letter that said this is
24 frivolous and if you go forward we are going to be here
25 today talking about sanctions. Well, he ignored my

1 letters and they went forward with the lawsuit. After we
2 were sued I filed a motion to dismiss which was granted
3 because there just is not a cause of action for what he
4 was going forward, his relief was under Rule 65. Judge
5 Goldsmith agreed and dismissed their lawsuit. That wasn't
6 enough, they appealed. That dragged on, finally the Court
7 of Appeals dismissed his appeal, cited Rule 220 of the
8 appellate rules which, and basically said that the case
9 had no merit. So, we are here today for sanctions, legal
10 fees and cost. And, Your Honor, I will tell you just a
11 little bit more about the 2001 case. What happened is Ms.
12 Irby had a lot in a restricted subdivision that said no
13 trailers or temporary structures. Well, she moved in what
14 she called a modular home, we found out about it before
15 she got it zoned for the lot. Ms. Lawson got a TRO and
16 then we came up here for a preliminary injunction hearing.
17 Ms. Lawson won, Judge Clary enjoined Ms. Irby from moving
18 that so called modular home onto the lot. At the hearing,
19 I don't know that they sought a bond, if they did maybe
20 they wouldn't of gotten one, they didn't get one. Well,
21 after that Ms. Irby, say that lawyer won, it leaves a
22 picture. Lawyer two comes in and he moves for a rehearing
23 on a preliminary injunction stage. That was denied by
24 Judge Clary. Then and this is important, lawyer two filed
25 a counterclaim in 2001 against Ms. Lawson basically

1 asserting the same thing that they asserted in 2006. That
2 we had interfered by enjoining them, likely so, asserting
3 our rights under those restrictions that we had interfered
4 with her right to enjoin her property. Well, I moved to
5 dismiss that counterclaim and it was granted. That had no
6 merit. Well, a year and a half later we had the hearing,
7 final hearing and they won. Judge Johnson agreed that the
8 so called modular home did not violate restriction. So,
9 they won that case and we appealed and the ruling was
10 affirmed. And that should of been it. Well, three years
11 later here they come and sued us for interfering with
12 their property rights simply because Ms. Lawson sought and
13 got an injunction keeping them out temporarily. Now, Your
14 Honor, there is no cause of action for that and we moved
15 to dismiss and that was granted. And then they appealed
16 and that was dismissed because it had no merit. So, Your
17 Honor, we have been through this for I don't know how
18 long, we have spent significant time, there is a huge bill
19 of legal fees and cost. And the frivolous sanctions act
20 says that we are entitled to fees and cost. It must have
21 been reasonable to believe that his claim would be
22 warranted under existing law. And it is clear under Rule
23 65 is right on point that in 2001 that was his remedy and
24 if they wanted a bond they should of gotten it then.
25 There is no cause of action to come back three years later

1 and sue us for interfering because we have got an
2 injunction, it just doesn't exist. And also under the
3 frivolous proceedings act there is a list of factors for
4 the Court to consider to determine whether they should be
5 sanctioned. For example, the number of parties, there are
6 only two parties. The complexity of the claim, it is
7 pretty simple, Your Honor. Rule 65 is right on point,
8 case law is right on point. The length of time that they
9 had to consider this. The amount of knowledge they had,
10 they knew all the facts, they knew everything. They had
11 three years, they thought about it for three years and
12 then brought this lawsuit. So, Your Honor, I think
13 clearly, I don't take this lightly, this is serious. But
14 this is a case that they should be sanctioned and we
15 should be awarded attorneys fees and cost. There is an
16 affidavit of attorneys fees and cost attached to the
17 documents that I have presented. Your Honor, we request
18 relief that we have asked for and I appreciate your time.
19 Thank you.

20 MR. JONES: Your Honor, the request for sanctions was
21 mentioned before Judge Goldsmith. I believe I have cited
22 that in my short brief where they were requested. I also,
23 in the motion to dismiss, in the prayer for that motion to
24 dismiss, that request for attorney fees and cost. Your
25 Honor, where I interpret Rule 43, once that those, those

1 that was requested and the Court failed to grant that it
2 was basically in whole and part, whatever the motion was,
3 the whole and part or be conditional. He can't bring that
4 motion again. It appears to me that he is asking for the
5 same relief that he asked before Judge Goldsmith. And,
6 Your Honor, and I also believe that Judge Goldsmith would
7 of been, since he heard his claim for frivolous privileges
8 suit, that if he thought that it was a valuable claim he
9 would of granted them the sanctions then. Also, Your
10 Honor, even after Judge Goldsmith had ruled he had an
11 opportunity to ask him to reconsider which he failed to
12 do. Instead he wanted, I assume, he wanted to preserve
13 the order that Judge Goldsmith issued and subsequent bring
14 this matter. Your Honor, also as far as, I don't have the
15 latest ruling from the Court of Appeals under the last one
16 but they dismissed the case on procedural grounds, not on
17 basis of merit. At least that is my interpretation of the
18 ruling. Your Honor, as it so happens we have got, we came
19 here and I think the Judge's Court Reporter was sick and
20 there was a new Court Reporter and we weren't able to get
21 the records together to find out who that person was in
22 time. Then once you start out wrong things multiple.
23 That is basically, basically our position is that
24 ultimately the Court made a ruling that something to the
25 effect, the main thing seems to be the last sentence is

1 that an answer may not be raised for the first time on
2 appeal, must have been raised in lieu upon by the lower
3 court. That is the last, well, Your Honor, I have got a
4 copy, although I did ask the Court to reconsider the
5 matter. I do have a copy of this opinion here if Your
6 Honor would like to see it.

7 THE COURT: It is your call, not mine. Any
8 objection?

9 MR. SULLIVAN: None, Your Honor.

10 THE COURT: All right.

11 MR. JONES: That is not the one, what we ask for a
12 reconsideration. The Court basically said that, in the
13 reconsideration they still held basically by that same
14 opinion. Your Honor, we think that we had, based upon the
15 Batson versus Parris Mountain (phonetic), we have had
16 basically, on that particular case a bond was issued. But
17 at the time, if I recall correctly, at the time the case
18 was finally heard and went before the Court the bond was
19 not enough to satisfy the claim and basically that is the
20 way we interpret, if the bond was not enough. Not every
21 bond would be basically the same thing. And that is the
22 basis that we proceed on. And the other thing was, the
23 other things that we would feel that some of the claims,
24 the case would have been adjudicated before we were in a
25 position to ask for the relief we asked for in 2006. The

1 2001 case would have to be fully adjudicated before we
2 would have reached a claim for a malicious prosecution and
3 other remedies. And, Your Honor, I think that is also a
4 provision and although we didn't cite it in our complaint,
5 dealing with homes, manufactured homes that were, that,
6 they do with manufactured homes that are built on cite
7 that they, some evidence to say that they, a petition,
8 provision. I am having trouble right now dealing with the
9 type of home we are talking about, there is a provision of
10 law that deals with stating that the person cannot be
11 denied her right to attribute a manufactured home that is
12 manufactured off cite as to be treated as a stick-built
13 home. And that is basically another matter that we would
14 cite. Again, Your Honor, we fall back on, Mr. Sullivan's
15 own words, he asked for it, he asked for it and argues
16 before the Court for sanctions. And Judge Goldsmith,
17 though I appealed his ruling but I think he was right to
18 deny sanctions in that particular matter.

19 MR. SULLIVAN: Your Honor, first of all, motion to
20 dismiss, I probably asked for sanctions but I filed a
21 formal motion under this act of Rule 11 right after and I
22 say timely, it was right after we got an order from Judge
23 Goldsmith dismissing his complaint. Your Honor, he is
24 still talking about the merits of the case in 2001. That
25 is why we are here today. They spend more time talking

1 about whether or not they had a right to move the modular
2 home in the neighborhood. And all of that is irrelevant,
3 what is relevant is we have got an injunction and the
4 Judge granted an injunction and that was it and their
5 remedy was by appeal or what have you but they didn't do
6 that then. He talks about they didn't know, they had to
7 wait until the end of that case before they could take
8 this, bring this case and see what their rights were. It
9 had to be adjudicated. But, Your Honor, in that first
10 case they filed a counterclaim, a counterclaim with the
11 same language that is in this complaint from 2006 about
12 interfering with their rights. And that counterclaim was
13 dismissed. So, they didn't mention earlier that when they
14 brought the 2006 case, not only was there no merit, there
15 was no cause of action for what they are trying to say.
16 They were res judicata, they already raised that same
17 complaint and formed a counterclaim which had been
18 dismissed. The res judicata, they didn't, the Court never
19 got to and didn't have to get to it. Because if you look
20 at Rule 65 it is very clear, that was their remedy in
21 2001. So, in 2006 there was just, it was over and here we
22 go. And it has taken a lot of time, not only through the,
23 getting the motion dismissed here in the trial court but
24 through the appellate court. And I have got an exhibit
25 showing all the things that we went through, just watching

1 them and reacting to what he did in the appellate court.
2 He missed six deadlines and it is all right there and it
3 is all in the record that I am sure was sent back from the
4 Court of Appeals. And they did eventually cite Rule
5 220(b) and the Court Appeals which reversed in the action
6 having no merit. So, it is frivolous, it was frivolous
7 and I told him it was frivolous and he disregarded, he
8 didn't respond. One of the factors was after he was put
9 on notice what did he do, how did he respond. He didn't
10 respond at all, he just pressed his case. So, Your Honor,
11 they have acted unreasonably and we have lost a lot of
12 fees and am entitled to be paid, I think the numbers is in
13 excess of \$2,000.00 dollars. It is attached to my
14 invoice, it is attached to my brief. And, Your Honor, we
15 ask that they be ordered to pay our fees and cost and also
16 enjoin from suing Ms. Lawson again. So, that is what we
17 request, Your Honor. Thank you very much.

18 MR. JONES: Your Honor, may I?

19 THE COURT: Briefly.

20 MR. JONES: Your Honor, as far as the cost of the
21 Court of Appeals, those cost have been paid. They were
22 paid to Mr. Sullivan's law firm, Collins and Lacy. I have
23 the canceled check for that. Your Honor, it totaled
24 \$1,016.50. And, Your Honor, I will be more than happy to
25 produce both sides of the check.

1 MR. SULLIVAN: That is not necessary, Your Honor. If
2 I may, we credited that on my invoice, the next to the
3 last line item.

4 MR. JONES: Okay. Your Honor, also as far as, we
5 have also asked, we sent the clerk a letter and a copy to
6 Mr. Sullivan stating that this matter had already been
7 raised with Judge Goldsmith. And he has sought to
8 proceed. And, Your Honor, we ask that this matter be
9 dismissed and ask for a cause for having to come here to
10 appear before you today in this matter.

11 THE COURT: All right, thank you, I will take a look
12 at it.

13 MR. SULLIVAN: Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. JONES: Your Honor, before we go. I just
16 received this memorandum from the Defendant. He ask
17 various, services rendered and that type of thing. I
18 would like to have an opportunity to respond to it.

19 THE COURT: Well, we have already gone to the next
20 matter. I received both of your submissions in a
21 relatively tardy fashion. I will give them probably the
22 consideration that they warrant considering that I have
23 not received that. If you feel the need to want to
24 respond further you might want to put it in writing and
25 submit it to your Clerk.

1 MR. JONES: Thank you, Your Honor.

2 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

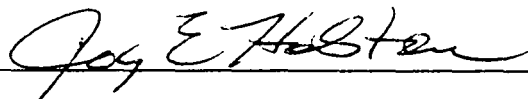
STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Laurens for South Carolina, on the 23rd day of October, 2008.

I do further certify that I am neither kin, counsel nor interest to any party hereto.

September 14, 2010



JOY E. HOLSTON, COURT REPORTER

MY COMMISSION EXPIRES: MARCH 13, 2016

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

Karen Irby,)
)
Plaintiff,) TRANSCRIPT OF RECORD
) 2006-CP-30-547
-vs-)
)
Augusta Lawson,)
)
Defendant.) March 10, 2009
Spartanburg, South Carolina

B E F O R E:

HONORABLE J. MARK HAYES, II, JUDGE

A P P E A R A N C E S:

ANDREW M. JONES, JR., ESQ.
Attorney for the Plaintiff

EDWARD D. SULLIVAN, ESQ.
Attorney for the Defendant

Margaret A. Woods
Circuit Court Reporter

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NO EXHIBITS INTRODUCED

1 THE COURT: We ran long in the other case that preceded
2 this one so I apologize for the delay in getting started. All
3 right. This is a reconvening of a hearing that we had
4 previously conducted down in Laurens. The result of the
5 previous case I issued a ruling. I posed several few
6 questions to the lawyers and they have provided me with some
7 guidance, so to speak, to those questions. We'll reconvene
8 this this hearing in the matter of the Irby vs. Lawson case.
9 I'm more than happy to hear from ya.

10 Now, gentlemen, I'll tell you I've taken a look, I won't
11 say that I've studied, that I know that, you know, don't ask
12 me any quizzes from them, I'm not sure I know them that well,
13 but I I believe I understand your positions at the point that
14 we are now. I believe that as you are probably are aware, you
15 know, I am inclined to make an award of some type of attorney
16 fees in this particular matter at this time. Now a factor
17 that is substantial is the relationship to Mr. Sullivan with
18 his client and whether or not that fee in fact is going to be
19 an incurred fee, that's not a determinate factor, that is an
20 important factor so if you want to argue those things include
21 that but it is an important factor but it's not the ultimate
22 determining factor because I believe that under the provisions
23 of law that we are looking at there is a reason why courts are
24 allowed to make a determination award attorneys fees, one of
25 those reasons is to prevent or to act as a deterrent for

1 bringing these types of matters. This case has a long
2 history, a long history. These -- this case, or whether that
3 I say this case, the matter that presently exists between
4 these parties has a long long history and what I am wanting to
5 do is try to as best I can bring this matter to a conclusion
6 and, you know, so that these parties can move on as well as
7 properly address the issue that's before me as to whether or
8 not I need to award an attorneys fees and to to what degree so
9 I'll be more than happy to hear from ya.

10 MR. SULLIVAN: Your Honor, the the issues have been
11 briefed extensively and we were willing to submit that without
12 a hearing but as to the whether or not it's incurred or not,
13 the newest Frivolous Civil Proceedings Act does not use in the
14 wording, The sanction may include an award of reasonable cost
15 and attorneys fees. The word "incurred" is not in that. For
16 what it's worth, it's not in that statute. It was in the old
17 statute, it's not the new statute so I don't think
18 Ms. Lawson or her lawyer should be penalized simply because
19 she is lucky or unlucky enough to have a relative who's a
20 lawyer nor should a law firm be penalized. I'm not the only
21 one that worked on this matter. When the matter started, I
22 was a solo practitioner and I, and I that was in the fall and
23 summer and fall of '06 and I'm -- I moved to dismiss, joined
24 Collins & Lacy in January of '07 and since then that that time
25 when I was a solo pertac -- practitioner is not included in

1 the charges we submitted so since that time my law firm hasn't
2 been engaged, they're good lawyers and they they certainly
3 didn't expect to work for free, Your Honor, so that's all I
4 have to say, Your Honor. I appreciate your consideration.
5 Thank you.

6 MR. JONES: Your Honor, our position basically is that
7 dealing with -- going back to Your Honor said she -- he's
8 aware of the matter Judge Goldsmith's Order. Judge Goldsmith
9 didn't cite any cases that indicated that that he was relying
10 on any any previous finding of the Court regarding a a a
11 similar similar case. In fact, I was unable to find one that
12 said that, that said that failure to have a bond was
13 prohibited in in the, in in this case. And also, Your Honor,
14 from looking at Judge Clary's Order to Dismiss it has no no --
15 there's no statement "dismiss with prejudice" and it's been my
16 understanding in the past that cases that that if it's
17 dismissed without prejudice, I mean, if it's dismissed and
18 it's without prejudice unless it it states so unless there's
19 been the action has been brought several times and in this
20 particular case it's brought once and we basically in the, in
21 the defendant's own statement in memorandum it states that the
22 matter was a -- well basically wasn't ripe to be heard until
23 after there had been a determination that the, that the
24 injunction was wrong and then once once the injunction was
25 wrong, it was determined it was wrongful then a action would

1 would would would be, would be ri -- the matter would be ripe
2 for criminal action. Also, Your Honor, dealing with the case
3 of *Batson vs. Greenville Water*, that case there was a bond but
4 the bond was insufficient. It was insufficient when when --
5 and the person was -- Mr. Batson was allowed to sue any --
6 anyway regarding that and recover above the bond, that's
7 that's at least that's my reading of the, of the case. And
8 and basically, Your Honor, also that once once the, once --
9 the only way this matter could -- once -- we could have
10 appealed Judge Clary's ruling with a regular appeal, with the
11 appeal that the defendant brought but the case had been
12 decided in my client's favor. I I don't see where that that
13 appeal, the appeal of an injunction that had been lifted
14 woulda offered us any any any relief especially since then it
15 basically had, it had no assignment of to indicate that it was
16 granted with prejudice, I mean, appeal appeal that injunction
17 and other relief that that Mr. Duckett had sought. I think he
18 did seek, if I recall correctly, he did seek other relief in
19 the, in the action but it like I say it it wasn't appealed
20 because it didn't have prejudices attached to that that Order.

21 Your Honor, also dealing with the, with the dealing with
22 Mr. Sullivan it it appears to me, if I recall correctly, from
23 lookin' at at the pleadings that only his name appear on the
24 initial pleadings and on the followed pleading, it's it's -- I
25 don't get the impression that the the other attorneys that he

1 was speaking of are involved in this or got involved in this
2 matter. And al -- Your Honor, Ms. Ms. Ms. Irby has has not
3 only did what she -- did she lose, wasn't able to put her
4 mobile home on the on -- I mean, not a mobile home, I'm sorry,
5 her her home, her manufactured housing on the, on the, on the
6 the site, she was -- that home had to be sold, it was sold at
7 at a loss and she suffered -- in fact that she still has a a
8 loan that she's paying to the bank for that particular, that
9 particular piece of -- for that transaction.

10 Your Honor, we we feel that we brought a action that that
11 clearly it may have been unique in the sense that Judge Judge
12 Goldsmith didn't didn't see it as, felt that and and it's it's
13 true that that I don't know -- I don't wanna go back to the,
14 to the other judges as to why they did require when a bond
15 wasn't required but it it wasn't and and it appears to me that
16 once we were actually in -- once once that Judge Johnson had
17 decided for my client, there was no need to to appeal his his
18 particular Order, his -- I mean, the Order the the previous
19 Order that that granted granted granted the defendant the
20 relief that that was sought.

21 Your Honor, we -- as far as the the attorney fees that
22 appears to be, to be sought by Mr. Mr. Sullivan, there's --
23 there -- it's the -- I don't -- as far as the the circuit
24 court there was -- we had one hearing on that that particular
25 matter and I I I made an attempt to to appeal and for some

1 reason that that appeal did not, did not, did not meet the the
2 Court of Appeals what they felt was their their requirements.
3 Your Honor, it wasn't dismissed on the, on the merits at at
4 all, it was, it was, it was, it was dismissed basically, if I
5 recall correctly, on the basis of conclusiatory statements and
6 that was the gist of it and we've and we feel that, we do feel
7 that this matter has has gone quite a long time but we feel
8 that any fees should be minimum in this particular matter not
9 nowhere near the amount that the the defendant is is is is
10 seeking. It was, it was -- it -- the the situation appeared
11 to be as a guarantee to state that that the courts cited no no
12 no authority for its decision regarding -- other than the,
13 other than the requirement that that the -- a a bond be posted
14 but that bond my understanding I believe that the bond was to
15 be posted for the benefit of the, of the defendant in that
16 case would be Ms. Ms. Irby whose property was being, was being
17 prohibited from placing her mo -- her manufactured housing on
18 her property.

19 THE COURT: Well let me ask you a question before -- what
20 is your, what is your position in regards to the decision that
21 was made by Judge GoldSmith? I mean, I understand that you
22 want me to say that Judge GoldSmith took away the issue that
23 I'm addressing today when he made his ruling is that correct?

24 MR. JONES: That he took away the the issue, uh, ---

25 THE COURT: Right. Since he did not make an award of

1 attorney fees then I am to implicitly view his -- that
2 decision as that as affecting me to where I cannot make a
3 ruling is that correct?

4 MR. JONES: Your Honor, I would like for that to be the
5 Court's position true enough but but even if the Court did
6 not, does not adopt that position, it's I feel that there
7 normally would be some indication in the judge's, in the, in
8 the judge in hearing the case ordered that he finds the the
9 the -- some some degree of that that the attorney for the the
10 par -- the other party rather acted improperly in some way or
11 pushed something that was or grind grind the wheels of justice
12 as as the Supreme Court has used in some other cases.

13 THE COURT: All right. Let me ask ya before I lay that
14 point.

15 MR. JONES: Um-hum.

16 THE COURT: If I accept that proposition that somehow the
17 decision that was made by Judge Goldsmith, doesn't that only
18 affect the sanctions, if any, that I would award under the
19 rules and not under the frivolous claim motion?

20 MR. JONES: Um, well, ---

21 THE COURT: Do you follow -- do do I ask my question ---

22 MR. JONES: Yes, sir, I I follow the question but, Your
23 Honor, I I feel basically that that the facts would be, the
24 the facts and the issues would be basically the similar
25 similar issues and basically the same I just see why one would

1 would justify a different finding in -- with the same facts.
2 It's it's seem like they would ---

3 THE COURT: Well let -- the way, this might be a bad
4 analogy so excuse me in advance, when someone say takes out a
5 prosecution against another individual and that prosecution in
6 a criminal setting is is really without merit whatsoever, that
7 person cannot be sued for malicious prosecution until that
8 prosecution has actually been ruled upon. You follow me?

9 Mr. JONES: Oh yeah.

10 THE COURT: So that it'd seem logical then that a person
11 could not seek sanction or attorney fees or costs under the
12 frivolous cl -- under a fro -- under under an assertion that a
13 matter was frivolous until after that matter had actually been
14 disposed of. Does that make ---

15 MR. JONES: Yes, sir, I I understand what you -- what
16 what what the Court is hinting with that, yes, sir, but but
17 under -- I I go back to the 40, I'm sorry I can't recall,
18 under the rule that says if it's been asked for and then and
19 not granted, it's it's basically denied or it can't be
20 brought, it can't be brought, you know, it can't be brought up
21 again under the the under a different statute but I feel that
22 basically it's just it's the same thing but even if that's not
23 the case, Your Honor, we we still go back to position that it
24 it -- the way it was -- that there was no, prior to, prior to
25 Judge Goldsmith ruling there was no -- Judge Clary's order

1 that -- it didn't claim anything to indicate that that
2 that Ms. Irby was prej -- her case was dismissed with
3 prejudice and that's that's basically and that basically gave
4 rise to us to to moving to proceed ahead after after the --
5 there had been a finding that the the grant of an injunction
6 was was done erroneously. And our position that we could --
7 we couldn't proceed with with the case in in Batson and and
8 other cause of actions but for malicious prosecution for
9 tortious interfering with a contract at that time did not
10 exist until after that -- it was a determination that the
11 injunction was was not -- was was wrong, was wrongfully
12 granted in error.

13 THE COURT: Okay.

14 MR. JONES: It, Your Honor, it it -- I don't I don't --
15 while I think it's, you know, admirable that that an attorney
16 will will help help his his family member in the matter but it
17 appears that there's no indication that -- in fact I have
18 relatives in in Union, I've appeared at divorce cases and that
19 typa thing and I think I even appeared well in family court
20 here for for relatives, but I I applaud that but there's no
21 indication that anything was actually charged
22 Ms. Ms. Ms. Sullivan in in this partic -- in this particular
23 matter there's there's no letter, there's there's there
24 appears to be no letter or anything that's coming from her or
25 going to her indicating that that any cost was assessed to

1 her. My client has has extended, has lost for -- her money
2 going back for sometime regardin' this particular case that
3 was originated but things were found in her favor as as Your
4 Honor knows and we we don't -- I wouldn't want for her to have
5 to suffer any additional loss in this, in this case. Well I'm
6 sure Your Honor knows about it. I I don't wanna rehash the
7 the whole matter, I'm sure Your Honor has heard
8 it -- I mean, read it and are familiar with it just like and
9 but if Your Honor wanna hear anything else from me on it
10 I'll ---

11 THE COURT: Well let let me ask this, I mean, we have
12 obtained, clerk of court was kind enough to make copies of all
13 of the things that were in the file and we received from the
14 attorneys various supplements. Now my understanding is that
15 there is a request for 22,000 plus dollars in attorney fees
16 but for some reason the actual breakdown of that I don't have.
17 Do ya'll have it?

18 MR. SULLIVAN: I have a, I have a bill right here.

19 THE COURT: Do ya have something that I, that I ---

20 MR. SULLIVAN: It was ---

21 THE COURT: --- can use?

22 MR. SULLIVAN: It was, it was attached to an affidavit.

23 THE COURT: Yeah, it's supposed to be I believe it is
24 Exhibit H but it was not.

25 MR. SULLIVAN: No it is, Exhibit H. All right.

1 THE COURT: It's not in my documents. Do you have a copy
2 of that?

3 MR. SULLIVAN: Yeah, I have my my copy, Your Honor.

4 THE COURT: Is that the only one you have?

5 MR. SULLIVAN: I think it might be.

6 THE COURT: I wouldn't mark on it. I'll just let you
7 have it back.

8 MR. JONES: I -- well, I think I, I think I got a letter
9 from Professional Service Rendered and then I see something
10 else there. Your Honor, also we -- anything that we feel that
11 that the the Court of Appeals will be something that was --
12 that would have been in the -- within the purview of the Court
13 of Appeals to deal with if they thought that, thought it was
14 so I believe in this matter they had two opportunities to do
15 it; one is the initial case and then when I asked for a
16 rehearing.

17 (Whereupon, a comment was made off the record.)

18 THE COURT: All right. Do you wish to on the affidavit
19 of Mr. Edward D. Sullivan, Esquire and the attachments which
20 were the list of billings from Collins & Lacy, now you
21 mentioned to me that -- is there anything else you want me to
22 know about the billing per se that you can -- that you want me
23 to consider or or not consider or ---

24 MR. JONES: Your Honor, I guess the only, the only thing
25 as far as considered the billing would be the the billing up

1 until the, up until the time that of Judge Goldsmith's Order.
2 I think that up until that time or at the time that he filed
3 his his his motion I don't, I don't know if there's anything
4 that oc -- any -- I don't recall him doing anything new after
5 that particular new new filing with the Court to take in
6 anything that that that that occurred subsequent to the motion
7 that that he filed ten days after Judge Goldsmith's ruling.

8 THE COURT: So it would be your position I I understand
9 you feel like an award is not warranted in this case but
10 assume for a moment that that it is.

11 MR. JONES: Yes, sir.

12 THE COURT: Is it your position then that I should only
13 award up to the time that Judge Goldsmith issued his Order or
14 from Judge Goldsmith until the -- until this matter comes to
15 an end?

16 MR. JONES: Your Honor, my position would would be up
17 until Judge Goldsmith's Order that would be the -- my position
18 and, uh, ---

19 THE COURT: Do you know what date was that on tell me.
20 Do you have his billing records in front of you?

21 MR. JONES: Yes. Yes, sir, I I have a list of, list of,
22 let's let's see, the the Order I I think was I believe April
23 the 20, let's see April the 28th and then I think he filed --
24 prepared this motion and filed it with the Court I believe
25 about the April the 5th it looks like to me.

1 THE COURT: Of '07?

2 MR. JONES: Yes. Judge Goldsmith's Order was March the
3 25th '07.

4 THE COURT: Okay. I was, I was looking at that if I were
5 going to eliminate any of them I might eliminate eliminate
6 them up through the time that the Court of Appeals had ruled
7 because the Court of Appeals actually made the determination
8 for for cost.

9 MR. JONES: Your Honor, up until the Court of Appeals had
10 ruled they made a determination yes, Your Honor, they did make
11 a determination as for cost, Your Honor, but I I believe that
12 those costs incurred as as on the, on the, uh, on matters that
13 were before the Court of Appeals. I I think that they just, I
14 believe, Your Honor, that those matters that should have been
15 brought before the Court of Appeals if there was any
16 frivolous, if there was thought that the the action was
17 frivolous should have been mentioned to the, to the Court of
18 Appeals. And also, Your Honor, it appears that there seem,
19 there seem to have been more, for whatever reason, more more
20 action as far as -- more review and more action in in in the
21 reviewing what was supposedly taking place in the Court of
22 Appeals than actually took place before Judge Goldsmith
23 actually ruled. I I don't know what's what's the reason for
24 that was basically was the same same matter.

25 THE COURT: It's harder to practice in front of the Court

1 of Appeals than it is in circuit court.

2 MR. JONES: Yes, sir, it definitely is. I'm I'm I'm a --
3 at least it seems to be gettin' harder and harder.

4 THE COURT: All right.

5 MR. JONES: I I personally didn't didn't didn't and was
6 at a loss as to their their ruling that they made in this
7 particular case in this issue.

8 THE COURT: Okay. Is there anything else that you would
9 like for me to know or consider?

10 MR. JONES: Your Honor, I I think Your Honor's aware.
11 aware of the situation I basically stated. I think that's
12 sufficient with what what our position is and and that we feel
13 that that we feel it's a unique situation and I found nothing
14 in the case law that I looked at that would indicate that
15 that -- I was always under the impression that the bond was
16 there to protect the person who actually who was injured by
17 the, by the injunction and and that like I said until the the
18 injunction was was successfully resolved that that party could
19 not proceed with the matter and Judge Judge Clary's not
20 finding the case didn't did not rule that my client was
21 prejudiced by the act -- the pleading filed by Mr. Duckett I
22 felt that we had opportunity to to proceed, ---

23 THE COURT: Okay.

24 MR. JONES: --- Your Honor.

25 THE COURT: Thank you.

1 MR. SULLIVAN: Your Honor, just very briefly please, sir.
2 On the appeal attached is to my original motion for sanctions
3 is Exhibit D and I don't know -- do you have Exhibit D, Your
4 Honor? You didn't have Exhibit H but Exhibit D is a history
5 of the, of the litigation in this case and and, you know, a
6 large percentage of it is in the Court of Appeals and and I
7 invite, Your Honor, if you have it to review it, I won't go
8 through everything, it's four or five pages long, and it's
9 missed a deadline, missed deadline and missed deadline and so
10 forth of of Mr. Jones those things we had to react to, we had
11 to deal with and and a large part of the time is is parta
12 that. Our position Your Honor has the discretion to award
13 fees for all that under under the statute. It just simply
14 says a reasonable legal fee. The Court of Appeals limits it
15 to a thousand dollars (\$1,000) for for the effort in the, in
16 the Appellate Court but that and it it provides a sanction for
17 frivolous appeal but we didn't wanna get into a situation
18 involving a frivolous appeal or a frivolous case but the
19 appeal went on and on and on, it was dismissed for lack of
20 prosecution, it was dismissed for for bad writing and many
21 positions, sir, on and on and on, and I'm not out to embarrass
22 anybody but, Your Honor, this has taken up a lotta time and
23 and I I believe you have, it's our position you have
24 discretion to award all those fees and just for for the, for
25 the record the new statute 15-36-10 (g) says that the sanction

1 may include reasonable costs and attorney's fees other of the
2 prevailing party, does not have the word "incurred." There's
3 the legal word "incurred" in the old statute 15-36-30 which
4 has been repealed I guess says award fees and costs reasonably
5 incurred. So I think that was left out on purpose. It's not
6 just to to pay the lawyers that that do the work, it should be
7 a deterrent. This was a big deal when they passed that
8 statute, I believe it was in the summer of 2005, and it was to
9 stop just this sorta thing. I mean this was nine, let's see,
10 eight years ago, he's still talkin' about a trailer on the
11 merits of the first case so there's no motion -- the motion
12 before the judge that day was a motion to dismiss, now that's
13 clear in the transcript. I said, he asked what the motion
14 what the matter was and I said motion to dismiss. Everybody
15 agreed there was one motion there that day and that you cannot
16 bring it as
17 you -- as I think the judge pointed out until after the case
18 anyway was dismissed.

19 And lastly, Your Honor, and I know two more points, the
20 the bill we turned in was through October. We've continued to
21 work. We're here today although we were willing to submit it
22 on the briefs and the last thing I'll say is the statute
23 provides for injunctive relief and we would ask as a part of
24 this relief, Your Honor, to please enjoin the plaintiff,
25 Ms. Irby, and her lawyers from continuing to bring actions

1 against Ms. Lawson. Thank you, Your Honor.

2 MR. JONES: Your Honor, may I have one few second. Your
3 Honor, there was, there was one deadline missed, one deadline.
4 It was the deadline to request the transcript. It was, it
5 was -- what what what happened is that I asked my secretary to
6 request it. The the person who was, who was at the time,
7 Ms. Ms. Watson was no longer there, whoever the clerk was
8 didn't give her the name of who actually took the, and I
9 failed to get it when I was there before Judge Goldsmith, who
10 actually took the the transcript. I told, I told to request
11 it and she said she couldn't. I told her well request it from
12 the, from the the court -- court's -- the -- from the court
13 authority in Columbia that governs the Court. I said request
14 it from them. Well she took about two days to. I told her to
15 do it on Monday, I saw the letter was Wednesday and that
16 that's how that's that's that's the deadline that was missed,
17 that was the only deadline missed. It's true enough that that
18 the Court determined that that that we -- the case was -- that
19 we we had conclusiatory statements in our, in our appeal but
20 conclusiatory statements to to me, Your Honor, at the time
21 that the the only thing that coulda it was dismissal of a, of
22 of a summary judgment. There was no -- we didn't have a whole
23 lot to to as far as, as far as case law or anything else
24 there's nothing, a whole lotta testimony to deal with as far
25 as since I filed a brief and that typa thing and I take

1 exception to Mr. Sullivan indicating that there was several
2 deadlines missed.

3 THE COURT: Let me ask you a question. He al -- one of
4 his other reliefs is his request for injunctive relief. Does
5 your client -- would your client and you have any concern of
6 there being an injunction that no more litigation will be
7 filed that that arises from these facts?

8 MR. JONES: Your Honor, the way I interpret the, I may be
9 mistaken, but the way I interpret the rules time is relevant
10 on on this particular, this particular matter being being that
11 well I think we had just got in within three years after after
12 the Court made made its, made its ruling in the -- regarding
13 the the injunction. I think we just got -- well then there
14 might, there might have been some time left but I think it was
15 very -- I I feel that the time has run. I don't think that
16 she's -- at at this, at this point I think Ms. Ms. Irby would
17 like to go in peace and and and so would I and Mrs. Irby.

18 THE COURT: So I take that as you don't mind me issuing
19 an injunction.

20 MR. JONES: Your Honor, I I if the Court decides, I don't
21 see that, you know, that ---

22 THE COURT: Might be unnecessary.

23 MR. JONES: Yes, sir. Yes, sir.

24 THE COURT: All right. Okay. I'll let ya know.

25 MR. JONES: Thank you, Your Honor.

1
2
3
4 CERTIFICATE OF REPORTER
5

6 I, Margaret A. Woods, Court Reporter in and for the State
7 of South Carolina at Large, hereby certify that I reported the
8 preceding case on March 10, 2009 at the time and place
9 heretofore set forth; and that the foregoing pages numbered
10 from 3 through 20, inclusive, constitute a true and accurate
11 transcription of my stenographic notes of the said proceeding.

12 I further certify that I am neither attorney nor counsel
13 for, nor related to or employed by any of the parties
14 connected to the action, nor am I financially interested in
15 the action.

16 September 28, 2010
17

18 Margaret A. Woods

19 Margaret A. Woods, Court Reporter
20 in and for the State of South Carolina at Large.
21
22
23
24
25

ORIGINAL

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Brooks D. Goldsmith, Circuit Court Judge

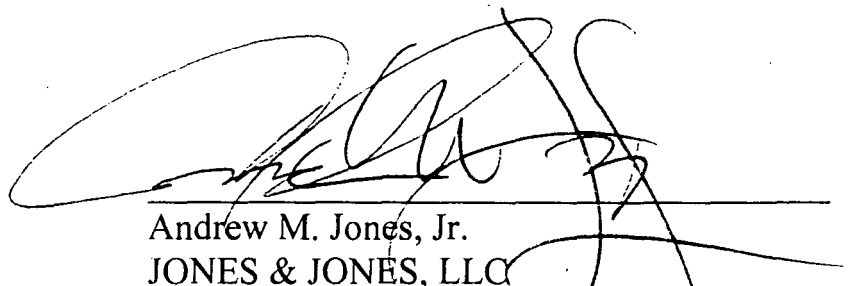
Case No: 2006-DR-30-547

Augusta S. Lawson, ...Respondent,

Karen Irby, ...Appellant.

NOTICE OF APPEAL

Karen Irby appeals the Order of the Honorable Brook P. Goldsmith, dated March 25, 2007. Appellant received written notice of the entry of this Order on or about March 28, 2007.



Andrew M. Jones, Jr.
JONES & JONES, LLC
21 Harris Street (29601); P.O. Box 9212
Greenville, S.C. 29604
864/271-1230(office); 864/271-1286(fax)

Other Counsel of Record:
Edward D. Sullivan
P. O. Box 12487
Columbia, SC 29211

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Karen Irby,

Plaintiff,

vs.

Augusta S. Lawson,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 2006-CP-30-547

**AFFIDVAIT OF
EDWARD D. SULLIVAN, ESQUIRE**

PERSONALLY APPEARED BEFORE ME, EDWARD D. SULLIVAN, ESQUIRE,
who being duly sworn, deposes and says:

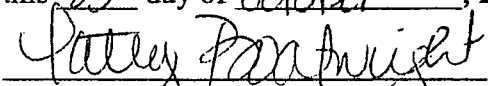
1. I am retained counsel for the Defendant in this matter.
2. I am of counsel at the Law Offices of Collins & Lacy, P.C.
3. I am a graduate of the University of South Carolina School of Law and was admitted to practice in South Carolina on May 18, 1988.
4. The Defendant retained my services in this matter on or about August 17, 2006.
5. The costs related to this action from February 23, 2007 through the October 23, 2008 are Three Hundred Sixty Three and 92/100s (\$363.92) Dollars, of which \$16.50 was paid by the Plaintiff following the conclusion of the Appeal in this matter.
6. The attorney fees related to this action from February 23, 2007 through October 23, 2008 are Twenty Two Thousand Eight Hundred Five and 00/100s (\$22,805.00) Dollars, of which \$1,000.00 was paid by the Plaintiff following the conclusion of the Appeal of this matter.
7. The net amount of attorney fees and costs owing at this time are Twenty Two Thousand One Hundred Fifty Two and 42/100s (\$22,152.42) Dollars.

FURTHER YOUR AFFIANT SAYETH NOT.



Edward D. Sullivan

SWORN to and SUBSCRIBED before me
this 23 day of October, 2008

 (L.S.)
NOTARY PUBLIC for South Carolina

My Commission Expires: 12-31-13

EXHIBIT

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tabbies

H

Collins & LacySM

ATTORNEYS AT LAW

October 23, 2008

Billed through 10/23/08

Bill Number 001128 00100 43038 EDS

Federal Tax ID: 57-0989944

Augusta "Gussie" Lawson
100 Blair Road
Laurens, SC 29360

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

REGARDING: Karen Irby vs. Augusta S. Lawson
Docket# 06-CP-30-547

FOR PROFESSIONAL SERVICES RENDERED

02/19/07	EDS	Review of file documents; Preparation of Brief	1.20 hrs	\$270.00
02/20/07	EDS	Preparation for Hearing;	1.10 hrs	\$247.50
02/28/07	EDS	Research; Office Conference with law clerk;	1.50 hrs	\$337.50
02/28/07	SRB	Get new assignment re: Rule 65 and the claim of wrongful deprivation of the use of property.	0.20 hrs	\$15.00
03/02/07	EDS	Research;	1.00 hrs	\$225.00
03/02/07	JLF	Researching whether SC recognizes an action for "wrongful deprivation of property."	0.60 hrs	\$45.00
03/04/07	EDS	Research;	1.90 hrs	\$427.50
03/05/07	EDS	Preparation of brief; Research; Preparation for hearing;	3.90 hrs	\$877.50
03/06/07	EDS	Travel to/from Laurens; Attend hearing on motion to dismiss;	4.50 hrs	\$1,012.50
03/06/07	SRB	Get assignment from Mr. Sullivan re: injunction case from 1906.	0.20 hrs	\$15.00
03/06/07	SRB	Research and shepardize 1906 case.	0.30 hrs	\$22.50
03/06/07	SRB	Brief Mr. Sullivan as to results of research.	0.10 hrs	\$7.50
03/12/07	EDS	Receipt and review of brief;	0.90 hrs	\$202.50
03/13/07	EDS	Preparation of brief; Correspondence;	1.50 hrs	\$337.50
03/14/07	EDS	Preparation and revision of brief;	1.50 hrs	\$337.50
03/27/07	EDS	Receipt and Review of correspondence, order;	0.20 hrs	\$45.00

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Date	Initials	Description	Hours	Amount
03/28/07	EDS	Research;	1.00 hrs	\$225.00
03/30/07	EDS	Research re: Frivolous lawsuit, sanctions;	1.10 hrs	\$247.50
04/03/07	RFG	Draft Motion for Sanctions pursuant to Rule 4 and Frivolous Civil Proceedings Act. (L250 A103)	0.20 hrs	\$36.00
04/05/07	EDS	Preparation of motion;	0.80 hrs	\$180.00
04/05/07	AEC	Follow up telephone call to Laurens County Clerk of Court to determine when Judge Goldsmith's Order was filed.	0.10 hrs	\$10.00
04/05/07	AEC	Review of Laurens County website to locate contact number for Clerk of Court.	0.10 hrs	\$10.00
04/05/07	AEC	Telephone call to Laurens County Clerk of Court to determine when Judge Goldsmith's Order was filed. Told to call back after 2pm.	0.10 hrs	\$10.00
04/26/07	AEC	Review of Laurens County Motions Roster to determine if Defendant's Motion for Sanctions has been scheduled. It has not.	0.10 hrs	\$10.00
05/01/07	EDS	Receipt of voice mail from Mr. Jones.	0.20 hrs	\$45.00
05/02/07	EDS	Correspondence.	0.20 hrs	\$45.00
05/09/07	EDS	Receipt and review of correspondence.	0.20 hrs	\$45.00
05/10/07	EDS	Receipt and review correspondence; conference with paralegal.	0.30 hrs	\$67.50
05/10/07	CCR	Review correspondence from SC Court of Appeals regarding untimely request for transcript made by Andrew Jones and need for Motion to Request Out of Time filed with Court.	0.10 hrs	\$9.50
05/17/07	EDS	Receipt and review of correspondence.	0.10 hrs	\$22.50
05/18/07	AMW	Receipt and review Motion to Order Transcript out of time. (L110 A104)	0.10 hrs	\$9.50
05/20/07	EDS	Receipt and review of correspondence; motion.	0.20 hrs	\$45.00
05/21/07	CS	Review matters regarding responding to Appellate's Motion to Extend Time to Order Transcript. (L520 A104)	0.40 hrs	\$88.00
05/21/07	EDS	Preparation of Response to Motion.	0.40 hrs	\$90.00
05/21/07	LW	Research SC rules of appellate procedure so as to rebut a motion for an extended time for appeal.	3.90 hrs	\$292.50
05/22/07	LW	Draft respondent's opposition to appellant's motion for extension to order transcript of the proceeding.	2.10 hrs	\$157.50
05/24/07	LW	Edit respondent's Response to Order Transcript Out of Time.	0.30 hrs	\$22.50
05/25/07	EDS	Office conference with law clerk, research; review of Motion.	0.70 hrs	\$157.50
05/25/07	LW	Response to Order Transcript Out of Time	1.22 hrs	\$91.50
05/25/07	LW	Draft cover letter to Response to Order Transcript Out of Time.	0.70 hrs	\$52.50

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05/29/07	EDS	Reply of Motions; office conference with law clerk, paralegal.	1.60 hrs	\$360.00
05/29/07	LW	Revise Response to Motion to Order Transcript Out of Time.	0.78 hrs	\$58.50
05/29/07	LW	Revise Response to Motion to Order Transcript Out of Time	1.72 hrs	\$129.00
06/20/07	EDS	Receipt and review of court correspondence.	0.20 hrs	\$45.00
06/20/07	AMW	Receipt and review Order granting Motion to Order Transcript out of Time. (L110 A104)	0.10 hrs	\$9.50
06/26/07	AMW	Receipt and review Statement of Accounts. (L110 A104)	0.10 hrs	\$9.50
07/16/07	AMW	Receipt and review correspondence from Andrew Jones regarding transcript. (L110 A104)	0.10 hrs	\$9.50
08/10/07	EDS	Receipt and review of Brief; office conference with co-counsel.	0.80 hrs	\$180.00
08/13/07	CS	Conference with Amy L. Neuschafer regarding the status of the brief. (L120 A104)	0.20 hrs	\$44.00
08/13/07	ALN	Review Appellant's Initial Brief; determine grounds for motion to dismiss.	0.60 hrs	\$108.00
08/13/07	ALN	Review South Carolina Appellate Court Rules requirements for briefs in preparation to draft Respondent's Motion to Dismiss.	0.30 hrs	\$54.00
08/13/07	ALN	Research South Carolina case law regarding impact of conclusory arguments in briefs and failure to comply with Appellate Court Rules.	0.50 hrs	\$90.00
08/13/07	ALN	Begin drafting Motion to Dismiss the Appeal.	0.50 hrs	\$90.00
08/14/07	CS	Edit and amend Motion to Dismiss Appeal. (L510 A104)	0.30 hrs	\$66.00
08/14/07	EDS	Review of Motion; correspondence.	0.50 hrs	\$112.50
08/14/07	ALN	Finish drafting Motion to Dismiss Appeal.	3.10 hrs	\$558.00
08/14/07	ALN	Review and revise Motion to Dismiss Appeal.	0.30 hrs	\$54.00
08/15/07	EDS	Office conference with co-counsel; receipt and review correspondence from Court.	0.30 hrs	\$67.50
08/15/07	AMW	Receipt and review correspondence from Court of Appeals. (L110 A104)	0.10 hrs	\$9.50
08/16/07	CS	Receive and review August 15th letter from Court of Appeals to Appellant regarding failure to file Designation of Matter. (L520 A104)	0.10 hrs	\$22.00
08/24/07	EDS	Receipt and review of Response.	0.30 hrs	\$67.50
08/24/07	AMW	Receipt and review Designation of Matter. (L210 A104)	0.10 hrs	\$9.50
08/24/07	AMW	Receipt and review Appellants Response to Respondents Motion to Dismiss. (L210 A104)	0.20 hrs	\$19.00
08/27/07	CS	Receive and review Appellant's response to Respondent's Motion to Dismiss Appeal. (L520 A104)	0.20 hrs	\$44.00
08/27/07	CS	Receive and review Appellant's "Designation of Matter."	0.10 hrs	\$22.00

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(L520 A104)

08/27/07	EDS	Review of Brief.	0.40 hrs	\$90.00
08/28/07	CS	Review case status; evaluate prospective case management activities for September 2007. (L120 A104)	0.10 hrs	\$22.00
08/28/07	EDS	Office conference with Mr. Christian B. Stegmaier regarding Reply.	0.10 hrs	\$22.50
08/28/07	ALN	Review Appellant's Designation of Matter and Response to Motion to Dismiss in preparation to draft Reply.	0.30 hrs	\$54.00
08/28/07	ALN	Outline Reply to Appellant's Response to Motion to Dismiss.	0.70 hrs	\$126.00
08/28/07	ALN	Review relevant Appellate Court Rules in preparation to draft Reply to Appellant's Response to Motion to Dismiss.	0.30 hrs	\$54.00
08/28/07	ALN	Draft Reply to Appellant's Response to Motion to Dismiss.	2.90 hrs	\$522.00
08/28/07	ALN	Review and revise draft of Reply to Appellant's Response to Motion to Dismiss.	0.20 hrs	\$36.00
08/29/07	EDS	Receipt and review of Court of Appeals correspondence.	0.10 hrs	\$22.50
08/29/07	ALN	Review changes made by Attorney Stegmaier to Reply to Response to Motion to Dismiss Appeal	0.10 hrs	\$18.00
08/29/07	AMW	Receipt and review correspondence from Court of Appeals to Andrew Jones. (L110 A104)	0.10 hrs	\$9.50
08/31/07	EDS	Correspondence.	0.20 hrs	\$45.00
09/03/07	CS	Receive and review August 28th letter from Court of Appeals to Appellants' counsel regarding Amended Designation of Matter. (L510 A104)	0.10 hrs	\$22.00
09/04/07	EDS	Receipt and review of court correspondence to Mr. Jones.	0.20 hrs	\$45.00
09/04/07	AMW	Receipt and review correspondence from South Carolina Court of Appeals to Andrew M. Jones regarding motion. (L110 A104)	0.10 hrs	\$9.50
09/10/07	EDS	Receipt and review of correspondence; motion to file out of time; memorandum.	0.20 hrs	\$45.00
09/10/07	AMW	Receipt and review Motion to file Designation of Matter out of Time. (L110 A104)	0.10 hrs	\$9.50
09/11/07	CS	Receive and review Appellant's Motion to File Designation of Matter Out of Time and a supporting memorandum. (L520 A104)	0.20 hrs	\$44.00
09/25/07	EDS	File review.	0.10 hrs	\$22.50
09/25/07	AMW	Receipt and review correspondence from SC Court of Appeals. (L110 A104)	0.10 hrs	\$9.50
10/01/07	EDS	Receipt and review of correspondence; office conference with Mr. Christian B. Stegmaier; office conference with Ms. Amy Neuschafer.	0.30 hrs	\$67.50
10/04/07	EDS	Planning for deposition.	0.40 hrs	\$90.00

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10/05/07	EDS	Planning for deposition.	1.00 hrs	\$225.00
10/07/07	EDS	Office conference with Mr. Hawkins; planning.	0.50 hrs	\$112.50
10/09/07	EDS	Office conferences (2) with Mr. Neuschafer regarding fees; research.	0.30 hrs	\$67.50
10/10/07	ALN	Review Appellate Court Rules to determine time period for filing of motion to tax costs; confer with Attorney Sullivan regarding the same.	0.20 hrs	\$36.00
10/15/07	EDS	Receipt and review of correspondence.	0.10 hrs	\$22.50
10/16/07	ALN	Receipt and review Appellant's Motion to Reinstate Appeal; check filing deadline to ensure it was timely filed.	0.20 hrs	\$36.00
10/18/07	ALN	Draft Return to Appellant's Motion to Reinstate the Appeal.	3.00 hrs	\$540.00
10/19/07	EDS	Review and revisions of motion.	0.40 hrs	\$90.00
10/19/07	PAR	Review Laurens County jury and non jury rosters to check the status of the case. (no charge)	0.10 hrs	\$0.00
10/19/07	ALN	Continue to draft Respondent's Return to Appellant's Motion to Reinstate the Appeal.	1.60 hrs	\$288.00
10/19/07	ALN	Review and revise first draft of Respondent's Return to Appellant's Motion to Reinstate the Appeal.	0.20 hrs	\$36.00
10/22/07	CS	Review matters regarding return to Appellant's Motion to Reinstate. (L520 A104)	0.10 hrs	\$22.00
10/22/07	EDS	Review of return to motion.	0.20 hrs	\$45.00
10/24/07	EDS	Correspondence.	0.40 hrs	\$90.00
10/25/07	EDS	Correspondence; planning for hearing.	0.40 hrs	\$90.00
10/26/07	EDS	Receipt and review of correspondence regarding hearing; review of roster.	0.40 hrs	\$90.00
10/26/07	PKB	Prepare draft letter to Jones with notice of Motion hearing on December 10, 2007.	0.10 hrs	\$10.00
10/26/07	PKB	Review docket for the week of December 10, 2007 in Laurens County for the Motion for Sanctions that was previously filed. Add hearing to attorney's calendar.	0.20 hrs	\$20.00
10/26/07	PKB	Research for the motion for sanctions brief.	0.60 hrs	\$60.00
10/31/07	EDS	Receipt and review of court order.	0.10 hrs	\$22.50
11/05/07	EDS	Receipt and review of correspondence.	0.30 hrs	\$67.50
11/05/07	EDS	Receipt and review of correspondence.	0.30 hrs	\$67.50
11/21/07	PKB	Draft the Memorandum in Support of the Motion for Sanctions. Prepare research to support this memorandum.	1.50 hrs	\$150.00
11/27/07	EDS	Receipt and review of correspondence regarding hearing.	0.20 hrs	\$45.00
11/27/07	PKB	Telephone call to Lynn Lancaster to continue the Sanctions hearing scheduled for December 10, 2007.	0.10 hrs	\$10.00
11/27/07	PKB	Prepare e-mail to Lynn Lancaster regarding the	0.10 hrs	\$10.00

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continuance request in this matter.

11/27/07	PKB	Fifth telephone call to Lynn Lancaster's office regarding the Motion for Sanctions hearing continuation.	0.20 hrs	\$20.00
11/27/07	PKB	Prepare a letter to Elaine and Debbie Grubbs at Laurens County Clerk's office requesting a continuance in this matter.	0.20 hrs	\$20.00
11/28/07	EDS	Receipt and review of correspondence; correspondence.	0.20 hrs	\$45.00
11/28/07	AMW	Telephone call from Joy Hoston, court reporter regarding copy of transcript. (L110 A108)	0.10 hrs	\$9.50
11/28/07	PKB	Draft a letter to opposing counsel regarding the continuance of the Motion for Sanctions hearing.	0.10 hrs	\$10.00
12/06/07	PKB	Revise the letter to opposing counsel regarding the motion hearing continuance.	0.10 hrs	\$10.00
12/07/07	PAR	Review Laurens County jury and non jury roster to check the status of the case. (No charge)	0.10 hrs	\$0.00
12/09/07	EDS	Receipt and review of Order regarding restatement petition.	0.10 hrs	\$22.50
12/09/07	EDS	Receipt and review of order.	0.10 hrs	\$22.50
12/14/07	PAR	Review Laurens County jury and non jury roster to check the status of the case. (No charge)	0.10 hrs	\$0.00
12/20/07	EDS	Review of correspondence; documentation.	0.50 hrs	\$112.50
12/21/07	PAR	Review the Laurens County jury and non jury roster to check the status of the case. (no charge)	0.10 hrs	\$0.00
12/28/07	LEB	(No Charge) Review county jury and nonjury rosters to check the status of the case.	0.10 hrs	\$0.00
01/02/08	CS	Review matters regarding status of Appellant's Motion to Reinstate.	0.20 hrs	\$44.00
01/02/08	EDS	Receipt and review of correspondence; correspondence regarding Motion to Reinstate.	0.40 hrs	\$90.00
01/02/08	ALN	Review Order on Petition to Reinstate Appeal and determine action to be taken after deadline stated in Order runs.	0.20 hrs	\$36.00
01/02/08	ALN	Telephone call to Court of Appeals to determine if Appellant has filed proof of service as required by Order of the Court dated December 5, 2007; nothing has been filed.	0.10 hrs	\$18.00
01/07/08	EDS	Correspondence; Receipt and review of correspondence.	0.30 hrs	\$67.50
01/16/08	EDS	Correspondence.	0.20 hrs	\$45.00
01/21/08	EDS	Receipt and review of Transcript; correspondence.	1.00 hrs	\$225.00
01/21/08	EDS	Correspondence.	0.20 hrs	\$45.00
01/21/08	AMW	Receipt and review Transcript of Record. (L110 A104)	0.30 hrs	\$28.50
01/21/08	PKB	Review the Transcript of Record for hearing date March 6, 2007.	0.40 hrs	\$0.00

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01/28/08	ALN	Confer with Mr. Edward Sullivan regarding need to write letter to Court of Appeals regarding case status and Appellant's continued violation of the Appellate Court Rules.	0.10 hrs	\$18.00
01/28/08	ALN	Receipt and review Final Brief of Appellant.	0.10 hrs	\$18.00
01/28/08	ALN		0.50 hrs	\$90.00
01/28/08	AMW	Receipt and review Appellant's Final Brief. (L510 A104)	0.20 hrs	\$19.00
01/29/08	ALN	Draft letter to Clerk of Court of Appeals requesting court clarify case status and rule on Appellant's Motion to Reinstate the Appeal.	0.90 hrs	\$162.00
01/29/08	ALN	Review file to determine pertinent dates and documents for inclusion in letter to Clerk of Court of Appeals inquiring into case status and requesting court rule on Appellant's Motion to Reinstate the Appeal.	0.40 hrs	\$72.00
01/29/08	AMW	(No charge) Conference with Ms. Amy Neuschafer regarding status appeal. (L120 A105)	0.40 hrs	\$0.00
01/30/08	ALN	Review and revise letter to Clerk of Court of Appeals requesting Court look into case status.	0.20 hrs	\$36.00
01/31/08	EDS	Review of correspondence.	0.20 hrs	\$45.00
02/06/08	EDS	Receipt and review of correspondence.	0.10 hrs	\$22.50
02/15/08	AMW	Receipt and review correspondenced from Court of Appeals granting motion to reinstate. (L510 A104)	0.10 hrs	\$10.00
02/18/08	ALN	Receipt and review Order granting Appellant's Motion to Reinstatement the Appeal.	0.10 hrs	\$18.00
02/20/08	PKB	Review the May 2007 and the February 2008 letter from the client to Gandalf Properties regarding their tenants.	0.10 hrs	\$10.00
02/28/08	CS	Case status review; evaluate/analyze prospective case management activities for March 2008.	0.10 hrs	\$22.50
02/28/08	EDS	Receipt and review of correspondence, Order; office conference with paralegal, office conference with Ms. Amy Neuschafer; correspondence.	0.90 hrs	\$202.50
02/29/08	EDS	Correspondence; receipt and review of correspondence with Mr. Christian B. Stegmaier; review of Rules.	0.60 hrs	\$135.00
02/29/08	ALN	Review and analyze Appellate Court Rules concerning motion for costs and motion for sanctions to determine appropriate time for filing such motions.	0.50 hrs	\$90.00
02/29/08	ALN	Receipt and review Court of Appeals opinion affirming decision of trial court.	0.10 hrs	\$18.00
03/03/08	EDS	Office conference with Mr. Christian B. Stegmaier.	0.10 hrs	\$22.50
03/04/08	EDS	Office conference with paralegal regarding Claim and Delivery.	0.20 hrs	\$45.00
03/05/08	EDS	Receipt and review of correspondence.	0.30 hrs	\$67.50
03/17/08	CS	Review internal memo directing return to Appellant's Petition for Rehearing be drafted.	0.10 hrs	\$22.50

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03/17/08	EDS	Receipt and review of letter; review of correspondence; two office conferences with Ms. Amy Neuschafer.	0.90 hrs \$202.50
03/17/08	ALN	Receipt and review Petition for Rehearing.	0.10 hrs \$18.00
03/17/08	ALN	Draft Return to Petition for Rehearing.	1.50 hrs \$270.00
03/17/08	ALN	Review previous appellate filings in preparation to draft Return to Petition for Rehearing.	0.20 hrs \$36.00
03/17/08	AMW	Receipt and review Petition for Rehearing.	0.30 hrs \$30.00
03/18/08	CS	Edit and amend Return to Petition for Rehearing.	0.20 hrs \$45.00
03/19/08	ALN	Review and execute Return to Petition for Rehearing and letter forwarding same to clerk for filing.	0.20 hrs \$36.00
03/20/08	PKB	NO CHARGE - Review the Court roster to obtain trial status.	0.10 hrs \$0.00
04/21/08	EDS	Receipt and review of Court Order; receipt and review of correspondence.	0.30 hrs \$67.50
04/21/08	AMW	Receipt and review Order denying Petition for Rehearing.	0.10 hrs \$10.00
04/22/08	EDS	Research regarding Remitter.	0.40 hrs \$90.00
04/22/08	EDS	File review.	0.10 hrs \$22.50
04/25/08	PKB	Review the Laurens County Jury Trial Roster to determine the status of this matter.	0.10 hrs \$10.00
05/02/08	PKB	Review the Laurens County motion roster to obtain the current status of this matter.	0.10 hrs \$10.00
05/13/08	EDS	Receipt and review of correspondence.	0.40 hrs \$90.00
05/20/08	ALN	Receipt and review Motion and Petition for Extension of Time to File a Petition for Writ of Certiorari.	0.10 hrs \$18.00
05/21/08	AMW	Receipt and review Order regarding Writ of Certiorari.	0.10 hrs \$10.00
06/26/08	CS	Receive and review Order of Supreme Court dismissing appeal; email to Amy L. Neuschafer regarding directive to begin motion for costs.	0.20 hrs \$45.00
06/26/08	EDS	File review.	0.10 hrs \$22.50
06/26/08	EDS	Receipt and review of correspondence from Court; correspondence.	0.30 hrs \$67.50
06/26/08	AMW	Receipt and review Notice of Dismissal.	0.10 hrs \$10.00
06/26/08	PKB	Review opposing counsel's letter to the court concerning the appeal. Review the Order from the court concerning opposing counsel and order a dismissal.	0.20 hrs \$20.00
06/30/08	CS	Receive and review notice of opposing counsel acknowledging oral argument.	0.10 hrs \$22.50
06/30/08	EDS	Receipt and review of remittitur; two office conferences with Mr. Christian B. Stegmaier.	0.20 hrs \$45.00
06/30/08	PKB	Review the letter of the Appeals Court directed to the County Court.	0.10 hrs \$10.00
07/03/08	LEB	(No charge) Review county's jury and nonjury roster to determine status of the case.	0.10 hrs \$0.00

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07/03/08	PKB	Review the Laurens County motions roster to obtain the status of this matter.	0.10 hrs	\$10.00
07/07/08	ALN	Review and analyze prior appellate filings and appellate court rules to determine events that should be discussed in Motion to Tax Costs.	1.30 hrs	\$234.00
07/07/08	ALN	Outline contents of Motion to Tax Costs.	1.00 hrs	\$180.00
07/07/08	ALN	Research SC case law regarding Rules 222 and 240, SCACR.	0.30 hrs	\$54.00
07/08/08	ALN	Draft Motion to Tax Costs.	3.30 hrs	\$594.00
07/08/08	ALN	Review trial court filings to determine dates relevant to Motion to Tax Costs.	0.80 hrs	\$144.00
07/09/08	ALN	Draft Itemized Statement of Costs.	0.50 hrs	\$90.00
07/09/08	ALN	Determine costs incurred to be listed in Itemized Statement of Costs accompanying Motion to Tax Costs.	0.20 hrs	\$36.00
07/09/08	ALN	Review and revise Motion to Tax Costs and Itemized Statement of Costs.	0.20 hrs	\$36.00
07/10/08	CS	Review, edit and execute Motion for Costs and supporting Affidavit.	0.20 hrs	\$45.00
07/10/08	CS	Draft letter to Court of Appeals forwarding the Motion to Tax for filing.	0.20 hrs	\$45.00
07/10/08	EDS	Review of Petition for Costs; office conference with Ms. Amy Neuschafer.	0.40 hrs	\$90.00
07/10/08	ALN	Revise Motion to Tax Costs and Itemized Statement of Costs to include filing fee for same.	0.40 hrs	\$72.00
07/10/08	PKB	Review the Laurens county motions roster to obtain the motion hearing status.	0.10 hrs	\$10.00
07/11/08	PAR	Review the Laurens County jury and non jury rosters to check the status of the case. (no charge)	0.10 hrs	\$0.00
07/15/08	PKB	Review the incoming correspondence from opposing counsel concerning the outstanding bill.	0.10 hrs	\$10.00
07/24/08	CS	Receive and review Order of Court of Appeal: Motion for Costs - granted.	0.10 hrs	\$22.50
07/24/08	EDS	Receipt and review of correspondence.	0.10 hrs	\$22.50
07/24/08	ALN	Receipt and review Order Granting Respondent's Motion to Tax Costs.	0.10 hrs	\$18.00
07/24/08	PKB	Review the correspondence and Order of the Court.	0.10 hrs	\$10.00
07/25/08	CS	Receive and review Order Granting Motion to Tax Costs; forward copy of same to opposing counsel requesting funds be paid as ordered.	0.30 hrs	\$67.50
07/25/08	EDS	Correspondence.	0.10 hrs	\$22.50
07/28/08	EDS	Receipt and review of Remitter.	0.10 hrs	\$22.50
08/01/08	PKB	Review the motion roster for Laurens County to obtain the status of this matter.	0.10 hrs	\$10.00

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08/04/08	EDS	Correspondence regarding hearing.	0.10 hrs	\$22.50
08/12/08	EDS	Correspondence.	0.10 hrs	\$22.50
08/12/08	EDS	Review of file status.	0.10 hrs	\$22.50
08/14/08	EDS	Receipt and review of correspondence; correspondence.	0.20 hrs	\$45.00
08/14/08	PKB	Review the Laurens County Motion Roster to ascertain the status of the Motion hearing in this matter.	0.10 hrs	\$10.00
08/18/08	EDS	Correspondence; Receipt and review of correspondence; office conference with Ms. Amy Neuschafer.	0.50 hrs	\$112.50
08/18/08	ALN	Receipt and review letter from Plaintiff's counsel to clerk of court requesting no hearing be scheduled on Defendant's motion for sanctions.	0.10 hrs	\$18.00
08/18/08	PKB	Review the letter to the court from opposing counsel concerning our Motion for Sanctions.	0.10 hrs	\$10.00
08/19/08	EDS	Correspondence.	0.30 hrs	\$67.50
08/19/08	ALN	Conference with Eddie Sullivan regarding response to Plaintiff's attorney's letter to Clerk of Court requesting no hearing be scheduled on Defendant's Motion for Sanctions.	0.30 hrs	\$54.00
08/20/08	EDS	Correspondence.	0.10 hrs	\$22.50
08/21/08	PKB	Review the court dockets to ascertain the status of the case.	0.10 hrs	\$10.00
08/22/08	LEB	(No charge) Review county's jury and nonjury rosters to determine status of the case.	0.10 hrs	\$0.00
08/25/08	ALN	Confer with Mr. Edward Sullivan and Mr. Christian B. Stegmaier regarding strategy for recouping attorney's fee from Appellant.	0.10 hrs	\$18.00
08/29/08	LEB	(No charge) Review county's jury and nonjury roster to determine status of the case.	0.10 hrs	\$0.00
09/05/08	LEB	(No charge) Review county's jury and nonjury roster to determine status of the case.	0.10 hrs	\$0.00
09/05/08	AMW	Review Laurens County Motions Roster to determine status of pending Motion for Sanctions.	0.10 hrs	\$10.00
09/12/08	LEB	(No charge) Review county's jury and nonjury rosters to determine status of the case.	0.10 hrs	\$0.00
09/19/08	EDS	Receipt and review of Motion; correspondence.	0.30 hrs	\$67.50
09/19/08	EDS	Correspondence; planning.	0.50 hrs	\$112.50
09/19/08	AMW	Review Laurens County Motions Roster to determine status of pending Motion for Sanctions.	0.10 hrs	\$10.00
09/19/08	PKB	Review the Laurens County motions roster to ascertain the status of this matter.	0.10 hrs	\$10.00
09/25/08	PKB	Review the Laurens County Court Rosters to determine this case's status.	0.10 hrs	\$10.00
09/30/08	EDS	Office conference with paralegal re preparation for	0.10 hrs	\$22.50

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hearing.

09/30/08	PKB	Prepare an event chronology and document summary in preparation for the Motion for Sanctions hearing October 23.	1.80 hrs	\$180.00
10/01/08	EDS	File review.	0.10 hrs	\$22.50
10/16/08	PKB	Review the Laurens County Rosters to ascertain the status of this matter.	0.10 hrs	\$10.00
10/20/08	EDS	Preparation of Memorandum	1.00 hrs	\$225.00
10/21/08	EDS	Preparation of Memorandum	1.50 hrs	\$337.50
10/21/08	PKB	Draft the Memo in Support of the Motion for Sanctions. Review all applicable laws, civil procedural rules, etc. applicable to this matter. Draft a bulleted exhibit to be attached to the memo.	5.00 hrs	\$500.00
10/22/08	CA	Preparation of Memorandum; office conference with attorney Edward Sullivan	7.00 hrs	\$1,260.00
10/22/08	EDS	Preparation for Hearing; Review and revise supporting Memorandum and Exhibits	6.00 hrs	\$1,350.00
10/23/08	EDS	Travel to and from Laurens; attend Hearing (estimate)	4.00 hrs	\$900.00
Total fees for this matter				\$22,805.00

DISBURSEMENTS

		Units	
10/23/08	Mileage - 150 miles @ .585 ea. to and from Laurens for Hearing		\$87.75
01/23/08	Vendor HARRIET P BENNETT; Invoice # 1128-100; Transcript Fees		\$16.50
10/23/08	Inhouse Copies	1441	\$144.10
10/23/08	Long Distance Telephone		\$0.75
10/23/08	Filing Fees		\$75.00
10/23/08	Mileage - miles @ .585 ea. to		\$2.74
10/23/08	Postage		\$16.14
10/23/08	Prints	162	\$16.20
10/23/08	Research		\$4.51
10/23/08	Long Distance Telephone		\$0.23
Total disbursements for this matter			\$363.92

TIMEKEEPER SUMMARY

Stegmaier, Christian B.	SENIOR SHAREHOLDER	2.00 hrs	220.00 /hr	\$440.00
Stegmaier, Christian B.	SENIOR SHAREHOLDER	1.50 hrs	225.00 /hr	\$337.50
Sullivan, Edward D.	OF COUNSEL	58.40 hrs	225.00 /hr	\$13,140.00
Biggins, Lee E.	PARALEGAL II	0.60 hrs	0.00 /hr	\$0.00
Rossi, Peggy A.	PARALEGAL II	0.50 hrs	0.00 /hr	\$0.00
Appleby, Charles L.	ASSOCIATE	7.00 hrs	180.00 /hr	\$1,260.00
Floyd, Lee	ASSOCIATE	0.60 hrs	75.00 /hr	\$45.00

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Goings, Robert F.	ASSOCIATE	0.20 hrs	180.00 /hr	\$36.00
Neuschafer, Amy L.	ASSOCIATE	28.90 hrs	180.00 /hr	\$5,202.00
Rogers, Christy C.	PARALEGAL	0.10 hrs	95.00 /hr	\$9.50
Bondurant, Stefania R.	LAWCLERK	0.80 hrs	75.00 /hr	\$60.00
Wells, Logan M.	LAWCLERK	10.72 hrs	75.00 /hr	\$804.00
Bianco, Angie C.	SENIOR PARALEGAL	0.40 hrs	100.00 /hr	\$40.00
Boatwright, Patty K.	SENIOR PARALEGAL	0.10 hrs	0.00 /hr	\$0.00
Boatwright, Patty K.	SENIOR PARALEGAL	12.10 hrs	100.00 /hr	\$1,170.00
Stobbe, Andrea M.	SENIOR PARALEGAL	0.40 hrs	0.00 /hr	\$0.00
Stobbe, Andrea M.	SENIOR PARALEGAL	1.80 hrs	95.00 /hr	\$171.00
Stobbe, Andrea M.	SENIOR PARALEGAL	0.90 hrs	100.00 /hr	\$90.00

TOTAL FEES	\$22,805.00
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TOTAL DISBURSEMENTS	\$363.92
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TOTAL CHARGES CURRENT BILL	\$23,168.92
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LESS PAYMENT FROM TRUST	- \$1,016.50
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BALANCE DUE FOR THIS BILL	\$22,152.42
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Please remit all payments to the following address:

Collins & Lacy, PC
P.O. Box 12487
Columbia, S.C. 29211
(803)256-2660

PLEASE REFERENCE OUR 16 DIGIT BILL NUMBER LOCATED AT THE TOP OF THIS BILL.

TASK CODE SUMMARY

Task Code	Task	This Bill
119	*Conv* Unknown Desc	\$4,102.50
A103	*	\$292.50
A111	*	\$187.50
L110	Fact Investigation/Development	\$166.50
L120	Analysis/Strategy	\$551.00
L190	Other case assessment, develop	\$1,393.50
L210	Pleadings	\$2,025.00
L240	Dispositive motions	\$328.50
L250	Dispositive motions	\$3,397.50
L250	Other Written Motions and Subm	\$3,397.50
L330	Depositions	\$1,538.00
L440	Other trial preparation and su	\$315.00
L460	Other trial preparation and su	\$450.00
L470	Post-trial motions and submiss	\$180.00
L510	Enforcement	\$22.50
L520	Appellate motions and submissi	\$7,154.00
L520	Appellate briefs	\$633.50

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L530

Oral arguments

\$67.50

Exhibit (4)

BARBARA T. WASSON

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS)

FOR THE EIGHT CIRCUIT

2001 JUN -6 P 1: 23

Augusta S. Lawson,)

CASE NO: 01-CP-30-105

Plaintiff)

vs.)

MEMORANDUM IN SUPPORT
OF PLAINTIFF'S MOTION
TO DISMISS COUNTERCLAIM

Karen Irby,)

Defendant)

FACTS

This is an action seeking to enjoin the Defendant and her agents from violating covenants and restrictions in a subdivision. Plaintiff lives in Green Acres Subdivision (the "Subdivision"). The Subdivision is restricted by Covenants and Restrictions, including, among others, a restriction prohibiting temporary structures as residences, either as a temporary residence or a permanent residence. Section C-5 of the Covenants and Restrictions provides as follows:

Temporary Structure: No structure of a temporary character (trailer, basement, tent, shack, garage, barn, or other out-building) shall be used on any lot at any time as a residence, either temporarily or permanently.

Defendant is attempting to place onto a restricted lot in the Subdivision a structure that has been hauled into the Subdivision in two pieces on transport trailers. Plaintiff seeks to enforce the restrictions. On February 15, 2001, a temporary restraining order was issued by G. Thomas Cooper, Jr. On March 8, 2001, a temporary injunction was issued by Judge Gary E. Clary enjoining Defendant and all persons holding under or aiding or assisting Defendant from

placing, constructing, and/or erecting on property in the Subdivision the structure now placed, or being placed, or intended to be so placed by Defendant, or such similar structure, and from allowing such a structure to so remain in the Subdivision pending the trial of this action.

Defendant answered and filed a counterclaim against Plaintiff alleging that "upon the arrival of said modular home at Defendant's property or home site, Plaintiff thereupon instituted a civil action in this Court to prevent Defendant from placing Defendant's modular home upon Defendant's property." In addition, Defendant's pleading states "Jury Trial Demanded". Plaintiff now moves to dismiss Defendant's counterclaim pursuant to SCRCP 12(b)(6) for failure to state a cause of action for which relief can be granted.

LAW/ANALYSIS

SCRCP 65 governs the procedure in South Carolina courts relating to injunctions. In this action, Plaintiff has proceeded under SCRCP 65 to obtain, first, a temporary restraining order and, second, a preliminary injunction. Injunctions are necessary to maintain the status quo in matters such as the case at hand, and this Court has properly issued such a preliminary injunction.

The seeking of injunctive relief is not a tort. This rule is an aspect of the more general rule that no action lies against a party for resort to civil courts in good faith. 43A C.J.S. Injunctions Section 314. In the event that a party is found to have been wrongfully enjoined or restrained, his remedy is an application to the court against security, if any, earlier required by the court.

Injunctions are equitable in nature and are therefore tried before the court rather than a jury. Implicit in SCRCP 65 is that the enjoined party may apply to the court for damages sustained, not exceeding an amount earlier specified by the court, in the event that the court determines plaintiff was not entitled to the injunction. According to the reporter's notes, Rule 65, enacted in 1985, continued the state practice then in effect. The law as formerly codified in SC Code Ann. 15-55-60 provided for such a procedure. A condition precedent to the accrual of liability for damages is a determination that an injunction was wrongfully issued. 43A C.J.S. Injunctions Section 319.

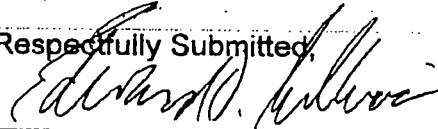
Persons have a right to seek redress in courts of law and to enforce their rights. To do so is not a tort. In the case at hand, the Plaintiff seeks only to enforce covenants and restrictions encumbering real estate. No cause of action exists against parties for application to the courts in good faith for injunctive relief. A wrongfully enjoined party may seek relief from the court pursuant to SCRCP 65 in the event, and only in the event, that there is a previous determination that the injunction was wrongful. Defendant's counterclaim fails to state a cause of action for which relief can be granted and should, therefore, be dismissed.

CONCLUSION

It is not unlawful for parties to apply to the courts to enforce rights. Plaintiff has proceeded in accordance with SCRCP 65. This action is one in equity and is for the court to hear as opposed to a jury. SCRCP 65 provides for practice and procedure in obtaining injunctions and for the remedy for wrongful injunction. No separate cause of action exists against Plaintiff. In addition, there can be no

accrual of liability until and unless there is a determination that an injunction was wrongful. Defendant's counterclaim, therefore, fails to state a claim for which relief can be granted and should, therefore, be dismissed.

Respectfully Submitted,

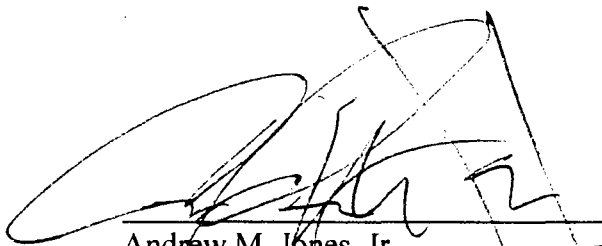


Edward D. Sullivan
Sullivan Law Firm, PC
1200 Main Street, Suite 803
PO Box 11714
Columbia, South Carolina 29211
(803) 748-7485
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
June 6, 2001

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g) of the South Carolina Appellate Court Rules, Counsel for appellant certifies that this record on appeal contains all material proposed to be included by any of the parties and not any other material.



Andrew M. Jones, Jr.
JONES & JONES, LLC
21 Harris Street (29601); P.O. Box 9212
Greenville, SC 29604
864/271-1230

June 13, 2011

THE STATE OF SOUTH CAROLINA
In the Court Appeals

Appeal from Laurens County
Court of Common Pleas
J. Mark Haynes, II, Circuit Court Judge

Case No: 2006-CP-30-547

Karen Irby,

Appellant,

V.

Augusta Lawson,

Respondent.

APPENDIX TO RECORD ON APPEAL

Andrew M. Jones, Jr.
JONES & JONES, LLC
P. O. Box 9212
Greenville, SC 29604
864/271-1230 (office); 864/271-1286 (fax)
Attorney for Appellant

Edward D. Sullivan
P.O. Box 11714
Columbia, SC 29211
Attorney for Respondent

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Activity List of Defendant's Attorney filed with lower court October 23, 2008.....	4

SULLIVAN LAW FIRM, PC

Also Admitted:
District of Columbia

EDWARD D. SULLIVAN, JD, CPA
LYNN W. LANCASTER
Attorneys and Counselors at Law

1200 Main Street, Suite 400
Columbia, South Carolina 29201
Facsimile: (803) 779-9488
edsesquire@aol.com

MAILING ADDRESS:
Post Office Box 11714
Columbia, South Carolina 29211

2008 OCT 23 4:10:44

Telephone: (803) 748-7485

LAURENS COUNTY
August 22, 2006
CLERK OF COURT

VIA FACSIMILE 864.271.1286 and US Mail

Mr. Andrew M. Jones, Jr.
P.O. Box 9212
Greenville, SC 29604

Re: Irby v. Lawson
06-CP-30-547

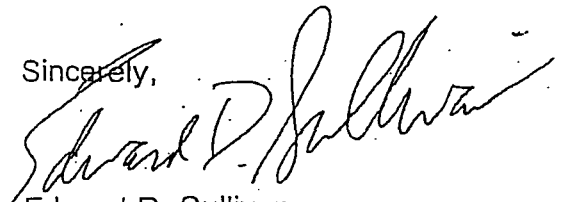
Dear Mr. Jones:

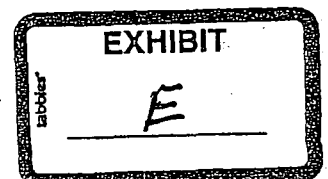
Ms. Lawson has asked me to represent her in the above-captioned action that you have filed. I believe that she was served on Thursday, August 17, 2006. Accordingly, the due date to answer or otherwise respond is Monday, September 18, 2006. If your records indicate otherwise, please let me know.

The claim that you are making in this case was also made in the previous litigation between these parties- first by way of Ms. Irby's Motion to Reconsider Temporary Restraining Order, which was denied by Judge Clary, and second by way of Ms. Irby's counterclaim, which was dismissed by Judge Clary. Ms. Irby did not appeal either order. I told you this when we spoke by telephone earlier this year. The present lawsuit, in addition to having no merit, is barred by the doctrine of res judicata and is in fact frivolous since this claim was previously litigated.

In the event that you do not have the entire file of the previous lawsuit, I am attaching copies of the answer and counterclaim, Plaintiff's Notice of Motion and Motion to Dismiss Counterclaim and the order granting the Plaintiff's Motion to Dismiss Counterclaim in the previous litigation. I ask you to review them carefully. If you would like to discuss this matter after reviewing these documents, please do not hesitate to call.

Sincerely,


Edward D. Sullivan



Mr. Andrew M. Jones, Jr.

February 22, 2007

Page 2

Sincerely,

A handwritten signature in cursive script, appearing to read "Ed Sullivan", written in dark ink.

Edward D. Sullivan

EDS:bre
Enclosure

Collins & Lacy

ATTORNEYS AT LAW

2008 OCT 23
Edward D. Sullivan | Direct Dial: 803.255.0459 | E-Mail
Of Counsel

February 23, 2007

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Andrew M. Jones, Jr.
Post Office Box 9212
Greenville, SC 29604

Re: Irby v. Lawson
06-CP-30-547
C&L File: EDS

Dear Mr. Jones:

On August 22, 2006 I sent to you a packet of information pertaining to the above-referenced lawsuit which you have filed. The packet of information includes an Order signed by Judge Gary E. Clary, my Notice of Motion and Motion to Dismiss Counterclaim, the Order Denying your client's Motion to Reconsider the TRO (temporary restraining order), and Order from Judge Gary E. Clary granting the preliminary injunction, the Order granting a restraining order, and a copy of the Counterclaim that was filed in the previous lawsuit between these parties.

As I've informed you, Judge Clary previously ruled in our favor on this exact claim in previous litigation between the parties. Mrs. Lawson had a right to go to court to attempt to enforce the restriction on the property which she did. The previous attempt to sue Mrs. Lawson for enforcing her rights failed because it had no merit. It will fail again because not only does it have no merit, but more importantly, is *res judicata*. This matter has been heard and decided. It was not appealed. The decision is final.

My letter to you of August 22, 2006, copy (with enclosures) which is enclosed, invited you to reconsider your position in this matter. I also asked you to call me if you would like to discuss it. I have not heard from you. I understand my motion will be heard on May 6, 2007. This hearing is a waste of the Court's time as well as mine.

This matter is grossly frivolous: I will ask the Court for fees and costs at the conclusion of the hearing.

If you would like to discuss this matter please give me a call at (803) 255.0459.

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For delivery information visit www.usps.com

OFFICIAL USE

Postage \$ 1.41
Certified Fee 2.10
Return Receipt Fee (Endorsement Required) 1.85
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees \$ 5.36

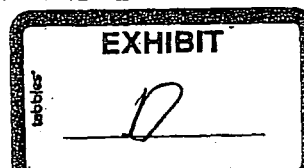
10:47
FEB 22 2007
COLUMBIA SC 29211

Sent To
Mr. Andrew M. Jones, Jr.
Street, Apt. No.
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PS Form 3800, June 2002 See Reverse for Instructions

Karen Irby v. Augusta S. Lawson
Civil Action No.: 2006-CP-30-547

Date Signed	Date Filed/Heard	2008 OCT 23 A 10:41
07/15/06	07/21/06	• Complaint filed by Karen Irby, C/A No.: 2006-CP-30-547
09/15/06	09/18/06	• Defendant Augusta Lawson files her Notice of Motion and Motion to Dismiss
03/05/07		• Defendant Augusta Lawson files her Memorandum in Support of Defendant's Motion to Dismiss
03/09/07		• Plaintiff Karen Irby files her Memorandum in Opposition to Defendant's 12(b)(6) Motion
03/14/07		• Defendant Augusta Lawson files her Reply to Memorandum in Opposition to Defendant's 12(b)(6) Motion
03/25/07	03/27/07	• The Order Granting Defendant Augusta Lawson's Motion to Dismiss was signed by The Honorable Brooks P. Goldsmith
04/05/07	04/11/07	• Defendant Augusta Lawson filed her Notice of Motion and Motion for Sanctions
04/18/07	04/18/07	• Karen Irby files her Notice of Appeal whereby she appeals the Order of Judge Goldsmith dated 03/25/07
05/07/07		• Plaintiff Karen Irby requests the transcript of the Motion to Dismiss hearing seven (7) days past the deadline.
05/09/07		• The Court of Appeals issued a letter to Plaintiff Karen Irby informing her she had missed the deadline, April 30, 2007, to Order the transcript • She was informed that she must file a motion with the Court to be allowed to Order the transcript within ten (10) days
05/17/07		• Plaintiff Karen Irby files her Motion to Order Transcript Out of Time
05/29/07		• Defendant Augusta Lawson files her Response to Motion to Order Transcript Out of Time
06/19/07		• The Appellate Court issued its Order Granting Plaintiff's Motion to Order Transcript Out of Time and requires Irby to notify Court the day she receives the transcript.
07/12/07		• The Plaintiff notifies the Court by letter that she received the hearing transcript on 07/10/07.
08/09/07		• Plaintiff files her Initial Brief
08/14/07		• The Appellate Court issues a letter to the Plaintiff informing her that she has failed to file the Designation of Matter and she must no petition the Court for approval to file the Designation of Matter Out of Time within ten (10) days.
08/14/07	08/14/07	• Defendant files her Motion to Dismiss Appeal
08/23/07		• Plaintiff Irby files her Designation of Matter to be Included in the Record on Appeal



08/23/07		Plaintiff Irby files her Response to Defendant Lawson's Motion to Dismiss
08/28/07		- The Court notifies Plaintiff Irby, by letter, they have received her Désignation of Matter, however she was directed to file a Motion Requesting Permission to File the Designation of Matter Out f Time - She is again given ten (10) days to comply.
08/28/07	08/29/07	Defendant Lawson's Reply to Plaintiff Irby's Response to Motion to Dismiss Appeal
08/31/07		- The Court notifies Plaintiff Irby, by letter, they have received her Motion fee but the motion has not been received. - She is again given additional time, seven (7) days, to comply.
09/07/07		Motion to File Designation of Matter out of Time
09/07/07		Plaintiff Irby files her Memorandum in Support of Motion to File Designation of Matter out of Time
09/24/07		- The Court filed its Notice that the Court Reporter is granted extension of time up to 10/19/07 to deliver transcript of record. - Transcript to be delivered by 10/19/07
09/27/07	09/28/07	The Court issues its Order Granting Defendant Lawson's Motion to Dismiss and Irby's Motion to file designation of matter out of time is rendered moot.
10/12/07		Plaintiff Irby files her Motion to Reinstate
10/22/07	10/22/07	Defendant Lawson files her Return To Appellant's Motion To Reinstate The Appeal
10/23/07		- The Court given Notice that the Court Reporter is granted extension of time up to 11/19/0to deliver the transcript of record. - Transcript to be delivered by 10/19/07
12/05/07		- The Court issues its Order regarding the Plaintiff's Petition to Reinstate Appeal - Order requires the Appellant to strictly comply with Appellant Court Rules - The Designation of matter is considered filed - Irby has 30 days from the order date file proof of service of the record on appeal - In 30 days the court will consider the motion to reinstate.
01/04/08		Plaintiff Irby files her Amended Certificate of Mailing with the Court.
01/15/08		- The Court notifies Plaintiff Irby, by letter, they have received the Record on Appeal and Proof of Service - The Proof of Service does not indicate service upon the opposing party. - She is given additional time, ten (10) days, to comply.
01/18/08		The Court notifies Plaintiff Irby, by letter, they have received the Amended Proof of Service.

01/24/08		• By letter, Plaintiff Irby serves a copy of her Final Brief upon Attorney Sullivan and the Appellate Court.
02/05/08	02/14/08	• Irby's motion to Reinstate is GRANTED – No Gaps.
03/13/08		• Plaintiff Irby files a Petition for Hearing and Memo in Support of Petition to Rehear the Appeal.
03/19/08	03/19/08	• Defendant Lawson filed her Return to Appellant's Petition for Rehearing
04/18/08		• The Court Issues it's Order Denying the Plaintiff's Petition to Rehear her Appeal.
05/19/08		• Plaintiff Irby files her Motion for a Thirty Day Extension of Time to File a Petition for Writ of Certiorari and Appendix and Supporting Memorandum
05/20/08		• The Court issues an Order allowing the Plaintiff a thirty day extension of time to file the Writ of Certiorari and Appendix.
06/24/08		• Plaintiff Irby, by letter, notifies the Appellate Court that she no longer wishes to file the Writ of Certiorari and Appendix...
06/25/08		• The Honorable Jean Toal issues an Order of the Court Dismissing the case.
06/27/08		• The Appellate Court issues its Remittitur and the case is remanded to the lower court.
07/10/08	07/10/08	• Defendant Augusta Lawson files her Motion to Tax Costs and Itemized Statement of Costs.
07/24/08	07/23/08	• The Court issued its Order Granting the Defendant's Motion in the modified amount of \$1,016.50.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g) of the South Carolina Appellate Court Rules, Counsel for appellant certifies that this record on appeal contains all material proposed to be included by any of the parties and not any other material.

A large, stylized handwritten signature in black ink, appearing to read 'A. Jones, Jr.', is written over a horizontal line.

Andrew M. Jones, Jr.
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864/271-1230

September 15, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County
Court of Common Pleas
J. Mark Hayes, II, Circuit Court Judge

Case No. 06-CP-30-547

KAREN IRBY,

APPELLANT

V..

AUGUSTA LAWSON,

RESPONDENT.

FINAL BRIEF OF APPELANT

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STATEMENT OF ISSUES ON APPEAL

1. The issue of Sanctions was addressed and barred by the Trial Judge Brooks P. Goldsmith's order granting the Respondent's rule 12(B)(6) SCRCPP and he did retain exclusive jurisdiction to hear the Respondent's Motion for Sanctions pursuant to the South Carolina Frivolous Proceeding Sanctions Act. R. pp. 41-42
2. It was reasonable for the Appellant to bring action against the Respondent for damages.
3. The award of Attorney's fees to the Respondent was without evidentiary support.

STATEMENT OF THE CASE

The Plaintiff Karen Irby, a property owner in the Green Acres Subdivision of Laurens County, South Carolina, brought an action against the Defendant Augusta S. Lawson, the sister of her attorney Edward Sullivan seeking punitive and actual damages, as a result of the Defendant Augusta S. Lawson interfering with the Plaintiff Karen Irby's quiet and peaceful use of her property.

On February 15, 2001, on Motion and Application for Temporary Restraining Order Judge G. Thomas Cooper, Jr., granted an Order temporarily restraining the Plaintiff Karen Irby from placing a modular home on her lot in said subdivision.

On March 8, 2001 Judge Gary E Clary issued a Temporary Injunction and dismissed the Plaintiff Karen Irby's counterclaim for damages. It appears that the Temporary Restraining Order and the Temporary Injunction were issued without security being provided by the Defendant Augusta S. Lawson.

In a written decision issued July 22, 2002, the trial court held that the Plaintiff Karen Irby was attempting to place a modular home on her property and that her home was not temporary in nature.

The Defendant Augusta S. Lawson filed a motion to alter or amend the judgment pursuant to Rule 59(e) SCRCPP. The court denied the motion by Order dated September 12, 2002.

The Defendant Augusta S. Lawson appealed the decision to the South Carolina Court of Appeals, where in the Court of Appeals on March 2004, affirmed the decision of the Honorable James W. Johnson.

The Defendant Augusta Lawson appealed the decision of the Court of Appeals to the Supreme Court of South Carolina, wherein the Petition of Writ of Certiorari was denied by the Honorable Chief Justice Toal on August 8, 2005.

The Plaintiff Karen Irby filed a claim against the Defendant Augusta S. Lawson on July 21, 2006 alleging that the Defendant Augusta S. Lawson has caused damage to the Plaintiff by interfering with the Plaintiff's quiet and peaceful use of her property. R. pp. 28-34

During the hearing in the Motion to Dismiss the Defendant requested Sanction.

The Plaintiff appealed the dismissal of her case; the appeal was later dismissed on procedural grounds. Karen Irby vs. Augusta S. Lawson, Unpublished Opinion No 2008-UP-134 submitted February 1, 2008 filed February 27, 2008.

After the Plaintiff's case was dismissed the Defendant filed a Motion for Sanction pursuant to Rule 11, SCRPC of South Carolina Frivolous Civil Proceedings Sanction Act, S.C. Code Ann. § 15-36-10. R. pp. 41-42

The Order dated June 19, 2009 Judge J. Mark Hayes granted the Defendant Sanction pursuant to Rule 11 of the South Carolina Frivolous Civil Proceedings Sanction Act. Code Ann. § 15-36-10. R. pp. 1-9

ARGUMENT

- I. THE ISSUE OF SANCTIONS WAS ADDRESSED AND BARRED BY THE TRIAL JUDGE BROOKS P. GOLDSMITH'S ORDER GRANTING THE RESPONDENT'S RULE 12(B)(6) SCRPC MOTION AND HE DID RETAIN ESCLUSIVE JURISDICTION TO HEAR THE RESPONDENT'S MOTION FOR SANCTIONS PURSUANT TO THE SOUTH CAROLINA FRIVOLOUS PROCEEDING SANCTIONS ACT?

The Respondent Augusta Lawson, the sister of her attorney, Edward Sullivan, sought attorney fees and cost incurred in bringing her written Notice of Motion to Dismiss before the Trial Court. R. pp. 35-38, and 94

"And Your Honor, I think this is clear and I think it falls within the South Carolina Civil Proceedings Sanctions Act".

"So I would ask Your Honor, first of all, to dismiss this law suit with prejudice, and further, to order fees and costs to be paid to the Defendant Ms. Lawson".

The Respondent repeated her request for Sanctions. Tr.. pp. 94 and 96

"I think quite frankly, Your Honor that this is a waste of your time.... and this Court's time, and it is frivolous. I think it is borderline frivolous, or it was then, when they filed a counterclaim to start with, because it didn't survive 12(b)(6). Here today it is clearly res judicata, Your Honor, and I would ask for fees and costs, and that the cause of action be dismissed and not be brought again".

The trial court in its wisdom did not grant or address sanctions in its Order dated March 25, 2007, the issue was clearly brought before the trial court by the Respondent in her written Motion to Dismiss and during Argument before the trial court on March 6, 2007.

Rule 43(L) SCRCF should control the issue of sanctions in this case. Tr. Pp. 103-104

"If any motions is made to any Judge and be denied in whole or in part or be granted conditionally, no subsequent motion upon the same stated facts shall be made to any other Judge in that action".

It is the Plaintiff's position that any relief specifically sought and not granted is denied. Therefore, Judge J. Mark Hayes should not have granted the Respondent's Motion for Sanction. R. pp. 1-9

The Respondent is informed and believe that the Respondent's Motion Sanction did not survive the trial judge Order of March 25, 2007 pursuant to Rule 43(L) SCRCF but in the event it did survive said order, the trial Judge Brook P. Goldsmith would retain jurisdiction to hear post-trial motions in accordance with S.C. Code Ann. § 15-36-10. R. pp. 103, 106, and 109 In re Beard 597 S.E. 2nd 835. Frivolous lawsuits, signing pleadings imposition of sanctions notice and opportunity to respond; reporting violations

(C)(1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a

direct verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous.

The trial judge being more than familiar with the case should have been the one to hear the Respondent's Motion for Sanctions.

ARGUMENT

2. IT WAS REASONABLE FOR THE APPELLANT TO BRING ACTION AGAINST THE RESPONDENT FOR DAMAGES.

The Appellant suffered a lost as a direct result of the Respondent obtaining Temporary restraining order and later an injunction against her preventing her from placing her modular in Green Acres Subdivision.

The restraining order and the injunction was granted without bond as require by Rule 65(C) SCRPC. R. pp. 22, 25, and 12

After the case was decided in Appellant's favor, she brought an action against the Respondent alleging the elements as a cause of action for malicious prosecution. (1) the institution or continuation of original judicial proceedings, either civil or criminal; (2) by, or at the instance of , defendant; (3) the termination of such proceedings in Plaintiff's favor; (4) maliciousness in instituting such proceedings; (5) want of probable cause; and (6) resulting injury or damage. Batson vs. Davis Mountain Water Co., 53 S.E. 500 and South Carolina Jurisprudence, Vol. 1, Page 178, Section 77, with the possible exception of using the word malicious in referring to the Defendant's actions in this matter. R. pp.39 and 105

In his order of March 27, 2007 the trail judge did not indicate that the Batson vs. Davis Mountain Water Co. had been overruled or otherwise limited by appellate courts. In fact he cited no case authority to support his order simply finding that because there

was no giving of security by the Respondent for neither the temporary restraining order nor the temporary injunction, there is no bond on which to assess any damages. The Trial Court failed to appreciate that the Appellant was not suing on bond. R. pp., R. pp. 39 and 105

The Appellant is informed and believe that it was reasonable to assume that she would not be precluded from maintaining an action against the Respondent because an earlier court refused to require the Respondent to post a bond in order to obtain a restraining order and later an injunction.

ARGUMENT

3. THE AWARD OF ATTORNEY FEES TO THE RESPONDENT WAS WITHOUT EVIDENTIARY SUPPORT.

The Respondent Augusta Lawson is the sister of her attorney, Edward D. Sullivan. He stated in his affidavit that he is the retained counsel for the Respondent in this matter, but he has failed to produce a retainer agreement, a cancelled check, ledger, receipt, letter or any other document establishing that his sister, the Respondent, paid any compensation to him or the law firm he is associated with from February 19, 2007 through October 23, 2008 the period he states that he provided services to her. In fact, the only payment acknowledged by Edward D. Sullivan is the one forwarded to him by the Appellant's attorney pursuant to the South Carolina Court of Appeals awarding cost and attorney fee pursuant to Rule 222 SCACR in the amount of One Thousand Sixteen and 50/100. R. pp.108

Before Judge J. Mark Hayes the Respondent's attorney failed to state that the Respondent incurred attorney fees and costs. Before the court on October 23, 2008, he stated "So, Your Honor they acted unreasonably and we have lost a lot of fees and am entitled to be paid. I think the number is in the excess of two thousand dollars (\$2000.00)." R. pp. 108

At the March 10, 2009 hearing before Judge J. Mark Hayes, the attorney for the Respondent was requesting Twenty Two Thousand dollars (\$22,000.00) in attorney fees. R. pp. 13. Mr. Edward D. Sullivan again failed to state that the Respondent had incurred attorney fees. R. pp. 122, R. pp. 134

The Appellant believes that the award of attorney fees and costs to the Respondent should be reversed in accordance with William v. Middleton 681 S.E. 2nd 867 (S.C.2009).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas
J. Mark Hayes, II, Circuit Court Judge

Case No. 2006-CP-30-547

Karen Irby, ... Appellant,

v.

Augusta S. Lawson, ... Respondent.

**BRIEF OF RESPONDENT
AUGUSTA S. LAWSON**

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in hearing and exercising jurisdiction on Respondent's Motion for Sanctions?
2. Did the trial court abuse its discretion in awarding sanctions against Appellant Irby and her counsel?

STATEMENT OF THE CASE

On July 21, 2006, Appellant Irby ("Irby") filed an action alleging damages as a result of Lawson's interference with the peaceful enjoyment of her property by instituting a civil action to prevent her from placing the structure on her property. (R. pp. 29 – 34). Respondent Lawson ("Lawson") filed a Motion to Dismiss the Complaint. (R. pp. 35 – 38, p. 27, pp. 25 – 26, pp. 22 – 23, p. 24, pp. 86 – 89, p. 27, p. 88). On March 27, 2007, the Honorable Brooks P. Goldsmith issued an Order granting Respondent's motion to dismiss. (R. p. 12). Judge Goldsmith ruled Irby's proper course of action, rather than commencing suit, "should have been to appeal the temporary restraining order and/or injunction and ask that a bond be posted for the payment of costs or damages should she be found to have been wrongfully enjoined." (R. p. 12).

On April 11, 2007, Lawson filed the instant motion for sanctions requesting she be awarded attorneys' fees and costs incurred in defending against the 2006 suit. (R. pp. 41 – 42). On April 18, 2007, Irby filed a Notice of Appeal in which she sought to appeal Judge Goldsmith's March 27, 2007 Order. (R. p. 133). Irby's appeal was dismissed on September 27, 2007. (R. p. 21). On February 5, 2008, the Court of Appeals granted Appellant's Petition to Reinstate Appeal. (R. pp. 19 – 20). Thereafter, the Court of Appeals then issued its unpublished opinion affirming the circuit court's order granting Lawson's motion to dismiss. (R. pp. 17 – 18). The Court of Appeals thereafter denied Appellant's Petition for Rehearing on April 18, 2008. (R. p. 16). By order dated May 20, 2008, the South Carolina Supreme Court extended the

time for serving a filing a Petition for a Writ of Certiorari until June 18, 2008. (R. p. 15). On June 24, 2008, Irby notified the Court by letter she no longer wished to file the Writ of Certiorari. On June 25, 2008, the Supreme Court dismissed Appellant's appeal. (R. pp. 13 - 14). The case was remanded to the trial court and hearings were held on Respondent's Motion for Sanctions.

By Order dated June 19, 2009 and entered June 20, 2009, the Honorable Mark W. Hayes held that Irby and her counsel, Andrew M. Jones, Jr., Esquire, violated the South Carolina Frivolous Civil Proceedings Sanctions Act (the "Act") and Rule 11, SCRCP, by commencing a frivolous proceeding. As sanctions for these violations, Judge Hayes held that Respondent Lawson was entitled to an award of attorneys' fees and costs reasonably and necessarily incurred in defending against this action in the Circuit Court and ordered Appellant Karen Irby and her counsel, Andrew M. Jones, Jr., Esquire, jointly, to pay Respondent Lawson the sum of Five Thousand One Hundred and Forty-Three (\$5,143.00) Dollars. (R. pp. 1- 9). Thereafter, Irby filed a Motion for Reconsideration. (R. p. 77). Lawson filed a Memorandum in Opposition to the Motion for Reconsideration. (R. pp. 78 - 80). By Form 4 Order dated June 25, 2010, Judge Hayes denied the motion for reconsideration. (R. p. 10). Thereafter, a formal Order denying the Motion for Rehearing was signed by Judge Hayes on July 17, 2010, and entered on July 26, 2010. (R. p. 11). Irby now appeals.

STATEMENT OF FACTS

In 2001, Lawson brought an action seeking to enjoin Irby and her agents from violating the covenants and restrictions prohibiting temporary structures as residences in the subdivision in

which they reside.¹ (R. pp. 82 – 85). On February 15, 2001, the Honorable G. Thomas Cooper, Jr. issued a temporary restraining order precluding Irby from placing the structure, which had been hauled into the subdivision in two pieces on transport trailers, on the subdivision property. (R. pp. 25 – 26). On March 8, 2001, the Honorable Gary E. Clary issued a preliminary injunction enjoining Irby from placing, constructing, and/or erecting the structure on property in the subdivision and from allowing such a structure to remain in the subdivision pending trial. (R. pp. 22 – 23). The Order did not provide for security. There is no evidence that Irby made a motion to request security for the issuance of the preliminary injunction.

During the 2001 litigation, Irby answered and filed a counterclaim against Lawson alleging that “upon the arrival of said modular home at [Irby’s] property or home site, [Lawson] thereupon instituted a civil action in this Court to prevent [Irby] from placing [Irby’s modular home upon [Irby’s] property.” (R. pp. 86 – 89). Irby further alleged she suffered damages as a result of Lawson’s interference with the peaceful enjoyment of her property. (R. p. 88). By Order dated March 29, 2001, Judge Clary Denied Irby’s Motion to Reconsider Temporary Restraining Order. (R. p. 24). Lawson moved to dismiss Irby’s counterclaim pursuant to Rule 12(b) (6), SCRCF, for failure to state a cause of action for which relief can be granted. (R. pp.

¹ Lawson brought an action seeking to enjoin Plaintiff Karen Irby (Irby) and her agents from violating covenants and restrictions in a subdivision. Lawson lives in Green Acres Subdivision (the “Subdivision”). The Subdivision is restricted by Covenants and Restrictions, including, among others, a restriction prohibiting temporary structures as residences, either as a temporary residence or a permanent residence. Section C-5 of the Covenants and Restrictions provides as follows:

Temporary Structure: No structure of a temporary character (trailer, basement, tent, shack, garage, barn, or other out-building) shall be used on any lot at any time as a residence, either temporarily or permanently. (R. pp. 82 – 85).

90 – 91). Judge Clary granted Lawson’s motion and the counterclaim was dismissed. (R. p. 27). Judge Clary’s order was not appealed.²

Five years later, on July 21, 2006, Irby filed an action alleging damages as a result of Lawson’s interference with the peaceful enjoyment of her property by instituting a civil action to prevent her from placing the structure on her property, asserting the same claims previously dismissed in the 2001 litigation, and giving rise to the sanctions awarded to Appellant in this matter. (R. pp. 29 – 34, pp. 1- 9).

STANDARD OF REVIEW

An appellate court reviews findings of fact in an equity matter taking its own view of the evidence. However, the “abuse of discretion” standard plays a role in the appellate review of a sanctions award. An abuse of discretion occurs where the decision is controlled by an error of law or is based on unsupported factual conclusions. For example, where the appellate court agrees with the trial court’s findings of fact, it reviews the decision to award sanctions as well as the terms of those sanctions, under an abuse of discretion standard. Ex Parte Gregory v. Malloy, 378 S.C. 430, 663 S.E. 2d 46 (2008) citing Father v. S.C. Dept. Soc. Services, 353 S.C. 254, 262. 578 S.E.2d 11, 15 (2003). The imposition of sanctions will not be disturbed on appeal absent a clear abuse of discretion by the lower court. Runyon v. Wright, 322 S.C. 15, 471 S.E.2d 160 (1996).

ARGUMENT

I. The Trial Court Did Not Err in Hearing and Exercising Jurisdiction on Respondent’s Motion for Sanctions

Appellant contends that Judge Goldsmith ruled on Respondent’s request for sanctions. However, a review of the record in this case, particularly the transcript of the hearing conducted

² Ultimately, Appellant prevailed on a hearing on the merits.

on Respondent's motion to dismiss, reveals a motion for attorney's fees and costs was not before Judge Goldsmith. When the hearing commenced, Judge Goldsmith inquired whether the only motion before him was Respondent's motion to dismiss, and the parties clarified that was the only pending motion. (R. p. 93, lines 6-13). The parties then proceeded to argue their respective positions on this motion, with Respondent's counsel ultimately stating he believed Respondent was entitled to an award of attorney's fees and costs because the action fell within the Act. (R. p. 94, lines 10-15; R. p. 95, lines 7-9; R. p. 96, lines 8-10). However, no argument was presented by either party regarding the propriety of an award of attorney's fees and costs. At the conclusion of the hearing, Judge Goldsmith directed Appellant's counsel to submit a brief in response to Respondent's Memorandum in Support of the Motion to Dismiss. (R. p. 97, lines 19-23). Judge Goldsmith made no mention of an award of attorney's fees and costs. Accordingly, because the hearing was confined to the merits of Respondent's motion to dismiss, it was not necessary for Judge Goldsmith to rule on an award of fees and costs in the order granting Respondent's motion to dismiss and his ruling has no impact on the present motion.

Moreover, a motion for sanctions under the Act, is not ripe until after the Court issues a decision terminating the case. See S.C. Code Ann. § 15-36-10(C)(1) (stating prevailing party may move for sanctions after case has been dismissed); Russell v. Wachovia Bank, N.A., 370 S.C. 5, 633 S.E.2d 722 (2006) (holding proper timeframe for bringing motion for sanctions is same as that for bringing post-trial motions, within ten days of the notice of entry of judgment). Accordingly, Respondent could not properly move for sanctions and the Court could not properly rule upon such a motion until after Judge Goldsmith issued the order granting Respondent's motion to dismiss. To comply with this requirement, Respondent filed her motion for sanctions on April 5, 2007, within ten days of entry of the order dismissing the action.

Therefore, Judge Goldsmith's prior ruling had no effect on Respondent's instant motion for attorney's fees and costs.

Furthermore, Judge Goldsmith did not entertain and rule on a motion for sanctions because to entertain such a motion would have required compliance with the procedural framework established by § 15-36-10. Subsection D states that the moving party must notify all parties of the conduct constituting a violation and explain the basis for the potential sanction. The party against whom sanctions are sought is then afforded thirty days to respond to the allegations. § 15-36-10(D). These procedures were not implemented in the instant case prior to the hearing before Judge Goldsmith, nor did Judge Goldsmith request the parties brief the issue of sanctions. Thus, it is evident the parties were not litigating a motion for sanctions before Judge Goldsmith. As such, his order granting Respondent's motion to dismiss has no bearing on Respondent's instant motion for sanctions.

Finally, Respondent's instant motion for fees and costs is based on two independent grounds: (1) violation of the Act; and (2) violation of Rule 11, SCRCF. While defense counsel did state during the hearing that Appellant's lawsuit was frivolous under the South Carolina Frivolous Civil Proceedings Sanctions Act, Rule 11 was never mentioned as a basis for awarding fees and costs. Accordingly, a motion based on violation of Rule 11 was not before Judge Goldsmith and, therefore, it was not necessary for his order to incorporate a ruling on such a motion.

Appellant also contends Respondent's motion for sanctions is controlled by Rule 43(l), SCRCF. However, Rule 43(l) is inapplicable to the instant case, and Appellant's argument is manifestly without merit. This rule provides "[i]f any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same

state of facts shall be made to any other judge in that action.” Rule 43(l), SCRCF. It is evident from a review of the record that the only motion before Judge Goldsmith during the hearing was Respondent’s motion to dismiss pursuant to Rule 12(b)(6). Counsel’s comments that it was his opinion Appellant’s action was so unfounded that it justified sanctions in the form of an award of attorney’s fees and costs to Respondent do not amount to a motion pursuant to Rule 11, SCRCF, or § 15-36-10. Furthermore, such a motion is not ripe until after the court dismisses the case. See S.C. Code Ann. § 15-36-10(C)(1) (stating prevailing party may move for sanctions after case has been dismissed); Russell v. Wachovia Bank, N.A., 370 S.C. 5, 633 S.E.2d 722 (2006) (holding proper timeframe for bringing motion for sanctions is same as that for bringing post-trial motions, within ten days of the notice of entry of judgment). Therefore, because no motion for sanctions was before Judge Goldsmith at the hearing, he could not have issued an order denying such a motion. Accordingly, Rule 43(l) is inapposite to the instant motion for sanctions.

Appellant additionally argues the circuit court does not possess the subject matter jurisdiction necessary to decide Respondent’s motion for sanctions. Subject matter jurisdiction is “the court’s power to hear and determine cases of the general class to which the proceedings in question belong.” Dove v. Gold Kist, 314 S.C. 235, 442 S.E.2d 598 (1994). The trial court unquestionably possessed the power to hear and rule upon a motion for sanctions arising in the context of a frivolous civil proceeding commenced in the circuit court.

Furthermore, nothing in the Act requires such a motion be heard by the same judge who dismissed the action. Rather, § 15-36-10(C)(1) simply addresses the timing of a motion for sanctions and the necessary findings to be made by the court in ruling on a motion for sanctions. It is undisputed that Respondent Lawson’s motion for sanctions was filed timely.

Appellant relies on In re Beard v. Newsome, 359 S.C. 351, 597 S.E.2d 835 (2004), for the proposition that only Judge Goldsmith could rule on Respondent's Motion for Sanctions. Appellant's reliance is misplaced. The statute under consideration by the Court in In re Beard was the predecessor to the current act and was repealed by the current Act. The former statute, 15-36-30, provided "[t]he entitlement of the aggrieved person must be determined by the trial judge at the conclusion of a trial upon motion of the aggrieved party" The current Act makes reference to "the court" rather than the "trial judge". Accordingly, it was appropriate for Judge Hayes to hear and rule on Respondent's Motion for Sanctions.

II. The Trial Court Did Not Abuse Its Discretion In Awarding Sanctions against Appellant Irby and Her Counsel.

Irby is subject to sanctions as a result of the frivolous claim brought in 2006. Irby's counsel is subject to sanctions for the frivolous pleadings filed in conjunction with the frivolous claim.

S.C. Code Annotated Section 15-36-10 addresses frivolous lawsuits and the imposition of sanctions. §15-36-10(A)(4)(a) specifically states a court may enter sanctions against an attorney for filing a frivolous pleading, motion, or document if:

- (i) the person has not read the frivolous pleading, motion, or document;
- (ii) 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;
- (iii) 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; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document 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;

South Carolina Code Section 15-36-10(C) states a court may enter sanctions against an attorney if after the dismissal of a case, an attorney brings a claim that falls within the conditions stated in subsections (ii), (iii), or (iv) of 15-36-10(A)(4)(a). In the case at bar, a reasonable attorney in the same circumstances would believe the claim brought in 2006 by Irby was clearly not warranted under existing law.

When defending against a claim, a reasonable attorney would research both statutes and case law to determine the best defense and strategy for the client. In 2001, Lawson sought a temporary restraining order and then a preliminary injunction against Irby. Appellant and her counsel should have researched the law and discovered that under SCRCP Rule 65(c), "no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." SCRCP 65 governs the procedure in South Carolina courts relating to injunctions. In 2001, Lawson proceeded under SCRCP 65 to obtain, first, a temporary restraining order and, second, a preliminary injunction. Injunctions are necessary to maintain the status quo in matters such as the case at hand, and the Court properly issued a preliminary injunction. Rule 65 requires security in an amount as the court granting the temporary injunction "deems proper." The court did not require security when it issued the temporary injunction nor when Irby moved for reconsideration. Those orders were not appealed and are final.

The seeking of injunctive relief is not a tort. This rule is an aspect of the more general rule that no action lies against a party for resort to civil courts in good faith. 43A C.J.S. Injunctions Section 314. In the event that a party is found to have been wrongfully enjoined or restrained, his remedy is an application to the court against security, if any, earlier required by the court.

Injunctions are equitable in nature and are therefore tried before the court rather than a jury. Implicit in SCRCP 65 is that the enjoined party may apply to the court for damages sustained, not exceeding an amount earlier specified by the court, in the event that the court determines plaintiff was not entitled to the injunction. According to the reporter's notes, Rule 65, enacted in 1985, continued the state practice then in effect. The law as formerly codified in SC Code Ann. 15-55-60 provided for such a procedure.

A reasonable attorney should know that persons have a right to seek redress in courts of law and to enforce their rights. To do so is not a tort. In the case at hand, Respondent Lawson sought only to enforce covenants and restrictions encumbering real estate. No cause of action exists against parties for application to the courts in good faith for injunctive relief. A reasonable attorney should know that a wrongfully enjoined party may seek relief from the court pursuant to SCRCP 65 in the event, and only in the event, that there is a previous determination that the injunction was wrongful and security required in such amount as the court deems proper. No security was required.

Furthermore, no action lies to recover damages from obedience of temporary injunction thereafter dissolved, no injunction bond having been executed according to the order granting the injunction. Batson v. Paris Mountain Water Co., 73 S.C. 368, 53 S.E. 500 (1906). Irby's

When Judge Clary granted the preliminary injunction in March 2001, Irby did not seek or receive security pursuant to Rule 65. Thereafter, Irby moved for reconsideration which was denied. Next Irby filed a counterclaim based on loss of enjoyment of property. This claim was dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. The order dismissing Irby's counterclaim was not appealed.³

Several years later, after the conclusion of the initial lawsuit, Irby, through her counsel Andrew M. Jones, Jr., filed the 2006 Complaint. Lawson provided Irby and Irby's counsel notice of Lawson's position that the 2006 Complaint was frivolous, the basis for this position, and ample opportunity to respond. (R. Appendix, pp. 1-3). Irby chose not to respond.

³ Furthermore, a reasonable attorney should have known that the 2006 suit lawsuit was barred by the doctrine of res judicata. In Plum Creek Development v. City of Conway, 334 S.C. 30 (1999), the Supreme Court explained the doctrine and set forth its requirements.

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E.2d 569 (1992). Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Hilton Head Center of South Carolina, Inc. v. Public Service Comm'n of South Carolina, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Reidman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 419, SE2d (1992). Seal v. Dodge, 289 S.C. 543, 347 SE2d. 504 (1986).

In granting Lawson's 12(b)(6) motion and dismissing the 2006 complaint, Judge Goldsmith stated Irby's proper course of action "should have been to appeal the temporary restraining order and/or injunction and ask that a bond be posted for the payment of costs or damages should she be found to have been wrongfully enjoined." (R. p. 12). Judge Goldsmith continued by finding "that because there was no giving of security by the applicant for neither the temporary restraining order nor the temporary injunction, there is no bond on which to assess any damages." (R. p. 12).

Irby's claim was a frivolous claim under §15-36-10(C) because a reasonable attorney would believe the 2006 Complaint was clearly not warranted under existing law. Irby's attorney filed frivolous pleadings under §15-36-10(A)(4) because a reasonable attorney would believe all the pleadings associated with the 2006 Complaint were clearly not warranted under existing law.

In addition, Lawson is entitled to recover legal fees and costs under Rule 11 of the South Carolina Rules of Civil Procedure. Claims which are not made in good faith are subject to sanction pursuant to Rule 11, SCRCP. Chewning v. Ford Motor Co., 354 S.C. 72, 86, 579 S.E.2d 605, 613 (2003).

The standard for sanctions under Rule 11 is essentially the same as under the Frivolous Civil proceedings Sanctions Act. Father v. S.C. Dept. Soc. Services, 353 S.C. 254, 262, 578 S.E.2d 11, 15 (2003). Rule 11 allows "an award of attorney's fees when the court finds the opposing party has filed pleadings that were made in bad faith and/or frivolous." Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 176-77, 557 S.E.2d 708, 711 (Ct. App. 2001).

South Carolina Code Section 15-36-10 (E) provides several factors that the court should take into account in determining if a party or attorney has violated the provisions of the Frivolous Proceedings Statute including, among other, the number of parties, the complexity of the claims

and defenses, the length of time available to the attorney or party to investigate the law and circumstances, the information known by the attorney or party, the response, if any, of the attorney or party to the allegation that he violated the provisions of the Act, and other factors the court considers just, equitable, or appropriate under the circumstances. This case was simple. There were two parties. The defense was clear. Irby's remedy, if any, was to seek security in 2001 when Lawson obtained the temporary injunction pursuant to SCRCP 65. Irby and her counsel had complete information and access to all the facts and law. They had years to investigate the merit, or lack thereof, of their claim. Irby and her attorney Jones were twice put on notice by Lawson's counsel immediately after their lawsuit was served on Lawson by written correspondence, one a certified letter, that Lawson would seek sanctions if this claim was pursued. Irby and her attorney chose not to respond at all.

There is no question that the lawsuit is frivolous and sanctions against Appellant and her counsel are proper. Appellant asserts "[t]he Trial Court failed to appreciate the Appellant was not suing on bond." (Final Brief of Appellant, p. 8). However, it is the Appellant and her counsel that continue to fail to appreciate and understand that "suing on bond" in accordance with SCRCP 65 was the only available remedy. They fail to understand this straightforward rule of law despite the fact that their claim has been dismissed twice by Motion(s) to Dismiss for failure to state a cause of action for which relief can be granted pursuant to SCRCP 12(b)(6) and the dismissal of their appeal by The South Carolina Court of Appeals (citing Appellate Rule 220(b) which provides the Court need not address a point which is manifestly without merit). (R. pp. 17 – 18).

Lastly, Appellant contends that the award of attorney fees was without evidentiary support. In support of this ground, Appellant relies on Williamson v. Middleton, 383 S.C. 490,

681 S.E.2d 867 (2009). However, Appellant fails to explain why Williamson supports his contention. In fact, Appellant makes no explanation or argument at all. As such, his argument is conclusory at best and therefore deemed abandoned. (If an argument consists only of a conclusory statement or a party does not cite any supporting authority, the issue is deemed abandoned on appeal. E.g., First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting that where a party fails to cite any supporting authority or where the argument is merely a conclusory statement, the issue is deemed abandoned on appeal); Solomon v. City Realty Co., 262 S.C. 198, 203 S.E.2d 435 (1974) (issue was abandoned when conclusory statement left the issue unargued); State v. Black, 319 S.C. 515, 518, 462 S.E.2d 311, 313 (Ct. App. 1995) (finding a conclusory argument of an issue by appellant amounts to an abandonment of the issue); Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993) (holding an issue is deemed abandoned and thus not presented for appellate review if argued in a short, conclusory statement).

Regardless, Williamson, does not stand for the proposition that a retainer agreement must exist between the party seeking an award of fees and her counsel in order for an award of attorneys' fees to be proper. The pertinent issue in Williamson was whether the party seeking an award of attorneys' fees had actually "incurred" any fees, as required by S.C. Code Ann. § 39-65-20 (2008), the statute authorizing the award in Williamson. Moreover, the South Carolina Supreme Court has held that lack of a fee agreement does not preclude an award of attorneys' fees. See Singleton v. Collins, 251 S.C. 208, 210-11, 161 S.E.2d 246, 247 (1968). The Court of Appeals' opinion in Middleton v. Williamson, 374 S.C. 419, 430, 649 S.E.2d 57, 63 (Ct. App. 2007), recognized this proposition and that aspect of the Court of Appeals' decision was not overturned by the Supreme Court in its subsequent opinion. Accordingly, the lack of a fee

agreement does not provide a basis for reconsideration of the Court's award of attorneys' fees and costs in favor of Defendant.

Furthermore, the statute under consideration in Williamson, was SC Code Section 39-65-30 rather than the South Carolina Frivolous Civil Proceeding Act (the "SCFCPA"). SC Code Section 39-65-30 provides that the employer is liable for "attorney's fees actually and reasonably incurred by the sales representative in the action and court costs" (emphasis added). S.C. Code Section 39-65-30 (2008). In this case the sanctions have been awarded under the SCFCPA and Rule 11. The SCFCPA which provides attorney's fees and costs and other sanctions for violations does not include the word "incurred".

In arguing that the award of attorney fees was without evidentiary support, Irby completely ignores the affidavit of counsel for Respondent Lawson taken into evidence by the trial court setting forth legal services rendered, hours, and billing rates and fees and expenses. (R. pp. 134 – 147).

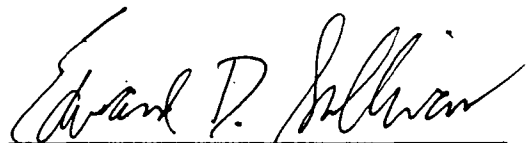
In short, Appellant Irby and her attorney have no excuse or basis whatsoever for bringing this frivolous claim against Respondent Lawson. Where the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions as well as the terms of those sanctions, under an abuse of discretion standard. Ex Parte Gregory v. Malloy, 378 S.C. 430, 663 S.E. 2d 46 (2008) citing Father v. S.C. Dept. Soc. Services, 353 S.C. 254, 262. 578 S.E.2d 11, 15 (2003). The imposition of sanctions will not be disturbed on appeal absent a clear abuse of discretion by the lower court. Runyon v. Wright, 322 S.C. 15, 471 S.E.2d 160 (1996). Since the underlying facts are largely undisputed, sanctions will not be disturbed absent a clear abuse of discretion. Pursuant to Ex Parte Gregory, the court could have in fact not only awarded attorney's fees and costs in litigating the proceedings but also the fees and costs that represent

discretion by the lower court. Runyon v. Wright, 322 S.C. 15, 471 S.E.2d 160 (1996). Since the underlying facts are largely undisputed, sanctions will not be disturbed absent a clear abuse of discretion. Pursuant to Ex Parte Gregory, the court could have in fact not only awarded attorney's fees and costs in litigating the proceedings but also the fees and costs that represent the underlying proceedings wherein [the aggrieved party] sought sanctions for the underlying frivolous suit. In this case, that would have been much greater than the Five Thousand One Hundred and Forty-Three (\$5,143.00) Dollars awarded by Judge Hayes. See Affidavit of Edward D. Sullivan dated October 23, 2008 together with accompanying exhibits. (R. pp. 134 – 147). The trial court did not abuse its discretion in awarding these sanctions. Accordingly, the sanctions should be upheld.

CONCLUSION

For the foregoing reasons, Respondent Lawson respectfully requests the Court to affirm the ruling of the trial court awarding sanctions against Appellant Irby and her counsel Andrew M. Jones, Jr., together with such further relief to Respondent Lawson as the Court shall deem just and proper.

Respectfully submitted,

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September 28, 2011

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas
J. Mark Hayes, II, Circuit Court Judge

Case No. 2006-CP-30-547

Karen Irby, ...Appellant,

v.

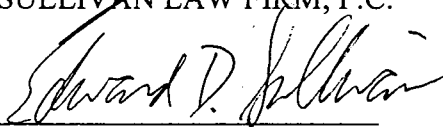
Augusta S. Lawson, ...Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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Augusta S. Lawson, ...Respondent.

PROOF OF SERVICE

I hereby certify that I have served the Brief of Respondent Augusta S. Lawson upon Appellant Karen Irby by placing a copy in the United States mail, postage-prepaid, to counsel of record, Andrew M. Jones, Jr., PO Box 9212, Greenville, SC 29604 on September 28, 2011.

Respectfully submitted,
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