

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

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

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

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

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**Churchill Park, Respondent**

**v.**

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

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

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

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SC Court of Appeals**

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**APPELLANT'S AMENDED RETURN TO RESPONDENT'S MOTION FOR COSTS  
POST MARKED 27 JANUARY 2020**

Appellant Alan Nix submits this return to McCabe Trotter's Motion for Costs dated and post marked 27 January 2020.

EXHIBIT LIST: (exhibits incorporated into response by reference)

- A. Order re: Attorney Fees, Supreme Court of South Carolina, dated 17 January 2018 (1 pg)
- B. McCabe Trotters's Motion to Dismiss, dated 15 November 2018 and McCabe Trotter's Return to Appellant's Motion to "Just Do the Right Thing", dated 1 April 2019 (12 pages)

- C. Judge Lockemy Order, dated 27 June 2019 (1 page)
- D. Judge Jefferson Order, dated 17 October 2019, Case No. 2019-CP-10-00067 (10 pgs)
- E. Judge McDonald Order, dated 13 November 2018 (1 pg)
- F. Writ of Certiorari, Cases 2018-000056 and 2018-000174, dated 9 Sept 2019 (8 pgs)
- G. Affidavit of Attorney Fees, notarized 26 Sept 2017, (12 pgs)
- H. Portion of Declaration of Protective Covenants for Churchill Park, (26 pgs)
- I. Scarborough Order, Case No. 2014-CP-10-05407, file date 23 March 2016 (1 pg)
- J. Notice to Respondent from SC Secretary of State's Office, dated 31 Dec 2019
- K. Letter from Appellant to SC Secretary of State's Office, dated 20 Dec 2019 (49 pgs)

## I - COSTS

### **I(a) - \$2500 Attorney Fees**

McCabe Trotter requests attorney's fees of \$2,500.00 as dictated by Rule 222(b), SCACR. Rule 222 references the order of 17 January 2018 as the basis for the \$2500.00 sought. The SC Supreme Court's order of 17 January 2018 related to this \$2,500.00 claim is included as Exhibit A.

Based on a simple reading of the order as written, even a non attorney who is a relatively reasonable person can only conclude that the Order, and it's directive of \$2,500.00, are arbitrary on their face. Black's Law Dictionary defines arbitrary as "*Not supported by fair, solid, and substantial cause, and without reason given. Treloar v Bigge, L.R. 9 Exch. 155*". With respect to this Order, there is not a scintilla of reason included in the order which hints at the logic of the SC Supreme Court in determining \$2,500.00 to be an apparently reasonable amount for attorney's fees to be involved in an appeal in our Great State. Furthermore, it doesn't seem rationale for the SC Supreme Court to believe that any reasonable person, attorney or not, could logically and equitably agree that an arbitrary award of a set amount, without any consideration of the facts of the specific situation, could possibly be construed to be a fair a reasonable amount. Appellant includes two possible scenarios, with calculations, from diametrically opposed views, to demonstrate the obvious arbitrary nature of the Court's Order dated 17 January 2018.

Assuming most attorneys believe their time is worth at least \$250.00 per hour, the Supreme Court's arbitrary award of \$2500.00 equates to ten hours of fully funded work on an

appeal. Appellant sees no plausible argument by the Supreme Court to suggest that a reasonable attorney would estimate as an average that only ten hours of work is required to do even the minimum required to appropriately pursue an appeal.

Appellant saw an article several years ago that stated the average annual income for a USC Law Grad was approximately \$80,000. For arguments sake and to further quell any disputes about this amount, let's increase this rate by a function of 1.5, then the average income would be \$120,000 per year. If an average number of work hours in a year is assumed to be 1920, then the average hourly rate is \$62.50. Hence in this scenario, the Supreme Court's arbitrary amount of \$2500.00 would represent forty hours of fully reimbursable work on an appeal. Appellant agrees that forty hours seems to be within a rationale range of hours required to appropriately deal with a simple appeal, but also raises serious doubts of the availability of more than a handful of qualified attorneys willing to work forty hours on an appeal at a rate of \$62.50 per hour.

In this instant case, please review Ex. B. This exhibit includes a 1.5 page Motion to Dismiss and a four page respondent's return. By calculation, if one assumes it took 20 mins of Attorney's time per page at a rate of \$250.00 per hour, the total in attorney fees would be 1.83 hours x \$250.00 / hr for a total of \$457.50. If the court adds another hour of paralegal time for these two motions at a rate of \$75.00 per hour, the total of all attorney fees would be \$532.50. Consequently, if the Court grants McCabe Trotter \$2500.00 in attorney fees, as the SC Supreme Court apparently views as appropriate in all cases, the \$2500.00 award is very near to five times the actual amount of attorney fees incurred. In no manner could a reasonable person consider this award to be anywhere near a reasonable attorney fee.

Given the fact that, in Appellant's experience, most appeals in this State are not necessitated because of errors in the application of law nor in legitimate disagreements about the applicable facts, but due to Circuit Court Judges knowingly and willfully engaging in improper conduct by entering easily understood improper judgements, Appellant argues that the SC Supreme Court's arbitrary mandate of \$2500.00 in attorney fees for all appeals ultimately acts to further the extortionate nature these judges engage in when improperly requiring litigants to appeal knowing and willful improper judgements. In support of this assertion, Appellant argues that, assuming a standard legal rate of \$250.00 per hour, the Supreme Court is ultimately limiting

the incentive of most attorneys to expend more than ten hours in pursuit of an appeal, thereby significantly raising the likelihood that such knowing and willful improper judgements become case law, and ultimately leads to illegitimate legal precedent weakens our State's legal environment. No reasonable person can construe this scenario to be in the Public Interest, hence, the Supreme Court's arbitrary order of 17 Jan 2018 related to such attorney fees should be rescinded and, in the instant case, clearly not apply.

For all of the above reasons, Appellant argues that the SC Supreme Court order dated 17 Jan 2018 should not be applied to the court's determination of a reasonable legal fee in this matter.

In the alternative, Appellant argues that McCabe Trotter should provide to the Appellant and the Court the following documents to utilize in determining an appropriate legal fee:

1. A fully documented, current version of Ex. G, from May 2013 through 27 Jan 2020, but of course without any of the redactions which Judge Scarborough apparently thought were ok for them to utilize to be granted excessive and improper attorney fees.
2. A copy of the contract McCabe Trotter alleges is instrumental to this calculation. See paragraph six, page 1 of Ex. G.
3. Actual copies of payment from "Churchill Park" (the company, not the Subdivision), for payment of attorney fees and payment for the transcript.
  - a. See Ex, H, page 5, paragraph c. specifically "costs, including without limitation, reasonable attorney's fees actually incurred"

**I(b) - \$428.44 – Cost of Court Reporter's Transcript**

Given the criticality of the transcript involved in this claim to other matters Appellant is and/or will be pursuing against Churchill Park (the company, not the Subdivision), Charleston County, Judge Scarborough, McCabe Trotter, etc. Appellant will provide reimbursement to "Churchill Park" if McCabe Trotter files the following with the Court before the Court rules on their Motion for Costs.

1. "Churchill Park" (the company, not the Subdivision) provides proof they have incurred this cost no later than 4 September 2018. Sufficient proof would be

considered a transacted check in this amount, in the name of “Churchill Park” and signed by one or more Officers and/or Directors of “Churchill Park”

2. McCabe Trotter produces an invoice where they invoiced “Churchill Park” for this amount, which resulted in “Churchill Park”’s Officers / Directors signing the check described in number one above.
3. McCabe Trotter returns the original copy of the transcript to Ms. Smith of Sandlapper Reporting, LLC and Sandlapper Reporting, LLC provides Alan Nix, the Appellant, the original copy of the transcript for \$10.00. This seems equitable to Sandlapper Reporting, LLC since Sandlapper Reporting, LLC surely received \$428.44 from “Churchill Park” (the company, not the Subdivision) at least a year and a half ago. Obviously, Sandlapper Reporting, LLC should reassert in writing, as an oath, that the original returned by McCabe Trotter is accurate and complete. (Sandlapper Reporting, LLC has had problems with this at least twice previously. The transcript of 2014-CP-10-05407 of the hearing of 21 March 2016 and the transcript of 2017-CP-10-04031 and 2014-CP-10-05407 of the hearing on 26 September 2017. The Court is aware of this relate to several of the motions to remand they consistently denied.)

**I(c) – Equitable apportionment of all costs**

Once the court has determined the appropriate amount of attorney fees, Appellant asks the costs to be equitable distributed across the following parties:

1. The SC Court of Appeals
2. Charleston County
3. Charleston Legal Access

The Appellant’s brief logic related to this equitable distribution of these costs, assuming proven to actually be incurred by “Churchill Park”, is as follows.

1. The SC Court of Appeals intentionally created this scenario and these apparent damages by and through their knowing and intentional pattern of misconduct via numerous improper denials of Appellant’s motions to remand to correct knowingly incorrect transcripts and file 60(b) motions in cases 2017-CP-10-04031 and 2014-CP-10-05407.

2. Charleston County knowingly and willingly created these unnecessary appeals through their pattern of misconduct related to cases 2017-CP-10-04031 and 2014-CP-10-05407, beginning at least by 23 March 2016. See Ex. I.
3. Charleston Legal Access, Respondent's co Respondent in these appeals, knowingly and willfully did not take any appropriate and timely actions related to these appeals or the underlying cases, hence, at a minimum, requiring these apparent expenditures by their co Respondent.
4. Appellant Alan Nix has spent a significant amount of time and money on these appeals, only to have the SC Court of Appeals engage in improper conduct in furtherance of Charleston County's and Judge Scarborough's previous misconduct, in particular, improperly denying multiple obviously meritorious requests to remand. Appellant Nix is the only party in these matters with clean hands, consequently, Appellant Nix shouldn't be further injured by these parties.

## **II – COURT'S AFFIRMATION OF LOWER COURTS RULING**

### **II(a) – This Court's apparent affirmation of the trial court by Order dated 16 June 2019**

Ms. Trotter states, as an apparent fact, in McCabe Trotter's Motion for Costs, "*On June 16, 2019 this Court affirmed the decision of the trial court, ruling in Respondent's favor.*" The subject Order Ms. Trotter is apparently referencing is included as Ex. C. This is the only known order this Court filed during the month of June 2019, which shows a filed date of 27 June 2019. Assuming this is the order Ms. Trotter is referencing in McCabe Trotter's Motion for Costs, Appellant prays for both McCabe Trotter and this Court to file affidavits with this court specifying, with particularity, proof of Ms. Trotter's assertion that "*this Court affirmed the decision of the trial court, ruling in favor of Respondent's favor*". If the order attached is not the order Ms. Trotter is referring to, Appellant asks this Court and McCabe Trotter to produce the order referenced and mail the same to Appellant within the next ten days. In the absence of McCabe Trotter and this Court completing these clarifications in good faith and in a timely manner, Appellant asks this Court to levy sanctions against McCabe Trotter and both their client(s) and "Churchill Park" (the company, not the Subdivision). In the event that McCabe Trotter does respond with the necessary information and evidence to support their assertion that "*this Court affirmed the decision of the trial court, ruling in favor of Respondent's favor*",

clearly McCabe Trotter should amend their Itemized Statement of Costs, and associated affidavit, to include other such necessary expenses as their client(s) and Churchill Park (the company, not the Subdivision) must have certainly incurred to procure "*this Court*"'s affirmation "*of the decision of the trial court, ruling in favor of Respondent's favor*".

### **II(a) – This Court's apparent affirmation of the trial court – 13 November 2018**

Substantially related to Ms. Trotter's assertion in McCabe Trotter's Motion for Costs is Judge Jefferson's apparently conflicting assertion in her order dated 17 Oct 2019 in case 2019-CP-10-00067, attached as Ex. D. On page nine of Ex. D, Judge Jefferson asserts as fact that "*The Court of Appeals affirmed the lower Court's ruling, and Mr. Nix has since filed a pending petition for a writ of certiorari with the Supreme Court*". Judge Jefferson goes on to clarify her assertion by specifying in footnote number two on page nine that the order she asserts as fact in which the "*Court of Appeals affirmed the lower Court's ruling*" was filed on November 13, 2018 in case 2018-000056. The order which Appellant believes Judge Jefferson is referencing is attached as Ex. E. Once again, Appellant, despite spending countless hours searching this one page order for a sign of the word "affirmed" has failed repeatedly to find the word "affirmed" or even a clear reference to the "lower Court's ruling". Given Appellant's request for sanctions against McCabe Trotter in the event they cannot, or will not, clarify with specificity their basis for asserting as fact that "*this Court affirmed the decision of the trial court, ruling in favor of Respondent's favor*", Appellant requests this Court to levy the same sanctions, or potentially, more appropriately, even more severe sanctions against Judge Jefferson, if she cannot or will not mail to this Court and the Appellant a plausible and good faith basis for asserting as fact that Judge McDonald's order of 13 Nov 2018 apparently "*affirmed the lower Court's ruling*".

After McCabe Trotter and Judge Jefferson responds with their basis' for asserting that this Court has apparently "*affirmed the lower Court's ruling*" on either 16 June 2019 and/or 27 June 2019 and/or 13 Nov 2018, Appellant asks this Court to enter an order clearing up this apparent controversy once and for all, specifically clarifying which order is controlling and specifically apparently "*affirmed the lower Court's ruling*" / *affirmed the decision of the trial court, ruling in favor of Respondent's favor*".

### **III – Reserve Ruling on this Motion until 3 March 2020**

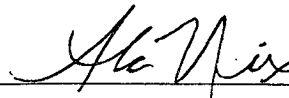
is directed to Exhibits J and K. As of the date of this response, Respondent complied with the requirement the SC Secretary of State's Office sent them over a month ago. Given the fact that the Respondent has been in violation of Section 33-31-505 of the SC Nonprofit Corporation Act for over ten years, including the entire duration of this litigation beginning in 2013, any further awards to "Churchill Park" before they cure this long term and significant deficiency would be improper. Without "Churchill Park" curing this deficiency by close of business 2 March 2020, the Respondent will be administratively dissolved, creating multiple novel legal issues related to any ruling on this motion, or any other matter involving legal matters "Churchill Park" (the company, not the Subdivision) is involved in as a plaintiff.

.....  
WHEREFORE, Appellant Alan Nix respectfully requests this Court:

1. Grant Appellant requests called out in each section above, including but not limited to, requiring McCabe Trotter, "Churchill Park" (the company, not the Subdivision) prove the expenses incurred and not utilizing the Supreme Court's arbitrary order giving \$2500.00 in attorney fees to McCabe Trotter.
2. Clarify the matter of Judge Jefferson's and McCabe Trotter's and "Churchill Park"'s assertions that this Court affirmed the lower Court's ruling via an order of June 2019 and /or November 2018.
3. Delay judgement on this motion until Respondent complies with the Secretary of State's requirement set out in Ex. J.
4. Any other and further relief as the Court deems just, prudent and proper.

Dated: February 9, 2020

Respectfully submitted,



Alan G. Nix  
1401 Densmore Circle  
Mount Pleasant, SC 29466  
(843) 991.4170

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

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

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

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Case No. 2014-CP-10-05407  
2017-CP-10-04031  
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**Churchill Park, Respondent**

v.

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

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

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

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**PROOF OF SERVICE**  
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The undersigned certifies that a copy of the Appellant's Response to Motion for Costs has been served upon the individuals listed below by mailing a copy of the same, postage prepaid, in the United States Mail, or hand delivery, addressed as shown below this 7<sup>th</sup> day of February 2020 to:

Ryan McCabe  
McCabe Trotter and Beverly  
4500 Fort Jackson Blvd.  
Columbia, SC 29209

Charleston Legal Access  
Attn: Schrieber  
1630 Meeting St.  
Charleston, SC 29405

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✓ Julie Armstrong  
Clerk of Court, Charleston County.  
100 Broad Street  
Charleston, SC 29401

Joe Dawson  
Charleston County Attorneys  
4045 Bridge View Dr.  
North Charleston, SC 29405

Dated: February 9, 2020

Respectfully submitted,

By:

  
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Alan G. Nix  
1401 Densmore Circle  
Mount Pleasant, SC 29466  
(843) 991.4170

9 February 2020

Alan Nix  
1401 Densmore Circle  
Mount Pleasant, SC 29466

Ms. Jennie Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate St.  
Columbia, SC 29201

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RE: Churchill Park v Alan G. Nix, et al  
S.C. Appellate Case Number 2018-000056 / 000174  
Envelope to return Appellant copies / Amended Return

Ms. Abbott Kitchings,

I realized yesterday that it is possible I forgot to include a postage paid envelope for the return of my copies mailed to you last Thursday. Consequently, I have include one so you can mail my copies back hopefully by the end of the week.

Also, while I was thinking about it, given some of the requests I included in my return may have consequences on the State and Charleston County, I have sent copies to Mr. Wilson, the SC Attorney General and Mr. Dawson, Charleston County's attorney along with Judge Jefferson.

Lastly, I have included in this envelope a second postage paid envelope and a slightly amended version of the return. The primary changes are the removal of a few comments / words that appear to have gotten mixed in between versions and the inclusion of paragraph / number three on page five related to receiving the original copy of the transcript in exchange for paying the \$428.44, assuming once again the "Churchill Park" (the company, not the Subdivision) actually incurred the cost prior to 4 Sept 2018.

The proof of service for the amended return is limited to Ms. Armstrong, McCabe, Dawson and Charleston Legal Access, since they are the ones affected by the changes included.

Thank you very much for your assistance and please let me know if you require anything else related to this filing.

Best regards,



Alan Nix  
(c) 843.991.4170  
(e) alan.g.nix@gmail.com

# WE CARE

US Postal Service

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DEAR VALUED POSTAL CUSTOMER:

I want to extend my sincere apology as your Postmaster for the enclosed document that was inadvertently damaged in handling by your Postal Service.

We are aware how important your mail is to you. With that in mind, we are forwarding it to you in an expeditious fashion.

The United States Postal Service handles over 202 billion pieces of mail each year. While each employee makes a concerted effort to process, without damage, each piece of mail, an occasional mishap does happen.

We are constantly working to improve our processing methods so that these incidents will be eliminated. You can help us greatly in our efforts if you will continue to properly prepare and address each letter or parcel that you enter into the mailstream.

We appreciate your cooperation and understanding and sincerely regret any inconvenience that you have experienced.

YOUR POSTMASTER