

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. Doyet A. Early, Circuit Court Judge

C.A. No.: 2018-CP-40-02425
Appellate Case No. 2019-000648

RECEIVED
MAR 20 2020
SC Court of Appeals

Jefferson Davis, Jr.Appellant,

v.

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

APPELLANT'S MOTION TO STRIKE

Appellant, Jefferson Davis, Jr., hereby asks this Honorable Court for an Order striking certain sections of Respondent's Initial Brief's as addressing issues not in evidence or the subject matter in the underlying hearing and Order, as well as certain documents that were not part of the underlying hearing and Order.

As an overview, the February 19, 2019, Order by Judge Early that is the subject of this appeal SOLELY deals with the interpretation of the following conclusion in Judge Benjamin's October 30, 2018 Order:

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is granted in part and denied in part.

IT IS THEREFORE ORDERED each John Doe referenced in the complaint shall be specifically named and served. This court allows the plaintiff 15 days to appropriately amend the pleadings.

AND IT IS SO ORDERED.

s/ The Honorable DeAndrea Gist Benjamin
Presiding Judge

**October 30, 2018 Order - Judge Benjamin
(Record on Appeal, Page 8)**

Judge Early interpreted the above Order to require Appellant to not only amend his initial complaint within 15-days (which he did so timely), but to also PERSONALLY SERVE each of the newly named John Doe Defendants (which there were 31 newly named defendants) within that same 15-day time period. There is no reasonable basis to indicate such interpretation.

Appellant maintains in this appeal that nothing in the October 30, 2018, Order by Judge Benjamin (see Record on Appeal, Page 6 – 9) indicates that Appellant was instructed to PERSONALLY SERVE these 31 newly named defendants within a 15-day period, that there was no discussion whatsoever at the October 1, 2018, hearing (see Transcript, Record on Appeal, Page 378-411) before Judge Benjamin to indicate any requirement to PERSONALLY SERVE these 31 new Defendants within and expedited 15-day period, and aside from the lack of direction from the Court to do so within 15-days, it would have been a physical impossibility to

personally serve these 31 newly named and geographically diverse defendants within that 15-day period.

The below is the full extent of any conversation related to any 15-day period in the transcript from the hearing on October 1, 2018. The Court was specific in that “[i]t will be 15 days to amend”, which Appellant timely complied. No one debates that. However, the Court gave no deadline (outside the standard default service deadlines in the SCRCP) as to service of the amended complaint. There was no discussion, other than a REMINDER to *pro se* Plaintiff / Appellant that he was required to serve the amended complaint.

THE COURT: All right. It will be 15 days to amend.

MR. DAVIS: Thank you, Your Honor.

THE COURT: All right. Thank you. Now, of course, you know you have to serve him with the amended complaint, and then he will have to respond.

MR. RAINSFORD: And, of course, we will accept -- I will accept service on behalf of my two, but anybody else...

MR. DAVIS: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded at 3:27 p.m.)

**October 1, 2018 Hearing Transcript.
(Record on Appeal, Page 404)**

Aside from no discussion or evidence of an expedited 15-day time period to serve, Respondents have not provided any reasonable explanation (much less a legal basis) as to why Judge Benjamin might have expected Appellant to physically serve all 31 of the newly named and geographically diverse defendants within 15-days. It was clearly not the plain language intent of the trial court to impose such an impossible task.

Nevertheless, Respondents have improperly and in violation of the rules attempted to cloud this appeal with extensive matters not about and alleged expedited 15-day time period to serve, but the entire case. Respondents have generally all argued the merits of the entire case and substantive deficiencies in Appellants Amended Complaint in this appeal. This appeal deals solely with a procedural issue. Respondents have thrown the proverbial kitchen sink into this appeal record in an apparent hope to overwhelm a *pro se* Appellant and slip in an Appeal Court ruling on the merits of the underlying case, as opposed to a simple procedural matter.

In fact, at the February 12, 2020 hearing, there were TWELVE MOTIONS, nine of which were Motions to Dismiss. Contrary to the Order drafted by opposing counsel stating that “[t]he Court heard arguments on the motions on February 12, 2019”, only two of the motions were even heard at the hearing in February 12th, 2020. (See Transcript, Record on Appeal, Page 378-411) as the Court dismissed all the motions as MOOT given the amended complaint was not personally served on the newly named defendants within the 15-day time period.

Nothing substantive has been heard or ruled on by the lower court related to the merits of this case and as such there is no basis for Respondents to argue such matters before this Court of Appeals, nor is there any basis for Respondents to designate such matters for inclusion in the record of appeal.

Respondents should be instructed in no uncertain terms that “the Record on Appeal shall not contain any matter not presented to the trial court. Rule 209(c), SCACR.” *Henning v. Kaye*, 415 S.E.2d 794, 307 S.C. 436 (S.C. 1992)

UNRELATED FOIA CASE

To further demonstrate the general absurdity of Respondent’s over briefing and designation of the matter beyond anything presented, heard or even considered at the trial court, Respondent **South Carolina Educational Credit for Exceptional Needs Children Fund** (hereinafter “**ECENC Fund**”) specifically included in their Initial Brief and Designation of Matter (both stamped filed October 11, 2019) a discussion of and matters from an unrelated Freedom of Information Act case. **What does a FOIA case have to do with interpretation of an alleged service deadline?** Obviously nothing!!!

Respondent ECENC Fund alone designated an additional 14 items totaling 72 additional pages for the record on appeal related to this FOIA case.

EXTENT OF VIOLATIONS


Overall the Record on Appeal was expanded by Respondents from 7 items (four orders, a Motion to Reconsider & two transcripts) totaling from 97 pages as designated by Appellant and specifically related to the interpretation of any alleged service deadline in Judge Benjamin’s Order dated October 30, 2018; to now 61 items (an additional 426 pages) due to this over briefing and designation in violation of the SCRCP and SCACR generally, and Rules 52(b) and 59(e) of the SCRCP and Rule 209(c) of the SCACR specifically.

CONCLUSION

For the foregoing reasons, Appellant asks this Honorable Court to:

- A. **Strike “generally”** all sections of Respondent’s Initial Brief’s addressing issues unrelated to the interpretation of any alleged service deadline in Judge Benjamin’s Order dated October 30, 2018 (or alternatively request from Appellant specific sections for Respondents Initial Brief’s to be stricken).
- B. **Strike specifically** all items included in all Respondent’s Designation of Matter’s except for the 7 items included in Appellant’s Designation of Matter stamped filed September 9th, 2019 due to the fact such items are unrelated to the interpretation of any alleged service deadline in Judge Benjamin’s Order dated October 30, 2018.
- C. **Strike specifically** Items 40 – 53 (i.e., Items 48 – 61 of the Record on Appeal) of Respondent South Carolina Educational Credit for Exceptional Needs Children Fund’s Designation of Matter to be Included in the Record on Appeal (stamped filed October 11, 2019) which are items from a completely separate Freedom of Information Act (FOIA) case and unrelated to any alleged service deadline in Judge Benjamin’s Order dated October 30, 2018.
- D. Alternatively, require Respondents to show good cause as to why such arguments and designated matters should be included in this appeal.
- E. Any such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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Appellant.

Date: March 9, 2020

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In The Court of Appeals

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Hon. Doyet A. Early, Circuit Court Judge

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PROOF OF SERVICE

I certify that I have served the **APPELLANT'S MOTION TO STRIKE** on the below named parties at the addresses noted by depositing a copy of it in the United States Mail, postage prepaid on March 9th, 2020.

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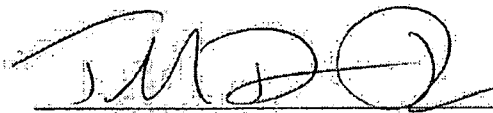
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March 19, 2020

The Honorable Jenny Abbott Kitchings
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RE: Jefferson Davis Jr. Appellant vs. Ellen Weaver, Et al. Respondents
Appellate Case No.: 2019-000648
C.A. NO. 2018-CP-40-02425

Dear Ms. Kitchings:

It was just brought to my attention that the Rule 240(d), (e) & (f) require that along with the original motion, return and reply respectively, **six (6) copies are also required.**

As such, please find the addition six (6) copies for the following two filings:

- **APPELLANT'S MOTION TO STRIKE**
 - Mailed 3/9/2020 although it has not been posted to the online docket.
- **APPELLANT'S RESPONSE IN OPPOSITION TO RESPONDENT KIRKLAND'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL**
 - Mailed 3/17/2020.
 - Kirkland Motion to Supplement was also mailed on 3/9/2020 to the Court, but also has not been posted to the online docket as of today.

I apologize about this misunderstanding, but thank the Court and your office for your assistance. If you have any questions, please feel free to email me at jeff@apogeetax.com or give me a call at 843-901-8036 (cell).

Sincerely,



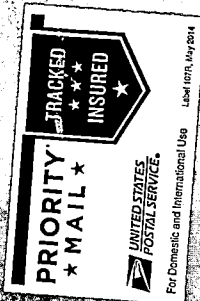
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