

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Alex Kinlaw, Circuit Court Judge

Sup. Ct. Appellate Case No. 2020-000829

David Rosen.....Petitioner,

v.

Josephine Middleton.....Respondent.

**PETITIONER'S REPLY TO RESPONDENT'S RETURN TO PETITION
FOR WRIT OF CERTIORARI**

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REPLY ARGUMENT

The respondent dedicates line after line of her return to stating what this Court can and cannot do. In doing so, the respondent essentially asks this Court to use procedural rules to endorse a fundamentally unfair ruling in a manner that more resembles totalitarianism than a system designed to ensure fairness. This Court is a place of justice, however, not inequity. For the following reasons, the Court should accept certiorari and reverse the Appellate Court's dismissal of this appeal.

I. The Supreme Court has the authority and the ability to correct the injustice giving rise to this appeal.

"Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible." *Ex parte Dibble*, 310 S.E.2d 440 (Ct. App. 1983). This appeal, and subsequent petition for certiorari, stems from the reversal by one judge of another judge's entry of summary judgement 10 months after the fact, where no Rule 59(e) motion or other motion was filed in the interim. What's worse, the circuit court's ruling was based upon a finding of attorney abandonment, which never occurred.

The appellant has fully addressed the issue of attorney abandonment in both his Rule 59(e) motion to reconsider and his initial brief. As a result, he will not belabor that point here. However, it is crucial to emphasize that the respondent admitted that she fired her attorney, in complete contradiction to any argument of attorney abandonment. Also key is the fact that the respondent herself began this controversy by filing an action against the appellant in Magistrate Court. As a result, this case fits squarely within the extreme cases of unfairness contemplated by the Court of

Appeals in *Ex parte Dibble*, and this Court should accept certiorari to correct the fundamental unfairness involved.¹

The respondent admits that “[a] writ of certiorari is not a matter of right, but of sound judicial discretion...” Rule 242(b). The “special and important reasons” contemplated by the Rule are certainly present in this case. *Id.* The respondent simultaneously wants the Court to use procedural rules to exact injustice and unfairness and ignore the same rules and case law that recognize this Court’s discretion and ability to “...do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.” *Id.*

II. To place form over substance in this case leads to an absurd result.

To deny certiorari in this case would be to promote unfairness and inequity, which is antithetical to our entire judicial system. “[E]quity applies substance over form...” *Regions Bank v. Wingard Properties, Inc.*, 715 S.E.2d. 348 (Ct. App. 2011). The respondent’s assertion on page 3 of its return that “[t]he un-appealed jurisdictional ruling is the law of the appeal and not subject to review now” smacks of unfairness. “In construing a statute, this Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature.” *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 663 S.E.2d 484 (2008).

Respectfully, the respondent’s assertion that “...this Court would ultimately sustain the trial court’s judgment if it ever reached the merits” cannot be taken seriously. Again, the trial court

¹ To deprive the appellant of any remedy after such a fatally flawed ruling would lead to an absurd result. The appellant has a right to Equal Protection under the law, and he has been treated differently than similarly situated individuals who routinely obtain judgments which are only reversed when there is a legitimate reason. The appellant’s due process rights and his constitutional right to property have also been violated. The appellant preserves all constitutional issues for appeal and application to the United States Supreme Court for certiorari.

reversed another judge's ruling after 10 months, even though the respondent caused extensive damages, fired her attorney, failed to obtain new counsel for 18 months, and then falsely claimed attorney abandonment, an argument directly contradicted by a *pro se* submission to the Circuit Court written in the respondent's own hand.

CONCLUSION

For the foregoing reasons, the appellant respectfully requests that this Court grant certiorari and reverse the Appellate Court's dismissal of this appeal.

Dated: July 2, 2020.

Respectfully submitted,

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