

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-In-Equity

Trial Court Case No. 2019-CP-23-05580
Appellate Case No. 2020-000913

RECEIVED
Jul 28 2020
SC Court of Appeals

In Re: Samuel Church, Debtor,

James Ray Smith and Suzuki of Anderson, Inc., Respondents,

v.

Samuel Church, Appellant.

REPLY

COMES NOW the Appellant who respectfully submits his Reply to Respondents' Return to Motion (styled as a Memorandum In Opposition To Motion For Reinstatement).

STATEMENT OF THE CASE

On page 2 of Respondents' Return, in the final paragraph, Respondents incorrectly state that the Appellant moved to quash the subpoenas issued by the Clerk of Court in Georgia. The motion also sought to quash the subpoenas issued by 13th Judicial Circuit, Court of Common Pleas, under the signature of the Respondents' counsel.

ARGUMENT

I. The Order denying Appellant's Motion to Quash was interlocutory, but is immediately appealable pursuant to S.C. Code Ann. 14-3-330 (1976).

The relevant South Carolina legislation sets forth several exceptions to the general rule that interlocutory orders are not appealable.

SECTION 14-3-330. Appellate jurisdiction in law cases.

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

In this case, the appealed order affects a substantial right of Appellant to not have his daughter placed in serious danger in these unprecedented times simply so the Respondents can conduct a discovery fishing expedition. Further, since this case involves supplemental proceedings there will be no final trial and no verdict. The danger to the subpoenaed witness is irreparable in that if she is forced to appear and testify at a deposition upon oral examination and she is exposed to the Novel Coronavirus and becomes infected with COVID-19 or her family members become infected with COVID-19, there is no recourse. The injury will be incapable of remedy by the Courts.

This case presents a dilemma similar to the cases concerning the unsealing of court records.

Moreover, we agree with courts which have been inclined to find such an order immediately appealable because, after a court file is unsealed and the information released, no appellate remedy is likely to repair any damage done by an improper disclosure. "Compelling a party that disputes an unsealing order to forgo an appeal until the conclusion of the underlying litigation would let the cat out of the bag, without any effective way of recapturing it if the district court's directive was ultimately found to be erroneous." *Siedle v. Putnam Investments, Inc.*, 147 F.3d 7, 9 (1st Cir.1998) (quoting *Irons v. FBI*, 811 F.2d 681, 683 (1st Cir.1987)). These courts also explain that the usual method of reaching an appellate court—being held in contempt for refusal to comply—is not available to a litigant when the court chooses to unseal its own records. See *Virginia Dept. of State Police v. Washington Post*, 386 F.3d 567, 574 n. 4 (4th Cir.2004) (order unsealing district court documents may be immediately appealed under collateral order doctrine applicable in federal courts); *S.E.C. v. TheStreet.com*, 273 F.3d 222, 228 (2d Cir.2001) (same); *Siedle*, 147 F.3d at 9 (same)(footnote omitted). *Ex Parte Capital U-Drive-It, Inc.*, 630 S.E.2d 464 (S.C. 2006).

II. After this appeal was filed the Respondents withdrew the subpoenas at issue *without prejudice* and, thus, this appeal is not moot because it is capable of repetition yet evading review.

Appellant anticipated that Respondents would argue that this appeal was moot and addressed that issue in his Motion for Reinstatement of Appeal. Respondents failed to address Appellant's argument on this issue in their Return and, thus, concede it.

III. Appellant's filing of this appeal and Motion for Reinstatement of Appeal were not filed for the purpose of delay, were filed in good faith and are not a purposeful effort to run out the time for enforcement of the judgment.

Respondents, having delayed in their efforts to conduct supplemental proceedings until the last possible months, now make calumnious allegations against Appellant without a single fact to offer as proof. The facts set forth in the Return are irrelevant because they resulted in no delays whatsoever. Further, the allegation that the creation of a revocable trust and transfers of Appellant's meager assets into it was fraudulent flies in the face of the fact that such trusts are

easily reachable by a court of competent jurisdiction during supplemental proceedings. S.C. Code Ann. 15-39-620 (1976).

If the use of revocable trusts to steer one's assets around a probate estate and directly into the hands of loved-ones is fraudulent, then a large percentage of the Bar is engaged in fraudulent activity for the purpose of earning legal fees.

Additionally, the Respondents failed to raise this issue of fraudulent transfer of assets during the hearing and briefing of the motion to quash and motion to reconsider. Obviously, they failed to do so because the issue before the court had no relevant connection to fraudulent transfer of assets. As the trial judge was not allowed to make any ruling on the issue of fraud, Respondents can not now raise this issue in the appeal.

Respectfully Submitted.

July 28, 2020



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PROOF OF SERVICE


I certify that I have served the Reply on James Ray Smith and Suzuki of Anderson, Inc.,
via electronic mail on July 28, 2020, addressed to their attorney of record, Daniel L. Draisen, at
daniel@injuredsc.com.

July 28, 2020



Pamela D. Helton, Legal Assistant

SWORN to before me this
28th day of July, 2020.


My commission expires 12-28-2022.

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July 28, 2020

VIA EMAIL: ctappfilings@sccourts.org

The Honorable Jenny A. Kitchings
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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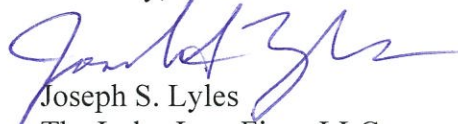
Re: *In Re: Samuel Church, Debtor*
James Ray Smith and Suzuki of Anderson, Inc. vs. Samuel Church
Appellate Case No. 2020-000913

Dear Ms. Kitchings:

Enclosed for filing find the following documents with respect to the above-referenced matter: (1) Reply and (2) Proof of Service.

By copy of this email, I am serving opposing counsel. Please feel free to contact me with any questions or concerns.

Sincerely,



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Enclosures

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The Honorable Jenny A. Kitchings
July 28, 2020
Page 2

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