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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Circuit Judge Maite Murphy and Roger Young

Eleven Orders filed between September 25, 2018 and September 27, 2019

Alan Nix, ... Petitioner,

v.

Churchill Park Homeowners' Association, Inc., Churchill Park, Churchill Park at Parkwest, Inc., David Brown and Catherine Brown . . . . . Respondents.

BRIEF OF PETITIONER

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STATEMENT OF THE CASE

This appeal is based on an appeal from the Charleston County Small Claims Magistrate Court, case number 2017-CV-10-11500354, filed in February 2017. That action sought compensation from the Defendant's for knowingly and willfully destroying a portion of Plaintiff's fence without permission in, or about, July 2014. Randall Stoney and Kevin Mims of Luzuriage Mims, LLC entered an answer in that case in March 2017 on behalf of Churchill Park Homeowners' Association, Inc., Churchill Park (incorporated July 31, 2003), Churchill Park at Parkwest, Inc., David Brown and Catherine Brown. Joseph Kaiser simultaneously entered an answer on behalf of David Brown and Catherine Brown. The subject pre-trial conference of April 18. 2017 did not address the issues Judge Turner stated in his letter he intended for that pre-trial hearing to address. The subject pre-trial hearing was also not done on the record but instead, in Judge Turner's office. Judge Turner, based on that off the record pre-trial hearing, entered an order dismissing the case against Churchill Park, Churchill Park Homeowners' Association, Inc., Churchill Park at Parkwest, Inc., and Catherine Brown.

Appellant, after finding evidence of collusion between Randall Stoney and Todd Musheff in the March 2018 timeframe, Todd Musheff at the time involved with McCabe Trotter, furthering a fraud by knowingly and willfully claiming Churchill Park Homeowners' Association, Inc was "up in Greenville somewhere", filed a motion on April 18, 2018 to restore the case to the active docket based on SCRCP Rule 60(b)((3). The Appellant's claim of fraud, misrepresentation, or other misconduct of an adverse party , if not fully supported at the time of filing the motion in April 2018, was clearly made for the Appellant on April 30, 2018 when Mr. Randall Stoney, in responding to a question by

Magistrate Turner, stated that of the five defendants he and Mr. Mims entered an answer on behalf of in March 2017, that he and Mr. Mims actually only represented one of those defendants, Churchill Park at Parkwest, Inc. As clearly articulated in the Memorandum in Support of the motion Appellant filed with the Small Claims court on May 7, 2018, there is, and never has been, an entity registered with the S.C. Secretary of State's Office named Churchill Park at Parkwest, Inc. Hence, clearly Mr. Stoney, and by extension, Mr. Mims, either committed fraud upon the court and the Appellant, when they filed the original answer in March 2017 claiming to represent all five defendants, or, committed fraud upon the court and the Appellant on April 30, 2018 when they stated they only represented one of the five defendants, ironically the one that clearly has never been incorporated. An entity utilizing the Inc. nomenclature must be incorporated to legally utilize such an extension. Hence, the one entity that Mr. Stoney claimed to represent on April 30, 2018 was fraudulent on its face. Magistrate Turner knowingly and willfully improperly denied Appellant's motion to restore case 2017-CV-10-11500354 because he did not want to find Mr. Stoney, the son of his friend, guilty of a Rule 60(b)(3) violation, thus improperly forcing Appellant to appeal the case to the circuit court.

On August 21, 2018, Joseph Kaiser, the same attorney that entered an answer on behalf of David and Catherine Brown in case 2017-CV-10-11500354 in March 2017, the next door neighbor of Mr. Stoney, entered a notice of appearance in appeal 2018-CP-10-03315. The day after the notice of a hearing for the appeal was received in September 2018, scheduled on Judge McCoy's docket, somehow a proposed order for substitution of counsel found its way onto Judge Roger Young's desk. It is undisputed that there was no motion fee paid for the proposed order, it was not filed with the Charleston County Clerk

of Court's office, it was not requested by Judge McCoy, it was not accompanied by a motion cover sheet and it was not served on the Appellant. On its face and factually undisputed, procedurally defective in every possible requirement of filing a motion or proposed order. One November 2, 2018, Appellant filed a Rule 60(b) motion seeking to have the order set aside and a clarification of the events which led to the order being signed and filed originally. On November 13, 2018, Caroline Leonard of the Charlesotn County Clerk of Court's Office sent an email stating that she had just spoke with Judge Young about the motion filed on November 2, 2018 and that Judge Young advised that any motion for reconsideration of his order Substituting Counsel signed on September 25, 2018 should have been submitted to the Court within 10 days of signing. Therefore, my motion of November 2, 2018 was moot because it was outside of the ten day period. The motion was then closed based on the email from Ms. Leonard on November 13, 2018. This easily known incorrect assertion by the Clerk of Court's office, which led to the motion being closed without a hearing on its merits, required Appellant to file another motion to correct the incorrect ruling in Ms. Leonard's email from November 13, 2018.

On November 19, 2018, Judge Young entered a Form 4 denying the Motion to Reconsider filed Nocmber 2, 2018 which was already closed, once again incorrectly asserting that the "*motion to reconsider only substituting counsel filed 9/27/18 is denied because it was filed more than 10 days after order was filed*". Once again, no hearing was scheduled or had to properly hear the motion. This led the Appellant to file another motion to reconsider and clarify on November 21, 2018 raising the same obvious issues with the ruling and the procedures. The motion of November 21, 2018 was technically never ruled on by Judge Young or Judge Murphy.

Due to the ongoing issues with such apparently simple issues that even the Appellant, who is not an attorney licensed to practice law in South Carolina, understood, Ms. Leonard then suddenly informed the parties via email on November 28, 2018 that the hearing scheduled on Judge McCoy's roster for November 29, 2018 had been taken off of Judge McCoy's roster and that he would have a hearing on this situation at 0930 on December 7, 2018. Interestingly, Ms. Leonard clarified that this would be the only notification of the hearing the parties would receive. This apparently meant that she would not be scheduling it as she would normally schedule a motion hearing because, she clearly did not and the hearing never showed up on a motion roster. The details of that hearing are contained in the previously submitted transcript of December 7, 2018. The improper purpose and intent of that hearing is rather easily understood based on the transcript and the associated Order filed later that afternoon.

Based on the hearing of December 7, 2018, and especially the remarks of Judge Young, the lack of questioning Mr. Thames, and Mr. Thames clear unwillingness to say anything of specific fact on the record, the Appellant filed a Rule 59 motion on December 28, 2018, laying out the numerous issues. Once again, on January 17, 2019, Judge Young denied the motion of December 28, 2018 without a hearing, yet knowingly and willfully stating as fact an untruth in the additional information section of the Form 4 that "*This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered*" No hearing was ever scheduled or held for this motion and Judge Young's assertion as to that apparent fact is a clear untruth of which he obviously had to be aware of at the time he filed the order on January 17, 2019.

In the period of time during April and May 2019, numerous motions of Appellant's were

either returned to Appellant or processed very slowly by the Charleston County Clerk of Court's office. This modis of operandi and its underlying intent would become a more clear strategy of Charleston County and the other parties within a few months.

Judge Price was scheduled to be at the August 28, 2019 hearing but instead Judge Murphy from Dorchester County appeared with no notice. The transcript of the hearing demonstrates, at a minimum, Judge Murphy's lack of preparedness for the hearing. The only issues she seemed to have a clear view of was quashing subpoenas for appearance of Public Officials and attorneys involved in the multiple instances of misconduct. She was obviously not clear on which motions were on the motion docket for the day, including, ironically, hearing the actual appeal from Charleston County Magistrate Turner. The Orders filed on September 19, 2019 and September 27, 2019 is what resulted from Judge Murphy's apparent "*look at the record to look at the dates as far as the other motions are concerned*"

ARGUMENT

There are obviously numerous reasons why this Court should reverse the holding of the lower Court in appeal 2018-CP-10-03315. Appellant will attempt to take the numerous issues up in order of the most obvious and egregious errors.

First, the Judge Murphy's Form 4 Order signed September 20, 2019, filed September 27, 2019, clearly and easily known, applies the wrong legal standard to the rationale given why appeal 2018-CP-10-03315 was dismissed. Judge Murphy cited S.C, Code 14-25-95 as the controlling legal basis for requiring an appeal from a Magistrate Court in South Carolina to be filed within ten (10) days of the date the Magistrate's order is dated. S.C. Code 14-25-95 clearly applies to municipal courts, not Magistrate Courts. The correct legal standard to apply to appeals from Magistrate Court's is Rule 18 from the Magistrate Court rules which states in part "*Within thirty (30) days after delivery of written notice of judgement to the parties or their attorneys, a party wishing to appeal shall serve on the respondent and file a notice of appeal....*" Judge Murphy somehow correctly states the facts of the matter, correctly cites Mr. Turner as a Magistrate, not once, but twice, and then somehow finds S.C. Code 14-25-95 to apply incorrectly rather than Rule 18. It is undisputable that there is less than thirty days between Magistrate Turner's order dated June 2, 2018 and the Appellant's Notice of Appeal filed June 28, 2018. This apparent mistake is very difficult for a Pro Se litigant to understand, given Judge Murphy is an attorney licensed to practice law in South Carolina. Furthermore, this apparent mistake compounded by the ORDER ENJOINING THE PLAINTIFF FROM RE-FILING THIS MATTER AND IMPOSING SANCTIONS UPON THE PLAINTIFF, made it impossible

for Appellant to have this obvious error corrected in the lower court, requiring the absolutely unnecessary time and expense to file an appeal to correct such an obvious and rookie apparent mistake. The Appellant wants to ensure the Court notes that none of the other numerous attorneys licensed to practice law in South Carolina raised this obvious issue either. A reasonable person can only conclude that this apparent mistake, combined with the ORDER ENJOINING THE PLAINTIFF FROM RE-FILING THIS MATTER AND IMPOSING SANCTIONS UPON THE PLAINTIFF was almost certainly not a mistake, and clearly intend for improper purposes, including the same improper purposes cited in the South Carolina Frivilous Proceedings Act that is the center piece of the apparent rationale for the ORDER ENJOINING THE PLAINTIFF FROM RE-FILING THIS MATTER AND IMPOSING SANCTIONS UPON THE PLAINTIFF.

The next most obvious incorrect Order of Judge Murphy's is the Form 4 Order signed September 20, 2019 and filed September 27, 2019, denying Appellant's Motion to Set Aside and Clarify Order dated November 1, 2018. Judge Murphy, after her apparent review of the record between August 28, 2019 and September 20, 2019, was apparently unable to figure out that Ms. Leonard of the Charleston County Clerk of Court's office had had denied it with an email from November 13, 2018 and then closed it and then Judge Young had denied it a second time with the Order filed November 19, 2018. So, Judge Murphy denied the same motion for the third time on September 20, 2019, this time also applying the wrong legal standard, meaning SCRCP Rule 52 instead of SCRCP 60(b), the Rule the motion clearly identified in the opening paragraph.

To leverage that motion and ruling, see Judge Young's Form 4 Order filed November 19, 2018. Judge Young utilizes an unknown legal standard to deny the Motion

to Reconsider filed November 2, 2018, declaring it was untimely "*because it was filed more than 10 days after the order was filed*" . To reiterate, the Motion to Reconsider filed November 2. 2018 was filed under SCRCP 60(b) which does not have a ten day limit associated with it. Furthermore, even if he were potentially referring to Rule 59 or Rule 52 by mistake, the ten day period does not end ten days after the order was filed unless perhaps the order was filed the same day the ruling was announced from the bench. Since there was not a hearing, that obviously can't be Judge Young's rationale for such an obviously flawed ruling.

Next, let's turn to Judge Murphy's Form 4 Order filed September 17, 2019 related to denying the Appellant's Rule 59 motion dated December 25, 2018, filed December 28, 2018. Judge Murphy's Form 4 states she is denying the motion because it has already been ruled upon by the Honorable Judge Young on January 14, 2019. Appellant has no plausible explanation why Judge Murphy would waste the time and incur the embarrassment of filing this Form 4 given she articulates it was already ruled upon eight months earlier, which most likely means it could not have possibly been on Judge Price's motion roster on August 28, 2019.

In the same vain, let's turn to Judge Young's Form 4 Order filed January 17, 2019 denying Appellant's Rule 59 Motion filed December 28, 2018. No hearing was held as sought and required. No explanation for the denial is provided other than for the knowingly and willful false assertion that "*This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered*" Appellant raises the obvious question about this false assertion. If this false assertion were remotely true, isn't it almost surely the case the Appellant would have ordered and utilized the transcript from this

apparent hearing that occurred between December 28, 2018 and January 14, 2019?

Now let's turn our attention to the Order that started this fiasco, the Substitution of Counsel order dated September 19, 2018, filed September 25, 2018. The first major indication of a problem with this order is it starts with "*It appearing*". Given, by almost all known facts that Mr. Kaiser wrote this Order, and that Mr. Kaiser had entered a notice of appearance for David Brown and Catherine Brown in the case almost exactly one month earlier, to a reasonable person, it seems as if he should be able to state something a bit more certain about the Brown's intent and reasons than "*It appearing that the defendants, David Brown and Catherine Brown, wish to discharge the Joseph Kaiser as attorney for Defendants and substitute G Troy Thames as counsel of record for Defendant*" In Appellant's experience with attorneys, every time you see something like "*it appears*", it means what is being stated is, at a minimum, less than accurate and "*it appears*" is the qualification utilized to avoid perjury, fraud upon the court and similar charges. To reiterate, this proposed order was not served on the Appellant, not filed with the Charleston County Clerk of Court and no motion fee was paid. Additionally, in direct contradiction to Judge Young's assertions during hearings and other rulings, both attorneys did not sign the order consenting to the substitution. Clearly, Mr. Kaiser signed for himself and Mr. Thames. Given there is no known Power of Attorney between Mr. Kaiser and Mr. Thames, and they don't even work for the same law firm, Mr. Kaiser's signature for Mr. Thames is almost surely not within the requirements of signing legal documents for someone else. Appellant also wants to raise the fact that due to the ORDER ENJOINING THE PLAINTIFF FROM RE-FILING THIS MATTER AND IMPOSING SANCTIONS UPON THE PLAINTIFF, Appellant has not been able to file a motion raising this newly discovered information, but

on December 10, 2019, under oath, David Brown stated he did not pay anything for Mr. Thames or Mr. Kaiser's apparent representation. Hence, unless Mr. Thames and Mr. Kaiser and Mr. Mims and Mr. Stoney provided Pro Bono legal services to David Brown, which has never been stated by any of the four, then Appellant suggest a better than average chance that David Brown is, at best, a third party client of Mr. Thames, Mr. Kaiser, Mr. Mims, and Mr. Stoney. Most importantly, if Mr. Kaiser had no legal basis for signing this legal document on behalf of Mr. Thames, then the Order is void and Mr. Kaiser is, and always has been, the attorney in case 2018-CP-10-03315.

Now to Judge Young's Order filed December 7, 2018. Judge Young incorrectly states as fact that "*The Substitution of Counsel Order was signed by the original and substituted attorneys, indicating consent*" Clearly Mr. Kaiser signed for both himself and Mr. Thames. Then Judge Young goes on to incorrectly conclude as apparent fact that "*At the time of signature, both attorneys consented on behalf of their clients.*" Clearly this statement can't be true if both attorneys didn't sign the order. Then Judge Young utilizes a misrepresentation in regards to the hearing when he says it was "*set for a hearing on the merits on December 7, 2018*" For it to be properly set for a hearing, the hearing would have been on a motion roster and at least ten days notice would have been given. The facts clearly indicate neither of these things occurred, most likely just like Judge Young didn't have two jury trials before 0930 on December 7, 2018. (See December 7, 2018 transcript, page three, first fill paragraph) Lastly, Judge Young's false reliance on the concept that "*no client has represented to the Court their disagreement to the substitution of counsel*" First, only one hearing had been scheduled as of December 7, 2018, and that hearing was on the roster for probably less than a week. Second, Appellant points out Judge Young's

interesting use of "*no client*" instead of directly citing David Brown and Catherine Brown, raising the obvious concerns that Judge Young knew Kaiser's and Thame's client(s) / direct clients were someone other than David Brown and Catherine Brown. This concern is heightened based on Judge Young's repeated unwillingness to require Mr. Thames to state unequivocally the circumstances of his apparent representation of David Brown and Catherine Brown during the hearing. Mr. Thames specifically, on page nine of the transcript, "*I'm now the attorney of record for Mr. Brown*", specifically not citing Catherine Brown, and then during the remainder of Mr. Thames comments on page nine, cites his clients, but never refers to the Browns again. Of even more interest is the sentence where Mr. Thames states in part "*it's our position that our client, my client, chose me to be their attorney*? That type of attorney double talk almost certainly raises the spector that Mr. Thames knew his client or clients, the Person's that signed a contract and paid the invoices, were someone other than David Brown and Catherine Brown. Lastly, Appellant reiterates again, for Mr Thames assertion on page nine of the December 7, 2018 transcript to be true, where he invokes attorney-client privilege, for that privilege to be true, then the order of substitution from September 25, 2018 would have to be valid, validly signed and not for an improper and fraudulent purpose.

Turning to Judge Murphy's order filed September 17, 2019 granting Defendants David Brown and Catherine Brown motion to quash subpoenas issued to G Troy Thames and Joseph Kaiser. Specifically to the citing of SCRCP 45(c) (3) (A) (iii), Appellant wants to specifically raise the exception of "*no exception or waiver applies*" Specifically to this point, Appellant wants to raise that no attorney client privilege exists when the parties are engaged in an ongoing fraud. The facts as they exist substantially raise the likelihood of the

parties being engaged in an ongoing fraud, meaning the subpoenas should have been allowed to ensure no such improprieties were involved. Likewise, Appellant raises once again related to this order, the fact that the September 25, 2018 substitution order is highly flawed, meaning it is likely that Mr. Thames was never legally the Brown's counsel, which means he can't assert privilege and the motion that led to this order was not validly filed.

To Judge Murphy's Order filed September 27, 2019 related to Judge Young's recusal. Judge Murphy, whether intentionally or unintentionally, got the basis for Appellant's recusal motion all wrong. Since the ORDER ENJOINING THE PLAINTIFF FROM RE-FILING THIS MATTER AND IMPOSING SANCTIONS UPON THE PLAINTIFF was ironically in place, Appellant couldn't correct this order either. The actual basis for the recusal was that given Judge Young's multiple and ongoing incorrect rulings, improper hearings, filing of orders of denial without a hearing, etc., beginning specifically with the clearly inappropriate signing of the order of substitution dated September 25, 2018, that Judge Young has substantially joined the Defendant's / Defendant's attorneys in their highly questionable order of substitution, and consequently, could not be considered an impartial trier of the facts. That goes directly to Canon 3 as well as he engaged in ex parte communications with the Defendant's attorneys related to the order of substitution without involveing the opposing party and his numerous erroneous rulings raise the substantial concern about his professional competence and faithfulness to the law. Ironically, in the aftermath of September 27, 2019, the same issues, but to an even greater degree, can be raised about Judge Murphy. All this order really represents is business as usual within the judiciary, one judge taking care of another judge instead of taking the required steps to report their highly questionable, and most likely actionable, improper pattern of conduct.

Now to the order filed September 27, 2018 related to granting motions to quash for Judge Young and Ms. Luthringer. Appellant raises the general issues of whether Judge Young and Ms. Luthringer can invoke judicial privilege for conduct prior to having a case on their docket and prior to issuing a ruling, especially for an order issues for an improperly received motion / proposed order, in this specific instance, the order of substitution filed September 25, 2018. Likewise, given the circumstance of this situation, the same likely exception applies to this situation as the Thames / Kaiser situation, meaning no privilege exists for judicial impropriety, and specifically for judicial impropriety which intentionally assists others involved in improper conduct. Whether or not the Appellant can or can not "*probe(ing) the inner workings of Judge Young's chambers*", clearly someone needs to probe those inner workings, the evidence of such is laid out in abundance in the transcript from December 7, 2018. Lastly, and perhaps procedurally fatal, the order is not dated by Judge Murphy.

The numerous above issues and order were intentionally laid out before proceeding to the ORDER ENJOINING THE PLAINTIFF FROM RE-FILING THIS MATTER AND IMPOSING SANCTIONS UPON THE PLAINTIFF, filed September 27, 2019. The first issue Appellant raises with this order is the incorrect citation as fact that "*The underlying judgement order regarded a contested foreclosure action against Plaintiff*" This apparent fact is clearly not true, since the small claims case was about the Defendant's intentional destruction of Appellants fence during or about July 2014. Where this apparent fact came from Appellant believes raises even more substantial concerns about this order.

The order goes on to raise completely unrelated facts such as that "*In response to instituting foreclosure proceedings against him, Plaintiff filed numerous complaints with*

city, county, and state offices complaining of Defendant Churchill Park's business practices" While a true statement for the most part, it is completely unclear what that has to do with the basis for the small claims case which is a Mount Pleasant Police Department report from July 2014. The inclusion of this information only heightens the actual intent, improper intent, of this Order. Then the order goes on to raise more information that is both general and unrelated, specifically, that "*Further, Plaintiff sent numerous requests to state agencies for the registration and financial information of Defendant Churchill Park*". And, then the really interesting fact which is included, foot note number one on page two which reads "*Additionally, Plaintiff field a police report against Defendant Churchill Park's counsel, Stephanie Trotter, accusing Ms. Trotter of misdemeanor notary fraud.*" The specific police report is Mount Pleasant Police Department Report number 2017-03844, which was filed in April 2017 and not closed until February 2019. The accusation was, and is, completely legitimate and legally correct. Specifically look at Ms. Trotter's notarizations and witness signatures on the *Assignment of Lien and Foreclosure*, filed with the Charleston County ROD on April 29, 2013 in Book 0326, Pg 993.

The next inaccurate statement of fact is that "*The Honorable James A. Turner dismissed the action*" on April 18, 2017. The pre-trial hearing was not on the record and not even in a court room. Judge Turner dismissed the action against Churchill Park Homeowners' Association, Inc., Churchill Park, Churchill Park at Parkwest, Inc. and Catherine Brown, since the small claims lawsuit was apparently creating an unacceptable level of stress for her. The action was not dismissed against David Brown.

The motion to clarify and restore the case filed April 18, 2018 specifically raised the issue of fraud upon the court by Mr. Mims and Mr. Stoney. After reviewing exhibits

from cases 2014-CP-10-05407 and 2017-CP-10-04031 in March 2018, it became apparent that attorney Todd Musheff and Randall Stoney were involved in perpetuating the fraudulent story that the Defendant in this case, Churchill Park Homeowners' Association, Inc., was apparently "*up in Greenville somewhere*". This is the same Churchill Park Homeowners' Association, Inc that Mr. Mim's and Mr. Stoney filed an answer for in March 2017 in this case. If the burden of meeting the threshold for proving a SCRCP 60(b)(3) violation didn't exist before the motion hearing on April 30, 2018, it clearly existed before the conclusion of the motion hearing on April 30, 2018. When Judge Turner asked Mr. Stoney which of the five Defendants he and Mr. Mims represented in the case on April 30, 2018, Mr. Stoney answered that he and Mr. Mims only represented Defendant Churchill Park at Parkwest, Inc. Hence, clearly Mr. Stoney and Mr. Mims committed a SCRCP 60 (b)(3) violation when they filed the answer to the small claims case in March 2017 stating that they represented all five Defendant's, or when they changed their story on April 30, 2018 and said they only represented Churchill Park at Parkwest, Inc., an entity that used the "Inc." designation but which has never been incorporated in South Carolina, nor any other nearby state that the Appellant knows of. Logically, a very simple conclusion to conclude that they had to commit a SCRCP Rule 60(b)(3) violation one of the two times. But, given Judge Turner's long term relationship with Ran's father, clearly Judge Turner just couldn't fulfill his legal and ethical obligations and hold Ran and Kevin Mims properly accountable, leading to the completely unnecessary appeal which led to case 2018-CP-10-03315.

Much of the remaining history cited in the ORDER ENJOINING THE PLAINTIFF FROM RE-FILING THIS MATTER AND IMPOSING SANCTIONS UPON THE PLAINTIFF is addressed previously in this Brief. However, it is worth noting that the order

granting the motions to quash for James A. Turner, Julie Armstrong, Johanna Gardner and Carolina Leonard was filed by Judge Murphy on November 5, 2019, which is obviously more than ten days after her order of September 27, 2019 which ended the case.

On page six of the ORDER ENJOINING THE PLAINTIFF FROM RE-FILING THIS MATTER AND IMPOSING SANCTIONS UPON THE PLAINTIFF, Judge Murphy finds that the Plaintiff has violated the FCPSA, specifically finding that the "*Plaintiff has filed three motions in regard to the September 19, 2018 Order of Substitution, which allowed Defendants Brown to substitute counsel*". As stated previously, the first motion was a 60(b) motion which Ms. Leonard of the Charleston County Clerk of Court's office apparently had the authority to end based on an email from November 13, 2018. The second motion was filed November 21, 2018 to make Judge Young clarify and correct the Order of November 19, 2018, when he applied the wrong legal standard and, regardless of which legal standard he utilized, cited a standard this is almost universally wrong. The third motion filed December 28, 2018 was very lengthy and laid out in great detail the many wrong processes and incorrect conclusions of fact and law. Once again, Judge Young denied that motion on January 17, 2018 without the requested hearing and without explanation, except for the knowingly and willfully false assertion that "*This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.*"

Based on this fact pattern, Judge Murphy apparently finds that "*any reasonable plaintiff in these circumstances would understand that under the fact his claim was clearly not warranted under existing law*". The first issue here is what is the definition of a "*reasonable plaintiff*" under the FCPSA. The second more obvious and disturbing issue

here is that apparently Judge Murphy believes that non judges, and in this case in particular Ms. Leonard, can deny motions, without scheduling a hearing, and without entering an order, just by sending an email with incorrect statements about the rules of civil procedure. The third issue here is that the Appellant had to write and file three motions, spending completely unnecessary time and money, to get a judge to do something so simple as apply common knowledge rules of civil procedure. This fact pattern doesn't meet the requirements to sanction the Plaintiff / Appellant who is apparently not a "*reasonable plaintiff*". This fact pattern is the basis for impeaching two judges and disbarring both of them, specifically in this instance, Judge Young and Judge Murphy.

Judge Murphy apparently goes on to incorrectly conclude that the "*Charleston County Judicial staff has relayed all pertinent information to Plaintiff's requests prior to the issues of these subpoenas.*" Clearly, if this is a true statement, and assuming of course that the Plaintiff / Appellant is a "reasonable plaintiff", the Plaintiff / Appellant would have known at least by noon on December 7, 2018 how the Substitution Order got on Judge Young's desk on or about September 19, 2018, how and why there was not motion cover sheet, how and why there was not motion fee paid, how and why the propose order was never served on Plaintiff / Appellant, etc. To state more succinctly, all of those things that Ms. Luthringer and Judge Young should have wanted to know on or about September 19, 2018, and no later than November 3, 2018. The only persons unreasonable in this regard are Ms. Luthringer, Judge Young, and the Charleston County Judicial staff.

Then of course, Judge Murphy apparently feels the need to point out that "*It is important to note, the September 19, 2018 Order is a minor, interlocutory matter, which has no overall effect on Plaintiff*". Even if true, the bizarre nature of all the Public Officials

actions in this regard, instead of just fixing the basic problems, tends to raise the spector that the exact opposite is true. Given that Mr. Stoney suddenly left Lurizaga Mims in July 2018, and that he was next door neighbors to Mr. Kaiser, and that Charleston County (Judge Young's previous employer) / McCabe Trotter / "Churchill Park", etc were unsuccessful in selling the Plaintiff's / Appellant's family home at auction on September 4, 2018, the much more likely situation is that Mr Kaiser feared I was beginning to put together a conspiracy case which included him and attempted to find a way out of that situation, which inherently required him to find a way out of his Notice of Appearance in this case from August 21, 2018.

Judge Murphy goes on to incorrectly conclude that Plaintiff / Appellant's "*continued motions and filings have demonstrated a pattern which shows a clear disdain for the judicial process, as Plaintiff continues to ignore the Court's direction.*" The actual fact pattern proves just the opposite about the Plaintiff / Appellant. The Plaintiff / Appellant spent numerous hours and dollars ensuring that the judicial process operated as designed and required, which ironically, literally required the Plaintiff / Appellant to ignore the Court's numerous corrupt directions, whether explicit or implicit. And then Judge Murphy apparently can't help herself or do what is proper and required regarding Judge Young's prolonged pattern of misconduct, and makes the completely moronic argument that the "*Plaintiff's continued filing regarding a minor interlocutory matter waste the Court's resources and frivolously subject Defendant's to costs and fess to defend the repetitive litigation.*" As stated previously, what was discovered on December 10, 2019, is that the apparent Defendant's David and Catherine Brown have incurred no costs and fess whatsoever related this matter, or apparently any other matter involving Plaintiff.

Furthermore, if the Court / Charleston County observed any of the rules of civil procedure, this would have never occurred originally and certainly should have been corrected promptly in early November 2018 when Plaintiff / Appellant filed the Rule 60(b) motion. The Court / Charleston County's own knowing and willful misconduct in this matter is what led to any apparent "*waste of the Court's resources*" Judge Murphy alludes to, as well as wasting countless hours of Appellant's time making them do something that resembles the right thing.

Appellant / Plaintiff won't even waste any more time on Murphy's statements about recalcitrant and potentially malicious. That actual fact pattern proves this isn't true and that either Murphy is suffering from serious mental issues or is just plain corrupt. However, Plaintiff / Appellant will state unequivocally, that he will definitely continue to harass the Judicial System anywhere and everywhere he encounters such misconduct and legal incompetence. That type of "good trouble" as Rep. John Lewis described it, is absolutely necessary to protect the Rule of Law and maintain some resemblance of Democracy.

Specifically to Judge Murphy's CONCLUSION, she clearly, and Appellant / Plaintiff, believes intentionally, grossly exceeds any sort of reasonable discretion that a judge can possible rationalize. Judge Murphy ORDERS that "*the Clerk of Court of Charleston County shall refrain from filing any additional Complaints or other Pleadings related to the matters set forth in Civil Action No. 18-CP-10-03315, until such time that Plaintiff has retained legal counsel, licensed in the State of South Carolina.*" Plaintiff notes that after all of Judge Murphy's musings about wasting the Court's time and apparently subjecting the Defendant's to the unnecessary burden and expense of continuing to re-

litigate these issue, Judge Murphy doesn't apparently find it proper to order the Plaintiff / Appellant to pay 1) reasonable costs and attorney fees or 2) are reasonable fine to the court. No, Judge Murphy's order substantially provides what numerous attorneys and judges and governmental entities have been desperate to obtain since at least December 2017, one of their associates who is a member of the South Carolina BAR to help control Plaintiff / Appellant before he files a suit against a lot of attorneys and governmental entities and Public Officials. Ironically, this Order is going to be the center point of one or more lawsuits of exactly that nature.

Specifically, according to the Standard of Review, whether under Rule 11 or the FCPSA, when an action in equity is tried by a judge alone, the appellate court has jurisdiction to find its own facts in accordance with its own view of the preponderance of the evidence. However, the abuse of discretion standard plays a role in the appellate review of sanctions award. (Ex. Parte Gregory, 378 S.C. 430, 437, 663 S.E. 2d, 46, 50 (2008). Where 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. Under the abuse of discretion standard, the imposition of sanctions will not be disturbed unless the decision is controlled by an error of law or is based on unsupported factual conclusions. The Act states that "Any person who takes part in the procurement, initiation, continuation, or defense of civil proceedings must be considered to have acted to secure a proper purpose as stated in item (1) of Section 15-36-10 if he reasonable believes in the existence of the facts upon which his claim is based and (1) reasonably believes that under those facts his claim may be valid under the existing or developing law or (3) believes an attorney of record, in good faith that his procurement, initiation, continuation or defense of a civil cause is not intended

to merely harass or injure the other party.

Under these standards, Judge Murphy's ORDER ENJOINING THE PLAINTIFF FROM RE-FILING THIS MATTER AND IMPOSING SANCTIONS UPON THE PLAINTIFF is substantially and fatally flawed in both respects, namely, obviously unsupported facts as has already been laid out in this Brief and clear errors of law with significant abuse of discretion.

First, from a factual perspective, this Brief has already laid out in great detail the actual facts vice the intentionally distorted and manipulated facts that Murphy and the other parties chose to cherry pick and manipulate to attempt, clearly in bad faith and meant for an improper purpose, to attempt to justify such a ludicrous Order which substantially did injure Plaintiff / Appellant in multiple ways, including but not limited to, violating his Constitutional rights and creating completely unnecessary costs and delays in correcting obviously incorrect factual findings and multiple incorrect errors of law and civil procedure. Thus, the first part of the Standard of Review is entirely appropriate and simple for the Court of Appeals to review the facts fairly, rationally and completely and find its own facts in accordance with its own view of the preponderance of the evidence, which by default, must be in the Plaintiff's / Appellant's favor.

The abuse of discretion standard is a simple matter for the review of and correction of by the Court of Appeals. Not that Appellant / Plaintiff believes it is remotely possible for the Court of Appeals to rule Murphy and associates could argue their version of the facts are anything but clearly unsupported factual conclusions and manufactured in bad faith and for an improper purpose, but clearly Murphy made numerous errors of law and civil procedure and also went down a very dangerous path of abuse of discretion by attempting

to taking away all of a Plaintiff's / Appellant's rights to argue in good faith obvious errors of law and rules of civil procedure in any case that in any way refers to the word "Churchill", including but not limited to, filing new Complaints for new causes of action against any or all of the apparent Churchill"s and their many co-conspirators for the misconduct which occurred in the second foreclosure filing started in August 2017 in Charleston County. That type of abuse of discretion is extremely dangerous to our system of democracy as well as our the United States Constitution and is even more highly circumspect in light of not even attempting to award attorney fees and costs or some penalty payable to the court. That type of ruling can only be construed to be for an improper purpose of which the Court, the BAR, and the "Churchill"'s and their co-conspirators were obviously desperate to have as a defense against future good faith claims and Complaints by Appellant.

If the Court, by some chance, actually needs an additional reason to summarily rule in favor of the Appellant and return this case to the lower court to hopefully once and for all be handled properly, Plaintiff / Appellant will remind the Court that this is the same judge who apparently got so confused on the same day she signed this Order that she applied a law for municipal court appeals to an appeal from a Magistrate court / judge. If a judge has repeatedly demonstrated that they can't be trusted to manage something that simple and straightforward correctly and in good faith, how can that same judge be trusted to accurately and fairly award sanctions of this nature based on easily understood false facts and unsupported factual conclusions which substantially harms Appellant / Plaintiff by knowingly and willfully violating their Constitutional rights?

CONCLUSION

The holdings of Murphy and Young in the underlying appeal of the previous underlying appeal are highly flawed and for areas of law and civil procedure that even a Pro Se litigant can relatively quickly determine to be both factually and legally incorrect. Given the pattern of such conduct by Murphy and Young, a reasonable person can only conclude that either a strange set of circumstances came together where Appellant / Plaintiff encountered to very incompetent and/or incapacitated judges in the same case or, as Appellant / Plaintiff argues, the State of South Carolina's Judicial System suffers from systemic judicial corruption which the BAR and the Judicial System has routinely proven they are incapable of self governance in a manner that protects the Public from such corruption and is thus, a dire threat to the Rule of Law and Democracy.

It is time for this case to be heard on the merits and in full compliance with the rules of civil procedure and applicable law. The pattern of misconduct in this case is symbolic of the same type of misconduct Appellant has routinely encountered in the South Carolina Judicial system. It is time for some judge with the political courage and a unshakeable commitment to the Rule of Law to face these problems head on and do what is both right, as well as legally and ethically required of them to start righting the ship of the Rule of Law in the South Carolina Judicial System. Almost nothing that has happened in the original small claims court case or the appeal in Charleston County has been correct, despite the issues being quite simple and straightforward. This Court should reverse and, in the process, send a clear message of what is expected, as well as what is clearly not acceptable, of judges in South Carolina. Subjecting any good faith litigant to such extremely improper conduct, which creates such additional and wholly unnecessary costs and time

expenditures by the entire system, is simply unconscionable.

Respectfully submitted,

August 27,
2020

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger Young
And
The Honorable Maite Murphy

Case No. 2018-CP-10-03315

Alan Nix, Appellant

v.

Churchill Park Homeowners' Association, Inc., Churchill Park at Parkwest, Inc., Churchill Park, David Brown and Catherine Brown, Respondents

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Appellate Case Number 2019-001878

PROOF OF SERVICE

The undersigned certifies that a copy of the Initial Brief and Designation of Matter has been served upon the individuals listed below by mailing a copy of the same, postage prepaid, in the United States Mail, addressed as shown below this 27th day of August 2020 to:

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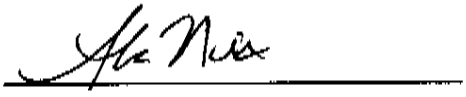
By: 

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ENCLOSURES:

1. CERTIFICATE OF SERVICE - 2019-001878
2. DESIGNATION OF MATTER - 2019-001878
3. INITIAL BRIEF - 2019-001878