

STATE OF SOUTH CAROLINA
In The Court of Appeals

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Sep 28 2020

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Maite Murphy, Circuit Court Judge
The Honorable Roger Young, Circuit Court Judge

Case No. 2018-CP-10-03315
Appellate Case No. 2019-001878

Alan Nix,

Appellant,

v.

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

Respondents.

**INITIAL BRIEF OF RESPONDENTS ROGER YOUNG, CIRCUIT COURT JUDGE,
AND LYND SAY LUTHRINGER**

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JUDGE, AND LYND SAY
LUTHRINGER**

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STATEMENT OF ISSUES ON APPEAL

- I.** The order quashing Appellant’s subpoenas of Judge Young and his law clerk was entirely appropriate.
- II.** Appellant has abandoned all issues on appeal.

STATEMENT OF THE CASE

The Attorney General’s representation extends solely to Judge Young and his law clerk and the subpoenas issued against them. Judge Young and his law clerk moved to quash those subpoenas, **R. ___**, and the subpoenas were quashed on September 27, 2018. **R. ___** Appellant Nix now appeals, *inter alia*, the quashing of those subpoenas.

STATEMENT OF THE FACTS

Respondents Catherine and David Brown filed a consent order to substitute counsel. **R. ___** Judge Young signed that consent order on September 19, 2018. **R. ___** The order was signed without a hearing and without an underlying motion, as is routinely done. One attorney, as an officer of the court, signed for the other attorney with permission. Appellant Nix sought to subpoena Judge Young and his law clerk regarding the consent order. **R. ___** As noted in Judge Young’s order denying Appellant’s motion to reconsider/clarify, any deficiencies regarding the order substituting counsel were cured by the full December 7, 2018, hearing on the merits. **R. ___** Appellant’s motion to reconsider was also outside the mandatory ten-day timeframe and thus untimely. **R. ___**

STANDARD OF REVIEW

“Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo.” *Town of Summerville v. City of N. Charleston*, 378 S.C. 107,

110, 662 S.E.2d 40, 41 (2008). Determining the proper interpretation of court rules is similarly a question of law and thus subject to a de novo standard of review. *See also Citizens for Quality Rural Living, Inc. v. Greenville Cty. Planning Comm'n*, 426 S.C. 97, 102, 825 S.E.2d 721, 724 (Ct. App. 2019), *reh'g denied* (Apr. 18, 2019).

ARGUMENT

I. The order quashing Appellant’s subpoena of Judge Young and his law clerk was entirely appropriate.

The subpoenas are procedurally improper. Under Rule 45(b)(1), a subpoena must be served in compliance with Rule 4(d). Officials of the State of South Carolina must be served by copying the Attorney General. Rule 4(d)(5), SCRCF. No copy was sent to the Attorney General. The subpoenas seek to compel production of documents on issues that have been finally adjudicated. **R.** ___ The order to substitute counsel is final. **R.** ___ The hearing Appellant sought to compel Judge Young and his law clerk to testify at has passed. Thus, these subpoenas are now moot. *See, e.g., In re Grand Jury Subpoena (T-112)*, 597 F.3d 189, 195 (4th Cir. 2010) (recognizing that to sustain a subpoena requires a persisting or extant “live controversy”).

Further, the subpoenas require disclosure of privileged or otherwise protected matter and are substantively improper. Rule 45(c)(3)(A)(iii), SCRCF. Judge Young cannot be compelled to produce documents or testify regarding orders he has issued. There is a “presumption [that] judges should not be called to testify regarding matters from a case over which they previously presided.” *In re Whetstone*, 354 S.C. 213, 217, 580 S.E.2d 447, 449 (2003). “The overwhelming authority concludes that a judge may not be compelled to testify concerning the mental processes used in formulating official judgments or the reasons that motivated him in the performance of his official

duties.” *United States v. Roebuck*, 271 F. Supp. 2d 712, 718 (D.V.I. 2003). “[J]udges are under no obligation to divulge the reasons that motivated them in their official acts; the mental processes employed in formulating the decision may not be probed.” *Id.*

Likewise, Ms. Luthringer is also shielded from the subpoenas as Judge Young’s law clerk. She cannot be compelled to produce documents or testify regarding confidential communications with or work product for Judge Young.

“Judges, like Presidents, depend upon open and candid discourse with their colleagues and staff to promote the effective discharge of their duties.” *In re Certain Complaints Under Investigation by an Investigating Comm.*, 783 F.2d 1488, 1519 (11th Cir. 1986) (“*Hastings*”), *quoted in In re Grand Jury*, 821 F.2d 946, 957 (3rd Cir. 1987). “[T]here exists a [qualified] privilege . . . protecting confidential communications among judges and their staffs in the performance of their judicial duties.” *Hastings*, 783 F.2d at 1520, *cited in Smith v. U.S. Dist. Court for S. Dist. of Ill.*, 956 F.2d 647, 650 (7th Cir. 1992). “The judicial privilege is grounded in the need for confidentiality in the effective discharge of the federal judge’s duties. In the main, the privilege can extend only to communications among judges and others relating to official judicial business such as, for example, the framing and researching of opinions, orders, and rulings.” *Hastings*, 783 F.2d at 1520.

In re U.S., 463 F.3d 1328, 1332 n.4 (Fed. Cir. 2006). *See also Turner v. Murphy Oil USA, Inc.*, No. CIV.A. 05-4206, 2008 WL 2178087, at 1 (E.D. La. May 21, 2008) (“By way of example, the Court sees this situation the same as if an applicant sought to subpoena the Court’s law clerk to testify, which courts have routinely held should generally not be allowed.”); *Doe v. Cabrera*, 134 F. Supp. 3d 439, 456 (D.D.C. 2015) (collecting cases noting that discovery directed at law clerks is prohibited). *Cf.* S.C. Code Ann. § 15-78-60(1), (5). Appellant’s attempts to subpoena Ms. Luthringer as a means of probing the inner workings of Judge Young’s chambers are impermissible, inappropriate, and prevented by judicial privilege.

II. Appellant has abandoned all issues on appeal.

Appellant cites to no case law or legal authority, nor are his Questions Presented argued in order or with any specificity. *See* Rule 208 (B), (E), SCACR. Thus, Appellant should be deemed to have abandoned all issues on appeal. *See, e.g., First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994); *Glasscock, Inc. v. United States Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct.App.2001); *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct.App.2000).

Under Rule 201 (b), SCACR, “only a party aggrieved by an order, judgment, sentence, or decision may appeal.” Appellant has not asserted, much less proved, that he is aggrieved by the minor, interlocutory order substituting counsel. Thus, the portion of the appeal related to Judge Young signing the order substituting counsel and Appellant’s subpoenas related to that order are procedurally barred.

CONCLUSION

The motion to quash the subpoenas was properly granted. Appellant has abandoned his issues on appeal and is not aggrieved. Thus, this court should affirm the rulings of the circuit court.

Respectfully submitted,

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YOUNG, CIRCUIT COURT JUDGE, AND LYND SAY
LUTHRINGER**

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Churchill Park Homeowners' Association, Inc., Churchill Park at Parkwest, Inc., Churchill Park,
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Respondents.

CERTIFICATE OF SERVICE

I hereby certify that I have served the Attorney General's motion, initial brief, and designation of matter on Appellant pro se by U.S. Mail and on counsel for Respondents by email at the email address below this September 28, 2020. A copy of the email is attached.

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September 28, 2020

From: [Laura Tesh](#)
To: tthames@wjlaw.net; kmims@lmlawllp.com
Cc: [Harley Kirkland](#)
Subject: Nix v. Churchill Park et al. Ex parte Respondent's motion, initial brief, and designation of matter
Date: Monday, September 28, 2020 9:00:12 AM
Attachments: [Initial Brief of Respondents Roger Young, Circuit Court Judge, and Lyndsay Luthringer \(02389086xD2C78\).pdf](#)
[Certificate of Service-Motion \(02389198xD2C78\).pdf](#)
[Motion to add Roger Young, Circuit Court Judge, and Lyndsay Luthringer as Ex Parte Respondents \(02389090xD2C78\).pdf](#)
[Designation of Matter for the Record on Appeal \(02389088xD2C78\).pdf](#)

Good morning,

Please find attached the motion to amend the caption to add Roger Young, Circuit Court Judge, and Lyndsay Luthringer as Ex parte Respondents, as well as a copy of the initial brief and designation of matter for service upon you. Please confirm receipt by return email.

Sincerely,

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