

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appellant Case No.: 2019-001428

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SC Court of Appeals

**APPEAL FROM EDGEFIELD COUNTY**

Circuit Court

Honorable Alison Renee Lee, Chief Administrative Circuit Court Judge

Case No. 2016-CP-19-00141

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Rufus Lyndell Griffin,

Appellant

v.

Thomas Mosley, Quinnie Mosley, Walter Mosley,  
Timothy Mosley, and Paquita Mosley, Individually and  
as Personal Representative of the Estate of Ellec Mosley,

Respondents

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**REPLY OF APPELLANT**

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## RESPONDENT'S 'FACTS OF THE CASE' REFUTED:

Respondent's 'Facts of the Case' should, by its titling alone, be an accounting of facts. However, Respondent's Initial Brief sets a minimizing tone in referencing the issues of Appellant's Complaint before the lower court to bolster the circuit court having ceded its jurisdiction of the civil case to the probate court.

Respondent's Brief addressed the assets once held jointly between Appellant and his father, (the 'Decedent' of a 2013 probate case which prompted the civil case action). Respondent described the disputed certificates of deposit as being '*relatively small*'. (Respondent's Brief, p. 2) This terminology leads to a presumption that Appellant's civil suit was unwarranted based on the value of the assets or funds in question. The civil case record reflects at least five certificates of deposit with a combined value exceeding \$50,000.00 and a 'Payable on Death' bank account, of which Appellant was named beneficiary. Appellant alleges that these accounts were depleted by Respondents prior to the Decedent's death and compensation for the loss of non-probate assets is proper in a circuit court.

Respondent further stated that '*Appellant would also be unable to recover because contrary to Appellant's allegations, Decedent personally cashed in all the certificates of deposit...*' (Respondent's Brief, p. 2) This is a false and misleading statement, as the Decedent, at the time, was a resident of a nursing home, under the influence of a 24-hour-a-day regimen of narcotics for pain, and succumbing to a terminal cancer during the time that all five certificates of deposit and other bank account funds

were being depleted. Appellant contends that it was not the lone hands of the Decedent that carried out all these financial transactions.

Appellant also contends that Appellant's relationship to the Decedent, (the acknowledged father of Appellant since his birth), is not a prerequisite for joint ownership of bank accounts with the Decedent. Although Appellant was joint owner for many years prior to Decedent's death, bank accounts shared by any two individuals, regardless of relationship or length of time, are subject to the same legal protections from access or theft, just as accounts where no kinship exists.

Respondent eluded to the usage of the Power of Attorney document as being '*only used once*', which implies that a one-time usage, even if unlawful, should be perceived as insignificant. (Respondent's Brief, p. 2) Yet, Appellant argues that this document, created fraudulently and thereby invalid, was utilized multiple times by one or more Respondents of the civil suit, during a period of the Decedent's incapacitation, which facilitated their ability to add their names onto the numerous accounts held jointly by Appellant and Decedent, as well as accounts Decedent owned independently. Appellant alleges that this document facilitated the inappropriate transferal of thousands of dollars between, perhaps a dozen, bank accounts freely, without question or oversight. This is no small thing.

#### **RESPONDENT'S ARGUMENTS REFUTED:**

- I. CLERICAL ERRORS IN A CASE CAPTION DO NOT INVALIDATE A COURT ORDER AND THE LOWER COURT'S ORDER OF DISMISSAL

WAS PROPER DESPITE THE ACCIDENTAL OMISSION OF A  
PARTIES' NAME AND APPELLANT'S INTERPRETATION OF THE  
RESPONDENTS' DESIGNATION IN THE CASE CAPTION

Respondent has asserted that clerical errors in a case caption do not invalidate a court order, and that technical errors have no consequence to the case but are rather just Appellant's interpretation. (Respondent's Brief, p.4). However, Appellant contends that the captioning of a court case is vital to the integrity of the case and ensures that all involved are considered in their rightful capacity, and it is not confined to '*resting on personal interpretation*'. Appellant reminds that it is this very S.C. Court of Appeals which on November 26, 2019 informed Appellant that his Notice of Appeal, which had originally listed all civil case parties in accordance with the actual lower court's case record, required a captioning change so it would match the captioning of the July 2019 Order instead. The S.C. Court of Appeals instructed Appellant to change "*all future records in this matter*" to "*reflect this title*" (of the defective circuit court Order). Apparently, the captioning does matter as it protects the continuity of procedures from one court to another. That's why it's imperative that the lower court ensures the accuracy of captioning on its final Orders to, most importantly, cover all parties of which the ruling effects, and to not leave room for interpretation. And, contrary to Respondent's usage of Rule 61, SCRPC to imply that the captioning errors do not infringe upon the '*substantial rights*' of the Appellant, her assertion conveniently overlooks the rights of other parties in the case and specifically any party who was omitted from the appeal due to that same technically incorrect Order. Omitted parties become excluded from the guaranteed, legal protections as the case progresses. While it may not be the duty of

Appellant or Respondent to protect the interest and the rights of any omitted party, and even the omitted party might perceive the omission as a false sense of relief to be excluded from future repercussions, it is certainly the duty of the court which issues the Order to ensure procedural protections for all.

**II. THE LOWER COURT WAS PROPER IN DISMISSING APPELLANT'S COMPLAINT AGAINST ALL RESPONDENTS BECAUSE IT LACKED SUBJECT MATTER JURISDICTION OVER A PROBATE MATTER AND BECAUSE DISCOVERY SANCTIONS WERE PROPER.**

Respondent has referenced Appellant's lack of compliance with discovery requests as the reason for the lower court's dismissal of his Complaint and also repeatedly accuses Appellant of harassment due to 'continued filings', (Respondent's Brief, p.6) yet opposing argument does not share with the court the Respondent's own delinquency in production of discovery from 2016 to 2018 at the expense of Appellant and the court.

However, the circuit court was aware, and the case record supports, Appellant's attempt to share discovery with Respondent, but that Respondent did not take action to gain that discovery, but rather complained and used those grounds as another reason for case dismissal. The lower court did not utilize discovery non-compliance as its reason for dismissal but referred to that issue as 'moot'. (July 2019 Order) The circuit court based its final decision solely on the jurisdiction of the court and its opinion that the matter before it required action in the probate court and thereby granted the Respondent's Motion for Dismissal based on jurisdiction alone.

Respondent's Brief continues to assert that the matters before the civil court are probate matters. Yet, the probate court, in September 2014, after reviewing the investigative findings into Decedent's finances, by its own court-appointed temporary Personal Representative, declined jurisdiction, as it did not find the financial transactions, prior to the death of decedent, to be matters proper before the probate court. Furthermore, the circuit court upheld that stance in its own review of Appellant's appeal of the probate decision, and ruled explicitly that the only matter before the probate court would be to determine paternity of Appellant, and an Order of Reverse and Remand was issued in November 12, 2015 expressive of its position. (Appellant's Brief, pg.16)

Therefore, as Appellant cannot argue his civil case, nor dispute his claims, against multiple parties who were not parties of the probate case originally, nor can the probate court decide matters of non-probate assets or alleged fraud and theft transpiring prior to the death of a Decedent, Appellant's civil action is proper before the circuit court. Appellant asserts that the circuit court indeed has subject matter jurisdiction, even to determine probate matters, if it were necessary, pursuant to S.C. Code Ann § 62-1-302 (1), thereby nullifying the relentless argument by Respondent, or the lower court's ruling to cede its jurisdictional authority.

**III. THE LOWER COURT APPLIED THE PROPER LEGAL STANDARD TO THE RELEVANT CASE FACTS, WHICH RESULTED IN PROPERLY ISSUING ITS ORDER OF DISMISSAL OF APPELLANT'S CASE BECAUSE A CASE INVOLVING THE SAME PARTIES AND SUBSTANTIALLY THE SAME SUBJECT MATTER IS ALREADY PENDING BEFORE THE PROBATE COURT**

Respondent asserted, in her Initial Brief of Respondent, that *'whether or not there may be any errors in the record as to the factual background of the case is irrelevant to the legal standard applied'*. (Respondent's Brief, p. 8) It is blatantly clear that Respondent is not only dismissive of errors within the case captioning but is equally unconcerned with the factual content of the case record and the court's pursuit of those facts. If misstated facts of the case led to the court's final decision, then indeed the final decision must be questioned. Appellant's Brief decisively shows the numerous instances within the circuit court Order where the critical misstatements occurred and how they indeed have bearing on the final action by the court (Appellant's Brief, p 15, 16, 17, 18, 19, 20).

Respondent furthers her attempt to blur the lines between the probate case and the civil case. The 2013 probate case reached finality in September 2014. Upon appeal by Appellant, the Edgefield County Circuit Court ruled in favor of Appellant on November 12, 2015, issuing an Order to 'Reverse and Remand' the probate court decision due to an improper standard that had been applied in determining Appellant's paternity, pursuant to S.C. Code Ann. 62-2-109(2)ii)(Supp.2014). This action therefore limited future probate litigation to the matter of paternity, as paternity had been challenged by Respondent Paquita Mosley in her co-petition for executorship of the probate estate. (Appellant's Brief, p 5). Therefore, contrary to Respondent's assertion, Appellant was not required to *'remove the Probate Court action to the Circuit Court'*. (Respondent's Brief, p 8, 9).

In 2016, the Probate Court once again chose not to interfere with the ongoing proceedings of the Circuit Court. It is not proper for Appellant to pursue civil matters in a probate venue, nor is it proper to force him to include multiple outside parties into an already appealed probate court case where those parties never had legal standing.

IV. THE DOCTRINE OF RES JUDICATA DOES NOT BAR RESPONDENTS FROM FILING SUBSEQUENT MOTIONS TO DISMISS BASED ON A LACK OF SUBJECT MATTER JURISDICTION BECAUSE THE ISSUE OF SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY TIME

Although Respondent seeks to remind the court and inform Appellant that '*subject matter jurisdiction*' can be raised at any time, there are standard court procedures established to aid Respondent if she had not agreed with the initial decision of the court which dismissed her first Motion to Dismiss, other than filing repeated Motions on the same grounds. Pursuant to SC Code § 14-5-350, circuit court judges carry equal powers to decide matters brought before them. Therefore, these judges should not be put in a position to overrule or overturn each other's decisions with no material changes to be considered. Respondent's first Motion to Dismiss was denied by the Richland County Circuit Court in May 2016. That was the time for Respondent to file a Motion for Reconsideration, and if that had not been granted, to appeal the decision. However, Respondents waited until the venue had been changed to Edgefield County to once again argue a second Motion to Dismiss, on the same grounds of jurisdiction, before a new judge in the new county. This Motion to Dismiss was also denied in November 2016. During this time, Respondent was

delaying her own compliance to Appellant's discovery requests and was the subject of a Motion to Compel. Respondent then introduced a third filing of a Motion to Dismiss (again on the grounds of subject matter jurisdiction of the circuit court) before a third judge. This third attempt, which succeeded in overturning two prior judges' decisions and precipitated the errant dismissal of Appellant's civil case, is what utterly defies the fundamental principles of Res Judicata.

Subverting prior court rulings by continued filings before the next presiding judge, within the same circuit, is indeed frowned upon and raises suspicion that the party is merely shopping around. Filing of these frivolous Motions while all Respondents continually delayed compliance to discovery requests, with a collective assumption that the case would be eventually dismissed anyway, is the true reason for the ongoing setbacks. When Respondents will not comply with initial discovery requests of Appellant, then criticize Appellant for non-compliance, as they file endless Motions on the same grounds, it becomes clear that Respondent is even more culpable of the '*legal harassing*' actions to which was accused of Appellant, and sanctionable under S.C. Code § 15-36-10(A)(4)(a)(ii)-(iv).

V. REGARDLESS OF WHETHER ANY VIOLATION EXISTS OF CIRCUIT COURT STANDARDS PURSUANT TO SC CODE ANN §14-5-10, 14-17-510, AND 14-17-570, NO BIAS IS CREATED BY A JUDGE MAINTAINING POSSESSION OF AN ORIGINAL COURT FILING HANDED UP IN A HEARING THAT RESULTED IN DISMISSAL OF THE CASE

Respondent stated that "*no bias is created by a judge maintaining possession of an original court filing handed up in a hearing that resulted in dismissal of the case.*"

(Respondent's Brief, p. 13) This statement alone seeks to reshape and deflect from the gravity of the process that transpired within the circuit court prior to this appeal. Appellant clarifies for the record, regarding the handling of his Response Brief: The Appellant presented to the circuit court on March 18, 2019. Appellant did not hand his brief directly to the judge expecting her Honor to register the document, as implied by Respondent. Appellant presented this document directly to the Edgefield County Clerk of Court, who then bypassed the crucial step of properly registering the document but presented the document to the judge without ensuring its proper stamping or its return to the case file. Although the Respondent does not hesitate to inform and remind Appellant of his duties as a pro se litigant, it is not the responsibility of Appellant to date stamp and record his own document. Respondent also accuses Appellant of making '*no attempt during the time he complained of his document missing to actually file his document*'. Firstly, following the suggestion of Respondent, Appellant would not have followed proper court rules by presenting his document days or weeks later to ensure the court had it, as the court would have no obligation at that time to stamp the original date of receipt. Precision in dating documents is crucial when adhering to court deadlines and protocol. Secondly, Respondent was fully aware, when making the aforementioned statement, that when Appellant became aware that his document had not been properly registered by the Clerk of Court, he in fact alerted the clerk and the judge formally in writing on March 31, 2019. (Appellant's Brief, p. 25)

Furthermore, Respondent has chosen to advise the court and Appellant that the *“Clerk of Court and the Judge’s chambers are all part of the same judicial complex, that Appellant’s Response Brief never left the custody and control of the Edgefield County Clerk of Court”* and therefore no violation of Circuit Court Standards occurred. However, this assertion is not supported by facts, nor by court rules.

Pursuant to S.C. Code, Article 1 § 14-5-10, Circuit Courts are *“courts of record, and the books of record thereof shall, at all time, be subject to the inspection of any person interested therein.”* The Law further states in §14-17-570 that *‘the clerk shall not in any case permit either the books or records to be removed from his office, though he shall at all times permit either party to a suit.... to inspect or copy... any papers pertaining thereto...’*

Appellant must reiterate that the Clerk of Court (of the lower court) not only failed to properly record Appellant’s Response Brief, but allowed the removal of it *‘from his office’* and in fact, the Clerk of Court’s office was not even aware of the document’s whereabouts in November 2019, nine months later, when Appellant appeared in person to *‘inspect’* the record. The document did not remain in Edgefield County in *‘Judges Chambers’* as asserted by Respondent but traveled with the circuit court judge across the state/circuit, as the judge was not in the court of record when she declared that the document was in her possession in December 2019. If this document had been lost at any time, there would be no record of it ever being timely received. Documents removed from the case record, even by the judge, would and should be properly clocked-out and clocked-in accordingly. The actions

that transpired between March 2019 and December 2019 are not supported by S.C. Code of Laws and cannot be shaped to fit the narrative of Respondent.

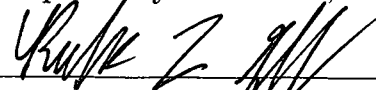
## CONCLUSION

Based on arguments by Respondent, it is asserted that Appellant should know and comply with every aspect of the law as a pro se litigant, but the courts and its officials, who are practicing bodies, educated and legally certified within every facet of state law, should not be bound to even the most basic standards and statutes of state law.

State Codes and Statutes, if not followed, have no meaning, and cannot be relied upon as touchstones for upholding justice. Therefore, not only the practices of the court officials should be strictly adhered, but the legal standards utilized to justify a negative action against a party must be supported by facts, not misstatements of facts. According to S.C. Code of Judicial Conduct § 501 Preamble, *“the judge is the arbiter of facts and law for the resolution of disputes”*. This Court of Appeals has the jurisdictional authority to reverse the decision of the lower court, which based its decision on numerous misstatements of fact and a non-applicable standard of law. For reasons stated, this Court should reverse the decision of the circuit court.

November 16, 2020

Respectfully submitted,



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