

THE STATE OF SOUTH CAROLINA

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In The Court of Appeals

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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

Appellate Case No. 2019-001428

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

FINAL BRIEF OF APPELLANT

Rufus L. Griffin, pro se
313 Fifth Avenue
McCormick, SC 29835
Phone: 864-852-2163

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JURISDICTIONAL STATEMENT

This is an appeal from a judgment entered by Judge Allison R. Lee, Administrative Judge of the Fifth Judicial Circuit, presiding in Edgefield County Circuit Court, the Eleventh Judicial Circuit, on the date of hearing held on March 18, 2019. The circuit court, on July 9, 2019, issued an Order in favor of the Respondents, granting the dismissal of Appellant's complaint on grounds of improper jurisdiction of the circuit court. Appellant, pursuant to Rule 72 SCRCP and Rule 201 SCACR acts upon his right to appeal the decision of the lower court. Therefore, jurisdiction in this Court is properly invoked.

STATEMENT OF ISSUES ON APPEAL

Appellant, pursuant to Rule 72 SCRCF and Rule 208 (b) SCACR, submits his appeal before the Court of Appeals with the following questions for review:

1. DID THE CIRCUIT COURT ERR IN ISSUANCE OF AN ORDER THAT IS TECHNICALLY AND LEGALLY FLAWED?
2. DID THE CIRCUIT COURT ERR IN MISSTATEMENT OF MATERIAL FACTS AND BY APPLYING A LEGAL STANDARD THAT WAS NOT APPLICABLE TO CASE FACTS?
3. DID THE CIRCUIT COURT ERR IN DISMISSING APPELLANT'S COMPLAINT AGAINST MULTIPLE RESPONDENTS BASED ON THE MOTION OF ONE RESPONDENT, THEREBY CEDING JURISDICTION TO A LOWER PROBATE COURT WHERE THE OTHER RESPONDENTS WERE NEVER PARTIES?
4. DID THE CIRCUIT COURT ERR IN ALLOWING RESPONDENT'S MOTION TO DISMISS WHEN IT SHOULD HAVE BEEN BARRED BY DOCTRINE OF RES JUDICATA?
5. DID THE CIRCUIT COURT ERR IN ITS NONADHERANCE TO CIRCUIT COURT STANDARDS ACCORDING TO S.C. CODE ANN. § 14-5-10, 14-17-510, AND 14-17-570? AND DOES THIS ACTION PROMOTE A PERCEPTION OF BIAS?

STATEMENT OF THE CASE

A. Nature of the Case

This appeal arises from the circuit court's July 9, 2019 Order dismissing Appellant's Complaint originally submitted in December 2015, and Amended Complaint of February 2016, on jurisdictional grounds. The circuit court decided, upon a third Motion to Dismiss from Respondent, to cede its jurisdiction of the civil case to a lower probate court. (R. p.1).

Appellant raises a litany of issues in this appeal: The July 9, 2019 circuit court Order (Order) is technically flawed, whereas its captioning does not match the case record on which it has ruled, making it incapable of representing all case parties, nor recognizing each in their original capacity. The Order further contains misstatement of material facts of the case, that resulted in apparent inconsistency in the final ruling. This Order granting dismissal of Appellant's civil case also contradicted the court's prior two rulings upholding its jurisdiction by heeding to Respondent's third Motion to Dismiss on the same grounds, without any substantial change in information or law, an action that should have been barred altogether per premise of Res Judicata.

MOREOVER, Appellant has further concern pertaining to the handling of his case record by the circuit court, which was not in keeping with the standards of S.C. Code Ann. § 14-5-10, 14-17-510, AND 14-17-570. Therefore, it is Appellant's sincere intention that upon review of this appeal, this Court would set aside or Reverse the judgement of the circuit court.

STATEMENT OF THE CASE

B. Procedural History

On December 10, 2015, Appellant Rufus L. Griffin (Plaintiff) filed a civil suit in the County of Richland (Fifth Judicial Circuit), and an Amended Complaint on February 16, 2016 (Amended Complaint). Individual Respondents to the suit are Paquita Mosley, Timothy Mosley, Thomas Mosley, Betty Mosley, Quinnie Mosley and Walter Mosley. Appellant alleged that the six (6) Respondents entered a conspiracy to deplete financial accounts and gain property Appellant had been given or shared jointly with his father, Ellec Mosley. Appellant argued that a vast amount of funds, held in joint bank accounts with his father had been fraudulently taken through the independent and coordinated efforts of the Respondents between July 2012 and December 2012. When Mr. Ellec Mosley eventually died on December 2, 2012, he died virtually penniless and all accounts he shared with Appellant were also depleted.

As the July 9, 2019 Circuit Court Order granting Respondent's Motion to Dismiss was solely on the grounds of jurisdiction of the Probate Court and a pending action within that court 'between the same parties', Appellant must now provide a brief summary of the probate case now that it has been referenced:

On December 28, 2012, Appellant, Rufus L. Griffin, filed a Petition in the Probate Court of Edgefield County for Formal Appointment as Personal Representative of Ellec Mosley's estate as decedent's son. This Petition listed Respondents as Paquita Mosley (Appellant's half-sister) and Timothy Mosley (Appellant's cousin), due to both previously claiming to be Power of Attorneys for

the decedent. No response was ever filed by Timothy Mosley. Respondent, Paquita Mosley, filed a Co-Petition on February 12, 2013, simultaneously challenging the paternity of Rufus L. Griffin.

The probate court appointed a Temporary Personal Representative (PR), to investigate the financial assets of the decedent, who issued his Interim Report in October 2013 to the court. The Probate Court did not find these financial assets or questionable activities to be matters of the estate or actionable by the Probate Court and thereby a final Court Order and Memorandum was issued September 29, 2014. This Order upheld Petitioner Paquita Mosley as child and heir of decedent while applying an improper standard in its adverse decision on Rufus Griffin's paternity.

On November 13, 2014, Appellant, Rufus Griffin, appealed the probate judgement. The Edgefield County Circuit Court ruled that the probate court had indeed applied an improper standard of law, pursuant to S.C. Code Ann. 62-2-109(2)ii)(Supp.2014). It's November 12, 2015 ruling then 'Reversed and Remanded' the probate decision and limited future probate litigation to paternity. (R. pp. 15-16)

On December 15, 2015, the Supreme Court of South Carolina disqualified and recused the Edgefield County Probate Court judges. Since then, other county probate court judges have been appointed, but since requested recusal. The most recent appointment, on February 15, 2018, was the Greenwood County Probate Court. As of this date, there has been no notice of hearing or status update for the 'Reverse and Remand' Order of the circuit court.

The matters of the civil action now before the Court of Appeals are as follows:

Appellant's civil suit includes six (6) previously named Respondents. On February 12, 2016, Respondent Paquita Mosley filed an Answer to Appellant's Complaint, including Respondent's first Motion to Dismiss Appellant's Complaint on grounds of improper venue and improper jurisdiction of the circuit court. A 'jury trial' was also demanded. This motion contained a Cross Claim against Respondent Thomas Mosley, accusing him of negligence in his duties as attorney for decedent, Ellec Mosley, and placing blame on him for any alleged losses sustained by Appellant, and any future findings of blame that might be placed on her. (R. pp. 17-21: Answer, Cross Complaint, Motion - p. 4-5 (#78), p.6 (#85), & p. 8 (Prayer(a))).

Respondent Thomas Mosley, an attorney and resident of the county of Richland, through his counsel, filed a Motion to Change Venue to Edgefield County and a Motion to Dismiss Appellant's Complaint. On May 18, 2016, the Richland County Circuit Court granted the Motion for Change of Venue to Edgefield County for continued litigation and trial, denying Respondents' Motions to Dismiss. (R. pp. 22-24).

The matter then moved before the Eleventh Judicial Circuit, Edgefield County, regarding for the most part, funds which had been in the form of five (5) 'certificate of deposit' (CD) accounts valued over \$50,000.00, and one Payable On Death (POD) account (with Appellant Griffin as joint owner of the CD's and beneficiary of the POD). The five CD accounts had been solely in the names of Ellec Mosley and Rufus Griffin, as joint ('or') owners since 2008. Appellant's half-sister, Respondent Paquita Mosley, also shared five (5) CD accounts with Ellec Mosley of

the same value. None of the Respondents have declared the 5 CD accounts shared jointly by Respondent Paquita Mosley and Ellec Mosley as probate assets requiring probate court action. In fact, Paquita Mosley, has had unfettered access to and benefited from the CD accounts she shared with the decedent before and after his death. However, Appellant's Complaint alleges that one or more of the Respondents improperly accessed the accounts that Appellant shared jointly with Ellec Mosley within the five (5) months preceding Ellec Mosley's December 2012 death, and absconded with the funds, through physical and electronic transactions, via illegal and ethically questionable means while Appellant was unaware.

On November 7, 2016, oral arguments were heard in the civil case in the venue of Edgefield County. Two Respondents, Timothy Mosley and Walter Mosley, submitted a Motion to Dismiss (October 27, 2016) via their counsel, and argued 1) statute of limitations and 2) improper jurisdiction of the Circuit Court. These Respondents' Motion further affirmed that matters of the Complaint before the civil court '*occurred in the months of July and August 2012, and concerns matters of a deceased person, one Ellec Mosley, who passed life on December 2, 2012*' and claimed that '*plaintiff seeks relief which is improper in this (circuit court) forum*'. (R. pp. 25-26.)

During oral arguments on November 7, 2016, the Circuit Court recognized that the referenced bank accounts, although jointly owned by Appellant and his father, were no different than joint bank funds owned by unrelated persons and equally subject to recovery via civil suit. Appellant argued that not only did

Respondents Paquita Mosley and Timothy Mosley access accounts that were not legally theirs to access, but Respondents utilized a Power of Attorney (POA) document that had been improperly witnessed, created by and facilitated by Respondent Thomas Mosley and improperly witnessed by his wife, Respondent Betty Mosley. Appellant's Complaint further alleged that the improperly gained funds also flowed through accounts owned by other Respondents, Walter Mosley and Quinnie Mosley.

Respondent, Paquita Mosley and her counsel, were present during the November 2016 hearing and joined Defendants Motion to Dismiss on the grounds of improper jurisdiction of the circuit court. (R. pp. 27-30: Transcript, p.22, lines 23-24).

The court stated, on November 7, 2016 during oral arguments, presided by the Honorable Jocelyn Newman: "*Griffin also alleges that he was the son of Ellec, but I don't see that being tied to his claim of fraud or misrepresentation or civil conspiracy as to these CD's and deeds. As I mentioned earlier and asked about it, it appears to me to be incidental to that.*" (R. pp 27-30: Transcript, p. 30, lines 2-6). The circuit court, ruled on November 7, 2016 that Plaintiff (Appellant) Griffin's complaint had not only met the statute of limitations guidelines, but was in the proper jurisdiction of the circuit court and denied the Defendant's Motion to Dismiss: "*Saying all that, I am going to deny the motion to dismiss.*" (R. pp. 27-30: Transcript, p. 30, lines 13-14). The Court further acted upon Plaintiff's Motion to Compel and Motion of Contempt against Defendants and reminded and ordered all

Defendants to comply with Plaintiff's discovery requests. (R. pp. 27-30: Transcript, p. 32, lines 5-15).

During that time, on December 15, 2016 the Supreme Court appointee, Lexington County Probate Court judge, proceeded with the Reversed and Remanded probate case at hand, appropriately limiting it to the issue of paternity between Respondent Paquita Mosley and Appellant.

On January 10, 2017, Appellant filed a Motion to Compel against Respondent Paquita Mosley and Quinnie Mosley, and a Motion of Contempt against Thomas Mosley, Walter Mosley, Timothy Mosley and Betty Mosley, reminding the court that the Defendants had not yet complied with the Court's oral order of November 7, 2016 to comply with discovery. To this date, all Respondents still have not complied and the Circuit Court has taken no further action.

On February 18, 2019, Respondent (Paquita Mosley) filed a Motion to Compel discovery of Griffin and a Motion to Dismiss on the basis that the civil case lacks the ability to proceed as long as other actions between the Parties are pending in probate court.

On March 18, 2019, the Edgefield County Court of Common Pleas, presided by Judge Alison Lee, heard Respondent Paquita Mosley's Motion to Dismiss. Besides Appellant, no other Respondents appeared. Counsel for Respondent Paquita Mosley, moved for case dismissal in part on grounds of Appellant's noncompliance with discovery requests. However, Appellant had offered access to discovery which Respondent chose not to act upon for months and opted to instead file a Motion to

Compel. The opposing Motion to Compel and Motion for Contempt filed by Appellant in 2017 was also never acted upon by the court, which equally denied Appellant full discovery from Respondents. Therefore, in the final July 9, 2019 Order, the lower court regarded the issue of discovery as 'moot' and focused instead on jurisdiction. The Edgefield County Circuit Court, on July 9, 2019, granted Respondent's Motion to Dismiss citing jurisdiction of a lower probate court.

On August 1, 2019, Appellant received written notice of the entry of the said Order via certified U.S. Mail and timely served his Notice of Appeal, August 26, 2019, on all six Respondents of the case and the clerk of the lower court.

On December 27, 2019, Appellant filed a Motion to Vacate Order pursuant to his rights afforded under Rule 60, SCACR. The SC Court of Appeals denied the Motion on March 27, 2020. Therefore, Appellant proceeds with his appeal before this Court as instructed by the Court.

ARGUMENTS

- I. BECAUSE THE LOWER COURT ISSUED AN ORDER IMPROPERLY CAPTIONED, ALTERING THE RELATIONSHIP OF CASE PARTIES AND EXCLUDING ONE PARTY OF THE ORIGINAL CASE, THE ORDER IS TECHNICALLY FLAWED AND LEGALLY INVALID.

The lower court on July 9, 2019, issued its Order granting Defendant's Motion to Dismiss. It was captioned as follows:

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

(Order: cover page)

Appellant's case, of which the July 9, 2019 Order is pertaining, accurately reflects all (6) six Respondents and in their rightful capacities as:

“Thomas Mosley, *Individual*; Paquita Mosley, *Individual*; Timothy Mosley, *Individual*; Quinnie Mosley, *Individual*; Walter Mosley, *Individual*; Betty Mosley, *Individual*; Paquita Mosley, *as Personal Representative of the Estate of Ellec Mosley*.”

(Amended Complaint (cover pg.), Order (cover pg.))

Appellant brings to the Court's attention the following captioning discrepancies:

1. The caption of the lower court's July 9, 2019 Order excludes Respondent Betty Mosley, who has been a Respondent since 2016 and has not, at any time prior to this omission been given relief by the court.
2. The caption of the July 9, 2019 Order improperly re-titled each Respondent.

The lower court did not distinguish each Respondent individually but

presented all five defendants with a shared title of: '*Individually and as Personal Representative of the Estate of Ellec Mosley*', which they are not.

The SC Court of Appeals alerted Appellant of the discrepancies in a letter dated November 26, 2019, (R. p. 31), which advised Appellant that the title of his Appeal and any future submissions to the Appellant Court should be changed to match the titling of the lower court Order. This, of course, limited Appellant's progress in the appeal to information inconsistent with the civil case record.

There is but one Personal Representative of the probate case, which is Respondent, Paquita Mosley. There is but one other party to that case, which is Appellant, Rufus Lyndell Griffin. Appellant contends that it is not proper for the circuit court to list or title all other Defendants as 'Personal Representative' of a case of which none ever petitioned and to which none were ever parties. As it stands, there is no pending litigation in the probate court other than the Reverse and Remand that limits the appealed probate court case to the lingering matter of paternity between Appellant and Paquita Mosley. Therefore, the July 9, 2019 Order, haphazardly captioning all parties of the civil case as probate case 'Personal Representative', gives an unsettling appearance that the court seeks to now introduce and interject other parties into a case of which they have no history of participation, no formal petition, nor involvement.

For these reasons, Appellant submitted his Motion to Vacate the lower court Order to the Court of Appeals on December 27, 2019 pursuant to Rule 60, SCACR, which states: “*On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order*’ even from ‘*mistakes, inadvertence or excusable neglect*’. It is clear that the captioning alone makes this lower court Order a clear candidate of Rule 60b, but Appellant’s Motion was denied on March 27, 2020, forcing the defective Order into appeal, nonetheless. In compliance with proceeding into appeal with a defective lower court Order, Appellant’s procedural due process rights against the omitted Respondent have been compromised, as that Respondent is now removed from the legal chain that ties the appeal to the circuit court case.

STANDARD OF REVIEW:

The Court should review the action of the Circuit Court under the Clearly Erroneous Standard, which permits the reversal of any decision by the lower court if the error was evident, obvious, and clear; and if the error also resulted in prejudice to Appellant’s position. The Court should determine whether a circuit court Order should be upheld if it is technically flawed and legally inaccurate to a point that improperly removes a Respondent from the case without purpose or established leave. With the removal of a party in error, Appellant questions whether his rights are fully served in appeal, and whether the rights of the party who has now been restricted from the appeal is truly protected.

II. THE CIRCUIT COURT ERRED IN DISMISSING APPELLANT'S COMPLAINT AGAINST MULTIPLE RESPONDENTS BASED ON THE MOTION OF ONE RESPONDENT, THEREBY WRONGLY CEDING JURISDICTION TO A LOWER PROBATE COURT WHERE THE OTHER RESPONDENTS WERE NON-PARTIES AND APPELLANT CANNOT PURSUE MATTERS OF HIS CIVIL COMPLAINT.

The decision by the Edgefield County Court of Common Pleas, in its July 9, 2019 Order granting dismissal of Appellant's case solely on the merits of Respondent Paquita Mosley's Motion to Dismiss, also, to the legal detriment of Appellant, consequently and finitely dismissed Appellant's entire case and complaint against five (5) other Respondents: Thomas Mosley, Timothy Mosley, Walter Mosley, Quinnie Mosley and Betty Mosley.

As these other Respondents were not Parties to the referenced 2012 probate case, and never filed Petitions for Formal Appointment in the Edgefield County Probate Court at any time, and have no bearing on Appellant's 2015 appealed decision on paternity, it is therefore not reasonable to assume that Appellant can freely pursue civil action against these outside individuals within the jurisdiction of the Probate Court.

STANDARD OF REVIEW:

The Court should review the circuit court judgement under an Abuse of Discretion Standard as it appears that a clear error of judgment has been made. Appellate asks the Court to consider whether the action of the lower court, upon relinquishing its jurisdiction per Motion of one Defendant, constitutes an abuse of

discretion as it pertains to the rights of Appellant. The Circuit Court's action has left Appellant with no appropriate Court in which to litigate his claims, as he is unable to continue his civil litigation against the other Defendants in a lower probate court where they are non-parties.

III. BECAUSE THE LEGAL STANDARD USED WAS NOT APPLICABLE AND THE FACTS PRESENTED BY THE CIRCUIT COURT ARE MISSTATED AND INACCURATE, THE DECISION REACHED BY THE TRIAL COURT IS IMPROPER, PURSUANT TO SC CODE OF JUDICIAL CONDUCT § 501 PREAMBLE.

Respondent (Defendant), Paquita Mosley, sought dismissal of Appellant's (Plaintiff's) Complaint on the basis that another action between the parties is pending in probate court. On July 9, 2019 the circuit court ruled against Appellant, dismissing Appellant's Complaint against six named Defendants, using this legal standard: '*A Defendant may move for dismissal of an action pursuant to Rule 12(b)(8), SCRPC when another action is pending between the same parties for the same claim*'. The court cited authorities which noted '*that the claim must either be substantially or precisely the same as in the other action*'. (R. pp. 1-4: Order, p. 2, ¶ 1)

However, the Probate Court case, which is referenced as '*another action pending between the same parties for the same claim*' is most unequivocally not the same. The probate case, (Case No. 2014-CP-1900324), hearing began in February 2013, concluded September 2014, and consisted of only two Petitions for Formal Appointment. The judgement of the Edgefield Probate Court was appealed by

Appellant, in part because the Court had applied an improper standard of law regarding Appellant's paternity. The Eleventh Judicial Circuit Court ruled in favor of Appellant on November 12, 2015 as follows:

"The Court finds, and the record supports such a finding, that Appellant, Rufus Griffin, need only prove his kinship to the decedent by clear and convincing proof pursuant to S.C. Code Ann 62-2-109(2)(ii)(Supp.2014) (providing that 'paternity is established...by clear and convincing proof") Id. After reviewing all applicable transcripts, the Notice of Appeal, the Return, and all documents submitted with the Clerk's file, this Court reverses the decision of the Probate Judge. Specifically, the Probate Court's Order of Formal Testacy found that 'Rufus Griffin 'failed to provide the court with evidence beyond a reasonable doubt that Ellec Mosley was his biological father." See Memorandum of Formal Hearing, in the Matter of Ellec Mosley 2013-ES-19-00001(2013). Therefore, it is so ordered that this case is hereby REVERSED and REMANDED." (R. pp. 15-16: Order, ¶1 and ¶3)

The civil Complaint is in compliance with Appellant's constitutional and legal right to file suit against any individuals who have collaboratively or individually taken monies, causing him not only financial loss but possible punitive damages.

Therefore, the Circuit Court ruling of July 9, 2019 is not consistent with facts.

Appellant's Complaint is clearly not the same matter that is before the probate court, which limits its own Reverse and Remand ORDER to a formal dispute between two alleged siblings and the issue of Appellant's paternity. The Probate

Court declined any procedural jurisdiction in the matters concerning the funds in question, even after investigation by the court's own appointed Personal Representative and found the alleged theft of bank funds and conspiracy to be actions outside of the estate case.

Therefore, these numerous issues are proper in a civil action and in the jurisdiction of the Circuit Court, where they have been for approximately 5(five) years. Although SC Code 62-1-302(a)(1) provides for the probate court to have '*exclusive original jurisdiction*' over estate matters, it also acknowledges that the '*circuit court also has jurisdiction.... in other actions pending in the circuit court*'. In this case, the probate court has no jurisdiction in civil matters against non-parties of the original 2012 probate case or in its 2015 appealed decision.

The July 9, 2019 Circuit Court ORDER to allow Respondent's Motion to Dismiss, stated, '*that the claim must either be substantially or precisely the same as in the other action*' but is not supported by the facts. This ORDER even contradicts itself in noting that the only matter before the probate court, per November 2015 probate court Order of Judge McMahon, is paternity, not an ongoing litigation of estate assets: "*.....the Order of the Probate Court was reversed and remanded for further proceedings to determine paternity consistent with statutory requirements of S.C. Code Ann. 62-2-109 (2)(ii)*". This acknowledgement by the Circuit Court contradicts its own stance that the matters before the Circuit Court must be 'substantially or precisely the same' as the lower court of which it is ceding jurisdiction. (R. pp. 1-4: Order, 'Discussion', p. 2, ¶ 2).

FURTHERMORE, the Circuit Court, in its July 9, 2019 ORDER, misstated material facts: *'this case, like the underlying probate action, involves a dispute over assets originally in the possession of the Decedent that were distributed to Defendant and other parties following Decedent's death in December 2, 2012.'* This statement was followed by notation to *'see Complaint ¶¶ 24-25, 33-34'*. (R. pp.1-4: 'Discussion' p. 2, ¶ 3).

However, Appellant contends, and the Amended Complaint clearly states throughout and most specifically within ¶¶20-39, that the financial transactions referenced by the Court actually occurred in a period commencing in August 2012 until the month of December 2012, (prior to the Decedent's death) and that these specific funds had been owned jointly by Decedent and Appellant. (R. pp. 5-14: Complaint, p. 3-4, ¶¶20-39) The court misstated the timeframe of ownership by stating that these funds or assets were solely owned by Decedent until his death that were later *'distributed to Defendant and other parties following Decedent's Death in December 2, 2012'*. These funds, owned jointly by Rufus Griffin and Ellec Mosley since they were established in 2008, were removed improperly from accounts prior to the decedent's December 2, 2012 death. Thus, the timeframe of ownership and type of ownership is relevant, as the misstatement by the court implies that the funds belonged solely to Ellec Mosley and remained undisturbed until he died and only then required probate distribution AFTER his death, when in fact, Appellant had joint ownership of those funds, which were depleted by others PRIOR to his death.

MOREOVER, the Circuit Court, in its ORDER dated July 9, 2019, also quoted Appellant, from the hearing dated March 2019, in stating: "*Plaintiff asserted during the hearing that this case is different from the underlying probate action in that it involves funds which are/were not probate assets. However, a review of the record in the case offers insufficient evidence to draw such a conclusion*". (R. pp. 1-4: 'Discussion', p. 2, ¶ 1). Appellant contends that the civil case record contains his complaint and other information supportive of his claim. However, the Circuit Court at no time requested documentary evidence pre-trial, nor did it inform Appellant that evidence was being scrutinized to discern whether Appellant's action was in the proper jurisdiction. Appellant would also assert that it was unreasonable for the Court to place that burden and condition on Appellant when Appellant has, for three (3) years (since the previous two circuit court rulings), been assured that his case was already before the proper court. Appellant does not seek action of the Circuit Court to determine his paternity or to grant him Formal Appointment of an estate, which were the only actions before the Probate Court per the Reverse and Remand ORDER of 2015 from the very same Circuit Court.

WHEREFORE Appellant argues that the contents of his Complaint were misstated by the Court throughout the written July 9, 2019 ORDER which then granted Respondents Motion to Dismiss, and in fact the Order contained verifiable inaccuracies which are clearly evident.

'Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us.... The judge is the arbiter

of facts and law for the resolution of disputes...” *S.C. Code of Judicial Conduct § 501 Preamble*. As the Court’s inaccuracies and misstatement of facts were utilized in arriving at its conclusion of judgement, it is only proper, considering these inconsistencies, to conclude that the judgement was unsubstantiated by fact and should not stand.

STANDARD OF REVIEW:

The Court should review the action of the Circuit Court under an Abuse of Discretion standard, or at the very least, the Clearly Erroneous standard. The Court should determine whether the Circuit Court’s decision, and the legal standard it applied, supported the findings of fact of the case and whether the misstatement of material facts used to arrive at its decision was improper, in plain error, and/or resulted in prejudice to the appellant’s position.

IV. BECAUSE RESPONDENTS SOUGHT ACTION PREVIOUSLY RULED ON BY THE SAME COURT TWICE PRIOR, RESPONDENTS ARE BARRED BY RES JUDICATA FROM PRESENTING AND RELITIGATING THE SAME ISSUE ON THE SAME GROUNDS.

On February 12, 2016, Respondent Paquita Mosley submitted ‘Defense to Plaintiff’s Complaint’ to the Richland County Circuit Court and asked the court to dismiss Plaintiff’s Complaint on the grounds that the case was in the improper venue and that the Circuit Court lacked jurisdiction because there was another action pending between parties with the same claim. The Richland County Circuit

Court simultaneously was considering the Motion to Change Venue that had been submitted by Respondent Thomas Mosley. After approximately five (5) months, on May 18, 2016, the Richland County Circuit Court granted the Motion to Change Venue. However, it is noteworthy that the Court did not find it proper to dismiss Plaintiff's (Appellant's) Complaint on jurisdictional grounds as it wholeheartedly supported its decision by stating: *'the ends of justice would be served by having Edgefield County jurors'*, (R. pp. 22-24: Order- p. 2, lines 11-12). This action was in accordance with the Constitution of SC, Art.5 § 11: *Jurisdiction of the Circuit Court; The circuit court shall be a general trial court with original jurisdiction in civil and criminal cases..... (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9).*

On November 7, 2016, in the venue of the Edgefield County Circuit Court, Respondents (Timothy Mosley and Walter Mosley), through their counsel, presented the circuit court their own Motion to Dismiss on the same grounds of jurisdiction of the probate court. Respondent Paquita Mosley, through her counsel, joined the Motion to Dismiss, and contributed in oral argument before the court that Appellant/Plaintiff Griffin's Complaint should be litigated before the probate court instead. (R. pp. 27-30: Transcript- p. 22, lines 23, 24). Each Respondents respective counsel advocated on their behaves for the Circuit Court to dismiss Plaintiff's case on those same grounds. At the conclusion of this 2016 hearing, the Edgefield County Circuit Court, then justly ruled that Griffin's concerns and Complaint within the civil case were not one in the same as the probate matter, contained allegations of theft, fraud, conversion, conspiracy and pecuniary harm to Plaintiff. Therefore, the

Circuit Court, in November 2016, once again denied Respondent's Motion to Dismiss. (R. pp. 27-30: Transcript, p. 30, lines 2-6 and 13-14).

This case has not only been maintained within the Circuit Court for four (4) years, since 2015, but the same Edgefield County Circuit Court specifically, under its established jurisdiction, has itself issued approximately eight (8) hearing notices since the November 2016 ruling, and has recognized and/or acted upon at least seven (7) different Motions within the course of this case, allowed approximately thirty (30) separate filings, and issued multiple Orders within the past three (3) years under the premise of that jurisdictional authority.

Despite the circuit court's awareness of the history of this case, (R. pp. 33-36: Transcript- p. 8, lines 20-25 and p. 9, lines 1-12), the Court itself acknowledging that Richland County had already accepted jurisdiction prior to its changing the venue to Edgefield County, the Circuit Court nonetheless, on March 18, 2019, allowed presentation of Respondent's Motion to Dismiss. (R. pp.33-36: Transcript, p. 5, lines 22-25) This action by Respondents to blatantly submit another 'Motion to Dismiss' on grounds of jurisdiction, showed their unwavering assumption that the topic could be 'fair game' under a different judge, and therefore Respondents once again presented the familiar 'Circuit Court vs Probate Court' jurisdiction argument.

The doctrine of Res Judicata 'bars subsequent actions of the same Parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties'. *Hilton Head Ctr. of*

SC v PSC of SC 294 S.C. 9 (1987) and *Reidman Corp. v Greenville Steel Structures, Inc., 419 S.E. 2d 217 (S.C. 1992)*. This doctrine is based on the premise that “Res Judicata ends litigation, promotes judicial economy and avoids the harassment of relitigating the same issues.”

Appellant asserts that the Respondents Motion to Dismiss was presented frivolously, under complete awareness that the argument of jurisdiction had been presented and denied twice before. The action blatantly tosses aside the decisions of two prior judges without any change of argument or circumstance. The renewed Motions by Respondents did not present any new evidence or change in the law which would have warranted presentation of a third Motion to the court. In moving before the Court with repeated attempts to pit one judge’s decision against another’s, in presenting a Motion one knows to be improper, is severely frowned upon by law and is considered a sanctionable offense. *SC Code § 15-36-10 (4)(a)(b)*. The action of the Circuit Court to grant Respondent’s Motion to Dismiss, after their previous failed attempts in utilizing the same argument of jurisdiction, not only nullified the opinions of two prior judges, but has left Appellant with no other venue to appropriately have his civil complaints adjudicated. The outcome of the Respondent’s actions have effectively bogged-down the judicial process by reversing a decision which had been settled years prior in the same court, and has served no cause other than to uphold Respondents in their legal harassment of Appellant to relitigate the matter repeatedly and now into appeal.

STANDARD OF REVIEW:

Appellant asks this Court to use a de novo standard and consider similarly an abuse of discretion standard. The Court should review the circuit case history and determine whether the July 9, 2019 Order, renouncing its jurisdiction and reversing two prior circuit court rulings, constitutes an abuse of discretion as it pertains to Res Judicata, as the action by the circuit court was not in support of new law or evidence that warranted a reversal of the prior two judge's decisions.

Appellant asks the court to further determine whether this action constitutes a violation of Appellant's Constitutional right to due process.

- V. BECAUSE THE LOWER COURT MISHANDLED COURT RECORDS, IT FAILED TO ADHERE TO CIRCUIT COURT STANDARDS ACCORDING TO S.C. CODE ANN. § 14-5-10, 14-17-510, AND 14-17-570, THEREBY LENDING TO A PERCEPTION OF BIAS PURSUANT TO SCRPC 501, CANON 3(5).

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...*”

According to this long-standing rule, the state courts provide an assuredness that all records involved in a lawsuit would be kept in safety and available for inspection at any given time. The circuit court failed to adhere to its own standard by allowing Appellant's document to go unaccounted for approximately (9) nine months.

The Defendant's Motion to Dismiss Appellant's Complaint was heard on March 18, 2019. Appellant presented his 'Plaintiff's Response to Defendant's Motion to Dismiss' brief on the date of the hearing. Appellant's 'Response' brief was handed directly to the Edgefield County Clerk of Court, who then passed it to the judge, and a copy of this brief was also then provided to the Defendant's counsel. This 'Response' brief was referenced throughout the March 18th hearing. (R. pp. 37-47: Plaintiff's Response).

Neither the judge nor the clerk of court properly registered or filed Appellant's 'Response' brief at time of their acceptance of it.

On March 31, 2019, Appellant notified the Honorable Judge Alison R. Lee (R. pp. 48-50) to inform the judge and the Clerk of Court that his Response brief had not been admitted to the case file. Neither responded.

After final judgement (July 9, 2019), Appellant's Response brief remained absent from the case record. In August 2019, after formal notification of appeal to the lower court, Appellant's document was still not properly registered and added.

On December 3, 2019, Appellant physically appeared to the Edgefield County Clerk of Court's office to inspect the record and confirmed that the document was still absent and unavailable for proper inspection. Clerk of Court's staff claimed to have no knowledge of Appellant's document or its whereabouts and instructed Appellant to email concern to the Deputy Clerk of Court so it could be forwarded (again) to the judge. Appellant sent (2) two emails later that day (R. p. 51), which resulted in the Clerk of Court's office informing Appellant that her Honor was in possession of Appellant's 'Response to Motion' brief.

Finally, on December 16, 2019, Appellant's 'Response' brief was properly registered as received by the Edgefield County Clerk of Court's office, with an attached letter, dated December 4, 2019, from Judge Alison R. Lee. The letter acknowledged that Appellant had indeed given the judge his brief on March 18, 2019 and it had been in that judge's possession. (R. p. 52). The South Carolina Judicial Court Website confirms that this document was only made a part of the online case file on December 16, 2019.

It is notable and troubling that this particular court document had travelled to origins unbeknownst to Appellant in the (9) nine months that had elapsed since it was first provided to the court's custody for 'safe-guarding' in March 2019. This disregard by the court to ensure the security of court records opens significant concerns. Surely the circuit court would be aware that Appellant is restricted from

introducing documents into his appeal that had not been a part of the case. Had Appellant not physically appeared to inquire about this document, it raises question as to if or when the document would have ever been included in his case file, considering the court had been duly informed of this issue just a few days from the March 2019 hearing and had more than ample opportunity to do so.

It is most disturbing that the very stance taken by the Court granting the Defendant's Motion to Dismiss is accompanied by the disappearance of the only document presented against that Motion. It does not bode well when viewed in the context of the case, that the opposing motion is withheld from the case record by the very official who chose to reach the defining decision, and the Court Order of July 9, 2019 omits one Respondent and retitles the others to reflect a position in a probate case of which they have no standing, but supports the court's position. The omission of Appellant's Response from the case record for nine months, gave an inaccurate perception in the courts that the Defendant's Motion was never contested. These actions clearly cultivate a perception of bias and reasonable suspicion of our court system.

SCRCP 501, Canon 3 (5): *A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.... Commentary: A judge must perform judicial duties impartially and fairly. A judge who manifests bias on*

any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute". There is an unfortunate, but very real, perception of bias when Appellant's document was not held in equal status of care and respect as the Defendant's, and the ruling of the court was averse to Appellant.

STANDARD OF REVIEW:

The Court should further review whether the Circuit Court mishandled his case according to state laws and regulations, and if that mishandling constitutes a breach of Appellant's Constitutional right to due process. Appellant asks the Court to assess whether the circuit court's nonadherence to court rules, when reviewed within the totality of all other court errors, subjected Appellant to a perception of bias.

CONCLUSION

The Order granting Respondents Motion to Dismiss, dated July 9, 2019 from the Edgefield County Circuit Court, per the Honorable Judge Alison R. Lee, clearly cites a Legal Standard that is not applicable to Appellant's civil case and the Complaint therein. The Circuit Court further presented its Discussion to support its ORDER which was heavily reliant upon several misstatements of fact. As a final judgement of a Court relies upon judiciary competency and the originator of that judgement to be an 'arbiter of facts and the law' (*S.C. Code § 501 Preamble*), it would be conflictive with State laws and procedural rules to expect less than what is required, or to uphold an action that is not in harmony with those rules of law.

The action by Respondents to submit a motion before the same court, for the same purpose as previously argued, heard and denied, should clearly have been barred, as the act of presenting the same issue before the same court, multiple times, unsupported by any substantial change, just in an effort to gain a different decision was a frivolous and inadmissible action.

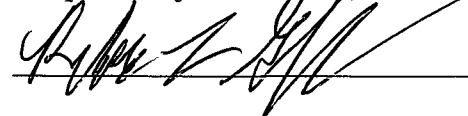
The decision of the lower court to permit Respondent's argument continually has now resulted in harm upon Appellant. In this action, against the premise of Res Judicata, and in opposition to all judicial economy, the Circuit Court has taken the means away from Appellant, which are afforded by the state, to recover his losses, and denied him his right to procedural due process. *SC Const. art. I, § 3.*

The 'Court of Appeals...may reverse...the decision (of the administrative law judge's order) if the substantive rights of the petitioner have been prejudiced because the finding, conclusion or decision is in violation of constitutional or statutory provisions, or affected by other error of law' *S.C. Code § 1-23-610 (2013).*

For the arguments presented and reasons stated, Appellant requests this Court reverse the judgement of the circuit court.

December 4th 2020

Respectfully submitted,



Rufus L. Griffin, pro se

313 Fifth Avenue

McCormick, South Carolina 29835

Phone: (864) 852-2163

Email: writeme44@yahoo.com