

**RECEIVED**

**Dec 31 2020**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Roger M. Young and Maite Murphy, Circuit Court Judges

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.

**RESPONDENTS DAVID BROWN AND CATHERINE BROWN'S  
DESIGNATION OF MATTER FOR THE RECORD ON APPEAL**

Respondents David Brown and Catherine Brown propose to designate the following as part  
of the Record on Appeal:

1. Order, April 18, 2017;
2. Motion to Clarify Order dated April 18, 2017, Amend Complaint, and Restore Case to Active Docket, April 18, 2018;
3. Order, May 9, 2018;
4. Return, July 9, 2018;
5. Substitution of Counsel Order, September 19, 2018;
6. Motion to Set Aside and Clarify Order of 19 Sept 2018, November 1, 2018;
7. Order, November 15, 2018;

8. Motion for Judicial Recusal, Return Case to Judge McCoy's Roster and Continue the Appeal Hearing until the Order Substitution Counsel is Properly Resolved, December 4, 2018;
9. Transcript of Record – Hearing before The Honorable Roger M. Young, December 7, 2018;
10. Order Denying Plaintiff's Motion to Reconsider/Clarify, December 7, 2018;
11. Transcript of Record - Hearing before The Honorable Maite D. Murphy, August 28, 2019;
12. Order, September 20, 2019;

I hereby certify that this designation contains no matters irrelevant to this appeal.

WILLSON JONES CARTER & BAXLEY, P.A.



---

G. Troy Thames, SC Bar No.: 69440  
421 Wando Park Boulevard, Suite 100  
Mount Pleasant, SC 29464  
Telephone: (843) 284-0832  
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Mt. Pleasant, South Carolina  
December 31, 2020

**ATTORNEY FOR RESPONDENTS  
DAVID BROWN AND CATHERINE BROWN**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Roger M. Young and Maite Murphy, Circuit Court Judges

Appellate Case No. 2019-001878

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SC Court of Appeals

Alan Nix .....Appellant,

v.

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

PROOF OF SERVICE

The undersigned certifies that a copy of *Respondents David Brown and Catherine Brown's Designation of Matter* has been served upon the following counsel of record by email and mailing a copy of the same to Pro Se Appellant by United States Mail, addressed as shown below this 31 day of December, 2020.

Alan G. Nix  
1401 Densmore Circle  
Mount Pleasant, SC 29466  
*Pro Se Appellant*

Kevin W. Mims, Esquire  
Luzuriaga Mims, LLP  
50 Immigration Street, Suite 200  
Charleston, SC 29403  
*Attorney for Respondents Churchill Park,  
Churchill Park at Park West, Inc., and  
Churchill Park Homeowners Association, Inc.*

December 31, 2020



G. Troy Thames, S.C. Bar No.: 69440  
Willson, Jones, Carter & Baxley, P.A.  
421 Wando Park Boulevard, Suite 100  
Mount Pleasant, SC 29464  
(843) 284-0832

*Attorney for Respondents David Brown and  
Catherine Brown*

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

**ORIGINAL**

2017CV1011500354  
CIVIL CASE NUMBER

ORDER OF  
DISPOSITION

FILED IN CHARLESTON COUNTY

APR 18 2017

**RECEIVED**

**Dec 31 2020**

**SC Court of Appeals**

Alan Nix  
1401 Densmore Circle  
Mount Pleasant, SC 29466

SMALL CLAIMS COURT

PLAINTIFF(S)

Vs

Churchill Park  
Homeowner'S  
Association, Inc

Churchill Park At  
Parkwest, Inc

Churchill Park

Catherine Brown

Dave Brown

1096 Willoughby Lane  
Mount Pleasant, SC  
29466

1096 Willoughby Lane  
Mount Pleasant, SC  
29466

DEFENDANT(S)

IT IS ORDERED that the above referenced civil case shall reflect a disposition of:

- Settled
- Dismissed**
- Default Judgment
- Find for the Plaintiff for Summons and Complaint (Transcript of Judgment will be issued ten (10) days from the court date.)
- Find for the Plaintiff for Claim and Delivery (Pick Up Order issued the day of court.)
- Find for Defendant
- Transferred to another Court

On, April 18, 2017, the party/parties to this action presented testimony and arguments. Based on the above information and findings of fact, an award was made to the Plaintiff/Defendant in the amount of \$ \_\_\_\_\_, plus filing fees of \$ \_\_\_\_\_, for a total of \$ \_\_\_\_\_

Case dismissed with prejudice as to all above Defendants except Defendant Dave Brown, individually. Case dismissed without prejudice as to Defendant Dave Brown with leave as Plaintiff to amend specific allegations. Amend complaint within 14 days.

IT SO ORDERED

JUDGE

Charleston County  
Small Claims - North  
4045 Bridge View Drive P. O. Box 70235  
North Charleston, SC 29405  
Phone: (843) 202-6650 Fax: (843) 202-6652

April 18, 2017  
MV 19



stipulations, argue motions, and “otherwise galvanize the issues”. Given this agenda for the pre-trial conference, as set out in Judge Turner’s Order filed March 31, 2017, Plaintiff Nix came prepared to declare witnesses and engage in discussion related to stipulations as was necessary and prudent. Given no pre-trial motions were served on Plaintiff Nix prior to the pre-trial conference by Mr. Mims, Mr. Stoney, nor Mr. Kaiser, Plaintiff Nix was not prepared to argue motions at the pre-trial conference given no notice of such was provided in a timely manner before the conference.

2. Judge Turner broached the discussion of Plaintiff Nix’s consent to dismiss the case against Churchill Park Homeowners’ Association, Inc., Churchill Park at Parkwest, Inc. and Churchill Park based on expressing his concern that if Plaintiff Nix did not consent to such dismissal, Defendant’s Churchill Park Homeowners’ Association, Inc., Churchill Park at Parkwest, Inc., and Churchill Park may seek attorney’s fees if they were to succeed at trial and that it would take very little of Mr. Stoney’s time to cost much more than the fence panel Defendant’s allegedly destroyed. Given Plaintiff Nix’s interpretation of Judge Turner’s stated concern, Plaintiff Nix consented to the dismissal against the three corporate entities apparently represented by Mr. Stoney.

3. Judge Turner dismissed the case against Catherine Brown based on his concern for how Ms. Brown was feeling about being involved in the case. Specifically, he asked her apparent attorney, Mr. Kaiser, if she were upset about the case and how she was handling the stress of the case. Apparently, based on Mr. Kaiser’s understanding of Ms. Brown’s stress level of being involved in a small claims case, individually and potentially as the President of one or more of the three corporations also named in the case, Judge Turner dismissed the case against Ms. Brown with prejudice. Plaintiff Nix is not aware of any case law that provides for dismissal of a case with prejudice against a Defendant based on their stress level of being involved in a civil case. This precedent is even more questionable given the case is in Small Claims Court with a maximum judgement limit of \$7,500.

4. Near the end of the pre-trial hearing, Mr. Stoney stated that the “other Churchill”, apparently referring to Churchill Park Homeowners’ Association, Inc., was “somewhere in the Upstate”. Given Mr. Mims and Mr. Stoney’s representation of Churchill Park Homeowners’ Association, Inc. in the matter, and their apparent lack of coordination with their client Churchill

Park Homeowners' Association, Inc. prior to the pre-trial hearing, it would have been proper for either Mr. Stoney and Mr. Mims to have requested a delay of the pre-trial hearing or for Judge Turner to have rescheduled the pre-trial hearing once it was clear Mr. Stoney did not know where his client was other than allegedly in the "Upstate somewhere".

5. Based on information and belief, Plaintiff Nix came to believe later in 2017 that Defendant Churchill Park at Parkwest, Inc. is not a legitimately organized corporation as its name suggests.

6. Plaintiff Nix, based on legal information learned during 2017 while being required to defend himself against two other lawsuits which "Churchill Park" has filed against him, his late wife, and his late wife's estate, Defendant Nix concedes that the police report provided in the original complaint does not meet the ordinary standard of pleading all of the elements of a cause of action as generally required in higher level courts in this State, while maintaining the police report documenting Ms. Brown's account of her husband's, David Brown, action in tearing down the Plaintiff's fence do sufficiently meet the standard for a small claims case. Consequently, Plaintiff Nix has included in this Motion, as **Exhibit C**, an amended Complaint drafted in the traditional complaint form.

7. Given Plaintiff Nix's recent recognition of many of the individual's involved in this case, as well as the other cases Plaintiff Nix is involved in as a Defendant in the other cases involving one or more of the Defendant's in this case, Plaintiff Nix states a concern that this case may have been intentionally dismissed as quickly as possible to avoid discovery in this case from potentially generating evidence that would have been relevant in the cases Nix is cited as a Defendant in. To wit: 2014-CP-10-05407 and 2017-CP-10-04031.

8. As of the date of this Motion, none of the original Defendants have restored, or even attempted to restore, the fence in question to its original state before one or more of the Defendant's, either individually or while acting as President of Churchill Park Homeowners' Association, Inc. and/or Churchill Park and/or Churchill Park at Parkwest, Inc., decided to tear down Plaintiff's fence and rebuild it to their own liking.

9. Judge Turner's Order dated April 18, 2017 state that "the party/parties to this action presented testimony and arguments. Based on the above information and findings of fact...". There was no testimony presented as the only party to this action present at the pre-trial

conference was Plaintiff Nix. Given Mr. Stoney apparently did not know one of his clients with any true knowledge other than speculating where they were, "somewhere in the Upstate", clearly Churchill Park Homeowners' did not provide testimony directly or through their attorney.

For the above stated reasons, Plaintiff respectfully requests the Court to:

1. Restore this case to the Active Docket.
2. Toll the Statute of Limitation related causes of action included in the Amended Complaint, attached to this Motion as and Exhibit, for the period April 18, 2017 through the date this case is properly restored to the Active Docket.
3. Amend the Order dated April 18, 2017 to reflect all parties remain parties to the Complaint until at least initial Discovery is exchanged and a proper pre-trial conference is held post initial discovery and before the case is scheduled for trial.
4. Accept Plaintiff's amended Complaint setting out the required elements of all the causes of action alleged.
5. Grant Plaintiff leave to amend the Complaint as appropriate based on exchange of discovery, interrogatories, and depositions.
6. Any other relief as the Court deems just, prudent, and proper.

April 17, 2018

Respectfully submitted,



---

Alan G. Nix  
1401 Densmore Circle  
Mount Pleasant, SC 29466  
(843) 729-2400  
alan.g.nix@gmail.com

# EXHIBIT

# A

STATE OF SOUTH CAROLINA

**ORIGINAL**

2017CV1011500354  
CIVIL CASE NUMBER

COUNTY OF CHARLESTON

FILED IN CHARLESTON COUNTY

**ORDER OF  
DISPOSITION**

Alan Nix  
1401 Densmore Circle  
Mount Pleasant, SC 29466

APR 18 2017

SMALL CLAIMS COURT

**PLAINTIFF(S)**

Vs

Churchill Park  
Homeowner'S  
Association, Inc

Churchill Park At  
Parkwest, Inc

Churchill Park

Catherine Brown

Dave Brown

1096 Willoughby Lane  
Mount Pleasant, SC  
29466

1096 Willoughby Lane  
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**DEFENDANT(S)**

**IT IS ORDERED** that the above referenced civil case shall reflect a disposition of:

- Settled
- Dismissed**
- Default Judgment
- Find for the Plaintiff for Summons and Complaint (Transcript of Judgment will be issued ten (10) days from the court date.)
- Find for the Plaintiff for Claim and Delivery (Pick Up Order issued the day of court.)
- Find for Defendant
- Transferred to another Court

On, April 18, 2017, the party/parties to this action presented testimony and arguments. Based on the above information and findings of fact, an award was made to the Plaintiff/Defendant in the amount of \$ \_\_\_\_\_, plus filing fees of \$ \_\_\_\_\_, for a total of \$ \_\_\_\_\_.

Case dismissed with prejudice as to all above Defendants except Defendant Dave Brown, individually. Case dismissed without prejudice as to Defendant Dave Brown with leave as Plaintiff to amend specific allegations. Amend complaint within 14 days.

**IT SO ORDERED**

JUDGE

Charleston County  
Small Claims - North  
4045 Bridge View Drive P. O. Box 70235  
North Charleston, SC 29405  
Phone: (843) 202-6650 Fax: (843) 202-6652

April 18, 2017  
MV 19

**EXHIBIT**

**C**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 ALAN NIX )  
 )  
 Plaintiff, )  
 )  
 )  
 )  
 CHURCHILL PARK HOMEOWNERS' )  
 ASSOCIATION, INC., CHURCHILL )  
 PARK AT PARKWEST, INC., )  
 CHURCHILL PARK, CATHERINE )  
 BROWN, AND DAVID BROWN )  
 )  
 Defendants, )  
 )

---

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2017-CV-10-11500354

**COMPLAINT**

The Plaintiff, Alan G. Nix, complaining of Defendants, respectfully shows this honorable Court the following:

**PARTIES AND JURISDICTION**

1. Plaintiff is a resident of Charleston County, South Carolina
2. Upon information and belief, Churchill Park Homeowners' Association, Inc. is a South Carolina Corporation organized under the South Carolina Nonprofit Act that operates in Charleston County, South Carolina and has a registered agent of InCorp Services Inc., 317 Ruth Vista Road, Lexington, SC 29073.
3. Churchill Park is a South Carolina Corporation organized under the South Carolina Nonprofit Act and has a registered agent of Cedar Management Group, 1320 Main St., Suite 300, Columbia, SC 29201 (Regus)
4. Churchill Park at Parkwest, Inc. is alleged to be a corporation incorporated in an undetermined state, but known not to be a South Carolina incorporated Corporation. .
5. Catherine Brown is an individual residing in Charleston County, South Carolina
6. David Brown is an individual residing in Charleston County, South Carolina

**FACTUAL ALLEGATIONS**

7. At all times pertinent to this action, Plaintiff has resided at 1401 Densmore Circle, Mount Pleasant, SC 29466, the physical location of which the damaged fence resides.
8. The fence in question was built by contractors hired by Plaintiff in June 2010.
9. The fence in question is approximately six inches inside the property boundary of Plaintiff's property.
10. The Plaintiff had the boundary line surveyed by a licensed surveyor prior to beginning construction of the fence to ensure the fence, in its entirety, was built only on property owned by Plaintiff.
11. The corner lot pin between Plaintiff's property and Defendant(s) Catherine and David Brown's property is clearly visible at the rear corner fence post of the fence where Defendant(s) tore down Plaintiff's fence.
12. The fence Defendant's tore down met the requirements as specified in the "Declaration of Protective Covenants for Churchill Park", as recorded in the Charleston County RMC records on January 10, 2001 in Book S340, Page 595.
13. Sometime during the period July 7, 2014 to July 30, 2014, while Plaintiff's were not present at their property in Mount Pleasant, SC, Defendant(s) tore down the fence the Plaintiff had previously had built by hired contractor in 2010.

**FOR A FIRST CAUSE OF ACTION**

**(Trespass)**

**(As to Catherine Brown and David Brown)**

14. Each and every allegation set forth above is fully incorporated herein.
15. Plaintiff owned the property that the fence was built upon as documented in the Deed to the Property as recorded with the Charleston County RMC on July 17, 2001 in Book C377, Page 591. **(See Exhibit A)**
16. Defendants knowingly and willfully entered onto Plaintiff's property sometime during the period July 7, 2014 and July 30, 2014 with the intent to tear down Plaintiff's fence.
17. Sometime during the period July 7, 2014 and July 30, 2014, Defendants knowingly and willfully did tear down Plaintiff's fence. **(See Exhibit B, Police report SC0100300)** Page two, Catherine Brown's statement that "*the fence was ugly and that it did not give them enough privacy, so her husband tore the section down*".

18. Defendants did not seek permission from Plaintiff to enter their property during the period July 7, 2014 and July 30, 2014. See Exhibit B, Page 1, Norma Nix's statement "*the neighbors did not have permission to tear down the fence and have not made an effort to contact them about why they tore the fence down*".

**FOR A SECOND CAUSE OF ACTION**

**(Conversion)**

**(As to Catherine Brown and David Brown)**

19. Each and every allegation set forth above is fully incorporated herein.
20. Plaintiff owned the property the fence was built upon and had purchased the lumber themselves and paid a contractor to construct the fence the Defendants tore down.
21. The entire side of the fence which defendant damaged was valued at approximately \$4,800 at the time it was constructed in 2010. Then entire fence around the back yard, which the side that was tore down matched, was valued at approximately \$11,000 at the time it was constructed in 2010.
22. Defendant Catherine Brown stated in Police Report SC 0100300, page 2, that "*she would have her husband put the old wood back up and that they would not bother the fence again.*" **(Exhibit B)**
23. As of the date of the filing of this amended Complaint, almost 45 months after Defendants tore down the fence, and almost a year after this action was first filed, Defendants have not performed as they stated they would in police report SC 0100300 on July 31, 2014, ("*she would have her husband put the old wood back up and that they would not bother the fence again.*") as the fence remains largely in the same state as it was reported to the Mount Pleasant Police Department on July 31, 2014.

**FOR A THIRD CAUSE OF ACTION**

**(Constructive Fraud)**

**(As to Catherine Brown)**

24. Each and every allegation set forth above is fully incorporated herein.

25. Defendant Catherine Brown, on July 31, 2014, stated to Mount Pleasant Police Officer Daniel Nease, as he documents in Mount Pleasant Incident Report SC0100300, "*that she and victim paid for the fence together but it was on the victim' property.*"
26. Defendant Catherine Brown, on July 31, 2014, also stated to Officer Nease "*she would have her husband put the old wood back up and that they would not bother the fence again*".
27. Catherine and David Brown did not pay for any portion of the fence originally or up until such time as David Brown tore down the fence sometime during the period of time July 7, 2014 and July 30, 2014.
28. Upon information and belief, Catherine Brown lived at the same address as David Brown, which is the property directly next to the property the fence was constructed on, during the period June 2010 till July 31, 2014.
29. Catherine Brown's assertion "*that she and victim paid for the fence together*" is and remains material to financial liability for damage to said fence.
30. Catherine Brown's assertion "*that she and victim paid for the fence together*" was intended to influence Officer Nease's interpretation of the trespass offense.
31. Catherine Brown's assertion that "*she would have her husband put the old wood back up*" was intended to influence Officer Nease's manner of dealing with the reported trespass and damage to private property.
32. Upon information and belief, Officer Nease had no prior knowledge of the Person or Person's that provided funding to construct the fence and consequently, had a right to rely on Ms. Brown's statement, especially since she was aware at the time of the statement she was being interviewed by a police officer making a formal inquiry into reported suspicious activity.
33. Upon information and belief, Officer Nease had no obvious reason to doubt Ms. Brown's assurance that "*she would have her husband put the old wood back up*".
34. Given Officer Nease's reliance on Ms. Brown's assertions that: 1. "*That she and victim paid for the fence together*" and 2. "*she would have her husband put the old wood back up*", and Plaintiff's reliance on Ms. Brown's statement "*she would have her husband put the old wood back up*", Plaintiff's damages due to having the fence not returned to the

original state before Mr. Brown tore the fence down have continued and increased since at least July 30, 2014.

**FOR A FOURTH CAUSE OF ACTION**

**(Breach of Fiduciary Duty)**

**(As to Catherine Brown)**

35. Each and every allegation set forth above is fully incorporated herein.
36. Upon information and belief, Catherine Brown was the President of Churchill Park and/or Churchill Park Homeowners' Association, Inc., and/or Churchill Park at Parkwest, Inc. at the time her husband tore the fence down.
37. Upon information and belief, during the period immediately before Ms. Brown became the President of one or more of the Associations and/or Corporations named, David Brown was the President of one or more of the Associations and/or Corporations named.
38. Upon information and belief, at the time Defendants tore down the fence, Southern Community Services, LLC was the professional property manager and Agent for one or more of the Churchill entities named.
39. Upon information and belief, Plaintiff believes at least one of these Associations and/or Corporations had a contractual relationship with Plaintiff as specified in the Declaration of Protective Covenants for Churchill Park, the Bylaws for Churchill Park Homeowners Association, Inc. and the Articles of Incorporation for Churchill Park Homeowners' Association, Inc., and/or the Articles of Incorporation for Churchill Park.
40. Upon information and belief, the entity represented to be a corporation known by the name Churchill Park at Parkwest, Inc. is not incorporated in South Carolina, nor any other state in near proximity to South Carolina.
41. Upon information and belief, the Board of Directors for the corporate entity or corporate entities responsible for the Churchill Park subdivision in Mount Pleasant, SC have used numerous names to refer to the various entities either responsible for or represented as having been responsible for the operation of the Churchill Park Homeowners' Association.
42. Upon information and belief, Plaintiff alleges that David and Catherine Brown utilized her position of President of one or more of the Churchill entities to justify David Brown's

willful and wonton action of tearing down the fence because “*it was ugly*” so he could put up a different “*section that was higher to block the subject view into the victim’s backyard*”. Hence, Ms. Brown incurred personal benefit for herself and husband through the use of her position as President of one or more of the Churchill entities, by breaching her fiduciary duty to the Association and consequently, one of its members, the Plaintiff in this action.

43. This breach of duty proximately caused Plaintiff to incur damages to which they are entitled to recover, including actual, consequential and punitive damages, as well as attorney fees and costs.

**WHEREFORE**, Plaintiff prays for:

1. Judgement against Defendants to include actual, consequential and punitive damages.
2. Toll the Statute of Limitation related to the causes of action alleged in this Complaint for the period April 18, 2017 through the date this case is properly restored to the Active Docket.
3. Award, where applicable, costs, interest and attorney fees.
4. Grant Plaintiff leave to amend this Complaint as appropriate based on information received during discovery, interrogatories and depositions.
5. Any other relief as the Court deems just, prudent, and proper.

**PLAINTIFF DEMANDS A JURY TRIAL.**

April 17, 2018

Respectfully submitted,



Alan G. Nix  
1401 Densmore Circle  
Mount Pleasant, SC 29466  
(843) 729-2400  
alan.g.nix@gmail.com

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
 )  
Alan Nix, )  
Plaintiff )  
-versus- )  
 )  
Churchill Park Homeowners' Association, Inc. )  
Churchill Park at Parkwest, Inc., )  
Catherine Brown & David Brown, )  
Defendant )  
 )  
 )  
 )

IN THE SMALL CLAIMS COURT  
CASE NO: 2017-CV-10-115-00354

**ORDER**

FILED IN  
CHARLESTON COUNTY  
MAY 09 2018  
NORTH AREA  
SMALL CLAIMS COURT

This court heard arguments at a hearing on a Rule 60(B) motion by the Plaintiff.

The court finds upon hearing the arguments and reviewing the case file as follows:

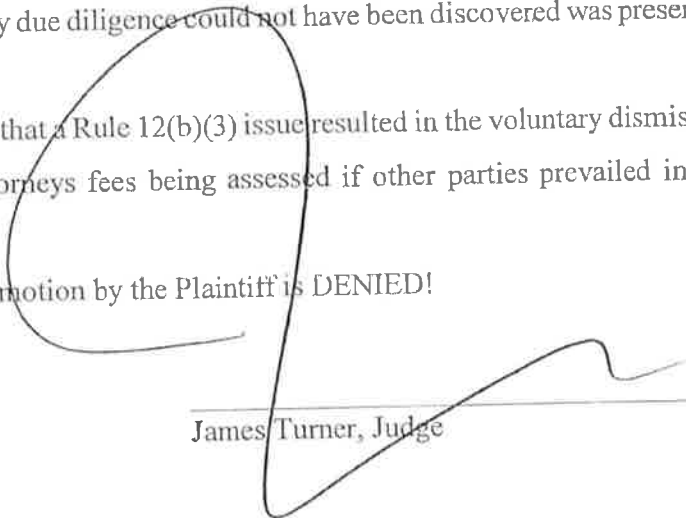
That Rule 12(b) of the Magistrate court which mirrors Rule 60(B) of the South Carolina Rules of civil Procedure is the applicable standard.

That the court finds a failure to demonstrate the requisite particularized showing of the reasons listed in 12(B) (1).

That no new evidence which by due diligence could not have been discovered was presented to the court.

That, it is unclear to this court that a Rule 12(b)(3) issue resulted in the voluntary dismissals rather than the risks of potential attorneys fees being assessed if other parties prevailed in the litigation.

For the foregoing reason, the motion by the Plaintiff is DENIED!

  
\_\_\_\_\_  
James Turner, Judge

May 9, 2018  
North Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
) )  
) )  
Alan Nix, )  
) )  
Plaintiff- Appellant )  
) )  
-versus- )  
) )  
Churchill Park Homeowners' )  
Association, Inc., Churchill Park at Park )  
West, Inc., Churchill Park, )  
Catherine Brown, David Brown )  
) )  
Defendant- Respondents, )  
) )  
) )

IN THE SMALL CLAIMS COURT  
CASE NO: 2017CV1011500354  
COMMON PLEAS: 18-CP-100-3315

**RETURN**

THIS is an appeal from the Charleston County Small Claims Court, North Charleston Division.

The appellant initially filed the complaint on February 24, 2017. Counsel filed responsive pleadings including dispositive pretrial motions.

A pretrial conference was held April 18, 2017.

The court issued a form order dated that same day based on the discussions that occurred between the appellant and the attorneys in chambers. None of the parties requested that the resolution be published on the record.

The order was sent to all parties at the addresses provided to the court and were not returned by the postal service. The appellant filed a motion to clarify the April 18, 2017 order and restore case to active docket on April 18, 2018 approximately one year later.

The court scheduled a motion hearing which was held on April 30, 2018.

FILED IN  
CHARLESTON COUNTY  
JUL 09 2018  
SMALL CLAIMS COURT

The court issued a written order May 9, 2018 denying the motion and delineating the grounds for denial.

The appellant file a motion for reconsideration of the denial of the Rule 60 or Rule 12 magistrate court motion on May 21, 2018.

The court denied the motion for reconsideration by written order on May 31, 2018.

The appellant then filed another post trial motion styled as a motion to compel or for clarification of the previous orders.

A written order denying that motion was issued by the court on June 20, 2018.

The seven exceptions by the appellant are addressed as follows:

First:

6/23  
The court did not deny the Rule 60 motions on the basis of timeliness of the motion but upon the other particular grounds prescribed by case law.

Second:

The court order of April 18, 2017 permitted the defendant to still pursue David Brown as a defendant instead of the other defendants based upon the discussion at the pretrial, which were deemed to be without objection.

Third:

The April 19, 2018 order dismissed the case with prejudice as to all defendants except David Brown. The May 9, 2018 order denying the Rule 60 motions notes that voluntary dismissal at the pretrial occurred after it was noted that a risk of attorney's fees being assessed existed if the defendants prevailed.

Fourth:

The responsive pleadings are contained in the file. The file does not appear to evidence any motion to enter a default as to any parties.

Fifth:

The legal basis of this as an exception is unclear to be addressed herein.

Sixth:

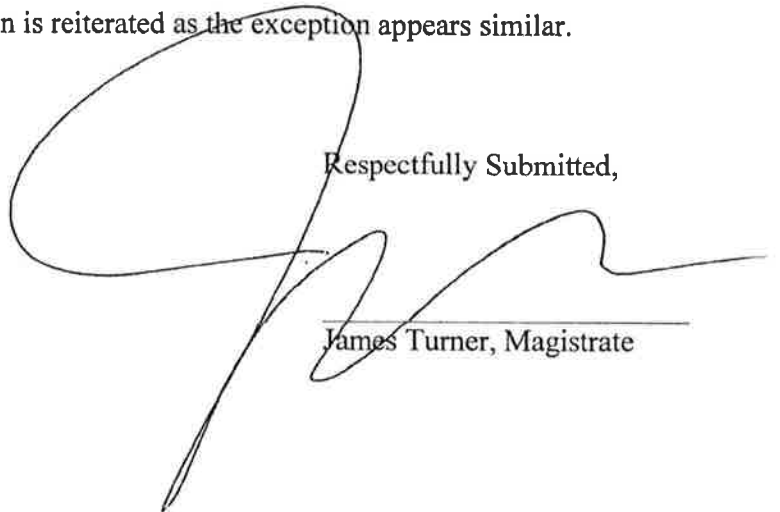
The court made a finding that no evidence had been addressed that could not have been previously discovered.

Seventh:

The response to the fifth exception is reiterated as the exception appears similar.

HT  
313

Respectfully Submitted,



James Turner, Magistrate

North Charleston, South Carolina  
July 9, 2018

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
ALAN NIX, )  
 )  
v. )  
 )  
CHURCHILL PARK, )  
CHURCHILL PARK AT )  
PARK WEST, INC., CHURCHILL )  
PARK HOMEOWNERS ASSOC., )  
INC., DAVID BROWN AND )  
CATHERINE BROWN )  
DEFENDANT. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO.: 2018-CP-10-3315

FILED  
2018 SEP 25 PM 12:39  
JULIE M. OF COURTYN

**SUBSTITUTION OF COUNSEL**

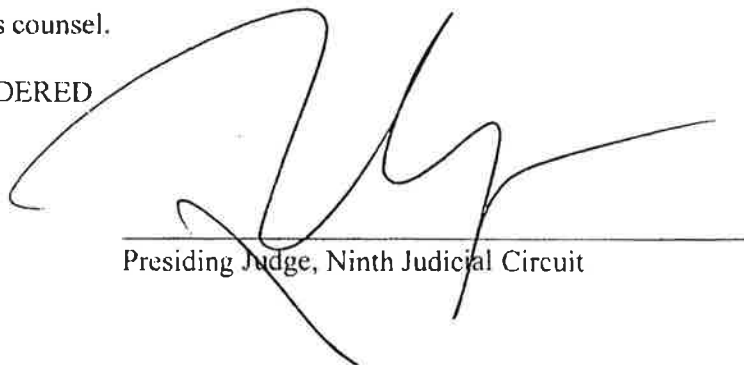
It appearing that the defendants, David Brown and Catherine Brown, wish to discharge the Joseph Kaiser as attorney for Defendants and substitute G. Troy Thames as counsel of record for Defendant.

Therefore upon request of Defendant and with the consent of counsel as evidenced by their signatures below, it is hereby

ORDERED that G. Troy Thames is hereby substituted as counsel for Defendant and Joseph Kaiser is hereby relieved as counsel.

AND IT IS SO ORDERED

9/19, 2018.



Presiding Judge, Ninth Judicial Circuit

I consent:



Joseph Kaiser  
155 King Street, Second Floor, Suite C  
Charleston, South Carolina 29401  
Telephone: (843)-970-2827  
Facsimile: (843)-970-2913  
Email: [joseph@kaiserlawsc.com](mailto:joseph@kaiserlawsc.com)



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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

ALAN NIX )  
 )  
Plaintiff, )

Case No.: 2018-CP-10-03315

**MOTION TO SET ASIDE AND  
CLARIFY ORDER OF 19 SEPT 2018**

CHURCHILL PARK HOMEOWNERS' )  
ASSOCIATION, INC., CHURCHILL )  
PARK AT PARKWEST, INC., )  
CHURCHILL PARK, CATHERINE )  
BROWN, AND DAVID BROWN )  
 )  
Defendants, )

PLEASE TAKE NOTICE, Defendant Alan Nix, pursuant to SCRCP 60(b), hereby submits this motion to Set Aside and Clarify the Order dated 19 September 2018.

I.

**Background and Factual Summary**

1. On June 28, 2018 the Notice of Appeal of Charleston County Small Claims Case 2017-CV-10-11500354 was filed with the Charleston County Clerk of Court.
2. On June 29, 2018, I emailed the Notice of Appeal to all Counsel of Record for case number 2017-CV-10-11500354, with subsequent service by USPS, certified mail, return receipt required.
3. On September 18, 2018, I received a notice of a hearing scheduled for this matter on September 27, 2018, with September 19, 2018 stated as the last day to request a continuance. Given at the time I had travel plans that week, and also did not have time to request necessary information from the Charleston Small Claims Court for use in a memorandum related to the hearing, I requested a continuance.

4. On 5 October 2018, I received a notification from the Charleston County Clerk of Court providing notification that an Order of Substitution of Counsel had been entered in this case.

## **II.**

### **Argument**

5. Based on a review of the Charleston County Clerk of Court's website, it appears that Mr. Kaiser entered his Notice of Appearance in this case on August 21, 2018.

6. There is no indication via review of the Charleston County Clerk of Court's website that Mr. Kaiser ever filed a Certification of Service for his Notice of Appearance dated August 15, 2018.

7. Mr. Kaiser did not at the time he filed his Notice of Appearance, or at any time thereafter, serve his Notice of Appearance on Plaintiff.

8. Mr. Kaiser, nor Mr. Thames, served any type of motion or proposed Order of Substitution upon Plaintiff related to this matter.

9. There is no indication via review of the Charleston County Clerk of Court's website that Mr. Kaiser or Mr. Thames filed a Certification of Service related to any documents provided to the Court on or before September 19, 2018.

10. The Order of Substitution of Counsel dated 19 September 2018 indicates that the order is based on an appearance that the defendant's, David Brown and Catherine Brown, wish to discharge the Joseph Kaiser as an attorney for the Defendants and substitute G. Troy Thames as counsel of record.

11. In the previous small claims case this appeal is related to, Mr. Mims and Mr. Stoney also represented defendant's David Brown and Catherine Brown. It was never clear to Plaintiff if Mr. Mims and Mr. Stoney were lead counsel for the defendant's David Brown and Catherine Brown or if they were secondary counsel to Mr. Kaiser as counsel for defendant's David Brown and Catherine Brown.

12. To be completely clear, Mr. Mims and Mr. Stoney entered an answer on behalf of all five defendant's in Charleston County Small Claims Case number 2017-CV-10-11500354.

13. The Order goes on to conclude in the second paragraph that “upon request of Defendant and with the consent of counsel as evidenced by their signatures below, it is hereby ORDERED.... With respect to this apparent conclusion, it does not appear as if there has been any evidence produced that Defendants David Brown and Catherine Brown requested that Joseph Kaiser be discharged and G. Troy Thames be substituted.

14. Additionally, with respect to the evidence related to their counsel’s signatures below, Plaintiff cannot tell whose signature is below, but it is clear that only one person’s signature is included below for both attorney’s. The note in parentheses next to the signature above Mr. Thames’ name clearly states “(with permission)”.

15. Likewise, there is no evidence included with this Order or in the online record for this case that whoever’s signature is used for both attorney’s names related to the consent had permission for someone to sign on their behalf.

15. Consequently, it appears that not only is there no evidence that the defendant’s David Brown and Catherine Brown may not have wished to discharge Joseph Kaiser as counsel of record, it also appears that only one of the attorneys actually consented to the substitution based on only one signature being used for both attorney’s names.

16. Given the apparent significant abnormalities related to the defendants, defendant’s representatives and defendant’s attorneys conduct in the Charleston County Small Claims Case 2017-CV-10-11500354, one of the primary basis’s that this appeal is based upon, the Plaintiff raises the better than average possibility that the alleged grounds that this Order of Substitution of Counsel is based on, may be for an improper purpose.

For the above stated reasons, Plaintiff respectfully requests the Court to:

1. Set Aside Order dated 19 September 2018.
2. Require Defendant’s appear in court and state on the record the reason(s) they wished to discharge Joseph Kaiser as their counsel of record, with specific explanation related to the primary grounds this appeal is based upon.
3. Require Defendant’s appear in court and state on the record explanation as to why they not only chose to apparently discharge Joseph Kaiser as their counsel of record,

but also apparently chose to replace Mr. Mims and Mr. Stoney with an attorney with no apparent knowledge of the underlying case that is being appealed.

4. Clarify the Order to such a degree that the issues raised in this motion are fully explained / resolved.
5. In the event that the court does not find it proper to set aside this order for the reasons given, make Mr. Thames secondary counsel / co-counsel to Mr. Kaiser in this matter with any costs associated with Mr. Thames representation 100% attributable to Defendant's.
6. Schedule the preliminary hearing related to this matter during the period November 27th to November 30<sup>th</sup>, 2018.
7. Any other and/or further relief as the Court deems just, prudent, and proper.

November 1, 2018

Respectfully submitted,



Alan G. Nix  
1401 Densmore Circle  
Mount Pleasant, SC 29466  
(843) 991-4170  
alan.g.nix@gmail.com

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

ALAN NIX

Plaintiff,

vs.

CHURCHILL PARK HOMEOWNERS'  
ASSOCIATION, INC., CHURCHILL PARK  
AT PARKWEST, INC., CHURCHILL  
PARK, CATHERINE BROWN AND  
DAVID BROWN

Defendants.

IN THE COURT OF COMMON PLEAS  
THE NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2018-CP-10-03315

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 1<sup>st</sup> day of November 2018, a copy of the Motion to Set Aside, or In the Alternative, Amend Order dated 19 September 2018 was served upon all parties and/or their respective counsel of record via USPS as follows:


Kevin Mims, Esq.  
Luzuriaga Mims, LLP  
50 Immigration St., Suite 200  
Charleston, SC 29403

G. Troy Thames.  
421 Wando Park Blvd, Suite 100  
Mount Pleasant, SC 29464

Joesph Kaiser, Esq.  
Kaiser Law Firm  
155 King St., 2<sup>nd</sup> Floor, Ste. C  
Charleston, SC 29401

Randall Stoney, Esq.  
Luzuriaga Mims, LLP  
50 Immigration St., Suite 200  
Charleston, SC 29403

Judge \_\_\_\_\_  
100 Broad St.  
Charleston, SC 29401

By:   
Alan G Nix  
1401 Densmore Circle  
Mount Pleasant, SC 29466  
(843) 991-4170 Phone  
alan.g.nix@gmail.com

Alan Nix

Churchill Park Homeowners' Association, Inc.,

Churchill Park at Parkwest, Inc., Churchill Park,  
Catherine Brown & David Brown

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Alan Nix	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input checked="" type="checkbox"/> Self-Represented Litigant
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**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

2018 APR 19 PM 3:19  
 RECEIVED  
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: Motion to Reconsider is denied as it was not timely filed.

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**  
**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge



2124  
Judge Code

Date

11/18

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

MOTION to reconsider only Substantive  
counsel filed 9/25/18 is denied  
because it was filed more than  
10 days after order was filed.



*Court within 10 days of signing. Therefore, your request for him to set aside or clarify his ruling is moot because your motion was filed on November 2, 2018, outside the ten day period.”*

4. On November 19, 2018, at the behest of the Plaintiff, Judge Young entered an order denying Plaintiff’s motion from November 2, 2018, substantially stating the same as was communicated via email on November 13, 2018.

5. On November 21, 2018, Plaintiff submitted a motion seeking to set aside the orders of November 19, 2018 and September 25, 2018, seeking for a second time a clarification of the circumstances and basis of the order of September 25, 2018, as well as pointing out that the motion of November 2, 2018 specifically cited Rule 60, SCRPC, a different legal standard than the apparent legal standard Judge Young chose to utilize to erroneously deny the motion on November 13/19, 2018.

6. On November 28, 2018, Judge Young apparently continued the matter off of Judge McCoy’s motion roster scheduled for the next day, apparently determining it was more proper for him to hear the case than Judge McCoy, and rescheduled the hearing for all motions, including the appeal hearing, before him on December 7, 2018.

7. Given no clarification of the September 25, 2018 order had been filed by the afternoon of November 30, 2018, despite multiple requests, the Plaintiff sought a subpoena to request all documents related to the September 25, 2018 Order of Substitution of Counsel.

## **II.**

### **Argument**

8. The Order of September 25, 2018 lacks any substantive proof related to the t conclusions of fact that Judge Young appears to cite in the order.

6. The apparent motion of the Defendants’ to substitute counsel was not served on the Plaintiff.

7. The apparent motion of the Defendants’ to substitute counsel was not filed with the Charleston County Clerk of Court.

7. There is no evidence that a motion fee was paid to Charleston County by the Defendant's on or about September 19, 2018 related to an apparent motion of any type, including but not limited to, a motion to substitute counsel.

8. On or about September 19, 2018, the Defendants' attorney, Mr. Kaiser, either knew, or should have known, that the Judge McCoy was assigned to hear the appeal. Consequently, if a motion for substitution of counsel was filed, it should have been before Judge McCoy for consideration, not Judge Young.

7. Judge Young's conduct since early November 2018, specifically related to a) apparently intentionally utilizing an incorrect legal standard to deny the motion for clarification and set aside, thereby avoiding explaining the circumstances of the order, b) an ongoing pattern of conduct related to not clarifying the circumstances of the order c) the apparent move to take the case from Judge McCoy for questionable reasons, leads an independent observer to conclude that an appearance of impropriety related to the order of September 25, 2018 exists.

8. Based on the information publicly available (or lack thereof) at the time of this motion, there is a strong appearance that the order of September 25, 2018 was entered without a motion being filed explaining the basis for the motion, thereby making the order improper.

9. Without a motion to request the order, Judge Young's order would be improper, and consequently, Judge Young's conduct would be improper, thereby clearly creating a conflict of interest for Judge Young and making it impossible to for him to be considered an unbiased finder of fact.

10. Furthermore, Plaintiff clarifies that if sufficient information is not produced to justify the basis for the order of September 25, 2018, it is likely Judge Young will be named in future litigation for related matters.

For the above stated reasons, Plaintiff respectfully requests the Court to enter and order by 1300 on December 6, 2018:

1. Recusing / disqualifying Judge Young from this case.
2. Continuing the hearing for the appeal until the matter related to the order of September 25, 2018 is properly clarified and resolved, and at the earliest, 15 days after the date Judge Young responds to the subpoena of November 30, 2018.

3. Return the case to Judge McCoy's motion roster.
4. Any other and/or further relief as the Court deems just, prudent, and proper.

December 4, 2018

Respectfully submitted,



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STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
ALAN NIX )  
Plaintiff, )  
vs. )  
CHURCHILL PARK HOMEOWNERS' )  
ASSOCIATION, INC., CHURCHILL PARK )  
AT PARKWEST, INC., CHURCHILL )  
PARK, CATHERINE BROWN AND )  
DAVID BROWN )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
THE NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2018-CP-10-03315

**CERTIFICATE OF SERVICE**

FILED  
2018 DEC -4 PM 4:27  
JULIE J. ADYSTRONG  
CLERK OF COURT

The undersigned hereby certifies that on the 4th day of December 2018, a copy of the Motion for Judicial Recusal was served upon all parties and/or their respective counsel of record via USPS and/or in person as follows:

Kevin Mims, Esq.  
Luzuriaga Mims, LLP  
50 Immigration St., Suite 200  
Charleston, SC 29403  
(in person and email)


G. Troy Thames.  
421 Wando Park Blvd, Suite 100  
Mount Pleasant, SC 29464  
(in person and email)

Joesph Kaiser, Esq.  
Kaiser Law Firm  
155 King St., 2<sup>nd</sup> Floor, Ste. C  
Charleston, SC 29401  
(in person and email)

Randall Stoney, Esq.  
Luzuriaga Mims, LLP  
50 Immigration St., Suite 200  
Charleston, SC 29403  
(in person and email)

Judge Young  
100 Broad St.  
Charleston, SC 29401  
(in person and email)

Judge McCoy  
100 Broad St.  
Charleston, SC 2401  
(in person and email)

By:   
Alan G Nix  
1401 Densmore Circle  
Mount Pleasant, SC 29466  
(843) 991-4170 Phone  
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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS  
2018-CP-10-03315

ALAN G. NIX,

Appellant,

-vs-

CHURCHILL PARK HOMEOWNERS  
ASSOCIATION, INC., et al.,

Respondents.

)  
)  
) TRANSCRIPT OF RECORD  
)  
) December 7, 2018  
)  
) Charleston, South Carolina  
)  
)

B E F O R E:

The Honorable Roger M. Young, Judge.

A P P E A R A N C E S:

Alan G. Nix, Appellant  
Appearing Pro Se

George Troy Thames, Esquire  
For Respondents Catherine Brown and David Brown

Amanda K. Haffenden, RPR, CRR  
Circuit Court Reporter

1 (December 7, 2018.)

2 THE COURT: Are you Mr. Nix?

3 THE APPELLANT: I am.

4 THE COURT: All right. Have a seat.

5 All right. Well, since you're here now, we  
6 will go ahead and start. I want to address some things  
7 that you have raised in your numerous emails that perhaps  
8 will explain to you how things get the way they are. I'm  
9 not really sure it will alleviate all your concerns, by  
10 I'll do the best I can.

11 Mr. Nix, you're a pro se litigant, our big,  
12 fancy word for people who represent themselves, so often  
13 pro se litigants present a bit of a challenge because  
14 they don't understand all the rules and they don't  
15 understand the process like lawyers do, so we try to  
16 explain things to them along the way, but there are  
17 procedures that we have that we have to follow, whether  
18 you're aware of them or not, and number one is that when  
19 cases get filed and people are represented by other  
20 people on the other side, or sometimes they're pro se as  
21 well, the number one thing that we do is we do not  
22 conduct hearings via email.

23 And I've noticed over -- well, my involvement  
24 in this case is now about 30 days old. I've never heard  
25 of you and don't know anything about this case other than

1 I am the chief administrative judge this year for  
2 Charleston, and that means I'm in charge of managing --  
3 as of this morning, there are 5,800 cases that have been  
4 filed here in Charleston. That doesn't count last year  
5 or the year before and all that, so it's my job to kind  
6 of manage them.

7 So to suggest that I have any particular  
8 interest in any case -- as I explain to juries when I try  
9 cases, and I tried two jury trials this morning -- I  
10 don't really have an interest in the outcome of the case.  
11 My job is just to preside, make sure that both sides get  
12 a fair hearing, and then I go on to the next one. The  
13 same thing with administrative stuff.

14 When I walk out of here, my office is not far  
15 down the hall, there's going to be a stack of probably a  
16 foot high of things by lunchtime (indicating). I'll sign  
17 all of those during lunch, and then by noon today,  
18 there's going to be another stack of things to sign.

19 That's just what the administrative judge  
20 does, and we have a computerized system. Things get set  
21 for hearings, if one needs to be held, but the number one  
22 thing that we don't do is conduct hearings via email, and  
23 lawyers understand that. And I don't get a lot of emails  
24 from lawyers arguing about the merits of the case because  
25 they know that's not the forum. We have a court for that

1 purpose with a court reporter present so that each side  
2 has the opportunity to present their side, and then the  
3 judge makes a decision, based on what both sides have to  
4 say.

5           Now, I understand because you are a pro se  
6 litigant that you may not completely understand that, and  
7 like most people that are involved in lawsuits and get  
8 sued, that is one of the most important things in their  
9 life, if not the most important thing in their life, and  
10 so they tend to only see the one side of it and the  
11 merits of theirs, but as I tell juries every day before  
12 we start a new trial, there's always two sides to every  
13 story, and you've got to listen to both sides before you  
14 make a decision.

15           So I preface those remarks because my  
16 involvement in this case was simply to -- I got a  
17 motion -- a consent order substituting counsel for the  
18 people that are on the other side. It's just a routine  
19 thing, signed it, never even gave it a second thought  
20 because it was probably only one of about 50 to 60  
21 documents that I signed on that day, very similar in  
22 nature to it.

23           So we fast forward to about the first part of  
24 March, and the clerk's office said, oh, we've got a case  
25 where a litigant wants you to reconsider an order that

1 you signed allowing substitution of counsel. I'm, like,  
2 that's a very unusual motion, and I said, well, I don't  
3 understand. He doesn't like his lawyer? And they said,  
4 no, he doesn't -- the other side consented to the  
5 substitution of counsel.

6           You really don't have the right to choose who  
7 sues you. Who represents whoever is on the other side,  
8 they have the right to do that, and, besides, it was over  
9 30 days old, so I just directed them to send an email to  
10 you that it is over 30 days old.

11           Well, that began our quest to get here  
12 because you asked to have me reconsider that. Now, from  
13 your viewpoint, you apparently think that when you ask a  
14 judge to do something that he should do it right away.  
15 You often set deadlines for doing things that you think  
16 the judge ought to do, but from my standpoint, once we  
17 get into a contested matter, I have to give both sides  
18 the opportunity to have a hearing on that, and so we get  
19 to the point where your motion to -- there's an appeal, I  
20 gather, from a magistrate's Court, and I'm not really  
21 sure what the merits of that are about, but it was  
22 scheduled just as a matter of routine in front of Judge  
23 McCoy, but at the same time, we had your outstanding  
24 request for me to reconsider my order, consent order,  
25 substituting counsel.

1 I said, well, unless the other side has their  
2 people come in and say, you know, there was a fraud on  
3 the court and they really didn't want their new lawyers,  
4 it's hard for me to imagine how that's got any merit to  
5 it, but, I said, I'll set it for a hearing. That's when  
6 I directed Caroline Leonard to tell you we're going to  
7 set this for a hearing, and because that had to be  
8 decided before Judge McCoy's hearing could be heard, I  
9 said just set it all in front of me.

10 I gather from your standpoint you begin to  
11 think that there was some kind of a conspiracy within the  
12 court personnel about your case. To me, it was just a  
13 matter of efficiency to have one judge hear it instead of  
14 bouncing it back and forth between judges, but,  
15 nevertheless, you took it the way you took it.

16 Now, that gets us here, and, again, your  
17 request. You keep sending me emails. I don't respond to  
18 emails. I especially don't respond to emails from pro se  
19 litigants. It's entirely improper for a judge to do  
20 that, but it's one of the phenomenons that we have  
21 because people figure out how to send an email to the  
22 judge, what the judge's email address is, and, in fact,  
23 it's not only a problem for me, but it's a problem for a  
24 lot of judges because I note that just yesterday, or the  
25 day before yesterday, court administration sent out a

1 memo saying they were taking judges' emails off of the  
2 stuff that they put out to the public and just putting  
3 the judges' secretaries' stuff on it because in the good  
4 old-fashioned days before email, you write the judge a  
5 letter, and then the judge would look at it and decide  
6 how to respond.

7           But we don't respond to emails, and if you  
8 stop and think about it for just one second, as I told  
9 you, there are 5,800 cases, roughly, a year filed in  
10 Charleston. If every single one of those people could  
11 email the judge and request that something be done and,  
12 as you tend to do, say, well, do it by day after  
13 tomorrow, it would be chaos. It would be absolute chaos  
14 to run a court system this way. So I don't respond to  
15 emails.

16           Now, that gets us here, and, as I am hoping  
17 that you will understand, you asked me to reconsider my  
18 order granting their substitution of counsel and/or  
19 clarifying. I ordered that to be set for a hearing.  
20 That is what you asked for. I'm giving you that, a  
21 hearing on that. I don't just arbitrarily rule in your  
22 favor. I have to give them the opportunity to say,  
23 Judge, our clients absolutely agree to it. I don't know,  
24 but they haven't emailed me about it because lawyers tend  
25 to know that's not how we do things.

1           So I'm grateful that they didn't, but that's  
2 what we're here for today, is to decide, first of all,  
3 whether or not that order granting a substitution of  
4 counsel is proper. After I decide that, I will decide  
5 whether or not I have any further involvement in this  
6 case.

7           You issued subpoenas. You threatened to sue  
8 me. You weren't the first, you won't be the last, but if  
9 at that point your appeal on the merits needs to be  
10 heard, I'll set it in front of somebody else. I don't  
11 have an interest in the outcome of your suit. I don't  
12 know what it is about. The only thing that I have before  
13 me today is to rule on this very unusual you object to  
14 them having a new lawyer.

15           So I'm going to give them the opportunity to  
16 tell me, did your clients really want a new lawyer? What  
17 was this about, and is there anybody here on behalf of, I  
18 guess, the homeowners association, that doesn't want the  
19 new lawyers?

20           Would you care to address that?

21           MR. THAMES: Thank you, Your Honor. I'm Troy  
22 Thames, as you know. I represent David Brown in this  
23 case.

24           Mr. Brown -- I was the attorney that was  
25 substituted in as counsel for Brown according to your

1 court order. I'm now the attorney of record for  
2 Mr. Brown, and, quite honestly, I think the motion, or  
3 the objection by Mr. Nix to that order, is frivolous and  
4 is a waste of the Court's time.

5 It's cost my client time for me to come down  
6 here and spend resources responding to a motion that he  
7 has actually no standing to object to, and, furthermore,  
8 to the extent anyone wants to know why my clients have  
9 chosen different counsel, that's protected by the  
10 attorney-client privilege, and I don't think I have to  
11 disclose that.

12 I'm happy to put it on the record that my  
13 clients consented to me being here; otherwise, I wouldn't  
14 be here. I'm not going to show up and do something I  
15 haven't been asked to do and haven't been retained to do,  
16 but it's our position that our client, my client, chose  
17 me to be their attorney. I'm here. I've been  
18 substituted in. Mr. Nix has no standing to object to  
19 that, and any further inquiry by Mr. Nix or demands that  
20 we produce anything related to the reasons for  
21 substituting counsel are protected by attorney-client  
22 privilege.

23 THE COURT: All right.

24 Mr. Nix, would you like to address the order  
25 of substitution of counsel?

1 THE APPELLANT: I would. Thank you, Your  
2 Honor. Thank you for your explanation as well.

3 First of all, all that exists on the record  
4 is an order of substitution. There's no motion for  
5 substitution. There was no consent order signed by the  
6 supposed clients consenting to the substitution, and the  
7 underlying case actually does allege fraud upon the  
8 Court, and it specifically alleges that the attorneys  
9 involved in the other case were involving fraud upon the  
10 Court as well as other conspiracies.

11 Consequently, it is my position that  
12 substitution of counsel is directly intended to remove an  
13 attorney from this case who had already filed a notice of  
14 appearance with the strict position that he remove  
15 himself from a case rather than be involved in a case,  
16 potentially being involved in an ongoing conspiracy, but,  
17 specifically, I would argue that the order of  
18 substitution was improper because it's not based on  
19 anything available to determine a problem, meaning no  
20 motion was filed.

21 No motion was filed. No motion was served  
22 upon me. There was no documentation that a client  
23 consented to a substitution, and, consequently, it's my  
24 position, based on that information, that the order is  
25 improper, and, most likely, it was done for an improper

1 purpose.

2 THE COURT: Which would be what?

3 THE APPELLANT: I've already stated that,  
4 which is actually to remove Mr. Kiser from a case he  
5 already knows he probably has legal liability in.

6 THE COURT: Enlighten me. I do not know  
7 anything at all about another case or whatever --

8 THE APPELLANT: Well, it's actually the  
9 foundation for the appeal, but I believe it can be very  
10 simple, actually. The only thing we have here at this  
11 point in time is Mr. Thames showing up to say on the  
12 record that his client consented.

13 Now, I'm not saying he can't do that, but my  
14 understanding, the proper procedure of this is a motion  
15 has to be filed. It has to be served on opposing  
16 parties. They have to be given time to respond, and,  
17 specifically, there has to be consent of the client to  
18 the substitution provided to the opposite parties and  
19 with the motion. Right now there's no evidence at all  
20 outside of an order of substitution from you.

21 And I believe this whole hearing was not  
22 necessary because all that actually had to be done was  
23 file a motion, serve a motion, and attach to it an  
24 affidavit of consent from the parties.

25 There is additional information available

1 that most likely Mr. Kiser's real client probably was not  
2 Mr. and Mrs. Brown. Potentially was, potentially was  
3 not, but they also had a separate attorney that was  
4 signed up, which was also Mr. Mims and Mr. Stoney, so  
5 they technically had two sets of attorneys in the  
6 underlying case.

7 Without getting into all of the details of  
8 what might be the motivation behind this, it just strikes  
9 me that on the surface it's improper due to no motion was  
10 filed, no motion was served, and there's no proof that  
11 any client of any sort consented to the substitution  
12 outside of what Mr. Thames stated on the record.

13 THE COURT: Well, it's December the 7th, and  
14 this got signed back in September, so we've now had over  
15 two months, and no client has come forward, including  
16 today, with a properly noticed hearing date to say, We  
17 don't want these people as our lawyer. Routinely, on a  
18 consent where we have substitution of counsel orders, the  
19 lawyers consent to it on behalf of their client because  
20 lawyers are allowed to consent on behalf of their client.

21 In other words, if their clients don't  
22 consent, well, then they come in, and they got to answer  
23 up why they signed a false document because their clients  
24 are going to be setting here screaming, going, We don't  
25 want these people as our lawyer, but it's been well over

1 60 days, and no one on that side is saying they're  
2 unhappy with these lawyers, nor did they ever ask to have  
3 them substituted.

4 They appear to want these people as their  
5 lawyers, and it's been over 60 days without anybody  
6 coming forward saying, Judge, that was a fraud on the  
7 Court, other than you.

8 THE APPELLANT: Okay. So if I'm  
9 understanding correctly, you're assuming that based on  
10 the fact that nothing happened then it must be correct.

11 THE COURT: We have to operate on the fact  
12 that these are officers of the court, and they stand to  
13 lose their law license if they make a representation to  
14 the Court that their clients agreed to something that  
15 their clients didn't. And we're here today, and their  
16 clients have had the opportunity, now for over 60 days,  
17 to send something to the Court, file something with the  
18 Court, or show up today saying, you know, we don't want  
19 these people as our lawyer.

20 THE APPELLANT: So did you have a motion  
21 before you related to this order?

22 THE COURT: Honestly, I don't know whether or  
23 not one was filed -- the way we typically do it is when a  
24 consent order is signed, on the back page it will say, I  
25 so move or I consent. They don't have to have a separate

1 motion and then a proposed order. The proposed order  
2 often contains a representation by the lawyers that they  
3 or their clients consent.

4 THE APPELLANT: And I appreciate that, Your  
5 Honor, and it's true I've only seen a few of these  
6 things, but, actually, for the most part, it's very  
7 consistent. There has to be a motion filed. There has  
8 to be a motion served on the opposite parties and  
9 typically some type of affidavit or a certification of  
10 willingness of the clients signed by the clients attached  
11 to it.

12 THE COURT: We don't necessarily, and I  
13 disagree with you, need to have something separately  
14 signed by the clients. Only if, for some reason -- and  
15 I've had an actual instance before where somebody has  
16 claimed that they didn't consent to it, and then when  
17 that happens, we call them, the lawyers, into court and  
18 say, What is this about? But in this case, it's been  
19 over 60 days, and there's been nobody complaining on  
20 their side. They appear to want these folks to, in fact,  
21 be their lawyer.

22 THE APPELLANT: No offense meant, Your Honor,  
23 but, unfortunately, I've been involved in some litigation  
24 with this for the last year or so. I have been involved  
25 in some litigation in this county for a little bit over

1 two years, and my exposure to the majority of the legal  
2 community is that as much as I agree with what's supposed  
3 to happen, which is officers of the court are supposed to  
4 operate a certain way with integrity and honesty, that  
5 typically is not actually what happens oftentimes,  
6 specifically related to these cases and these clients, or  
7 these plaintiffs.

8           We have property management companies  
9 operating without contracts in some cases. We have  
10 property management companies hiring attorneys on behalf  
11 of other people which may or may not be legitimate  
12 entities to do work. We have property management  
13 companies and attorneys operating in concert for improper  
14 purposes.

15           In this specific issue, we pretty much have  
16 proof that the underlying case was done in an improper  
17 manner, and it's my assertion that this substitution of  
18 counsel most likely probably was not done on the Browns'  
19 knowledge or consent. It was probably done on the real  
20 client's knowledge and consent, and the real client is  
21 probably not Dave Brown, Mr. and Mrs. Brown.

22           Simultaneously, as much as I can appreciate  
23 the workload and trying to do things efficiently, whether  
24 that's exactly by the book or not, I fully appreciate  
25 that concept. In this circumstance, this hearing could

1 have been avoided and the term with it could have been  
2 avoided if just simply a motion were provided, a motion  
3 were served, and some type of actual proof that a client,  
4 who the client actually is, consented to it.

5 So showing up and arguments in the courtroom  
6 on the record is certainly valid at some level, but,  
7 still, it's strictly Mr. Thames's word on the record,  
8 which prevents actually anything from being produced that  
9 would actually make that true based on evidence.

10 THE COURT: Well, he is an officer of the  
11 court, duly licensed by the state of South Carolina to  
12 practice law, and that carries certain responsibilities  
13 with it. So, again, he and the other side both  
14 represented to the Court that their clients consented,  
15 and, again, more than 60 days have passed and no client  
16 has come forward and said, We don't want these folks.

17 Now, eventually, if your underlying matter  
18 gets a hearing on it and the clients actually do get  
19 produced for testimony, I'm sitting there going -- and  
20 they find out they got a lawyer that they didn't know  
21 they had, well, then they're going to have to answer to  
22 that, but I find that to be a stretch.

23 THE APPELLANT: And, Your Honor, if I may  
24 interrupt, the only reason I'm in this position is I've  
25 already experienced this type of conduct. A

1 year-and-a-half ago I never asked a question. I didn't  
2 understand the process, and I didn't understand how  
3 questionable the operation of law in this county and  
4 state is.

5 I would still recommend, just to ensure  
6 clarity and comprehensive certainty, that the motion be  
7 set aside for now, a motion to substitute be filed, and  
8 assert with that the client's consent to a change of  
9 substitution, as well as the fact that Mr. Thames  
10 actually probably signed the order of consent himself,  
11 not Mr. Kiser doing it for him. On the surface, at the  
12 moment, even after today, all we have is a consent order  
13 signed by you and Mr. Kiser and Mr. Thames saying  
14 everything is on the record.

15 I will also bring to bear that there is an  
16 alternative built into my motion, which was simply to add  
17 Mr. Kiser back to the team. If Mr. Thames and Mr. Kiser  
18 want to be co-counsel on this, that's fine with me.

19 THE COURT: Well, I hear what you're saying,  
20 but I can't force them to hire a lawyer they no longer  
21 want, so I'm not going to do that. I've heard your side.  
22 I see no reason to vacate the order allowing the  
23 substitution of counsel.

24 Obviously, if something happens down the road  
25 and it becomes evident that these folks have -- don't

1 want these people as their lawyer, well, then, the Court  
2 will deal with that at that time, but, again, I say they  
3 represented to the Court on behalf of their clients,  
4 which they have the authority to do, that they wanted to  
5 substitute counsel.

6           It's a routine matter that we deal with, and,  
7 again, more than 60 days have passed, and nobody from any  
8 of the entities that they represent or any of the  
9 individuals that they represent have expressed to the  
10 Court that they were unhappy with the allowing of the  
11 substitution of counsel because they appear to have  
12 wanted it, so I am denying your motion to reconsider my  
13 order allowing substitution of counsel of 19  
14 September 2018.

15           THE APPELLANT: Judge Young, before you rule  
16 on that, why don't you have Mr. Thames state who his  
17 client is, who he has a contract with, who Mr. Kiser had  
18 a client, who their client was that they had a contract  
19 with on the record.

20           THE COURT: Well, I don't really feel it's  
21 necessary to do that for the reasons that I have already  
22 stated, now more than one time.

23           They have the ability, as officers of the  
24 court, to represent to the Court this is what their  
25 clients want, and their clients appear to be satisfied

1 with that, so I am denying your motion to reconsider.  
2 Again, if you don't like it, you can appeal. That's part  
3 of the process, but as far as my involvement with that  
4 order of September the 19th allowing the substitution of  
5 counsel, then I'm denying that motion to reconsider.

6 All right.

7 THE APPELLANT: Your Honor?

8 THE COURT: Yes?

9 THE APPELLANT: I do not find it proper to  
10 operate on appearances.

11 THE COURT: Okay. Well, then you can appeal.

12 THE APPELLANT: If we're not going to have a  
13 motion be filed and something attached to the motion,  
14 certainly Mr. Thames can say on the record who his client  
15 was and who Mr. Kiser's client was and if they actually  
16 had a contract with those clients.

17 THE COURT: Well, Mr. Nix, I understand you  
18 don't like that I ruled against you, but I have to rule  
19 one way or the other, and then I rule, and then the side  
20 that doesn't like it has the ability to appeal, but I  
21 have to rule. I've ruled against you. It's not  
22 personal, but I listened to both sides, and I've made my  
23 decision, and you can appeal that.

24 Now, we go on to what is left, I guess, is  
25 whether or not you're still asking me to recuse myself

1 from further hearing on the appeal.

2 THE APPELLANT: In light of this  
3 conversation, I'm afraid so, Your Honor.

4 THE COURT: Well, I want you to be  
5 comfortable with it, and if you think I can't be  
6 impartial to you, then, by all means, I'll just -- well,  
7 I'll have the clerk set it for the next term of common  
8 pleas nonjury, just like you originally had it set.

9 Now, the last thing is you issued -- or had  
10 the clerk issue a subpoena to me. I guess, basically,  
11 you want all my emails?

12 THE APPELLANT: I think it was pretty clear.  
13 I want the documentation related to this order.

14 THE COURT: Well, I have none. I don't write  
15 emails, but -- I didn't write anything to you. I have a  
16 stack of stuff right here (indicating) that's all  
17 generated by you.

18 THE APPELLANT: Well, my point is, you're  
19 suggesting the only thing you have related to this is  
20 that consent order?

21 THE COURT: As far as my involvement goes, I  
22 sign a piece of paper. It goes in a file. It goes back  
23 downstairs. I don't keep stuff up there in my office.  
24 When emails come in, it depends on what it is and where  
25 it's from, but, as I told you, with cases involving pro

1 se litigants, I don't respond.

2 Sometimes lawyers -- and it's a particular  
3 irritant of mine, a pet peeve, I guess you would say, is  
4 nowadays we have these cases that have ten different  
5 lawyers involved. We have a lot of complex litigation,  
6 and a lawyer will either email me or have a secretary  
7 email me and say, Here's a courtesy copy of an order or a  
8 motion that we are sending to the clerk's office today by  
9 regular mail for filing.

10 And I'm, like, why do you need to send me  
11 something because you're sending something in the mail?  
12 Because that's how you communicate with the Court, is  
13 through the clerk's office, or sending it through regular  
14 mail. But that's just a pet peeve of me, because, again,  
15 I'm managing over 10,000 cases at any given time, and if  
16 every single one of these litigants emailed me, I  
17 wouldn't get anything done. And, as I told you, I not  
18 only have to do this, I already tried two cases this  
19 week, so I don't spend a lot of time with email.

20 Now, as far as this particular subpoena goes,  
21 if you still insist that you're entitled to this, I have  
22 to get the Attorney General's office to represent me, and  
23 they will move to quash it. I am representing to you I  
24 haven't emailed anybody on this case, but if you want to  
25 go through this, just let me know so I can know whether

1 or not I need to get them to move to quash this;  
2 otherwise, if you say, well, I want to withdraw it, then  
3 I'll just throw it in the trash.

4 THE APPELLANT: Well, my question is, I  
5 believe what you're stating on the record is that all  
6 that you have related to this order is the consent order  
7 that was provided to you?

8 THE COURT: Correct.

9 THE APPELLANT: And my emails?

10 THE COURT: Correct.

11 THE APPELLANT: That's all?

12 THE COURT: That's all I got.

13 THE APPELLANT: And the consent order was  
14 provided to you by what means?

15 THE COURT: Well, the way it works, as a  
16 practical matter, is that stuff gets filed downstairs,  
17 and somebody in the clerk's office puts it in my inbox.  
18 And then my secretary goes down two or three times a day,  
19 gets the stuff from my inbox. She goes through it;  
20 decides what's appropriate. Sometimes stuff gets sent  
21 back to lawyers, sometimes it gets sent to the law clerk  
22 to review, but most of it she just puts in my inbox.

23 And then, as I say, I go into my office  
24 during a lunch break or the end of the day or first thing  
25 the next morning, sign all that stuff, put it back in her

1 inbox, and it goes downstairs, and that's my involvement  
2 with it. We don't keep files upstairs. Anything that I  
3 sign or had to do with this case is in your file.

4 I guess it's this file right now, but that's  
5 going back downstairs in about ten minutes, so anything  
6 that's on there should be in that file, which, as I  
7 understand, is available online to you.

8 THE APPELLANT: That's really where I'm going  
9 with this, Your Honor. So what we know, based on that  
10 record, is there was no motion fee filed and there was no  
11 motion filed.

12 THE COURT: I don't know.

13 THE APPELLANT: And, consequently, all I can  
14 determine is their consent order came from somewhere, and  
15 it was signed.

16 THE COURT: That's all I could tell you, but  
17 as far as motion fees and all that stuff goes, that's the  
18 clerk of court stuff. I don't involve myself in  
19 collecting fees and all that.

20 THE APPELLANT: And I understand that.

21 THE COURT: So whatever was done is a matter  
22 of public record.

23 THE APPELLANT: I think we're probably  
24 operating in reverse order on this topic, but if things  
25 had been done in a traditional manner, this hearing and

1 this issue would not be a problem, would not be required,  
2 and what I'm suggesting is, from my perspective, the  
3 reason that was issued was twofold: One, there was no  
4 information or clarification of what happened being  
5 provided; and, two, there is not information in the  
6 public record about a consent matter related to this  
7 matter; meaning there is no motion; there was no motion  
8 fee filed, there is nothing in the public record related  
9 to this other than your order.

10 And so from a public perspective, and from my  
11 perspective, because all I have is that order, all that I  
12 can determine happened is a document got provided to you  
13 by some means, and you signed it and filed it. And,  
14 consequently, as much as that might be a way of reducing  
15 workload, and I can appreciate that concept, there is not  
16 information available to determine how that occurred.

17 THE COURT: I can just tell you that's --

18 THE APPELLANT: It was not by a normal means.

19 THE COURT: Well, it's the normal means of  
20 how things end up on my desk for my signature, but as to  
21 what actually happened downstairs with filing, I couldn't  
22 tell you because I don't go down there.

23 THE APPELLANT: But it was not filed, is the  
24 problem.

25 THE COURT: I don't know. All I can tell you

1 is how things are normally done, and it ended up on my  
2 desk. It appeared to be an order that was in proper  
3 form. As to whether or not it got filed with the clerk's  
4 office with a fee attached or whatever, I have no way of  
5 knowing. That's just not in my purview.

6 But to me, from my viewpoint, I'm giving you  
7 a hearing. I gave you a hearing today on the merits of  
8 it with the opportunity for anybody that objected to it,  
9 as far as from the client's side of the other parties, to  
10 object. No one has. More than 60 days has passed. Any  
11 problems from it are cured.

12 As to whether or not they owe the clerk of  
13 court's office \$25 for a filing fee, you know, again,  
14 that's just not something that I get involved with.  
15 That's a clerk of court thing, but all I can tell you is  
16 that I don't have anything on my desk, in my office,  
17 pertaining to this file. I don't have any emails. The  
18 only emails I have are the ones that you've sent me. I  
19 didn't email anybody about this. I don't do that.

20 THE APPELLANT: And I'm really trying to help  
21 you solve the subpoena issue. What you're stating,  
22 though, is all you really know is you had a document on  
23 your desk and you signed it. That's essentially what  
24 happened?

25 THE COURT: Sure.

1           THE APPELLANT: Okay. And, you know, we're  
2 operating off a lot of assumptions and appearances here,  
3 which I'm uncomfortable with, but specifically one of  
4 your bases for trying to work through this is that nobody  
5 showed up and objected to it, but you also have no real  
6 proof that anybody knew about it that would object to it.

7           THE COURT: I have to take it as a matter of  
8 faith in our system and that they're officers of the  
9 court that they notified their clients that there was a  
10 hearing today. I'm sure they're going to bill them for  
11 it, so at some point, somebody is going to say, You guys  
12 went to court, and you're sending me a bill for this? I  
13 mean, what was that about?

14           So, I mean, I can't require them, as a matter  
15 of course, to document every single communication they've  
16 had with their clients about that. Sometimes clients  
17 show up. Sometimes, Just take care of it, handle that,  
18 and send me the bill. I don't know, but I know that I've  
19 had this hearing now set for several weeks and nobody  
20 showed up, and over 60 days have passed without anybody  
21 communicating, from any of the parties that were affected  
22 by the substitution of counsel, that they were  
23 dissatisfied with the substitution of counsel. They  
24 appeared to have wanted it.

25           THE APPELLANT: Your Honor, with two

1 corrections there: First of all, this was on Judge  
2 McCoy's roster up until last Thursday. It only -- it was  
3 only communicated on your roster today last Thursday, and  
4 even as of this morning, it's not technically scheduled.

5 THE COURT: Didn't you all get an email from  
6 Ms. Leonard a couple of weeks ago saying this was set?

7 THE APPELLANT: I got an email from  
8 Ms. Leonard last Thursday afternoon saying it was  
9 continued on to your roster for this Friday.

10 THE COURT: Okay. Well, then I misspoke.  
11 It's only been one week.

12 THE APPELLANT: But my point is, I don't want  
13 to be difficult. I think there are multiple ways to  
14 solve this problem more cleanly. Up until a  
15 year-and-a-half or so ago, I would have been completely  
16 in your position in saying, yes, they are officers of the  
17 court. I would like to rely on that as a good faith  
18 assumption. Experience has taught me that's not  
19 necessarily a true assumption in this state, for the most  
20 part.

21 I will raise again that I have serious  
22 concerns with the order. I believe it would be much more  
23 appropriate to set it aside and have it redone properly,  
24 and I'm not going to say -- obviously, you're the judge  
25 and you can rule how you would like, but I'll be coming

1 right back around with a rule that's not related to this  
2 order.

3 THE COURT: Okay. I have now ruled on this.  
4 There is no such thing as a motion to reconsider an order  
5 reconsidering, so if you don't like this order, this  
6 ruling today, appeal it. Don't just send me an email or  
7 file something saying reconsider it again. You'll lose  
8 your right to appeal by doing that.

9 THE APPELLANT: Your Honor, I can appreciate  
10 the situation we're in here, but, clearly, we're doing  
11 the wrong things for the wrong reasons here, and offering  
12 on appearances and assumptions are not necessarily the  
13 best way to operate.

14 THE COURT: Okay. Well, I'm going to have  
15 your hearing on the appeal set before some other judge.  
16 I don't know who it will be. It will just be the next  
17 judge who's ever presiding the week it gets set.

18 Again, if you want to appeal my order today,  
19 you're welcome to do that, just don't file anything more  
20 asking me to reconsider today's order because the  
21 consequences will be that time will run, and you'll lose  
22 your right to appeal if you want to appeal. That's  
23 totally up to you.

24 Just the last thing I want to address, again,  
25 are you withdrawing this subpoena of me?

1                   THE APPELLANT: Okay. So what I believe  
2 you're asserting is all you know about this order is it  
3 went on your desk and you signed it?

4                   THE COURT: Correct.

5                   THE APPELLANT: You have no emails; you have  
6 no documents; that's all you have.

7                   THE COURT: That's correct.

8                   THE APPELLANT: If that's the case, I'll  
9 withdraw it.

10                  THE COURT: Okay.

11                  THE APPELLANT: I will -- you know, taking  
12 the recusal out of order today I would assert probably  
13 create a situation with the ruling on this order.

14                  THE COURT: Well, I'm the only one that could  
15 reconsider it, which is why I did not -- I'm technically  
16 not recusing myself. I'm just giving you what you asked  
17 for, and that is to set it in front of some other judge.  
18 There may be a day when it comes back and it ends up that  
19 I happen to be the judge that day.

20                  I don't have any hard feelings towards you  
21 one way or the other, and maybe you do, but if you feel  
22 like at that point in time that you don't want me to hear  
23 it, then we'll deal with it, but today, all I'm saying is  
24 you're uncomfortable with my ruling, and I can see how  
25 you might have misconstrued my lack of communication, but

1 I'm telling you, I've learned the hard way: I don't  
2 communicate with pro se litigants, especially via email.

3 So to alleviate your concerns that I or  
4 anybody in the clerk's office were conspiring against  
5 you, I'll just have them set your appeal hearing in front  
6 of some other judge.

7 THE APPELLANT: Your Honor, I'm doing my best  
8 to work with what we have here. What we have here is --

9 THE COURT: It's what you want, right?

10 THE APPELLANT: First of all, I don't have  
11 any hard feelings here. What I have an issue with is a  
12 process which is not proper. And, you know, if I were in  
13 Mr. Thames's shoes, I'd be more than willing to stand up  
14 and say, okay. It didn't really work out the proper way  
15 it probably should have. We're trying to be simple here,  
16 but my client is, Mr. Kiser's client was, he had a  
17 contract, signed contract with, I signed a contract with,  
18 and my client stated on this date for this reason that we  
19 were going to change lawyers and they agreed, and even if  
20 the original order is -- the very language of the  
21 original order suggests that there was none of that  
22 information available, and, consequently, it should not  
23 have been signed, but I'll stop there.

24 THE COURT: All right. Well, I understand.  
25 You're not happy with my decision. Again, you have the

1 right to appeal. You acknowledge that you want to  
2 withdraw the subpoena. That ends my involvement with  
3 this case, and we'll have your appeal from the  
4 magistrate's court set in front some other judge.

5 THE APPELLANT: And out of curiosity, which  
6 motion of mine does this order that you're going to file  
7 actually apply to?

8 THE COURT: Well, you filed a bunch of the  
9 same things. You're asking me to clarify, to reconsider  
10 the order of substitution of counsel. That's the only  
11 thing I'm addressing, is the order of substitution of  
12 counsel, and I'm denying your motion to  
13 reconsider/clarify it. I'll write an order up, and it  
14 will be filed, and when you get it, if you don't like it,  
15 you can appeal it. Fair enough?

16 THE APPELLANT: I'll work with it. Thank  
17 you.

18 THE COURT: Okay. Good luck.

19 - - -

20 (Whereupon, the proceedings were concluded.)

21 - - -

22

23

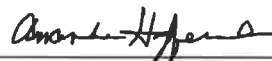
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25

I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 7th of December 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 15, 2019



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Circuit Court Reporter

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE CIRCUIT COURT  
2018-CP-10-3315

Alan Nix,

Plaintiff,

v.

Churchill Park, Churchill at Park West, Inc.,  
Churchill Park Homeowners Assoc., Inc., David  
Brown & Catherine Brown

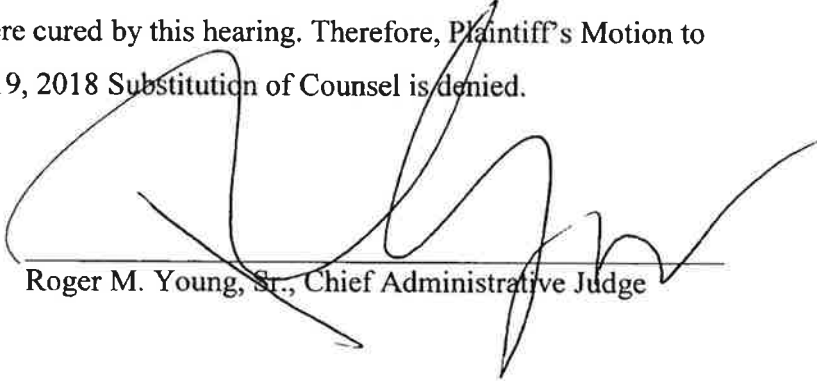
Defendants.

**ORDER DENYING  
PLAINTIFF'S MOTION TO  
RECONSIDER/CLARIFY**

2018 DEC -7 PM 3:54  
STATE OF SOUTH CAROLINA  
CLERK OF COURT

It is hereby ordered that Plaintiff's Motion to Reconsider/Clarify the September 19, 2018 Substitution of Counsel Order is denied. The Substitution of Counsel Order was signed by the original and substituted attorneys, indicating consent. At the time of signature, both attorneys consented on behalf of their clients. The Motion to Reconsider/Clarify was set for a hearing on the merits on December 7, 2018. More than 60 days has now passed since the time of signature, and no client has represented to the Court their disagreement to the substitution of counsel. Any deficiencies in such substitution were cured by this hearing. Therefore, Plaintiff's Motion to Reconsider/Clarify the September 19, 2018 Substitution of Counsel is denied.

And it is SO ORDERED.



Roger M. Young, Sr., Chief Administrative Judge

December 7, 2018

Charleston, South Carolina

Alan Nix v Churchill Park Homeowners Association, Inc. et al  
Motions to Quash Subpoenas, Motion for Sanctions, Motion to Set Aside/Clarify  
August 28, 2019

1 PROCEEDINGS

2 THE COURT: Good afternoon everyone. Please have a  
3 seat. All right?

4 CLERK OF COURT: Position 65, 2018-3315 Alan Nix  
5 versus Churchill Park Owners Association -- Homeowners  
6 Association.

7 THE COURT: All right counsel, it looks like we  
8 have several Motions to Quash Subpoenas. Who is ready to  
9 proceed?

10 MR. VORBERGER: Yes, Your Honor. Wesley Vorberger  
11 from the Attorney General's office on behalf of Judge  
12 Young and his law clerk, Ms. Lyndsay Luthringer. Your  
13 Honor, I'll try to be brief today. I think it's been  
14 pretty well-briefed in the motions. My friends on this  
15 side will have more to say about the case in general. I  
16 would just go with a little bit of background here.

17 Mr. Nix filed two rounds of subpoenas against Mr. --  
18 Ms. Luthringer and Judge Young. The first round  
19 pertained to documents relating to an order that he  
20 granted substituting defendant's counsel. We moved to  
21 quash that back in December. I've known there was a  
22 subsequent motion hearing. He was subpoenaed to come and  
23 testify; him and Ms. Luthringer as well. Your Honor, we  
24 would argue for different procedural and substantive  
25 reasons that these should be quashed. Procedurally, Your

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1 Honor, I would argue that they are moot because the  
2 hearing has since past and obviously there is nothing for  
3 them to show up to according to those subpoenas.

4 As it pertains to service, Your Honor we would argue  
5 they are improper in that they are officials for the  
6 purposes of the South Carolina Rules of Civil Procedure.  
7 And in addition to personal service they also need to  
8 have a copy mailed to the Attorney General's office which  
9 we did not receive.

10 More substantively Your Honor I do have a few things  
11 I'd like to hand up if that is all right?

12 THE COURT: Yes, sir.

13 MR. VORBERGER: Mr. Nix, here is your copy as well.

14 [Whereupon, Mr. Vorberger provides documents to Mr.  
15 Nix and to the Court]

16 MR. VORBERGER: Thank you. And the first is the  
17 statute that deals with appeals from Magistrate's Court  
18 which I believe this underlying action is and simply  
19 illustrates that it has to be heard upon the papers in  
20 the case. That is to say additional testimony or  
21 additional evidence that could be gathered via subpoena  
22 would be improper in this forum at this juncture.

23 Additionally, I provided you a copy of the Whetstone  
24 case which is very clear about the presumption against  
25 judges having to testify in matters that they have

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1 previously presided over. Judge Young has presided over  
2 specific matters in this case, most specifically the  
3 order to substitute counsel. And so because of that we  
4 would argue that it should be quashed.

5 And as it pertains to his law clerk we do cite a  
6 case in our brief extending that sort of judicial  
7 privilege to law clerks as well for obviously the same  
8 reasons that the judge's intimate thoughts in chambers as  
9 it pertains to a case cannot be scrutinized by subpoena  
10 or discovery or other matters.

11 And lastly, Your Honor, I think we're going to kind  
12 of just join with our friends on this side any sort of  
13 gatekeeper order or anything else that might be asked for  
14 we just ask for one as it pertains to Judge Young and Ms.  
15 Luthringer going forward. Pretty straight forward, Your  
16 Honor, but those are our arguments.

17 THE COURT: Thank you counsel. Next?

18 MR. THAMES: Thank you, Your Honor. Your Honor,  
19 I'm Troy Thames counsel for David Brown and Catherine  
20 Brown individually. Did you want to go in any order of  
21 motions or just deal with all the Motions to Quash at one  
22 time because they're all similar?

23 THE COURT: I think we can deal with all the  
24 Motions to Quash at one time. If you have anything to  
25 add to the previous argument or something different let

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1 me know and just let me know who you represent so I can  
2 keep track of each of the motions and then we can go from  
3 there. And I'll allow obviously Mr. Nix to respond.

4 MR. THAMES: Okay. Thank you, Your Honor. I will  
5 only add then I also I think our arguments on behalf of  
6 my clients are fairly well laid out in our Motion to  
7 Quash the Subpoenas. Specifically that I filed a Motion  
8 to Quash a subpoena directed to me and a subpoena  
9 directed to attorney Joseph Kaiser.

10 Mr. Kaiser was defense counsel for the Browns  
11 previously. On September 25, of 2019 Judge Young signed  
12 an order substituting counsel which Mr. Nix filed various  
13 motions in objection to, and have been ruled on by Judge  
14 Young. And the subpoena asked for any and all physical  
15 and electronically stored documents including but not  
16 limited to emails, electronic notes and archived  
17 documents specifically related to that order.

18 In addition to just being frivolous on its face Your  
19 Honor to the extent there would even be anything that's  
20 responsive to the subpoena it's protected by attorney  
21 client privilege. Mr. Nix has insisted that he is  
22 somehow entitled to not only have a say in who my clients  
23 attorneys were but the reasons why counsel was changed.  
24 All that is protected by attorney client privilege and he  
25 has no right or standing to insist on responses to any

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1 questions related to that change in counsel much less any  
2 documents electronic or otherwise. Your Honor, other  
3 than that I will rely on the motion itself and turn the  
4 table off to some of the other defendants that are here.

5 THE COURT: All right. Thank you. Yes, sir?

6 MR. MIMS: Good afternoon, Your Honor. Kevin Mims  
7 for the defendants. The only Motion to Quash I have is  
8 pertaining to a subpoena that was sent to me personally.  
9 Obviously, I am counsel in this case and I will join in  
10 the same arguments set forth by these other gentlemen and  
11 rely upon our motion itself. Thank you.

12 THE COURT: All right, sir. Thank you.

13 MR. FERRARA: Good afternoon Your Honor; Bernie  
14 Ferrara for Charleston County. I represent the Honorable  
15 James Turner, Magistrate for Charleston County North  
16 Charleston division, the Honorable Julie J. Armstrong,  
17 the Clerk of Court for Charleston County, Caroline  
18 Leonard, Charleston County Court Circuit Court docket  
19 manager, and Johanna Gardner an assistant county attorney  
20 in the County Attorney's office.

21 These are all non-parties to the litigation. I  
22 reiterate what the previous three lawyers have argued to  
23 support quashing the subpoena particularly the Attorney  
24 General's office because his grounds are similar to the  
25 same grounds that Charleston County has in its memo and

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1 motion to the Court citing the same case law as well.  
2 But I'll be just really brief. To the extent that these  
3 subpoenas that were issued to these four non-parties  
4 there is some language on the subpoena that says on all  
5 four of them Ms. Armstrong never properly files the  
6 Plaintiff's Motion for Change of Venue made on such and  
7 such a date, again on such and such a date, and again on  
8 such and such a date. This hearing may not be required.

9 So to the extent that these subpoenas still carry  
10 that same purpose then the subpoenas are moot because  
11 that hearing was had on June 4th and Judge Knie issued an  
12 order filed on July 11th denying Plaintiff's Motion to  
13 Change Venue.

14 Should the Court decide or determine otherwise basic  
15 grounds again are that the Plaintiff is not authorized or  
16 allowed under state law to elicit testimony at the  
17 hearing today, which is an appeal of a small claims court  
18 action to this Court.

19 Second, at least three of the parties that I  
20 represent don't have any direct or personal knowledge of  
21 the facts in that appeal in the lower court case appeal  
22 to Your Honor so they would not be able to offer any  
23 competent, reliable, or credible evidence to the Court.

24 Third reason and this goes back to the statement in  
25 the subpoena, the Plaintiff was seeking testimony at

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1 least from Ms. Gardner, the lawyer in the case, regarding  
2 schedules, how the Clerk of Court schedules hearings and  
3 dates. And to the extent that it is moot Ms. Gardner  
4 can't and will not offer protected or privileged  
5 information to the Plaintiff pursuant to testimony before  
6 the Court on matters that are protected by the attorney  
7 client privilege and the work product doctrine.

8         And the fourth reason, and that was articulated  
9 again by the lawyer for the AG's office Nix, the  
10 Plaintiff, he doesn't address why Judge Turner's  
11 testimony is critical to a system determining whether or  
12 not the defendants in the small claims case owed Nix  
13 money for removing the fence. So he can't overcome this  
14 presumption that Judge Turner can't be called to testify  
15 over matters that he previously presided over in the  
16 small claims case.

17         So with those grounds the County moves the Court to  
18 quash the subpoena to the extent they are still relevant  
19 to the hearing today. And again we spelled all these  
20 issues out in the Motion and Memorandum which is on file  
21 in the case and I believe maybe two law clerks ago may  
22 have sent that to you; didn't know you were going to be  
23 hearing this. But if you have any questions I'll be  
24 happy to answer them.

25         THE COURT: Thank you Mr. Ferrara.

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1 MR. FERRARA: Thank you, ma'am.

2 THE COURT: Yes, ma'am?

3 MS. TROTTER: Good afternoon, Judge. I'm  
4 Stephanie Trotter. I'm entering an appearance today on  
5 behalf of Paul Greiner. Mr. Greiner is the managing  
6 partner of a company called Cedar Management Group.  
7 Cedar Management Group is the company that provides  
8 association management services to the Homeowner's  
9 Association called Churchill Park in Mount Pleasant.

10 Mr. Greiner received a subpoena and we have filed a  
11 Motion to Quash. I also believe it's probably moot  
12 because it references a June 4th hearing date. But to  
13 the extent that it's not Mr. Greiner would argue before  
14 the Court that the motion was not properly served. It  
15 should have been served if it was going to be served by  
16 mail certified mail return receipt requested restricted  
17 delivery.

18 At the time that the subpoena was received by Cedar  
19 Management staff Mr. Greiner was in Wyoming. And he  
20 signed an affidavit attesting to that fact so he couldn't  
21 possibly have signed for the subpoena. Anybody in the  
22 Cedar office is not authorized to accept restricted  
23 delivery to him personally so service would be defective.

24 Additionally, the subpoena was served in Charlotte,  
25 North Carolina. Mr. Greiner is not a party to this

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1 action and so I don't believe that Mr. Nix had the  
2 authority to serve a subpoena on him without  
3 domesticating it in North Carolina first. So for those  
4 reasons we would ask the Court to quash the motion -- the  
5 subpoena to Paul Greiner.

6 THE COURT: Thank you, Ms. Trotter. Does that take  
7 care of all the Motions to Quash Subpoenas?

8 [Whereupon, there is no response]

9 THE COURT: All right Mr. Nix, your response?

10 MR. NIX: Yes, Your Honor. Thank you. Specifically  
11 related to -- well, let me speak broadly for a moment. I  
12 have countless various issues. So most all these motions  
13 have to do with the order from September 19th filed  
14 December 25th related to the change of counsel. And  
15 given the effectiveness of how it was signed, the method  
16 it was signed, the method that it got to Judge Young and  
17 specifically the manner of managing that or mismanaging  
18 that post in the period of time of 1 November and 7  
19 December. Clearly there are issues with that process of  
20 which only Judge Young can answer.

21 Based on Judge Young's own statements on 7 December  
22 it appears that the only person who could provide a clear  
23 answer as to how that occurred that is willing or is able  
24 to do so is Ms. Luthringer. Without those things being  
25 properly resolved the entire matter is in a stance of

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1 materially inappropriate to move forward. I understand  
2 everybody's position to do all that is possible to  
3 prevent that from happening or to allow that to happen.  
4 But specifically related to Ms. Luthringer she is a  
5 material witness to a situation which has yet to be  
6 resolved. As much as we would like to grant her certain  
7 immunities I don't believe that's appropriate.

8       Second of all related to -- well, I'll come back to  
9 that one. Related to Mr. Thames and those two subpoenas  
10 so the facts are undisputed an order wound up on Judge  
11 Young's desk which he signed without so much as a cover  
12 sheet, without a motion fee being filed, without a motion  
13 of appearance being served on me. So on its face it's  
14 defective. I've written all the motions.

15       The only people who can talk to how that occurred  
16 appear to be Mr. Kaiser who signed the order for himself  
17 and for Mr. Lang but had no permission and Ms.  
18 Luthringer. So for Mr. Kaiser to be able to declare that  
19 he is protected from that means that his appointment as  
20 an attorney in this case is valid. I'll argue that's not  
21 true.

22       From Mr. Kaiser's perspective that may be true but  
23 the manner of the entire process that was getting on  
24 Judge Young's desk to be signed to begin with is highly  
25 in question. It appears that Mr. Kaiser is a key witness

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1 at a minimum to that occurrence. From Mr. Mims  
2 perspective I'm not sure when he served on the case. Who  
3 does he represent? Do we know who Mr. Mims represents?

4 THE COURT: You're the one that served him the  
5 subpoena.

6 MR. NIX: He said he's a party to the case. Is that  
7 from subpoena perspective or is he a party or an attorney  
8 for a client or a defendant?

9 THE COURT: I believe Mr. Mims was appearing as an  
10 attorney.

11 MR. NIX: Related to the subpoena only?

12 THE COURT: Sir, Mr. Nix, I know nothing about your  
13 case other than the motions that are before me and the  
14 papers that have been filed before the Court. You're the  
15 one that served him the subpoena.

16 MR. NIX: So as long as Mr. Mims is representing  
17 himself only the reason for that subpoena is this. In  
18 the original small claims case he and his associate Mr.  
19 Stoney entered an answer for all five parties; Churchill  
20 Park, Churchill Park Homeowners Association Incorporated,  
21 Churchill Park at Park West Incorporated, Catherine Brown  
22 and David Brown which make them technically co-counsel  
23 either primary or secondary to Mr. Kaiser for David and  
24 Catherine Brown. Consequently, it seems like we have a  
25 situation where not only was there a change of attorneys

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1 for the Browns but the co-counsel also chose not to  
2 represent them. That was a specific issue at hand there.  
3 For Mr. Turner, Joseph Turner and Mr. Ferrara's clients  
4 Ms. Leonard in particular made herself a party to this by  
5 sending an email regurgitating something that Judge Young  
6 has apparently spoke to her about why it had to be done  
7 within 10 days of it being signed or it was moot.

8         And that in itself created a situation where  
9 apparently she found it proper to close a motion based on  
10 that email. Beyond that Ms. Leonard scheduled an off the  
11 books hearing for 7 December of which rationale for that  
12 is in question.

13         Ms. Gardner apparently knew that or somehow  
14 regardless of the situation with Ms. Leonard Ms. Gardner  
15 confirmed on 6 December there was a hearing scheduled for  
16 7 December despite the fact it was not scheduled anywhere  
17 on the remote court records. That's improper in and of  
18 itself on both counts.

19         And I will for the moment I will agree with Mr.  
20 Ferrara that Judge -- I mean Ms. Armstrong's appearance  
21 was not necessarily based on the order that was passed  
22 down in July.

23         So at a large portion of this we can talk about all  
24 these various civil procedure issues that may or may not  
25 be valid. They don't offset the issue of how they manage

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1 the data and the rationale for that. By my count we have  
2 one, two, three, four, five or at least four public  
3 officials involved in that mismanagement.

4 Now, we can choose to believe that's all by  
5 coincidence and accident but I don't know that's  
6 necessarily the case. But to Mr. Vorberger's perspective  
7 right now for Judge Young and Ms. Luthringer I'm prepared  
8 to let that slide for now but we will be addressing that  
9 in the near term.

10 From Mr. Thames and Mr. Kaiser's perspective they  
11 have a choice in my mind. Clear up the issue with how  
12 that occurred with the September order; one of them is  
13 and one of them isn't a counsel, the other one gets a  
14 subpoena. But their unwillingness even to discuss how  
15 that even occurred raises serious questions.

16 Once again, I'll have to rely on the fact that Mr.  
17 Mims is here representing himself. I don't know if he's  
18 entering a notice of appearance or anything else related  
19 to the case otherwise.

20 But I believe the motions themselves substantiate a  
21 pattern of conduct which raises serious issues with what  
22 happened since September of 2018 and specifically  
23 September 2018 and December the 7th and 8th of 2018.

24 And the simplest way to have solved that which would  
25 have been in November and December of last year would

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1 have been set aside the order, Judge Young have them re-  
2 do it properly, file it, pay 25 dollars, serve it; and  
3 the whole thing would have went away. But we can't seem  
4 to find a way to do that for some reason and consequently  
5 we're sitting here today doing this. Thank you.

6 THE COURT: All right. So that takes care of all  
7 the Motions to Quash the subpoenas. Any other motions  
8 that are on the roster or what's the next motion? Are  
9 there any other motions on the roster involving this  
10 case?

11 CLERK OF COURT: Its Park West Development verses  
12 Mount Pleasant.

13 MR. MIMS: Your Honor, there's other motions still  
14 outstanding on this case.

15 CLERK OF COURT: Oh, you're talking about ---

16 THE COURT: --- that's what I mean on this case.

17 CLERK OF COURT: My apologies. Plaintiff's Rule 59  
18 Motion to Set Aside Order, Plaintiff's Motion for  
19 Judicial Recusal, Mr. Alan Nix's Motion to Set Aside and  
20 Clarify Order, Notice of Civil Appeal.

21 THE COURT: All right. So let's take them one at a  
22 time.

23 MR. THAMES: Your Honor, I think he missed one. In  
24 addition to the Motion to Quash motion number 25 on the  
25 roster is a Motion for Sanctions, which I filed.

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1 THE COURT: Which you filed? All right sir, I'll  
2 be happy to hear from you.

3 MR. THAMES: Thank you, Your Honor. And I  
4 apologize. I should have been doing a better job of  
5 acquainting you with some of the facts just real briefly.  
6 The matter that all this arises from is a case that was  
7 filed in small claims court back in 2017, February of  
8 2017 for an incident that happened in July of 2014  
9 involving a fence between Mr. Nix's property and the  
10 Brown's property.

11 Mr. Nix sued the Browns in small claims court. He  
12 then brought in various entities identified as Homeowners  
13 Associations. I'm not counsel for the Homeowners  
14 Associations so I will leave it at that. They were also  
15 named.

16 Judge Young -- I'm sorry, Judge Turner entered an  
17 order on April the 18th of 2017 dismissing all of the  
18 defendants from the case with prejudice except for  
19 Defendant David Brown. He was dismissed without  
20 prejudice and the order gave Mr. Nix 14 days to file an  
21 amended pleading to properly assert claims against Mr.  
22 Brown.

23 A year later Mr. Nix filed a motion to clarify that  
24 April 18th of 2017 order. After that a motion was filed  
25 by Mr. Nix multiple motions on that same topic were filed

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1 in small claims court with Judge Turner, which has  
2 ultimately led to the appeal which is on the docket in  
3 front of Your Honor today. So what we are -- from the  
4 big picture what we are here about is an appeal from  
5 small claims court over a fence dispute and an order  
6 dismissing the case back on April of 2017 -- I'm sorry;  
7 2018 -- no, I'm sorry; 2017.

8 Your Honor, I filed a -- Mr. Kaiser was my client's  
9 attorney at the time. When the case was appealed we  
10 filed a substitution order which was signed by Judge  
11 Young and it was filed on September 19th of 2018.

12 In response to that motion Mr. Nix filed numerous  
13 motions, which have all been not only argued but ruled on  
14 in this court. In fact in December at a hearing in this  
15 court Mr. Nix brought up the very same issues he is  
16 attempting to argue now in response to our Motions to  
17 Quash his subpoenas.

18 And at that hearing he was instructed not file any  
19 further motions to reconsider. That was December 7th of  
20 2018. Judge Young denied Mr. Nix's various motions  
21 related to my substitution in the case.

22 Mr. Nix then filed a Rule 59 (e) Motion -- or 59  
23 Motion on February -- December 25th, 2018. It was filed  
24 on December 18th, 2018. Judge Young entered an order  
25 denying the Rule 59 Motion on January 14th of '19 and it

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1 was filed on January 17th of '19. So the issue to the  
2 extent there is any issues with my substitution in the  
3 case as attorney for the Browns has been litigated  
4 numerous times in this court and has been ruled on, a  
5 Rule 59 Motion has been ruled on and so that is a moot  
6 matter; which brings me to the reason for the Motion for  
7 Sanctions. And Your Honor essentially what it is asking  
8 for is a gatekeeper order.

9 Mr. Nix has filed motion after motion; a Motion for  
10 Reconsideration, Rule 59 motions that are all  
11 procedurally improper. He has bombarded the court, the  
12 court officials, the attorneys with emails related to  
13 those cases, related to all the other lawsuits that he  
14 has pending that are currently filed in Charleston  
15 County.

16 And his pattern of conduct clearly shows an abuse of  
17 the process. His motions are made without good faith and  
18 they are nothing more than dilatory litigation packets,  
19 Your Honor. So as counsel for the Browns the Motions for  
20 Sanctions speaks for itself. I filed a fairly detailed  
21 brief back in December.

22 The only thing that has changed since that motion  
23 was filed was that Mr. Nix then filed another Rule 59  
24 motion which was then ruled on by Judge Young as I just  
25 mentioned. And all we're asking for Your Honor is that

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1 the court enter some sort of order that prevents Mr. Nix  
2 from filing anything further in this case pro se and  
3 requires that he seek some sort of consultation with an  
4 attorney before he is permitted to file any other motions  
5 or communications with the court. Thank you, Your Honor.

6 THE COURT: Thank you counsel. All right Mr. Nix,  
7 your response just specifically on that issue.

8 MR. NIX: Well, first of all for Mr. Thames to have  
9 a right to enter that request means he has to have a  
10 legitimate reason or a right to be the counsel. That's  
11 still in question.

12 Number two, he misstates the facts about what he  
13 just stated and I'll talk about a few of the key ones.  
14 One, he stated he filed a substitution order. That is an  
15 untrue statement. For that to be true means there would  
16 be a record with the Clerk of Court, there would be a  
17 motion fee filed and paid, etcetera. There would be a  
18 motion cover sheet. There is none, never was, but still  
19 he's testified. That was raised in the very first  
20 motions. So that is an inaccurate statement.

21 The gist of the issue is actually much greater than  
22 meets the eye. What Mr. Thames willingly overlooked in  
23 the explanation is this; Mr. Thames' partner or ever how  
24 you want to describe Mr. Kaiser entered an answer on  
25 behalf of Catherine Brown and David Brown in March of

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1 2017. Shortly thereafter Mr. Stoney and Mr. Mims entered  
2 an answer on behalf of Mr. Brown, Catherine Brown,  
3 Churchill Park Homeowners Incorporated, Churchill Park at  
4 Park West Incorporated and Churchill Park. Based on  
5 another case that is going on of a similar nature it was  
6 determined in roughly mid to late February of 2018 that  
7 there were conversations going on which related to these  
8 two cases.

9       And there was a specific comment made by Mr. Stoney  
10 where he stated that one of his clients was in the  
11 upstate somewhere. Well, that very comment was  
12 regurgitated by another attorney in another case about  
13 two and half weeks later. And that created an  
14 appearance; I will argue a strong appearance of  
15 misconduct. And I'm being polite when I use that word.

16       So in terms of the small claims case the Motion to  
17 Reconsider had to do with a key, well one specific key  
18 fact; how could Mr. Mims and Mr. Stoney enter an answer  
19 on behalf of a client that they don't know where they're  
20 at.

21       And so at the motion hearing before Judge Turner  
22 Judge Turner asked Mr. Stoney to tell him who he  
23 represented; and during the previous 13 months the answer  
24 changed. The answer went from Catherine Brown, David  
25 Brown, Churchill Park, Churchill Park Homeowners

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1 Association Incorporated, and Churchill Park at Park West  
2 Incorporated to Churchill Park at Park West Incorporated.  
3 So clearly the answer filed in March of 2017 was not  
4 accurate in terms of who he represented. And ironically  
5 of the five parties which Mr. Stoney could have chosen  
6 from to answer Judge Turner in May or in late April of  
7 2018 he chose Churchill Park at Park West Incorporated,  
8 which does not exist.

9 And between that fact, the changing story of who  
10 they represented and the fact that it was documented in  
11 another attorney's timekeeping which just happens for Ms.  
12 Trotter it creates a clear impression that there was a  
13 relationship between the attorneys. And it turns out the  
14 story about the other Churchill Park in the upstate  
15 somewhere is a key fact.

16 So Mr. Thames you know supposedly the Browns got  
17 very upset with Mr. Kaiser who appeared of 21 August  
18 until 18 September for an unknown reason but I'm pretty  
19 sure I know what the reason is. It has to do with the  
20 fact of what happened in the other case between 18  
21 September and 25 ---

22 THE COURT: --- Mr. Nix, what happens in other  
23 cases is not before me ---

24 MR. NIX: --- understood. But what I'm trying to  
25 explain though ---

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1 THE COURT: --- well, I understand. But you're  
2 filing motions regarding parties representing parties in  
3 this case; not what the underlying issues were in your  
4 original case. And some of these matters have been ruled  
5 upon. So let's just stick to that fact. Tell me what  
6 has not been ruled upon that you filed this motion for  
7 subsequent to that.

8 MR. NIX: And so let me clarify one thing. The only  
9 reason this appeal is even required is because Judge  
10 Turner couldn't bring himself to deal with what had  
11 happened in his courtroom. It was a very large memo  
12 filed on 7 April -- 7 May, 2018, -- asked for which laid  
13 it out in detail. And he didn't find that proper to  
14 resolve the case.

15 THE COURT: All right. So let's move on to the  
16 next motion. That was the Motion for Sanctions. The  
17 next motion is a Motion to Set Aside an Order. That's  
18 your motion Mr. Nix?

19 MR. NIX: Yes, Your Honor.

20 THE COURT: All right. I'll be happy to hear from  
21 you.

22 MR. THAMES: Your Honor, that's the order that  
23 Judge Young ruled on and there is a filed order in the  
24 record dated January 17, 2019.

25 THE COURT: All right. So the court record will

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1 speak for itself on that. Mr. Nix, do you deny that  
2 Judge Young already issued that order?

3 MR. NIX: Well, I do because that was ---

4 THE COURT: --- well, let me look at the record.

5 MR. THAMES: Your Honor, I have a copy of it right  
6 here. May I hand it up?

7 [Whereupon, Mr. Thames provides documents to the  
8 Court]

9 MR. NIX: There was never an order entered for  
10 this. It was an email from ---

11 THE COURT: --- the court record will speak for  
12 itself, Mr. Nix. It was signed by Judge Young on January  
13 the 14th of '19. So that motion is moot then, Mr. Nix.

14 MR. NIX: That's the one from 25 December; dated 25  
15 December filed 27 December. That order references that  
16 one.

17 THE COURT: So are there any other outstanding  
18 motions?

19 MR. NIX: There is one from 1 November. That has  
20 never had an order entered against it because it was  
21 closed based on apparently Ms. Leonard's email to me  
22 where she specifically says quoting Judge Young -- or  
23 quoting Ms. Leonard's email: Judge Young advised that I  
24 will tell you that my Motion for Reconsideration -- I'm  
25 sorry. Judge Young advised that I tell you that any

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1 Motion for Reconsideration in his order substituting  
2 counsel signed on September 25th, 2018 should have been  
3 submitted to the court within 10 days of signing.  
4 Therefore, your request for him to set aside or clarify  
5 his ruling is moot because your motion was filed on  
6 November 2nd, 2018 outside the 10 day period.

7 THE COURT: And that's based upon the Rules of  
8 Civil Procedure Mr. Nix. You understand we can't go  
9 outside of that. So I understand that you're  
10 representing yourself and it can be a frustrating process  
11 as far as the Rules of Civil Procedure are concerned but  
12 you're held to the same standard as if you were an  
13 attorney practicing in this court when you represent  
14 yourself.

15 The rules are clear as far as when it's proper to  
16 file for a Motion to Reconsider or proper to file for a  
17 Motion for an Appeal; all those things have to be done  
18 within a specific period of time per the rules.

19 So it appears that that was not done and that's why  
20 Judge Young issued that. I will take a look at the  
21 record but other than that does that take care of all the  
22 pending motions that we have on the roster for today?

23 MR. NIX: So there is one for 21 November, there is  
24 one for 4 December, and there is one from 3 April.

25 THE COURT: Yes, sir. And again, the record will

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1 speak for itself on that. I'll look through the court  
2 record as far as what orders are entered in there and  
3 whether there was proper motions to reconsider them in a  
4 timely manner or not.

5 So that matter I've got to look at the court record  
6 to see whether or not you entered in a proper Motion to  
7 Reconsider. But based on this one Judge Young issued the  
8 order so that one is moot. Anything further or does that  
9 take care of all the motions on the roster for today?

10 CLERK OF COURT: The one I didn't hear was Notice  
11 of Civil Appeal.

12 THE COURT: All right. So the Notice of Civil  
13 Appeal?

14 CLERK OF COURT: On 6/28/18.

15 THE COURT: All right. So Mr. Nix, this is your  
16 Motion for Notice of the Civil Appeal? All right, sir.

17 MR. NIX: I believe the memo and the motions filed  
18 in the small claims court in April and May of 2018 speaks  
19 for itself.

20 THE COURT: All right.

21 MR. NIX: There was no rational reason for Judge  
22 Turner not to set aside the previous rulings issued in  
23 the case. They will speak for itself about the conduct  
24 of the clients. At best case I guess it could be argued  
25 that the Browns filed an answer but certainly the other

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1 three couldn't have filed an answer because the attorney  
2 himself later admitted that they didn't work with the  
3 clients.

4 So it's somewhat baffling to me how Judge Turner  
5 couldn't take that memorandum and solve that problem in  
6 his own court but he couldn't. And consequently it was  
7 appealed. I believe the memorandum filed 5 May of 2018  
8 related to the previous hearing speaks for itself.

9 THE COURT: All right. Sir, your response to that?

10 MR. MIMS: Thank you, Your Honor. Kevin Mims.  
11 Your Honor, the defendants would rely upon the return of  
12 Judge Turner and the underlying record of the case in  
13 response to the appeal and ask that it be dismissed and  
14 the underlying rulings affirmed.

15 THE COURT: All right counsel and Mr. Nix, what  
16 I'll do is I'll take a look at the record to look at the  
17 dates as far as the other motions are concerned. But  
18 regarding the Motions to Quash the Subpoenas those  
19 motions are each granted based upon the reasonings that  
20 were submitted to the Court and your arguments in your  
21 memorandums. If you would each draft a proposed order to  
22 that effect I'll be happy to sign that. And I'll take  
23 the other matters under advisement. Thank you everybody.  
24 Have a good day.

25 MR. NIX: Thank you very much.

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August 28, 2019

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MS. TROTTER: Thank you, Your Honor.

MR. MIMS: Thank you, Your Honor.

\*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*

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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina on the 28th day of August, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 20, 2020

---

Joyce C. Rueger, CVR-M  
Court Reporter

STATE OF SOUTH CAROLINA  
 COUNTY OF CHARLESTON  
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-10-03315

Alan Nix

Churchill Park, Churchill Park at Park West, Inc.,  
 Churchill Park Homeowner's Association, Inc.,  
 David Brown, and Catherine Brown

2019 SEP 27 PM 3:35  
 J. J. ANTHONY  
 CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for :  Plaintiff  Defendant  
 or  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: The Motion for Judicial Recusal dated December 4, 2018 is denied. Plaintiff's argument is that Judge Young should be recused because he signed an Order allowing Defendants David and Catherine Brown to substitute counsel. Pursuant to Canon 3 of the Judicial Code of Conduct, judicial recusal is warranted in when a judge's impartiality may reasonably be questioned. Plaintiff failed to provide an argument sufficient to establish a violation of Canon 3 of the Judicial Code of Conduct.

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk :

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-10-03315

Alan Nix

Churchill Park, Churchill Park at Park West, Inc.,  
Churchill Park Homeowner's Association, Inc.,  
David Brown, and Catherine Brown

2019 SEP 27 PM 3:55

THE CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: The Notice of Civil Appeal, dated June 28, 2018, was heard before this Court on August 28, 2019. Plaintiff appeals an Order of Judgment from Magistrate Court, dated June 2, 2018. Notice of Return from Magistrate Court was signed by Judge Turner on July 9, 2018 and filed the same day. Pursuant to S.C. Code Ann. § 14-25-95, Plaintiff's appeal was made after the statutorily permitted 10 day time limit had elapsed. Based on the foregoing reasons, Plaintiff's Appeal is denied. Therefore, this matter is dismissed.

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk :

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

