

RECEIVED
May 13 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Case No. 2015-CP-04-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,
In Re: Greg Battersby,

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., All State Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A.,

Respondents.

**APPELLANT’S MOTION TO
HOLD APPEAL IN ABEYANCE**

Appellant came before this Honorable Court asserting the Trial Court erred in imposing monetary sanctions against him. Appellant alleged none of the elements of Rule 11 SCRCP applied in the instant case.

Appellant admits this case has become complicated due to the multiple cases brought to the Circuit Court by Mr. Battersby and the gap in time between the issuance of Form 4, dated April 21, 2016, and the Order, dated December 16, 2019, granting Respondents’ Motion to Enter Monetary Sanctions in the Judgment Rolls, which was issued on.

To beat the 30-day period from December 16, 2019, Appellant filed a Notice of Appeal on January 13, 2016 (which was received by this Honorable Court on January 16, 2021). (Exhibit 1- Notice of Appeal). In retrospect, Appellant believes he has filed his Notice of Appeal prematurely. Appellant submits the afore-cited Form 4, is not the “final order” that the law contemplates to be subject of an appeal. This has been clarified in the case of Cheap-O's Truck Stop, Inc. v. Cloyd where the Court declared:

As a matter of practice and convenience, a Form 4 order is used on a plethora of occasions as a *FINAL ORDER*. *IF* the Form 4 order is *NOT* efficacious as a final order, the circuit court will specifically and with certitude signify:

- (1) a more formal order will be filed; *OR*
- (2) the final order will be prepared by Attorney; *OR*,
- (3) through the use of words and phrases what action will follow.

Cheap-O's Truck Stop, Inc. v. Cloyd, 567 SE 2d 514 - SC: Court of Appeals 2002.

The same conclusion was reached in the case of Metts v. Mims:

The Form 4 order was not signed by the judge and it specifically indicated a formal order would follow. Therefore, this form order was not in any way final. See Culbertson v. Clemens, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996) (a decree leaving some further act to be done by the court is not final)

As cited in Metts v. Mims, 384 S.C. 491 (S.C. 2009).

There mere fact Respondents filed a Motion to Enter Monetary Sanctions in the Judgment Rolls, shows there exists no “full and complete order or judgment”.

Under Rule 203(b)(1) of the South Carolina Rules of Civil Procedure (SCRCP):

(1) Appeals From the Court of Common Pleas. A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been

made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

It is apparent this particular Form 4 does not fully dispose of the case since on its face, the judge noted “*Mr. Krause to prepare Formal Order*” and marked the box that signifies “*This Order does not end the case*”. (Exhibit 2- Form 4, dated April 21, 2016). Clearly the Form 4 is not a final order and as such, could not have been the basis of a notice of appeal.

Proceeding from Respondents’ argument the Order, dated December 16, 2019 is merely an administrative order, Appellant posits the same is not a full and complete judgment where there is no Final Order or Judgment to support it. (Exhibit 3- Order Granting Respondents’ Motion to enter Monetary Sanctions in the Judgment Rolls, dated December 16, 2019). At the time this Order was issued, the judge had not entered a Formal Order on the monetary sanctions. Thus, there being no Formal Order, the Notice of Appeal filed by herein Appellant is considered premature.

Furthermore, while compiling the pleadings and documents related to this case, Appellant discovered circumstances that showed the Circuit Court lost its jurisdiction over this case, and as such any judgment rendered is considered void.

Records show that on June 29, 2015, Client Greg Battersby (hereinafter referred as “Battersby”) moved to remove Appellant as his counsel of record in the Battersby v. Neal case. (Exhibit 4- Removal of Counsel and Motion for Definitive Statement from Defendant Neal and Dunaway). Consequently, Battersby assumed representation of himself to the Circuit Court, submitting pleadings and motion in his name and representing and communicating with Respondents on his own.

On June 30, 2015, Appellant filed a motion to withdraw all the claims and all pleadings in the Battersby v. Moorhead case. (Exhibit 5- Motion to Withdraw All Pleadings). On July 1, 2015, he followed this with a request to relieve him as counsel in the case having reached an impasse with his client. (Exhibit 6- Motion to be Relieved as Counsel).

On July 8, 2015, the Circuit Court granted Appellant's motion to withdraw all pleadings and claims. (Exhibit 7- Form 4/Order Granting Motion to Withdraw All Pleadings). It also relieved Appellant as counsel in its Order, dated October 2, 2015. (Exhibit 8-Form 4 Granting Motion to be Relieved as Counsel).

Appellant believes for all intents and purposes, the Circuit Court lost jurisdiction over his person as well as the subject matter of this case as early as July 8, 2015. Thus, Appellant submits when Respondent Moorhead filed his Motion for Sanctions under Rule 11 SCRPC and the Frivolous Claims Sanctions Proceedings Act on July 24, 2015, the Circuit Court had no jurisdiction over the same when the case has been voluntarily dismissed. It is well-settled that "... a voluntary dismissal or non-suit brings about the same situation or result as if no suit had been." Allen v. Atlanta C.A.L. Ry. Co., S.C. 57 S.E.2d 249, 250. And, if there is no suit, then it is as if no Complaint or pleading has ever been signed by Appellant.

Appellant had withdrawn the Complaint before Respondents had moved to sanction him. It may be argued at the time the motion and the order for sanctions were made, there was no more 'offensive' or 'frivolous' pleading in existence. Furthermore, since the Circuit Court relieved Appellant as counsel in the case, it has lost personal jurisdiction over him.

Appellant submits the Circuit Court has no jurisdiction over the subject matter and the person of Appellant when it rendered the sanctions order on February 3, 2016, rendering the

same as a void judgment. (Exhibit 9- Order Granting Moorhead & Krause's Motion for Sanctions).

The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." (internal quotation marks omitted)); Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002) as cited in Everbank v. Scurry, Appellate No. 2013-002181 (S.C. Ct. App. Aug. 12, 2015).

A void judgment is a judgment, decree, or order entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, State ex rel. Turner v. Briggs, 971 P.2d 581 (Wash. App. Div. 1999). A void judgment is one that, from its inception, is a complete nullity and is without legal effect" *Id.* (quotation marks and citation omitted).

A court, lacking subject matter jurisdiction, cannot enforce its own decrees. It would serve no useful purposes to determine issues submitted to the court since the jurisdiction as to subject matter can be raised at any time, and if the case were remanded to the family court, it would have no authority to carry out its previously ordered mandate.

Hallums v. Bowens, 318 S.C. 1, 3, 428 S.E.2d 894, 895 (Ct. App. 1993) as cited in Katzburg v. Katzburg, Appellate No. 2013-000171 (S.C. Ct. App. July 30, 2014).

No sanctions can be imposed absent of proof of jurisdiction." Standard v. Olsen, 74 S. Ct. 768; Title 5 U.S.C., Sec. 556 and 558(b).

To this end, Appellant seeks to hold this appeal in abeyance to allow him to move to vacate/set aside judgment of the Circuit Court under Rule 60(b)(4). Appellant further moves this Court to allow him to defer filing of his Return to Respondent's Motion to Dismiss. Under certain circumstances, it is possible that this appeal will become moot: that is if the Circuit Court grants Appellant's motion and vacates the judgment.

Accordingly, since the proceedings in this case are replete with procedural defects, Appellant submits the Circuit Court should be given a chance to address its deficiencies. To conserve the resources of the Court and the parties, Appellant respectfully requests this Honorable Court suspend and/or hold this appeal in abeyance, pending the resolution of Appellant's motion to vacate.

Anderson, SC
May 13, 2021

s/Donald L. Smith

Donald L. Smith (SC Bar No. 6699)

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Pro Se

**FORM 7
PROOF OF SERVICE**

RECEIVED
May 14 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Case No. 2015-CP-04-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,
In Re: Greg Battersby,

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., All State Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A.,

Respondents.

PROOF OF SERVICE

Pursuant to Supreme Court of South Carolina's Amended Order 2020-05-29-02, I certify that I have served a copy of Appellant's Motion to Hold Appeal in Abeyance and Certificate of Counsel, and Proof of Service of same, upon The Honorable Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals, through the AIS, and the Respondents, by and through their respective counsel of record, via electronic mail in the addresses as follows:

Ms. Jenny Abbott-Kitchings

ctappfilings@sccourts.org

Attorney for Respondents

Mr. Steven M. Krause, Esquire

steve@krauselaw.org

Mr. Daniel I. Draisen, Esquire

daniel@injuredSC.com

The above-mentioned documents have been served on May 13, 2021.

s/Donald L. Smith

Donald L. Smith (Bar No. : 6699)
Attorney for Appellant
122 N. Main Street
Anderson, SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
May 13, 2021.

91923

**FORM 1
NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

May 13 2021

SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Case No.: 2015-CP-04-00667

Donald L. Smith, Esq.,

Appellants,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A.,

Respondents.

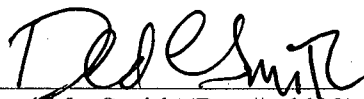
RECEIVED

JAN 16 2020

SC Court of Appeals

NOTICE OF APPEAL

The undersigned counsel respectfully appeals Judge R. Lawton McIntosh's challenged Orders, including : Order, dated July 10, 2015; Order/Form 4, dated October 8, 2015; Order, dated February 4, 2016; Order/Form 4, dated April 22, 2016; Form 4, dated December 6, 2019; and, Order, December 16, 2019, in the case of Gregg Battersby v. J. Kirkman Moorhead, et.al., C.A. No. 2015-CP-04-00667.



Donald L. Smith (Bar #: 6699)

Attorney for Appellants

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Anderson, SC
January 13, 2020.

Other Counsels:

Mr. Steven M. Krause, Esq.
Krause Moorhead & Draisen, P.A.
207 E Calhoun St, Anderson, SC 29621

Mr. Timothy Alan Nowacki, Esq.
Clardy Law Firm, P.A.
1001 E Washington St, Greenville, SC 29601

Attorneys for Respondent J. Kirkman Moorhead

**FORM 7
PROOF OF SERVICE
FILING NOTICE OF APPEAL
THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Case No. 2015-CP-04-00667

Donald L. Smith,

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A.,

RECEIVED

JAN 10 2020

SC Court of Appeals

RECEIVED

May 13 2021

SC Court of Appeals

Appellant,

Respondents.

PROOF OF SERVICE


I certify that I have served the following documents:

- a) Appellant's Notice of Appeal;
- b) Copies of Judge McIntosh's challenged Orders in the case of Gregg Battersby v. J. Kirkman Moorhead, et al., C.A. No. 2015-CP-04-00667:
 - a. Order, dated July 10, 2015;
 - b. Order/Form 4 dated October 8, 2015;
 - c. Order, dated February 4, 2016;
 - d. Order/Form 4, dated April 22, 2016;
 - e. Order/Form 4, dated December 6, 2019; and,
 - f. Order, dated December 16, 2019
- c) Copies of Transcript Request Forms for Court Reporters Dianne Marcengill and Vivian Cross and South Carolina Court Administration Office, and,
- d) Proof of Service of same,

upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, and Respondents, by and through their counsel of record, Mr. Steven M. Krause, Esq. Krause Moorhead & Draisen, P.A., located at 207 E Calhoun St, Anderson, SC 29621, and Mr. Timothy Alan Nowacki, Esq. at Clardy Law Firm, P.A. located at

1001 E Washington St, Greenville, SC 2960, by depositing a copy of same in the United States Mail, postage prepaid, on January 13, 2020.

Anderson, South Carolina
January 13, 2020


Donald L. Smith (SC Bar#6699)
122 N. Main Street
Anderson, SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

FORM 8
LETTER TO THE SUPREME COURT CLERK OF COURT
FILING NOTICE OF APPEAL

January 13, 2020

The Honorable Jenny Abbott Kitchings
Clerk of Court South Carolina Court of Appeals
1220 Senate Street,
Columbia SC 29201

RECEIVED
May 13 2021
SC Court of Appeals

RE: Donald L. Smith v. J. Kirkman Moorhead, Krause, Moorhead & Draisen, P.A.
(In relation to Gregg Battersby v. J. Kirkman Moorhead, et al.
C.A. No. 2015-CP-04-00667)

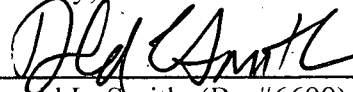
Dear Honorable Kitchings:

Please find enclosed the following documents for filing:

1. Notice of Appeal;
2. A check amounting to Two Hundred and Fifty Dollars (\$250.00) as filing fee;
3. Copies of Judge R. Lawton McIntosh's challenged Orders in the case of Gregg Battersby v. J. Kirkman Moorhead, et al., C.A. No. 2015-CP-04-00667:
 - a. Order, dated July 10, 2015;
 - b. Order/Form 4 dated October 8, 2015;
 - c. Order, dated February 4, 2016;
 - d. Order/Form 4, dated April 22, 2016;
 - e. Order/Form 4, dated December 6, 2019; and,
 - f. Order, dated December 16, 2019.
4. Copies of Transcript Request Forms submitted to Court Reporters Vivian Cross and Dianne Marcengill and the Office of Court Administration, and,
5. Proof of Service.

RECEIVED
JAN 16 2020
SC Court of Appeals

Sincerely,



Donald L. Smith, (Bar#6699)

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

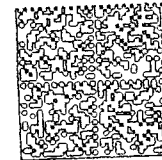
attorneydonaldsmith@gmail.com

Attorney for Appellant

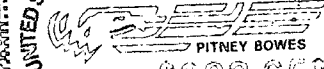
Cc:

Mr. Steven M. Krause, Esq.

Mr. Timothy Alan Nowacki, Esq.



UNITED STATES POSTAGE



02 1P
0000549874 JAN 13 2020
MAILED FROM ZIP CODE 29621

\$002.85

Attorney Office of Donald Smith
122 N. Main Street,
Anderson, SC 29621

RECEIVED

JAN 16 2020

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court South Carolina Court of Appeals
1220 Senate Street,
Columbia SC 29201

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

FORM 4
 FILED-CLERK'S OFFICE
 ANDERSON SC

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP040667
2015

Gregg Battersby

2015 JUL 10 AM 9:42
 COMMON PLEAS AND
 GENERAL SESSIONS

Allstate Northbrook
 Indemnity Co., et al

RECEIVED

May 13 2021

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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: _____
- 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:

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.

Circuit Court Judge

Judge Code

7/8/2015

Date

For Clerk of Court Office Use Only

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

LeB

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Richard A. Shirley

Court Reporter

Richard A. Shirley - Clerk of Court

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.

Plaintiff's motion to withdraw all pleadings granted. No formal order to follow.

FILED-CLERK'S OFFICE
ANDERSON SC
7995 JUL 10 AM 9:42
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gregg Battersby,

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity
Company,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2015-CP-04-00667

**ORDER GRANTING DEFENDANTS
MOTION TO ENTER MONETARY
SANCTIONS IN THE JUDGMENT ROLLS**

RECEIVED

May 13 2021

SC Court of Appeals

THIS MATTER comes before me pursuant to a Motion to Enter Monetary Sanctions in the Judgment Roll against the attorney for the Plaintiff, Donald Loren Smith, Esquire.

The Defendants J. Kirkman Moorhead and the Law Firm of Krause, Moorhead & Draisen, PA were present and represented by Steven M. Krause of the Law Firm of Krause, Moorhead & Draisen, PA.

Donald Loren Smith, Esquire was present.

At the call of the case, the Court inquired if the Motion was merely ministerial and what arguments, evidence or law would be pertinent.

The Defendants, J. Kirkman Moorhead and Krause, Moorhead & Draisen, PA concurred with the Court's rationale. Further, the only reason the Motion was filed was that Mr. Smith was not a named defendant and therefore the previous Order of the Court filed on February 4, 2016 awarding monetary sanctions against Mr. Smith is not listed or recorded in the Judgment Roll.

The Court listened to argument from Mr. Smith which centered upon the fact that the Form Order which was filed on April 22, 2016 denying his Motion for Reconsideration did not contain a formal order denying such reconsideration. Accordingly, he maintains that this Motion is not proper.

The Court does not concur with Mr. Smith's logic but will utilize this Order to again deny his Motion for Reconsideration, even though the Court feels it to be redundant.

In addition, the Court finds that the Motion for Monetary Sanctions previously granted by this Court should be entered as a judgment in the Judgment Roll of Anderson County against Donald Loren Smith, Esquire in the amount of \$11,206.20.

Further, the Clerk of Court is directed to do so.

IT IS SO ORDERED.

R. LAWTON MCINTOSH, JUDGE
TENTH JUDICIAL CIRCUIT

Anderson, South Carolina

_____, 2019



Anderson Common Pleas

Case Caption: Gregg Battersby VS J Kirkman Moorhead , defendant, et al

Case Number: 2015CP0400667

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

FILED-CLERK'S OFFICE
 ANDERSON SC

CASE NO. 2015-CP-04-667



RECEIVED

Gregg Battersby

J Kirkman Moorhead, et al

2016 APR 22 AM 8:35

May 13 2021

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

COMMON PLEAS AND
 GENERAL SESSIONS

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

SC Court of Appeals

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.
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- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- 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:

ORDER INFORMATION

RUN

PLAINTIFF'S MOTION TO RECONSIDER DENIED.

prepare formal order.

MR Krause to

This order ends does not end the case.

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.

Circuit Court Judge

[Handwritten Signature]

Judge Code

2155

Date

4-21-16

CLERK'S OFFICE
 ANDERSON, SC

CASE NO. 2015-CP-04-00667

RCB

Gregg Battersby

J Kirkman Moorhead, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

RECEIVED

DISPOSITION TYPE (CHECK ONE)

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- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

May 13 2021

SC Court of Appeals

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:

ORDER INFORMATION

MR. SMITH'S MOTION TO BE RELIEVED AS COUNSEL GRANTED

This order ends does not end the case.

Additional Information for the Clerk :

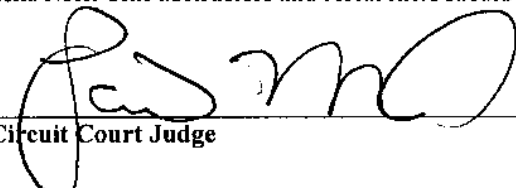
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		\$
		\$
		\$

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 Circuit Court Judge

7155
 Judge Code

10-2-15
 Date

For Clerk of Court Office Use Only

This judgment was entered on the 8th day of Oct., 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 9th day of Oct., 2015 to attorneys of record or to parties (when appearing pro se) as follows:

LOB

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Richard A. Shuler

Court Reporter:

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.

Multiple horizontal lines for additional information.

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

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ANDERSON, SC
IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
MAY 2 2021
COMMON PLEAS AND
GENERAL SESSIONS
CIVIL ACTION NO.: 2015-CP-04-00667

Gregg Battersby,

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity
Company,

Defendants.

**ORDER GRANTING J. KIRKMAN
MOORHEAD AND KRAUSE,
MOORHEAD, & DRAISEN, P.A.'S
MOTION FOR SANCTIONS**

RECEIVED
May 13 2021
SC Court of Appeals

THIS MATTER comes before the Court on Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A., (hereinafter referred to collectively as "Attorneys") motion for sanctions pursuant to Rule 11, SCRPC, and The South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 (the "Frivolous Proceedings Act"). Attorneys bring this Motion subsequent to a July 10, 2015 order (hereinafter "Order") of this Court granting summary judgment in Attorneys favor as to all of Plaintiff's claims. After due notice, a hearing was held in this matter on October 2, 2015. Plaintiff was represented by Donald L. Smith, Esq., and Attorneys were represented by Steven M. Krause, Esq., of Krause, Moorhead, and Draisen, P.A. Having carefully considered the Order, arguments and evidence submitted by counsel, the Court grants Attorneys' Motion and sanctions the attorney for the Plaintiff under Rule 11, SCRPC. The Court does not sanction the Plaintiff as a party or find any violation of the Frivolous Proceedings Act.

As an initial matter, Plaintiff objected to the Court's jurisdiction over the sanctions motion. Plaintiff's objection came only after this Court rendered its initial decision on January 8, 2016 communicated via email to all parties, and instructed Attorneys to prepare an order

granting the motion for sanctions. In a memorandum filed on January 27, 2016, Plaintiff argued that the Attorney's post-trial motion for sanctions was filed more than ten days after the filing of the Order and therefore this Court is divested of jurisdiction. Plaintiff misunderstands the law governing the timely filing of post-trial motions. In accordance with Rule 59(e), SCRCF, "[a] motion to alter or amend the judgment shall be served not later than 10 days *after receipt of written notice of the entry of the order.*" *In re Beard*, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct. App. 2004). A motion for sanctions must be filed within ten days of the *notice* of entry of judgment. *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006), *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 432, 570 S.E.2d 187, 189 (Ct. App. 2002).

On January 29, 2016, Attorneys filed with the court a verified memorandum attesting that they received the Order on July 23, 2015. A true copy of the Order filed July 10, 2015 from the clerk of court stamped July 23, 2015 was included with the verified memorandum. The Motion for Sanctions was filed with the clerk of court the next day, July 24, 2015. Based upon the Attorney's representations, this Court finds that the Motion was timely filed and therefore this Court has retained jurisdiction. *See USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008)(upholding trial court's finding that a motion to reconsider was timely filed after counsel, an officer of the court bound by the ethical and professional rules of this state, informed the court that she did not receive written notice of the order until more than a month after final judgment was entered).

Turning to the merits of the Motion, under Rule 11(a), SCRCF, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Runyon v. Ex parte Gregory*, 378 S.C. 430, 437-38, 663 S.E.2d 46, 50-51 (2008) citing *Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be

sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Id.* It is irrefutable that a lawyer owes their client zealous advocacy, but that zeal must be constrained within the bounds placed upon them as an officer of the court and under the court's rules. Specifically, Rule 11, SCRPC, expressly sets forth the outer boundaries of acceptable attorney conduct by requiring that there be good ground to support any pleading filed before the court. Thus, that rule prohibits a lawyer from asserting claims or legal positions that are not supported by fact, well-founded under existing law, or through the modification, extension, or expansion of existing law.

Plaintiff brought a complaint alleging that Attorneys are liable to Plaintiff for damages arising out of Attorneys' performance of professional activities as attorneys for a client. Plaintiff asserted seven causes of action against Attorneys. The seven causes of action are: (1) false imprisonment; (2) defamation; (3) intentional infliction of emotional distress ("IIED"); (4) malicious prosecution; (5) conspiracy; (6) fraud; and (7) abuse of process.

At the outset of the hearing on the summary judgment motion, Plaintiff stipulated that Attorneys were entitled to summary judgment on all causes of action except civil conspiracy. (Order p. 2; Hr'g Tr. p. 16 ll. 9-19). The Plaintiff conceded that the law in this state is that an attorney is generally immune from liability to third person arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. *See Pye v. Estate of Fox*, 369 S.C. 55, 564, 633 S.E.2d 505, 509 (2006). It is apparent to this Court that Plaintiff's counsel filed the claims without researching the law on attorney immunity to determine whether the claims were viable and supported by law. Plaintiff's counsel made no argument to the contrary. This Court finds that no reasonable attorney would have brought the

Plaintiff's claims against Attorneys given the well-established case law on attorney immunity and the facts of the case.

Regarding Plaintiff's conspiracy cause of action, this Court finds that Plaintiff's claim was based upon mere suspicion without any supporting evidence. Moreover, after reviewing Plaintiff's counsel arguments in support of the conspiracy cause of action, this Court finds that counsel alleged conspiracy to "throw it against the wall and see if it sticks". The Plaintiff made several arguments in an attempt to give some cognizable basis for his conspiracy claim, none of which this court finds are supported by law or fact.

First, the Plaintiff argued to the Court at the summary judgment hearing that the Attorneys stepped out of the scope of the representation of their client when they advised their client to report possible criminal acts to the police and further advised their client to recommend to another alleged victim that she also report her own, similar encounters with the Plaintiff. More troubling, is that plaintiff's counsel also argued that an attorney is not acting in his capacity as an attorney when assisting a client filing a complaint before a state administrative agency. The Plaintiff argued that Attorneys stepped outside their role as attorneys when they assisted their client with an online complaint against Plaintiff filed with the South Carolina Department of Labor, Licensing, and Regulation because the client did not need an attorney to file the complaint nor were the Attorneys representing the client when they completed the complaint form. (Order p. 2; Summ. J. Hr'g Tr. pp. 19-20, ll. 10-2). The Court found that "there is simply no cognizable basis in law or fact to conclude these acts fall outside the scope of Attorneys' representation of Client." (Order p. 2).

Second, the Court rejected the Plaintiff's argument that Attorneys created, embellished or made up better facts to strengthen their client's claims, and therefore conspired with their client

because Attorney's would share in any judgment obtained as a result of the suit because such an allegation is contrary to well-established law. (Order p. 5). The Court found that Plaintiff presented no evidence to support its bald assertions that Attorneys made up or embellished facts to strengthen their client's case. (Order p. 6). The Court also found, that in accordance with case law, an attorney does not act outside of the scope their representation simply by collecting a fee. (Order p. 5 citing *Gaar v. Myrtle Beach Realty Co., Inc.*, 287 S.C 525, 529, 339 S.E. 2d 888 (holding that an attorney normally conducts the litigation solely in his professional capacity and he has no personal interest in the suit)). The Court then found that there is no evidence here that Attorneys had any personal interest in their representation of their client. (Order p. 5).

Third, Plaintiff argued that Attorneys violated Rule 3.3 Candor Toward the Tribunal of the South Carolina Rules of Professional Conduct and that the rule also imposed a duty on Attorney to Plaintiff. The Court dismissed Plaintiffs argument that Rule 3.3 imposed Attorneys a duty to the Plaintiff, finding that the plain language of the rule creates no such duty. (Order p. 6). The Court also found that even if a duty was owed, the Plaintiffs breached no such duty. Plaintiff alleged that Attorneys should have recognized their client was lying when she informed them that Plaintiff was wearing a robe during the incident, but then later reported to law enforcement that Plaintiff was wearing a towel. The Court found that "these are subtle difference of no material distinction, both figuratively and literally, to put Attorneys on notice that Client may be lying." *Id.* Second, the Court found that the police report which contained the allegedly different descriptions of Plaintiff's attire was not created until after Attorney's advised their client to report to the police. Therefore, the Court found that Attorneys "would not have had the benefit of the very report Plaintiff claims should have put them on notice."

Plaintiff's argument is not reasonably supported by the facts. Plaintiff counsel's theory is on its face factually implausible.

Based upon the foregoing, this Court finds that sanctions are warranted against Plaintiff's counsel under Rule 11, SCRPC. A sanction under Rule 11, SCRPC, may include an order to pay the reasonable costs and attorney's fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. Rule 11(a), SCRPC.

Given the facts and circumstances of this case, I am imposing as a monetary sanction which I calculate based upon the Attorneys' fees and costs for defending the underlying lawsuit and bringing this sanctions motion. Attorneys were forced to notify their malpractice carrier and retain outside counsel. Attorneys also contributed considerably to the defense of the professional association.¹ I find that counsel is responsible for the reasonable expenses, including attorney's fees. Based upon the Affidavits of Attorneys' counsel, I find that the total costs of defending this action of \$11,206.20 are reasonable. Plaintiff's counsel is required to pay to Attorneys \$11,206.20 as a monetary sanction.

¹ Attorneys did not submit and this Court did not consider any time expended by Mr. Moorhead as he is a party to this action. However, this Court notes that it could have ordered Plaintiff's counsel reimburse Attorneys for Mr. Moorhead's time because I decided to impose a monetary sanction.

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Plaintiff's counsel is ordered to pay to Attorneys \$11,206.20 for violating Rule 11, SCRPC. This amount shall be paid within thirty days of the filing date of this order.

AND IT IS SO ORDERED.


~~THE HONORABLE~~ JUDGE LAWTON R. MCINTOSH

Anderson, South Carolina

2-3, 2016

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