

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

The Honorable Mikell R. Scarborough, Master in Equity

**Case No. 2014-CP-10-05407 and
2017-CP-10-04031**

Churchill Park, Respondent

v.

Alan G. Nix, Norma J. Nix and the Estate of Norma J. Nix, Defendants,

Of which Alan G. Nix is the Appellant

**Supreme Court Case Number 2021-00302
Court of Appeals Case Number 2020-001304**

APPELLANT’S REPLY TO RESPONDENT’S RETURN

Petitioner, Alan Nix, respectively asks the Court to deny Respondent’s request to deny Appellant’s Writ of Certiorari petition. Additionally, given a very short amount of time in which to respond, Appellant is focusing on responding to the key issue(s) Ms. Trotter attempts to make as well as address as many of the other issues with Ms. Trotter’s return as is possible in such a limited amount of time. In support of this request, Appellant shows the following unto the court.

Appellant perceives the primary issue Ms. Trotter attempts to raise as being contained on the third page of the return where Ms. Trotter appears to attempt to make the case that the trial court’s lack of jurisdiction doesn’t disqualify Ms. Christine Smith (hereafter referred to as

CSmith) and her company Sandlapper Reporting, LLC (hereafter referred to as "Sandlapper") from preparing a transcript of proceedings related to Appellant, Norma J. Nix, the Estate of Norma J. Nix, Respondent Churchill Park (hereafter referred to as "Churchill Park 2003") McCabe Trotter, etc.

On information and belief, CSmith is a Charleston County employee and the only court reporter for Mikell Scarborough (hereafter referred to as "Scarborough"), the Charleston County Master in Equity. Sandlapper is the transcription company which CSmith operates out of the Charleston County Judicial Center producing transcripts with equipment owned by Charleston County and with information obtained through her employment with Charleston County and at the direction of her Supervisor, Scarborough. In response to Ms. Trotter's apparent main argument related to what would legally, ethically, and rationally prevent CSmith and Sandlapper from preparing a transcript of the proceedings, Appellant shows this court the following:

1. CSmith and Sandlapper are, and have been, disqualified from being involved in the transcription of any proceedings related to the parties to cases 2014-CP-10-05407 and 2017-CP-10-04031 since at least the third quarter of 2017. CSmith and Sandlapper have been involved in the transcription of at least two substantially inaccurate transcripts related to cases 2014-CP-10-05407 and 2017-CP-10-04031 since March 2016. Once the significant issue related to the transcript for the 21 March 2016 hearing for case 2014-CP-10-05407 was identified in July 2017, CSmith and Sandlapper did not take any appropriate action to correct the inaccurate transcript, even when requested to by Appellant, by both informal request and formal motion. Instead, CSmith requested Appellant sign a document declaring what was correct and incorrect in the transcript, even though Appellant was not present at the 21 March 2016 hearing and CSmith refused to provide the recording of said hearing to Appellant. Hence, in contrast to CSmith being both a first hand witness to what occurred, or didn't occur, on 21 March 2016, and also having access to a recording of said event(s), Appellant only knew, based on admissions of CSmith in July 2017, that the transcript of 21 March 2016 at most contained one line in which CSmith's Supervisor, Scarborough, potentially stated "*I'll take it*".
2. As a continuation of this pattern, when serious issues related to the hearing of 26 September 2017 were brought to CSmith's and Sandlapper's attention in August

2018, instead of properly responding to the issues raised and correcting where required, CSmith and Sandlapper involved the Charleston County Attorney's office to shield them from Appellant's inquiry, further raising the substantial likelihood of CSmith's and Sandlapper's involvement in producing another intentionally incorrect transcript related to significant intentional procedural issues.

Due to these issues, as well as the fact that Appellant has placed CSmith and Sandlapper on notice of being sued for these actions, CSmith and Sandlapper Reporting, LLC can not remotely legitimately claim to be disinterested parties related to any of the parties involved in cases 2014-CP-10-05407 and 2017-CP-10-04031. Therefore, CSmith and Sandlapper should have, of their own accord, recused themselves no later than August 2018 from performing any function, including but not limited to as a court reporter and transcriptionist, related to parties to cases 2014-CP-10-05407 and 2017-CP-10-04031. Given Ms. Trotter is, and has been, aware of these issues, Ms. Trotter's argument in this regard is obviously meritless, if not completely frivolous.

Addressing more specifically Ms. Trotter's question about how Scarborough's lack of jurisdiction in case 2017-CP-10-04031 disqualifies the court reporter who attended the hearing from preparing a transcript of the proceedings. Appellant shows the Court the following:

1. On information and belief, the court reporter who attended the hearing was CSmith.
2. CSmith is an employee of Charleston County, not an employee of the State of South Carolina's Office of Court Administration, the Office which employs court reporters for Circuit Court.
3. CSmith owns and operates Sandlapper Reporting, LLC which she operates to produce transcripts she takes as an employee of Charleston County. Sandlapper Reporting, LLC operates out of office space owned by Charleston County and managed by Scarborough. On information and belief, Sandlapper Reporting, LLC also utilizes equipment owned by Charleston County to produce transcripts.
4. Appellant does not know whether or not Sandlapper employees more employees than CSmith but regardless, technically Sandlapper Reporting, LLC prepares transcripts of proceedings for Scarborough, not CSmith. While this distinction may or may not be legally relevant, Appellant reiterates that both CSmith and Sandlapper share either all,

or most all, of the same conflicts of interest related to the parties to cases 2014-CP-10-05407 and 2017-CP-10-04031.

5. According to SC Code of Laws 14-11-30, Charleston County is responsible for providing the salary, equipment, facilities, supplies and support personnel for Scarborough as Master in Equity for Charleston County. Hence, Scarborough is CSmith's Supervisor and any conflict of interest Scarborough has is also attributable to his Supervisees and their corporate entities.
6. Scarborough lost any and all legitimate jurisdiction of case 2014-CP-10-05407 after his improper involvement in the fraudulent 40j dismissal of 21/23 March 2016, which constitutes an obvious conflict of interest for Scarborough. Given CSmith's and Sandlapper's involvement in producing a transcript which aided the concealment of more than one instance of judicial misconduct by Scarborough, CSmith and Sandlapper are clearly subject to the same conflicts of interest as Scarborough, hence not disinterested parties to these cases as is required of court reporters.
7. According to Rule 53(b) of the SCRCP, "*In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court.*" It is undisputed that no order of reference by a circuit judge or Julie Armstrong, the Charleston County Clerk of Court, exists, or has ever existed, referring case 2017-CP-10-04031 to Scarborough. Consequently, since Scarborough didn't have jurisdiction of case 2017-CP-10-04031, only the circuit court could legally hold hearings and entered orders for case 2017-CP-10-04031, in which, court reporters employed by the Office of Court Administration would have been properly assigned to be a court reporter, not CSmith and Sandlapper, an employee and business partner of Charleston County, respectively.
8. Appellant raised the issue of Scarborough's ongoing lack of compliance with the Order of Reference for case 2014-CP-10-05407 in 2018, which clearly required the final order for case 2014-CP-10-05407 to be filed with the Richland County Clerk of Court within sixty (60) days of the final hearing for the case. In June 2018, instead of simply attempting to finally comply with Appellant's request and Ms Trotter's Order of Reference from 2014, Scarborough attempted to utilize Rule 60(a) to convert

Appellant's motion to a scrivener's error, stating that Richland should have been Charleston, even though Scarborough didn't draft or sign the Order of Reference for case 2014-CP-10-05407. At the time, Scarborough was clearly on notice that cases 2014-CP-10-05407 and 2017-CP-10-04031 were on appeal with the Court of Appeals and as an attorney licensed to practice law in South Carolina, knew, or should have known, that he had to request permission from the appellate court to take such action under Rule 60(a). On information and belief, Scarborough never sought such permission from the SC Court of Appeals and clearly no such permission was ever granted to Scarborough by the SC Court of Appeals. Hence, Scarborough's attempt to change Richland to Charleston via Rule 60(a) is/was null and void and Scarborough lost jurisdiction of case 2014-CP-10-05407, and if he ever had such jurisdiction, jurisdiction of case 2017-CP-10-04031, absolutely no later than 25 November 2017, and most likely much earlier. When Scarborough lost jurisdiction of case 2014-CP-10-05407, and if he ever had such jurisdiction, jurisdiction of case 2017-CP-10-04031, CSmith and Sandlapper should not have been involved in taking or producing any transcripts for such cases, only court reporters employed by the SC Office of Court Administration.

With the above being the most serious and obvious issues related to Scarborough's, CSmith's and Sandlapper's lack of jurisdiction and improper conduct, and given Appellant's limited amount of time to create this Reply, Appellant also raises at a high level some of Scarborough's most egregious acts which demonstrate his obvious lack of impartiality, fraud upon the court, and an ongoing pattern of misconduct which clearly demonstrates Scarborough is, and has never been, a neutral trier of the facts.

1. In November 2017, and multiple times thereafter, despite Appellant's raising the issue, Scarborough has stubbornly refused to address the obvious misconduct of the Plaintiff and Plaintiff's attorneys related to the fraudulent utilization of the still unfiled September 2017 "*Assignment of Foreclosure Rights*" which was improperly used at the last minute in an attempt to make Churchill Park 2003 the Real Party in Interest vice Park West Master Association, Inc. and/or Churchill Park Homeowners' Association, Inc.

2. In November 2017, despite being notified that the Real Party in Interest to these matters, Churchill Park Homeowners' Association, Inc., was sending letters to Members of that Association, Scarborough refused to hold Plaintiff's attorneys accountable for obvious fraud upon the court during the previous several months and hurriedly signed a order for case 2017-CP-10-04031.
3. Scarborough has awarded more than \$120,000 in attorney's fees to attorneys which have engaged in multiple counts of fraud upon the court.
4. Scarborough signed a Master's Deed on 23 October 2020, fraudulently stating that State Street Holdings (Co) LLC had paid the entire amount due, when in fact, they had paid less than five percent of their bid price. State Street Holdings (Co) LLC then utilized this fraudulent Master's Deed to obtain, under false pretenses, a \$142,000 mortgage on the property that is the subject of this ongoing litigation.
5. On 26 September 2017, while admitting the hearing in question was a clear example of fraud upon the court, Scarborough knowingly and willfully refused to allow Appellant to present his case, introduce evidence and testify on his own behalf.
6. On 29 September 2017, Scarborough denied, without providing a rationale, the Appellant's motion to correct the record related to the fraudulent transcript of 21 March 2016. This act can only be construed as intended to conceal his own misconduct and fraud upon the court.

CONCLUSION

In conclusion, Appellant reiterates that Trotter admits Appellant ordered the transcript in question and Ms. Allen and the Court of Appeals had proof such transcript was ordered prior to taking these erroneous actions. Consequently, Trotter's only remaining argument is related to Appellant's refusal to pay Sandlapper to produce the transcript he ordered from the Office of Court Administration more than three weeks prior to the filing this appeal is related to. As has been demonstrated in this reply, the evidence of a pattern of multiple instances of misconduct by CSmith and her company, Sandlapper Reporting, LLC, in coordination with her Supervisor, Scarborough, related to the parties involved in cases 2014-CP-10-05407 and 2017-CP-10-0403, is indisputable. Thus, CSmith and Sandlapper clearly have significant conflicts of interest, are not disinterested parties related to these cases, and thus Appellant is justified in requiring that

any transcript related to these cases be produced by a party that can reasonably claim to be a disinterested and neutral party.

The Appellant begs this court to finally begin holding these parties accountable for their ongoing and flagrant misconduct by denying Respondent's request to dismiss and instead, granting the Appellant's Writ and remanding this case to the Court of Appeals to be fully and properly resolved.

Dated: June 1, 2021

Respectfully submitted,



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S.C. SUPREME COURT