STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Shemuel Nahum Ben Yisrael,

PLAINTIFF,

v.

Law Offices of Darrell Thomas Johnson, Jr., LLC, Darrell Thomas Johnson, Jr., Attorney, Mills Morrison, Attorney, Town of Yemassee, Yemassee Police Department, Gregory Alexander, Police Chief, Joseph Loadholt, Police Officer, Samuel Watson, Jr., Police Officer, Leslie A. Jamison, Police Officer, M. W. Strauss, Police Officer, Beaufort Motor Sports, and State Fiscal Accountability Authority,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2019-CP-07-00894

ORDER DENYING PLAINTIFF'S REQUEST TO RECORD HEARING, DENYING PLAINTIFF'S ATTEMPT TO FILE A NOTICE OF APPEAL PRIOR TO THE HEARING ON THE DEFENDANTS' MOTION TO DISMISS, AND GRANTING DEFENDANTS' MOTION TO DISMISS THE CASE WITHOUT PREJUDICE

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AUG 25 2021

SC Court of Appeals

On August 10, 2021, this matter is before me on the Defendants' Town of Yemassee, Gregory Alexander, Joseph Loadholt, Samuel Watson, Jr., Leslie A. Jamison, and M.W. Strauss (collectively "Police Defendants") motion to strike the Complaint and dismiss the case pursuant to Rule 12(e), SCRCP. Present at the hearing was O. Edworth Liipfert, III, attorney for the Police Defendants. Also present was Mills Morrison, co-counsel for the Police Defendants and counsel for the Co-Defendants Law Offices of Darrell Thomas Johnson, Jr.; Darrell Thomas Johnson, Jr.; and Mills Morrison; all of whom joined the motion. The *Pro Se* Plaintiff was present at the start of the hearing and received proper notice of the hearing.

At the call of the case, the Plaintiff requested that he be allowed to record the hearing

on his own tape recorder. I denied this request. After I denied this request but before the motion to dismiss was heard, the Plaintiff handed up a pre-drafted appeal of "any and all rulings" against him and stated that the Court no longer had jurisdiction to hear the motion. The Plaintiff requested that the appeal be clocked prior to hearing arguments on the motion to dismiss. I denied this request on for grounds set forth in more detail in the "Discussion" section below. When this request was denied, the Plaintiff stated that he could not go forward with the hearing without his tape recorder because judges in the past had allowed him to tape record hearings, and he wanted to be able to appeal the split in the rulings on whether he could record hearings. I explained to him that it was within the Court's discretion to allow or deny his request to tape record the hearing. I explained to him that there would only be one official transcript of this hearing, and he could request a copy of the official transcript of the hearing from the court reporter. The Plaintiff again insisted that he could not proceed without recording the hearing, and I informed him that he was free to stay and argue against the motion to dismiss or to leave the courtroom, but the hearing on the motion to dismiss was going forward. I also explained to the Plaintiff that if he chose to leave, he would not be allowed back into the hearing. There were litigants for other motions on the roster waiting to be heard, and it would be improper to allow the Plaintiff to leave the courtroom and return during the motion hearing. Additionally, the Plaintiff had subpoenaed the five Defendants from the Yemassee Police Department and a surveyor to appear at the hearing, all of whom were present in the courtroom for the hearing. After being specifically instructed by the Court that the motion was proceeding and if he left, he would not be allowed to reenter the courtroom, the Plaintiff chose to leave the courtroom prior to the

start of oral arguments on the motion to dismiss, and the motion hearing proceeded in his absence.

LEGAL STANDARD

Pursuant to Rule 12(e), SCRCP, if a complaint is too vague and ambiguous, the Court may order a plaintiff to amend his complaint to more clearly state the grounds therein. "[I]f the order of the Court is not obeyed within 15 days after notice of the order... the Court may strike the pleading to which the motion was directed...." Rule 12, SCRCP. "It is well settled that a motion to strike is addressed to the sound discretion of the trial court." Totaro v. Turner, 273 S.C. 134, 135, 254 S.E.2d 800, 801 (1979). "When a court orders a sanction that results in default or dismissal, "the end result is harsh medicine that should not be administered lightly." QZO, Inc. v. Moyer, 358 S.C. 246, 256, 594 S.E.2d 541, 547 (Ct. App. 2004) (*internal citations omitted*). However, "in some circumstances, if a party fails or refuses to file an amended and simplified pleading or does not exercise good faith in purporting to do so, the severe sanction of a dismissal on the merits may be warranted." 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1217 (3d ed.2015). "[W]hen a sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." QZO, Inc. v. Moyer, 358 S.C. 246, 257, 594 S.E.2d 541, 547 (Ct. App. 2004) (*internal citations omitted*).

FACTS

The Plaintiff filed the complaint in this case on April 18, 2019. The Police Defendants initially moved to dismiss the complaint on May 21, 2019. The initial motion to

dismiss was heard by Judge Dukes, and on November 25, 2019, Judge Dukes entered an order granting the initial motion to dismiss as to the Yemassee Police Department and denying the motion as to the remaining Police Defendants. Judge Dukes also ordered "the Plaintiff, within 15 days of this Order to make more definite and certain his allegations, by specifically listing his causes of action as they relate to each Defendant with specific dates of alleged occurrences." The Plaintiff failed to amend his Complaint within 15 days as ordered, and on January 14, 2020, the Police Defendants file the instant motion to strike the Complaint. At the time the motion to strike came before the Court on August 10, 2021, nearly nineteen months after the motion was filed, the Plaintiff still had not amended his complaint.

DISCUSSION

A. The Plaintiff's Request to Record the Hearing

In my discretion, I find that recording this hearing was not proper or necessary for several reasons. First, the general rule prohibits recording proceedings. Rule 605(b) of the South Carolina Appellate Court Rules provides, "Except as provided by (c) through (f) below, the broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions is prohibited." Rule 605(c) through (f) grants the trial court discretion to allow the recording of hearings in certain circumstances. The decision on whether or not to allow recording devices into the courtroom rests in the sound discretion of the trial judge. See State v. Hill, 331 S.C. 94, 501 S.E.2d 122 (1998). Next, the Plaintiff was specifically informed that he could order a copy of the transcript from the court reporter, so there was no need for him to

record the proceeding. Additionally, the grounds upon which the motion to strike were based were sufficiently set forth in the motion and did not involve the merits of the underlying case, so the need to record the arguments of counsel was minimized. Finally, there were other litigants in other cases waiting to be heard, and the Plaintiff had not been allowed to bring his recorder into the courthouse, so allowing him to return to his car to get his recorder would delay judicial efficiency. Therefore, I hereby deny the Plaintiff's request to record the proceedings.

B. The Plaintiff's Attempted Appeal

The Plaintiff has a long history of suing judges to prevent them from issuing unfavorable orders on dispositive motions. The Court hereby takes judicial notice of the sanctions orders in cases 2017-CP-07-1519 and 2019-CP-07-00052 discussing this in detail. He also has a history of filing frivolous appeals. See Appellate Case No. 2019-001108. The Plaintiff's attempt to file a pre-drafted appeal of "any and all rulings against him" after his verbal request to record the hearing was denied but before the motion to dismiss was heard was improper pursuant to Rule 203, SCACR and Rule 11, SCRCP. Rule 203(b), SCACR, provides that a notice of appeal shall be served "within thirty days **after** receipt of written notice of entry of the order or judgment," and Rule 203(d) provides "The notice of appeal shall be filed with the clerk of court of the lower court and the clerk of the appellate court within ten (10) days **after** the notice of appeal is served." At the time the Plaintiff attempted to file the notice appeal in this case, no written order had been entered. Several of the defendants were not present and none had been served with the notice of appeal. The decision on whether to allow a motion hearing to be recorded is an interlocutory order not

subject to immediate appeal. In light of the Plaintiff's prior frivolous litigation, it is apparent that the attempted "appeal" was nothing more than an effort to divest the lower court of jurisdiction to hear the motion to strike the complaint. Pursuant to Rule 11, SCRCP, by signing a "pleading, motion, or other paper," a party is certifying that the document is not "interposed for delay," and "when a pleading, motion, or other paper... does not comply with this Rule, it shall be stricken...." I find that the Plaintiff was attempting to file the notice of appeal for the improper purpose of delay, and therefore the notice of appeal should not be filed pursuant to Rule 11, SCRCP.

C. Motion to Dismiss

The Police Defendants argued through counsel that the complaint should be stricken and the case should be dismissed because the Plaintiff willfully failed to obey the Court's order to file an amended complaint. This court recognizes that this is a severe remedy but finds that the facts of this case warrant such action. The Pro Se Plaintiff is no stranger to the legal system. He has filed numerous Pro Se Complaints against various governmental entities, judges, government employees, and their counsel over the last 21 years, as discussed in more detail in the sanctions orders in cases 2017-CP-07-1519 and 2019-CP-07-00052. Those orders specifically sanctioned the Plaintiff for his long history of filing baseless complaints against the government. In the case at hand, the Plaintiff demonstrated his knowledge of the legal system when he subpoenaed the five individual Police Defendants to appear in person at the hearing and by handing up a pre-drafted notice of appeal at the hearing and arguing that this court was divested of jurisdiction to hear the motion to dismiss. While the Plaintiff chose to leave the courtroom rather than argue against the motion to

dismiss, no colorable argument could be made that the Plaintiff simply did not understand the Court's order to clarify the Complaint. The order is plain and unambiguous on its face and specific as to what the amendment must clarify. Additionally, the Plaintiff did not attempt to amend the complaint for nearly 19 months while the Police Defendants' motion to strike the complaint was pending. Under these facts, I must find that the Plaintiff has willfully disobeyed the Court's order to amend and has shown gross indifference to the Defendants rights to be presented with clear allegations against them. Therefore, I find that the Complaint should properly be stricken and the case should properly be dismissed without prejudice.

ORDER

Therefore, as discussed above:

IT IS ORDERED that the Plaintiff's oral request at the call of the case to record the hearing is hereby DENIED;

IT IS FURTHER ORDERED that the Plaintiff's attempt to file a pre-drafted notice of appeal of "any and all rulings" against him after his request to record the hearing was denied was done for the improper purpose of delay, the notice of appeal violated Rule 11, SCRCP, and therefore the Plaintiff's request to file the notice of appeal and for the motion to be stayed because the court lacked jurisdiction to hear it is hereby DENIED;

IT IS FURTHER ORDERED that the Complaint is hereby stricken, and this case is hereby dismissed without prejudice;

IT IS SO ORDERED.

The Honorable Robert J. Bonds
Judge for Fourteenth Judicial Circuit, Beaufort County

Beaufort, South Carolina

August, _____, 2021

Proof Of Service

To: Supreme Court Of South Carolina
Clerk Of Court
From: Shemuel Yisrael, Plaintiff pro se
Date: Friday August 20, 2021

Re: Case # 2019-CP-07-00894
(lower court)

I, Shemuel Yisrael, plintiff pro se, did file the notice of appeal with the clerk of the lower court, the Beaufort County Court Of Common Pleas, on the following date: Tuesday August 10, 2021.

Date: Fri Aug 20, 2021 Sig. S. Yisrael

Shemuel Yisrael
18 Wall St.
P.O. Box 367
Yemassee, South Carolina
29945
(843) 510-3063
Pro Se

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S.C. SUPREME COURT

Proof Of Service

To: Supreme Court Of South Carolina
Clerk Of Court
From: Shemuel Yisrael, Plaintiff, pro se
Date: Friday August 20, 2021
Re: Case # 2019-CP-07-00894
(lower Court)

I, Shemuel Yisrael, plaintiff, pro se, did serve the Notice Of Appeal on defendants numbers 4, 5, 6, 7, 8, 9, and 10, by hand delivery to the assistant, Kristopher Long, of their attorney, Otto Lippert, at his office at 600 Monson Street, in the City Of Beaufort, South Carolina, on the date of:
Wednesday August 11, 2021

Date: Friday Aug. 20, 2021 Sig. S. Yisrael

Shemuel Yisrael
18 Wall St.
P.O. Box 367
Yemassee, South Carolina
29945
(843) 510-3063

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AUG 24 2021
S.C. SUPREME COURT

Proof Of Service

To: Supreme Court Of South Carolina
Clerk Of Court

From: Shemuel Yisrael

Date: Friday August 20, 2021

Re: Case # 2019-CP-07-00894
(Lower Court)

I, Shemuel Yisrael, plaintiff, pro se, did serve the Notice Of Appeal on defendant Mills Morrison, Attorney, by First Class Mail, postage prepaid, with the U. S. Postal Service, on:

Thursday August 19, 2021

Date: Friday Aug 20, 2021 Sig: S. Yisrael

Shemuel Yisrael
18 Wall St.
P.O. Box 367
Yemassee, South Carolina
29945
(843) 510-3063
Pro Se

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Proof Of Service

To: Supreme Court Of South Carolina
Clerk Of Court

From: Shemuel Yisrael, Plaintiff Pro Se

Date: Friday August 20, 2021

Re: Case # 2019-CP-07-00894
(lower court)

I, Shemuel Yisrael, plaintiff, pro se, did serve the Notice Of Appeal on defendant, Law Offices Of Darrell Thomas Johnson, Jr., LLC, by First Class Mail, postage prepaid, with the U.S. Postal Service on:
Thursday August 19, 2021

Date: Friday Aug 20, 2021 Sig. S. Yisrael

Shemuel Yisrael
18 Wall St.
P.O. Box 367
Jamassee, South Carolina.
29945
(843) 510-3063
Pro Se

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Proof Of Service

To: Supreme Court Of South Carolina
Clerk Of Court

From: Shemuel Yisrael, Plaintiff, Pro Se

Date: Friday August 20, 2021

Re: Case # 2019-CP-07-00894
(lower Court)

I, Shemuel Yisrael, plaintiff, pro se, did serve the Notice Of appeal on defendant Darrell Thomas Johnson, Jr., attorney, by First Class Mail, postage prepaid, with the, U.S. Postal Service on:
Thursday August 19, 2021

Date: Fri. Aug 20, 2021 Sig. S. Yisrael

Shemuel Yisrael
18 Wall Street
P.O. Box 367
Jemassee, S.C. 29945
(843) 510-3063
Pro Se

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Proof Of Service

To: Court Of Appeals South Carolina
Clerk Of Court
From: Shemuel Yisrael, Plaintiff, Pro Se
Date: Friday August 20, 2021

Re: Case # 2019-CP-07-00894
(lower Court)

I, Shemuel Yisrael, plaintiff pro se, did file the notice of appeal with the clerk of the lower court, the Beaufort County Court Of Common Pleas, on the following date: Tuesday August 10, 2021.

Date: Friday Aug. 20, 2021 Sig. Shemuel Yisrael

Shemuel Yisrael
18 Wall St.
P.O. Box 367
Jenassee, S.C. 29945
(843) 510-3063
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Yemassee, S.C. 29945

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Columbia S.C. 29211

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