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**Sep 08 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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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.

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**APPELLANT'S RESPONSE TO  
RESPONDENTS' LETTER TO THE COURT OF APPEALS**

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On January 16, 2020, Appellant filed a Notice of Appeal on this case. Due to the difficulty of obtaining the transcripts relating to the underlying cases forming the basis for the instant Appeal, Appellant was not able to file his Initial Brief and Designation of Matter until March 29, 2021. More than a year after Appellant filed his Notice of Appeal, Respondents moved to dismiss the same on April 23, 2021, alleging the following grounds: failure to perfect the appeal, failure to timely file appeal on Orders, dated July 8, 2015, and February 3, 2016; and,

that the January 16, 2019, Order was merely an Administrative Order. Thereafter, Respondents filed their Initial Brief and Designation of Matter on May 7, 2021.

On May 24, 2021, Appellant moved this Honorable Court to hold his appeal in abeyance, raising two issues: premature filing of the Notice of Appeal and the nullity of lower court's order granting the sanctions against Appellant. On June 16, 2021, this Honorable Court issued an Order granting in part Respondents' Motion to Dismiss Appeal of the Circuit Court's Order, dated July 10, 2015, and October 8, 2015, but denying the same as to the appeal from the 2016 and 2019 Orders. (Exhibit 1- Court of Appeal's Order, dated June 16, 2021). In the same Order, the Court denied the Appellant's motion for leave to file Rule 60 SCRPC.

Respondents neither objected nor moved for reconsideration of said Order. Appellant believed the Honorable Court could have honored Appellant's request for abeyance but deemed that in the interest of judicial economy, it would address the issue of premature filing and nullity of the sanctions order. Appellant avers the Honorable Court was not remiss in not dismissing the Appeal based on the first ground raised by Respondents.

Should the Court reconsider Respondents' assertions in their Letter, dated September 7, 2021, Appellant reiterates his position he had prematurely filed his Notice of Appeal in this case considering Form 4 dated April 21, 2016, is not the "final order" that the law contemplates to be subject of an appeal. The cases Cheap O's Truck Stop, Inc., (567 S.E.2d 514 (SC Ct. App.

2002)<sup>1</sup>, and *Metts v. Mims*, 384 S.C. 491 (SC 2009)<sup>2</sup>, have addressed this matter by ruling that a Form 4 which specifically indicated a final order would follow, is not a Final Order. And since by Respondents' own submission the Order Dated December 16, 2019, is merely an administrative Order, then it does not partake of a Final Order and did not "fully dispose of the case".

Appellant further asserts the Orders granting sanctions and denying Appellant's Motion for Reconsideration are void since they were issued when the Circuit Court has lost its subject jurisdiction (since the Appellant withdrew the Complaint and all the pleadings and the Circuit Court approved the same), as well as its jurisdiction over the person of Appellant (since the Circuit approved Appellant's motion to withdraw as counsel) prior to Respondents filing their Motion for Sanctions.

Since the Circuit Court has no jurisdiction over the subject matter of the case and the person of the Appellant when it rendered the Sanctions Order, the judgment and all subsequent proceedings thereof, are considered void. *State ex. rel. Turner v. Briggs*, 971 P.2d 581 (Wash. App. Div. 1999). No sanctions can be imposed absent proof of jurisdiction. *Standard v. Olsen*, 74 S. Ct. 768, Title 5, U.S.C. §556 & 558 (b).

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<sup>1</sup> *Cheap O's Truck Stop, Inc.*, (567 S.E.2d 514 (SC Ct. App. 2002) declares "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."

<sup>2</sup> *Metts v. Mims*, 384 S.C. 491 (S.C. 2009)- 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)

Respondents had several chances to address their concerns on the Notice of Appeal but waited until the final briefing to pursue the issue which this Honorable Court is presumed to have considered and ruled in the negative. Respondents had benefitted from all the procedural defects and/or deficiencies in the Circuit Court and continues to use the same to defeat Appellant's meritorious claims. Appellant respectfully requests this Honorable Court consider all the circumstances attendant in this case and rule in the interest of justice.

Accordingly, Appellant prays this Honorable Court will allow the appeal to proceed and decide on the merits of the case, and/or in the alternative, suspend and/or hold this appeal in abeyance to allow Appellant to file his Motion to Vacate the Circuit Court's rulings.

**s/Donald L. Smith**

Donald L. Smith (SC Bar No. 6699)

122 N. Main Street

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*Pro Se*

Anderson, South Carolina  
September 8, 2021.

# The South Carolina Court of Appeals

Ex Parte: Donald L. Smith, Appellant,

In Re: Gregg Battersby, Plaintiff,

v.

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

of which J. Kirkman Moorehead, Krause, Moorehead &  
Draisen, P.A., are the Respondents.

Appellate Case No. 2020-000070

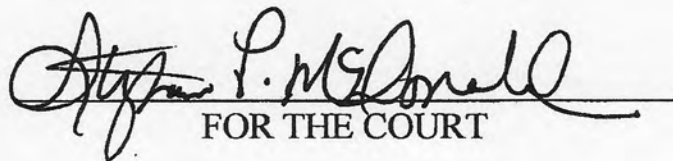
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## ORDER

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First, the motion to dismiss is granted in part and denied in part. Appellant failed to timely serve and file a notice of appeal from the July 10, 2015 order granting summary judgment and the October 8, 2015 Form 4 order. Therefore, the appeals from the July 10, 2015 order and the October 8, 2015 order are dismissed. The time for appealing the circuit court's 2016 orders relating to sanctions was tolled and began to run from the circuit court's 2019 order denying reconsideration. Accordingly, the appeal from the 2016 orders and 2019 orders shall proceed.

Second, Appellant's motion for leave to file a Rule 60, SCRCP motion with the circuit court is denied.

  
FOR THE COURT

Columbia, South Carolina

cc:

Donald Loren Smith, Esquire

Steven M. Krause, Esquire

Timothy Alan Nowacki, Esquire

Daniel L. Draisen, Esquire

**FILED**  
**Jun 16 2021**

**RECEIVED**

**Sep 08 2021**

**SC Court of Appeals**

**FORM 7  
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Judge

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

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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.

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**PROOF OF SERVICE**

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Pursuant to Supreme Court of South Carolina's Amended Order 2020-00047, I certify that I have served a copy of Appellant's Reply to Respondents' Letter to Clerk of Court of Appeals, as well as 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](mailto:ctappfilings@sccourts.org)

Attorney for Respondents

Mr. Steven M. Krause, Esquire [steve@krauselaw.org](mailto:steve@krauselaw.org)  
Mr. Daniel I. Draisen, Esquire [daniel@injuredSC.com](mailto:daniel@injuredSC.com)

The above-mentioned documents have been served on September 8, 2021.

*s/Donald L. Smith*  
\_\_\_\_\_  
Donald L. Smith (Bar No. : 6699)  
Attorney for Appellant  
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Anderson, SC 29621  
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Anderson, South Carolina  
September 8, 2021.

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SC Court of Appeals

**FORM 8**  
**LETTER TO THE APPEALS COURT CLERK**  
**REPLY TO RESPONDENTS' LETTER TO THE CLERK OF COURT**

September 8, 2021

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

**RE: Ex Parte: Donald L. Smith (In Re: Battersby v. Kirkman)**  
**Appellate Case No. 2020-000070**

Dear Ms. Kitchings:

Please find enclosed the following documents for filing:

- (1) Appellant's Reply to Respondents' Letter to the Clerk of Court; and,
- (2) Proof of Service for same.

Sincerely,

*s/Donald L. Smith*

Donald L. Smith, (Bar#6699)

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*Pro Se*

cc: Mr. Steven M. Krause, Esquire  
Mr. Daniel L. Draisen, Esquire