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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 REPLY TO RESPONDENTS'
SECOND MOTION TO DISMISS**

Appellant respectfully requests his Honorable Court to review his position on his Motion to Hold Appeal in Abeyance, filed on May 24, 2021, and his Reply to Respondents' Letter to the Court of Appeals, dated September 8, 2021.

Respondents first attempted to dismiss this Appeal on April 23, 2021, alleging three grounds. 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). Respondents neither objected nor moved for reconsideration of said Order. Respondents waited until the final briefing to pursue the issue which this Honorable Court is presumed to have considered and ruled in the negative.

Appellant believed the Honorable Court could have honored Appellant's earlier request to hold the Appeal in 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 reiterates his position that in as much as Form 4, dated April 21, 2016, and, Order, dated December 16, 2019, cannot be considered "full and complete order or judgment", then they could not have been the basis of a notice of appeal. Thus, this Appeal is premature.

Furthermore, Appellant submits the Circuit Court's Sanctions Order was null and void having lost its jurisdiction over the subject matter of the case and the person of the Appellant when it rendered the same. As a necessary, any judgment and all subsequent proceedings thereof, are considered void. State ex. rel. Turner v. Briggs, 971 P.2d 581 (Wash. App. Div. 1999).

Appellant respectfully requests this Honorable Court consider all the circumstances attendant in this case and rule in the interest of justice.

CONCLUSION

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

Anderson, South Carolina
September 24, 2021

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