The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 23, 2013

The Honorable Jackie S. Bowers
PO Drawer 10
Newberry SC 29108-0010

REMITTITUR

Re: Bennie Mitchell v. Joy Holston
Lower Court Case No. 0000CP3600000
Appellate Case No. 2012-213274

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Bennie D. Mitchell, 278318

The South Carolina Court of Appeals

Bennie D. Mitchell, Appellant,

v.

Joy E. Holston and Desiree Allen, Respondents.

Appellate Case No. 2012-213274

The Honorable [JudgeNm]
[County] County
Trial Court Case No. [LCTCaseNo]

ORDER

Appellant has failed to submit the filing fee for the notice of appeal, as required by Rule 203 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

FILED
3-28-13

Columbia, South Carolina

cc:
Bennie D. Mitchell, 278318
Jackie S. Bowers

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CASE NO. _____-CP-36-_____
	)	
	)	
	)	
Bennie D. Mitchell,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER DENYING MOTION TO PROCEED WITHOUT COSTS AND ORDER OF DISMISSAL
	)	
Joy E. Holston and Desiree Allen ,	)	
	)	
Defendants.	)	
	)	

FILED
NEWBERRY COUNTY
2012 SEP 27 A 11:42

This matter comes before the Court on Plaintiff's motion to proceed *in forma pauperis* with a Declaratory Judgment action. In denying Plaintiff's motion and dismissing the action, I find as follows:

1. In essence, Plaintiff seeks a declaration that Defendants were negligent in preparing a transcript of his trial for first degree burglary and possession of burglary tools. See State v. Mitchell, Op. No. 5009 (S.C. Ct. App. filed July 25, 2012) (Shearouse Adv. Sh. No. 25 at 69) (upholding conviction). Plaintiff's cause of action allegedly arises from "substantial and significant omissions and inaccuracies" in the transcript in his possession. (Plaintiff's Complaint at 2). In reality, Plaintiff bases his claim on differences between his recollection of the trial and the verbatim record produced by defendant Holston. The Court has reviewed Plaintiff's three (3) alleged omissions or inaccuracies. Even assuming, *arguendo*, that the record should read as Plaintiff desires, the discrepancies he highlights are neither substantial nor significant.

2. Defendants in this action are entitled to absolute judicial immunity for their actions relating to the preparation of a transcript. Defendants are employees of the courts of

South Carolina. S.C. Code Ann. § 14-15-15 (Supp. 2011). As such, they have absolute immunity under the Tort Claims Act and under the common law. See S.C. Code Ann. § 15-78-60(1) (2005); accord O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689 (Ct. App. 1998).

3. Defendants are also afforded judicial immunity based on their status as court representatives who perform at the court's discretion. Our Supreme Court stated this principle in Fleming v. Asbill, a case granting immunity for Guardians *ad litem*:

> "Because one of the guardian's roles is to act as a representative of the court, and because this role can only be fulfilled if the guardian is not exposed to a constant threat of lawsuits from disgruntled parties, a finding of quasi-judicial immunity is necessary. Such a grant of immunity is crucial in order for guardians to properly discharge their duties. The immunity to which guardians ad litem are entitled is an absolute quasi-judicial immunity. See Hartline v. Clary, 141 F.Supp. 151 (E.D.S.C.1956) (Judicial officers, quasi-judicial officers, judges, prosecuting attorneys, executive and ministerial officials of the government are immune from civil suit for acts committed by them in the performance of their official duties.)"

326 S.C. 49, 57, 483 S.E.2d 751, 755-56 (1997). If Guardians *ad litem*, who are more akin to advocates, enjoy absolute immunity, then so should court reporters, who likewise serve at the pleasure of the court.

4. Even if Plaintiff had filed a viable suit, he would not be entitled to proceed *in forma pauperis*. Plaintiff has failed to show his suit is "specifically authorized by statute or required by constitutional provisions." Martin v. State, 321 S.C. 533, 536, 471 S.E.2d 134, 135 (1995). No statute allows waiver of filing fees for negligence actions such as Plaintiff's. Likewise, Plaintiff has not shown a deprivation of a constitutional or fundamental right. See Sullivan v. S.C. Dept. of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003).

5. Finally, the Court notes that none of the discrepancies Plaintiff alleges would affect the outcome of his trial, his appeal, or his post-conviction applications. He complains that the transcript does not accurately reflect the seating arrangements in the court room, the

congeniality of his attorney, or his behavior during sentencing. As far as the Court can discern, none of these alleged discrepancies hinder Plaintiff from challenging his conviction or sentence. See Gunter v. State, 267 S.C. 486, 489, 229 S.E.2d 723, 725 (1976). (indigent need only be afforded "an adequate opportunity to present (one's) claim fairly" and are not entitled to a transcript merely to comb the record in the hope of discovering some flaw). Furthermore, Defendant Holston prepared her transcript in the manner prescribed by the Court Reporters Manual. See Rule 607(c), SCACR. Because Defendants complied with state law, Plaintiff's suit is without merit. Cf. Richardson v. Stewart, 386 S.C. 282, 688 S.E.2d 124 (2010) (waiver of costs denied based on frivolous and abusive nature of petitioner's filings).

WHEREFORE, Bennie D. Mitchell's motion to proceed *in forma pauperis* is **DENIED** and Plaintiff's action is **DISMISSED**.

IT IS SO ORDERED.

Frank R. Addy, Jr.
Circuit Court Judge
Eighth Judicial Circuit

September 24, 2012
Greenwood, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. _____ CP-36-_____

Bennie D. Mitchell

PLAINTIFF(S)

Joy Holston

Desiree Allen

DEFENDANT(S)

FILED
NEWBERRY COUNTY
2012 OCT 15 A 11:29
JACKIE S. BOWERS
CLERK OF COURT

I, Jackie S. Bowers, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy of the original on file in this office.

OCT 15 2012

Clerk of Court

Submitted by: Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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: This matter comes before the court on Plaintiff's Rule 59, SCRCP motion to alter or amend the court's September 24, 2012, order denying Plaintiff's request to proceed without costs and dismissal of his action. Because Plaintiff failed to pay the motion's fee required for a Rule 59 motion, failed to pay the filing fee for the original action, and for the reasons stated in the original order, Plaintiff's motion is denied. Although the court commends Plaintiff for his research skills in citing Antoine v. Byers & Anderson, Inc., 508 U.S. 429, for the proposition that court reporters are not entitled to absolute judicial immunity, the Court reviewed that case before issuing its initial order and found it sufficiently distinguishible and unpersuasive in interpreting South Carolina law. Antoine involved a situation where the court reporter was purportedly negligent in failing to provide a complete, verbatim transcript in a timely manner. In the present case. Plaintiff takes issue with the record itself, alleging that the verbatim record, which as been certified as a true, accurate, and correct record of the court's proceedings, is inaccurate based upon his recollection of the proceedings. To afford Plaintiff an opportunity to litigate the contents of the court's certified transcript would essentially grant Plaintiff a second trial and would encourage other similarly situated individuals, who were duly convicted of their crimes, to relitigate the very contents of the court's official record. Importantly, in the present case, documents filed by Plaintiff indicate that Defendant court reporter followed the proper procedure upon receiving Plaintiff's objection to certain portions of the transcript and made some minor corrections. Accordingly, this court declines to permit Plaintiff's filing (and to require Defendants' answering) of Plaintiff's complaint. Therefore, Plaintiff's motion to alter or amend the court's prior order is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Any further filings in this matter must be accompanied by the

appropriate filing fee.

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	2159 **Judge Code**	10-12-2012 **Date**

For Clerk of Court Office Use Only

This judgment was entered on the 15th day of Oct., 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 15th day of Oct., 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Bennie Mitchell #278318
MCCI / Unit 225-B
386 Redemption Way
McCormic, SC 29899

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

/s/ Jackie D. Bowers
CLERK OF COURT

Court Reporter: