

# COURT OF APPEALS OF GEORGIA

## RETURN NOTICE

May 8, 2015

To: Mr. Wesley A. Hostzclaw, #0044378, Main Detention Center, Post Office Box 24716,  
West Palm Beach, Florida 33416

Case Number: \_\_\_\_\_ Lower Court: \_\_\_\_\_ County Superior Court

Court of Appeals Case Number and Style: \_\_\_\_\_

Your document(s) is (are) being returned for the following reason(s).

- There is no case pending in the Court of Appeals of Georgia under your name.**
- A Notice of Appeal is filed with the clerk of the trial court and not with the Court of Appeals of Georgia. See OCGA §5-6-37.** Once the trial court clerk has received and filed the Notice of Appeal, the trial court clerk will prepare a copy of the record and transcripts as designated by the Notice of Appeal and transmit them to this Court. Once the Notice of Appeal is docketed in the Court of Appeals of Georgia, a Docketing Notice with the Briefing Schedule and other important information is mailed to counsel for the parties or directly to the parties, if the parties are representing themselves. You do not need to provide this Court with a copy of the Notice of Appeal you filed with the superior court.
- The Notice of Appeal must include a proper Certificate of Service.** A Certificate of Service must show service to the opposing counsel and contain the counsel's full name and complete mailing address. The opposing counsel must actually be served with a copy of your filing.
- An Application for Writ of Habeas Corpus should be filed in the superior court of the county in which you claim you are illegally detained.** An appeal from a denial of an Application for Writ of Habeas Corpus is to the Supreme Court and not the Court of Appeals.
- An Application for Writ of Mandamus should be filed in the superior court of the county official whose conduct you intend to mandate.** An appeal from a denial of an Application for Writ of Mandamus is to the Supreme Court and not the Court of Appeals.
- Your appeal was disposed by opinion (order) on \_\_\_\_\_.** The Court of Appeals \_\_\_\_\_  
divesting this Court of jurisdiction. The case decision is therefore final.
- Your mailing/documents are styled, "In the Superior Court of Paulding County" which indicates you intended to file your papers in another court rather than the Court of Appeals of Georgia. The address of the Clerk of the Superior Court of Paulding County is: Ms. Treva W. Shelton, Clerk, Paulding County Superior Court, Paulding County Judicial Building, 280 Constitution Boulevard • Room 1023, Dallas, Georgia 30132.**
- If an attorney has been appointed for you and you are concerned with the representation provided by that attorney, you should address that issue to the trial court.** As long as you are represented by an attorney, you cannot file pleadings on your own behalf. Your attorney must file a Motion to Withdraw as Counsel and it must be granted, before you can file your own pleadings in this Court.
- A request for an out-of-time appeal should be made to the trial court from which you are appealing.** If your motion is denied by the trial court, you can file an appeal of that decision by filing a Notice of Appeal with the clerk of the superior court.

IN THE Superior Court OF Paulding  
County IN AND FOR THE STATE OF  
GEORGIA

State of Georgia  
v,

CASE NO: 14-Civ-1828TB

\$10,502 U.S. Currency  
Claimant Wesley A. Hartzelaw

RECEIVED  
2015 MAY -6 AM 11:02  
CLERK OF SUPERIOR COURT  
PAULDING COUNTY, GEORGIA

Directions To Clerk  
Designation To Civil Court Reporter  
Pursuant To OCGA § 5-6-37

1.) Designation:

Comes now the Claimant in Propria Persona and files this designation to Approved Court Reporter, Civil Reporter, or Approved transcriptionist, and directs said (PERSON) or (PERSONS) to transcribe the following portions of the case proceedings that ARE to be used in this Appeal:

(1.) October 14, 2014, any hearing - hearings conducted by the Honorable Tommy J. BEAVERS in

CASE NO: 14-CIV-1828TB

- (2) October 22, 2014, Any HEARING AND HEARINGS CONDUCTED by THE HONORABLE Tommy J. BEAVERS in CASE NO: 14-CIV-1828TB
- (3) February 17<sup>th</sup>, 2015, Any HEARING OR HEARINGS CONDUCTED by THE HONORABLE Tommy J. BEAVERS in CASE NO: 14-CIV-1828TB
- (4) February 23, 2015, Any HEARING OR HEARINGS CONDUCTED by THE HONORABLE Tommy J. BEAVERS ON AND IN CASE NO: 14-CIV-1828TB
- (5), Any AND All motions AND LETTERS Submitted by Claimant BETWEEN October 14, 2014 AND February 23, 2015 ARE to be made PART of THE RECORD TRANSMITTED AND SUBSCRIBED to THE Georgia Court of Appeals herewith. . . AS PART of THE APPELLATE RECORDS.

### Certificate of Service

I, Wesley A. Hostzclaw certify that a copy of the foregoing motion has been sent via U.S. mail to Steven J. Messinger at 280 Constitution Blvd Suite 2072, Bar # 50323, Dallas TX 75201 on this 9<sup>th</sup> day of April 2015 Wesley A. Hostzclaw

Wesley A. Hostzclaw  
~~Wesley A. Hostzclaw~~  
#0044278 - Cert 824  
Palm Beach County Pal  
3228 Gun Club Rd  
W. P. B. FL 33416

IN THE SUPERIOR COURT OF Paulding County  
IN AND FOR THE STATE OF GEORGIA

State of Georgia

vs.

\$10,502.00 U.S. CURRENCY  
CLAIMANT, WESLEY A. HOSTZCLAW

L.T. CASE NO:  
14-CIV-1828 T.B.

RELATED NOTICE OF APPEAL  
AND MEMORANDUM OF LAW

NOTICE IS GIVEN THAT CLAIMANT, WESLEY ANTHONY  
HOSTZCLAW IN PRO SE APPEALS TO THE GEORGIA  
COURT OF APPEALS AT 417 TRINITY AVE, S.W. SUITE  
501 ATLANTA GEORGIA 30334 PURSUANT TO THE  
RULE - SEE OCMR § 5-6-37... from the Court  
ORDER of FEBRUARY 23, 2015, Judge Tommy S. BE  
AVERS, Chief Judge in the Superior Court of  
Paulding County Georgia.

CONFIRMED COPIES OF ORDERS DESIGNATED IN THE  
NOTICE OF APPEAL SHALL BE ATTACHED IN ACCORD-  
AND WITH RULE OCMR § 5-6-37.

## NO Court Order

The court will find from its records that this claimant has never been served with the court order of February 23, 2015.

The claimant has been incarcerated at and in the Palm Beach County Jail since December 11, 2015. Through (5) motions to this court claimant made this court fully aware of his location.

The service certificate of service for the court order was for -

Wesley A. Heltzclaw  
4610 Weyburn Lane  
Stone Mountain Ga. 30083

And claimant was and is in Florida at the time that it was sent to that address. Claimant has never been served a copy.

Claimant's (30) days to file appeal begins on the day he is served with the court order. So this claimant's motion "Notice To File Related Appeal" is timely filed in this matter.

THE NATURE OF THE ORDER IS FINAL IN THE CIVIL ACTION. SEE ATTACHED MEMORANDUM OF LAW IN SUPPORT OF THIS MOTION AND STATEMENT OF FACTS.

Wesley A. Hestzelaw  
Wesley A. Hestzelaw  
#0044378-201132A  
Main Detention Center  
P.O. Box 24716  
West Palm Beach, FL  
33416

### CERTIFICATE OF SERVICE

I Wesley A. Hestzelaw do hereby certify that a copy of this Motion has been sent by U.S. mail to opposing counsel Steven J. Messinger, Georgia Bar #50325 - Address 200 Constitution Blvd Suite 2072, Dallas Ga. 30132 along with the Memorandum of Law on this 8<sup>th</sup> day of April 8<sup>th</sup>, 2015.

Wesley A. Hestzelaw

MEMORANDUM OF LAW IN  
SUPPORT OF MOTION FOR  
RELATED APPEAL

Facts OF THE CASE

(1)

THIS CASE WAS SCHEDULED FOR FINAL HEARING August 12, 2014. CLAIMANT could not APPEAR due to physical illness AND BEING HOSPITALIZED. THE STATE did not OPPOSE THE DELAY AND THE HEARING WAS RESCHEDULED FOR OCTOBER 14, 2014.

(2)

ON OCTOBER 13, 2014 PLAINTIFF WAS ARRESTED AND PLACED IN CUSTODY OF THE DEKALB COUNTY JAIL. PLAINTIFF HAD NO WAY TO NOTIFY THE COURT OF HIS INCARCERATION. CLAIMANT INFORMED CO HORTON OF DEKALB COUNTY JAIL OF HIS OCTOBER 14, 2014 COURT DATE IN PAULDING COUNTY, ASKING WOULD THEY ALLOW HIM TO CALL THAT CLERK INFORMING THEM OF HIS WHEREABOUTS. HE WAS

informed by O'Hanlon he would not be allowed to call any one nor would any from the jail do so on his behalf and short of a court order he would not be transported from DeKalb County Jail to Paulding County for court. So this claimant was unable to attend the October 14, 2014 hearing due to his incarceration.

(3)

Upon release from DeKalb County Jail Plaintiff wrote a motion - or his guardian ad litem on his behalf submitted a motion "Notice of Appeal and To Reopen Case". The Court rescheduled another hearing for February 17<sup>th</sup>, 2015.

(4)

On December 14, 2014 Claimant was arrested here in Palm Beach County Florida. From January to February 17<sup>th</sup>, 2015 Plaintiff submitted over five motions informing the Court of his incarceration.

can requesting that telephonic or video conferencing hearing be arranged for the February 17<sup>th</sup>, 2015 scheduled court date... As well claimant wrote Judge Beavers two letters and his wife Quintella Ragland also called Cathy White - judge Beavers judicial assistant numerous times as phone records will show.

Each motion and letters were ignored by the court. Claimant's wife even spoke with the Chief Assistant District Attorney as phone records will show, 3 to 4 times between December 14, 2014 and February 17, 2015, so the court in Paulding County Georgia knew at all times (Plaintiff); Claimant in these matters is incarcerated and was entitled to a telephonic or video conferencing hearing on February 17<sup>th</sup>, 2015.

(5)

In the Court Order of February 23, 2015 signed by Judge Beavers and ADA Messenger it clearly

States in PARAGRAPH (4) - "quote"

" Claimant did NOT APPEAR for the February 17<sup>th</sup>, 2015 hearing - ALTHOUGH THERE WAS SOME INDICATION THAT CLAIMANT WAS INCARCERATED IN FLORIDA ON THAT DATE, THIS WAS THE THIRD TIME HE FAILED TO APPEAR FOR THIS CIVIL HEARING". Unquote.

(6)

A Claimant's failure to APPEAR DEPENDING UPON CIRCUMSTANCES IS EXCUSABLE if for good cause shown. A Defendant/ Claimant's or Petitioner's Hospitalization or INCARCERATION does constitute a good cause shown because such no show is not willful abandonment of a Claimant's claims before the Court, and the Court is legally bound judicially to stay such court actions until its legally feasible for the Claimant to be able to participate in the proceedings without constraints.

(7)

The State has not demonstrated that the Claimant in this present case "Willfully Did Not Appear Before The Court On February 17, 2015, just as it didn't for the missed dates of August 12, 2014 when Claimant was hospitalized, October 14, 2014 when Claimant was incarcerated. The State would in no way be prejudiced by another date for hearing being set on a false-phonetic/video conference hearing being held. As the State admits its knowledge that Claimant is incarcerated and was incarcerated on February 17, 2015. A further delay would not have proved prejudicial to the State.

In *Ross v. Moffitt* 417 U.S. 600 (1974) The U.S. Supreme Court states "The State 'CANNOT' adopt procedures which leave an indigent defendant entirely cut off from any appeal at all, by virtue of his indigency." *LANE v. BREWSTER*

372 U.S. at 481, 83, S. Ct. at 771. ...

1.) The facts of this case demonstrate that this claimant is presently incarcerated in the State of Florida, and despite claimant having filed (3) motions with this court to create a telephonic or video conference on the date of and for the date February 17<sup>th</sup>, 2015; to fully participate in the hearing, this court took no notice of said motions, not contacting claimant at his current address which each motion noted to this court.

Pro Se Complaints  
2.) The United States Supreme Court states  
"The hand written pro se document 'Is To Be Liberally Construed.' As the Court  
unanimously held in HAINES v. KERBER, 404  
U.S. 519, 92 S.Ct. 594, 30 L.Ed. 2d 652  
(1972), 'A pro se complaint however in-  
adequately plead, 'Must be held to less string-  
ent standards than formal pleadings

Drafted By Lawyers And Can "Only Be Dismiss-  
ed For Failure To State A Claim If It Appears  
Beyond Doubt That Plaintiff Can Prove No Set  
Of Facts In Support of His Claims Which Wou-  
ld Entitle Him To Relief" Id; At 520-521, 92  
S.Ct. At 596 quoting Conley v. Gibson 355,  
U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed 2d 80 (1957).

- 3) The United States Supreme Court has also stat-  
ed in Burns v. Ohio, 360 U.S. At 257, 79  
S.Ct. At 1168; "Once A State Chooses To Est-  
ablish Appellate Review, It May Not Forecl-  
ose Indigents From Access To Any Phase  
Of That Procedure Because Of Their Poverty.  
To Deny Claimant The Right To Appeal  
would Be To Act Outside This Court's  
Pendant Jurisdiction.

Memorandum of Law  
Motion To Dismiss Complaint

A motion to dismiss will be granted only where it is clear that "No Set of Facts Consistent with the Allegations Could Provide A Basis For Relief".

It is well established that a complaint should not be dismissed for failure to state a claim pursuant to Fed. R. Civ. Pro 12(b)(6) "Unless it appears beyond A doubt that Plaintiff can prove "No Set of Facts That Would Entitle Him To No Relief". . . BRADBERY v. Pinellas County, 789 F. 2d 1513, 1515 (11th Cir. 1986) quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed 2d 80 (1957). For purposes of a motion to dismiss, A Court (Must) construe the complaint in the light most favorable to the plaintiff and accept as true all facts alleged by the plaintiff. Hishon v. King, 467 U.S. 69,

73, 104 S.Ct. 2229, 81 L.Ed 2d 59 (1984). The issue is not whether the (claimant) Plaintiff will ultimately prevail (But) "Whether the claimant is entitled to offer evidence to support the claims". Little v. City of North Miami, 805 F.2d 962, 965 (11th Cir. 1986)

## Attachments To The Complaint Are Considered Part Of The Pleadings

On a motion to dismiss, the Court must consider documents attached to the complaint or directly referred to in the complaint, "Exhibits attached to a complaint or directly referred to in a complaint are properly considered part of the pleadings for "All purposes" including a motion to dismiss by an opposing party. Solis-Ramirez v. U.S. Dept of Justice, 758 F.2d 1426, 1430 (11th Cir. 1985). Attachments to a complaint are to be

CONSIDERED IN THE SAME MANNER AS THE COMPLAINT  
ITSELF. RHODES v. Omega Research Inc., 38 F. Supp.  
2d 1353, 1357-58 (S.D. Fla 1999).

SEE ATTACHED DOCUMENTS:

- 1.) LETTER to Quintella Ragland from Attorney Frank BAPS  
March 9, 2015.
- 2.) LETTER to Stauding County Sheriff Mary Gullledge to  
VERIFY CLAIMANT'S CLAIM to his money from Attorney  
FRANK BAPS, March 18, 2014.
3. Copy of check ENDORSED by CLAIMANT and Quintella  
Ragland for \$24,021.07 dollars and cents.
4. Affidavit from Attorney FRANK BAPS verifying  
HE PERSONALLY, when CLAIMANT was with him at  
THE BANK was given the money in his presence.
5. LETTER to CLAIMANT from Frank BAPS to CLAIMANT  
CONCERNING THE money given to him by FRANK  
BAPS.

Claimant states, I am entitled to have a full and fair hearing upon the issue of the money that was taken off my person.

The United States Supreme Court has clearly articulated; "The Court has consistently held that some kind of hearing is required at some time before a person is finally deprived of his property interest. Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168, 71 S. Ct. 624, 646, 95 L. Ed 817 (1951);

The requirement for some kind of hearing applies to the taking of private property, Grannis v. Ordean, 234 U.S. 385, 34 S. Ct. 779, 58 L. Ed. 1363 (1914), the revocation of licenses, In re Ruffalo, 339 U.S. 544, 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968) the operation of state dispute-settlement mechanisms, when one person seeks to take property from another,

OR TO GOVERNMENT-CREATED JOBS HELD ABSENT "CAUSE" FOR TERMINATION, SEE... BOARD OF REGENTS v. ROTH 408 U.S. 564, 92 S.Ct. 2781, 33 L.Ed.2d 548 (1972).

THE COURT FURTHER STATED "WE HAVE OFTEN REPEATED THAT THE VERY NATURE OF "DUE PROCESS NEGATES ANY CONCEPT OF INFLEXIBLE PROCEDURES UNIVERSALLY APPLICABLE TO EVERY IMAGINABLE SITUATION"; CAFETERIA AND RESTAURANT WORKERS v. MCKEY 367 U.S., AT 895, 81 S.Ct. AT 1748.

IN ORDER TO SURVIVE A MOTION TO DISMISS

A PLAINTIFF'S "FACTUAL ALLEGATIONS MUST BE ENOUGH TO RISE ABOVE THE SPECULATION LEVEL, ON THE ASSUMPTION THAT THE ALLEGATIONS IN THE COMPLAINT ARE TRUE (EVEN IF DOUBTFUL IN FACT)." SEE... BELL ATL. CORP. v. TWOMBLY, 550 U.S. 544, 555, 127 S.Ct. 1955, 1965 167 L.Ed. 2d 929 (2007) (CITATION OMITTED). TO

Survive a motion to dismiss, therefore, a plaintiff must plead a claim for relief that is plausible on its face." Id. at 570, 127 S.Ct. at 1974.

The claimant in this case it was alleged that money taken off my person was the proceeds of illegal drug activities. However I've produced solid documentation establishing that that \$10,000 and \$500 hundred dollars was given to me out of the bank by my attorney Frank Bpps from the trust fund established for me as a result of my father's death accidentally. It's all I have done to provide an affidavit from attorney Frank Bpps and the copy of the actual check cashed by the bank providing me with the \$10,000 - \$500 hundred dollars.

The state would have the court ignore all these facts which benefit the monies to be

returned to Plaintiff.

Plaintiff is ENTITLED to FURTHER APPELLATE REVIEW upon THESE ISSUES AND RESPECTFULLY request that this Court forward this Notice of APPEAL to THE APPROPRIATE APPELLATE Court.

### Certificate of Service

I Wesley A. Hostzclaw hereby certify that a correct copy of this foregoing motion has been sent to Steven J. Messenger on this 8th day of April 2015 at 280 Constatution Blvd Suite 2027 Dallas TX 75201  
Wesley A Hostzclaw

CC: Judge T. BEAVERS  
Steve Messenger

Respectfully  
Submitted

Wesley A. Hostzclaw  
Wesley A. Hostzclaw  
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