

# COURT OF APPEALS OF GEORGIA

## RETURN NOTICE

April 2, 2015

To: Mr. Wesley A. Hostzclaw, #0044378 W1B, 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 \_\_\_\_\_ . The remittitur issued on \_\_\_\_\_ divesting this Court of jurisdiction. The case decision is therefore final.
- Your mailing/documents indicate that you intended to file your papers in another court rather than the Court of Appeals of Georgia. The address of the Clerk of the \_\_\_\_\_ is: \_\_\_\_\_
- 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 IN And  
For Paulding County State of Georgia

State of Georgia  
vs.

CASE NO: 14CV-1828TB

\$10,500 DOLLARS  
And

Potential Claimant  
Wesley A. Hostzclaw

RECEIVED IN OFFICE  
2015 APR -2 AM 11:36  
CLERK OF SUPERIOR COURT  
COUNTY OF PAULDING, GEORGIA

## Notice Of Appeal

Came now Wesley A. Hostzclaw filing this Notice of Appeal in pro se in the above styled case; so stating for the record that Plaintiff has not personally been served with a true and correct copy nor original court order which denied Plaintiff's Motion To Reopen The Case or Notice of Appeal by the Honorable Tommy Beavers - Superior Court Chief Judge. Plaintiff's wife

QUINTELLA BELL RAGLAND informed him via phone  
A WEEK Ago that this court DENIED the motion  
based upon the state's motion to dismiss the  
petition based solely upon the fact this present  
Plaintiff was not physically present to attend  
the hearing completely ignoring Plaintiff's Mot-  
ions in pro se requesting telephonic - video  
conferencing hearings and notifying this court  
of his physical location and physical address.  
THREE such motions and A LETTER to THE HONOR-  
ABLE Tommy BEAVERS AS Chief judge.....

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".

If 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'". BRADBERRY 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).

Judge Beavers, 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 UNIVER-SALLY APPLICABLE TO EVERY IMAGINABLE SITUATION"; CAFETERIA AND RESTAURANT WORKERS v. MCELROY 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.

Judge BEAVERS, 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 Epps 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 Epps 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.

Respectfully  
Submitted

Wesley A. Hostetler  
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West Palm Beach FL  
33416

CC: Judge T. BEAVERS  
Steve Messenger