

District Court Circuit Court

68-CV-2011-000349.00

Style of case:

STEPHEN LLOYD GILBREATH

v. ERIC C PIPPEN ET AL

CIVIL MOTION COVER SHEET

Name of Filing Party:

STEPHEN LLOYD GILBREATH, Plaintiff

Name, Address, and Telephone No. of Attorney or Party (If Not Represented).

Stephen L. Gilbreath (Pro Se)
c/o Church of God Ministry
44 Southwood Drive
Alabaster, AL 35007-5380
Attorney Bar No.: 0000000

Oral Arguments Requested

TYPE OF MOTION

Motions Requiring Fee

Motions Not Requiring Fee

- Default Judgment (\$50.00)
Joinder in Other Party's Dispositive Motion (i.e. Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
Judgment on the Pleadings (\$50.00)
Motion to Dismiss, or in the Alternative Summary Judgment(\$50.00)
Renewed Dispositive Motion(Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
Summary Judgment pursuant to Rule 56(\$50.00)
Motion to Intervene (\$297.00)
Other
pursuant to Rule (\$50.00)
*Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.
Local Court Costs \$

- Add Party
Amend
Change of Venue/Transfer
Compel
Consolidation
Continue
Deposition
Designate a Mediator
Judgment as a Matter of Law (during Trial)
Disburse Funds
Extension of Time
In Limine
Joinder
More Definite Statement
Motion to Dismiss pursuant to Rule 12(b)
New Trial
Objection of Exemptions Claimed
Pendente Lite
Plaintiff's Motion to Dismiss
Preliminary Injunction
Protective Order
Quash
Release from Stay of Execution
Sanctions
Sever
Special Practice in Alabama
Stay
Strike
Supplement to Pending Motion
Vacate or Modify
Withdraw
Other
pursuant to Rule (Subject to Filing Fee)

Hearing Date: 28-July-2011

Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees)

Date: 27-July-2011

Signature of Attorney or Party:

Stephen L Gilbreath

Digitally signed by Stephen L Gilbreath
DN: o, ou=Church of God Ministry, cn=Stephen L Gilbreath
Date: 2011.07.27 16:35:48 -05'00'

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.

**IN THE CIRCUIT COURT
FOR JEFFERSON COUNTY, BESSEMER DIVISION, ALABAMA**

STEPHEN LLOYD GILBREATH,)

Plaintiff,)

vs.)

ERIC C. PIPPEN,)
HUGH McCALL,)
JACK M. CURTIS, et al.,)

Defendants.)

**Civil Action Number:
CV 2011-0349**

EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER

COMES NOW the plaintiff, pursuant to Rule 7 and Rule 65(b) of the Alabama Rules of Civil Procedure, and moves the Circuit Court of Jefferson County, Bessemer Division, in the State of Alabama, for a Temporary Restraining Order against Defendants Sandra McKinney and Gene McKinney, II; the owners of McKinney Towing (hereafter "Defendants") preventing Defendants from selling Plaintiff's vehicle. Such motion is being made upon the following grounds:

1. Defendants are in possession of a vehicle registered to the Plaintiff;
2. Defendants' possession of Plaintiff's vehicle was secured on the twenty-third day of April 2011 in violation of Section 13-32-2(a) of the Code of Alabama 1975.
3. Instead of reconciling the violation of Section 13-32-2(a) by returning Plaintiff's vehicle to Plaintiff, Defendants have verbally threatened to sell Plaintiff's vehicle on 28-July-2011*;
4. Defendants have not complied with the written notice of sale or notice of time and place provisions of Section 13-32-4(a)(1-4) of the Code of Alabama 1975;
5. Defendants have actual knowledge of this action in that Sandra McKinney was served with the Summons and Complaint in this action on the 5-July-2011, and Defendant Gene McKinney, II, was served with the same on the 11-July-2011.
6. None of the defendants has responded yet to the Complaint in this action.
7. Failure to grant the requested Temporary Restraining Order could result in immediate and irreparable loss to this moving Plaintiff in that a main purpose of Plaintiff's action is the seeking of a Court order to the Defendants to return to Plaintiff his vehicle – the call for tow of which was made in violation of Section 13-32-2(a) of the Code of Alabama 1975.

Rule 65(b) of the Alabama Rules of Civil Procedure allows a Temporary Restraining Order to be granted without written or oral notice to the adverse party, or that party's attorney (attorneys of defendants are unknown to Plaintiff at this time in that the Plaintiff has received no notice of any defendant in this action as having yet responded to the Complaint). I have not given notice to Defendants or any defendant out of fear that it might trigger their memory of Defendant Sandra McKinney having told me she would sell my vehicle on 28-July-2011 and if she sold it to a third-party before I could cause a copy of the Court's Order restraining such sell, it would defeat the purpose of my motion ab initio.

*On or about the twenty-eighth day of June 2011, Defendants' son, Gene McKinney, III, made a video tape of Sandra McKinney saying in the presence of Plaintiff that the towing company would be selling Plaintiff's vehicle on the twenty-eighth day of July 2011. Plaintiff is concerned that said Defendant or her co-owner-of-the-towing husband (Gene McKinney, II) might try to try to act in contempt of this Court's authority and jurisdiction by carrying through and improperly conducting a sell of Plaintiff's vehicle unless this Court issues an Order restraining such activity or sale.

Plaintiff asserts and confirms under penalty of perjury under the laws of the State of Alabama that his affidavit of facts made in this application are true and correct to the best of his information and belief.

This application is requesting protection from a disposition of assets – the concern of which is the main purpose of the Complaint in this action.

Dated: 27-July-2011



Stephen L. Gilbreath, Plaintiff in pro se

s/Stephen L. Gilbreath
Stephen L. Gilbreath
Pro Se for Stephen L. Gilbreath
44 Southwood Drive
Alabaster, Alabama 35007-5380
Telephone: (205) 461-6366
Fax: none
pro-se
E-mail: slg@cogtv.org

**IN THE CIRCUIT COURT
FOR JEFFERSON COUNTY, BESSEMER DIVISION, ALABAMA**

STEPHEN LLOYD GILBREATH,)

Plaintiff,)

vs.)

ERIC C. PIPPEN,)

HUGH McCALL,)

JACK M. CURTIS, et al.,)

Defendants.)

Civil Action Number:

CV 2011-0349

DECLARATION OF STEPHEN L. GILBREATH

I, Stephen L. Gilbreath, declare:

- 1 I am the registered owner of the vehicle that is the subject of my Complaint filed in this action. The subject vehicle is identified as a red Chevrolet Z-71 pickup with vehicle identification number (“VIN”) of 1GCEK14K4RZ251744 (“the vehicle” or “vehicle”) (see Exhibit 2 in the Complaint, which is a true and correct copy of my registration). My brother and I inherited the vehicle from my dad who died on the eighth of June 2008. My brother signed it over to me shortly before I commenced this action.
- 2 On or about 23-April-2011 my mechanic was testing driving the vehicle. He was forced off road when an oncoming car veered into his lane in a curve on Griffith road. The place where he went off road is a wooded area of land owned by his wife’s family (the Griffiths). The vehicle became immobilized when the rear axle came loose from the drive shaft as the car went off road.
- 3 The mechanic, Al Britain, who worked for Amison Transmission in Bessemer, stated in his SR-13 filing (please see Exhibit 1 attached to the Complaint) that on 23-April-2011 he stayed in the vehicle for six hours until morning light about 6:15 a.m. and then went for his granddad and their tow truck. When he and his granddad returned at about 8:15 a.m., the vehicle was gone (had been towed already by McKinney Wrecker Service).
- 4 On or about 19-May-2011, I took pictures of the vehicle at McKinney Wrecker Service in West Blocton and spoke with Sandra McKinney who said that she was co-owner of

McKinney Wrecker Service along with her husband whose name she gave as Gene McKinney.

5 When I tried to look up and verify the ownership records of the company, I was only able to find an IRS filing in the UCC records of the State of Alabama showing McKinney Wrecker Service in West Blocton as IRS Debtor and on the same form at the same address one Milton E. McKinney, Jr. I plan to inquire as to who that is during discovery to Defendant Sandra McKinney who told me on or about 19-May-2011 that she runs the business and makes all the decisions for the business – that her husband is simply a co-owner with her (according to her words).

6 On or about 28-June-2011, I went to McKinney Towing in West Blocton. Defendant Sandra McKinney's son who identified himself to me as Gene McKinney, III, videotaped his mother Sandra McKinney saying to me that unless I paid her \$1,580 in cash plus \$20 per day up until July 28, 2011 (when \$2,180 would then be owing for initial towing charges of \$300, plus \$20 per day storage), then she was going to sell the vehicle on 28-July-2011. Immediately following her telling me that with video camera running, I was escorted to the vehicle where I retrieved the license plate from the rear of the vehicle (which is what I mainly went there for – it had been my dad's special plate for more than a decade).

7 When I learned just this afternoon that a Milton E. McKinney, Jr., is the only name showing with McKinney Wrecker Service – both showing as in the "Debtor Information" boxes on a UCC statement filed on 11-February-2011 by the IRS and showing as still active through today, it frightened me that Defendant Sandra McKinney may not have been truthful with me about the name of her husband as being Gene McKinney and the certified service of the Complaint to Gene Mckinney came back marked "refused." This caused me to be reminded about Defendant Sandra McKinney's statement that she would sell the vehicle on 28-July-2011.

I declare under penalty of perjury under the laws of the State of Alabama that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: 27-July-2011



Stephen L. Gilbreath, Plaintiff in pro se

s/Stephen L. Gilbreath
Stephen L. Gilbreath
Pro Se for Stephen L. Gilbreath
44 Southwood Drive
Alabaster, Alabama 35007-5380
Telephone: (205) 461-6366
Fax: none
pro-se
E-mail: slg@cogtv.org



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UCC Details

UCC Filing 11-0079359	
Filing Type	US Federal Tax Lien
Total Pages	2
Original Filing Date/Time	2-11-2011 11:05 AM
Status	Active
Expiration Date	2-11-2023

Financing Statement	
Filing Date/Time	2-11-2011 11:05 AM
Pages Filed	1
Debtor Information	MCKINNEY MILTON E JR 4901 TRUMAN ALDRICH PKWY WEST BLOCTON, AL 35184-2101
Debtor Information	MCKINNEY WRECKER SERVICE 4901 TRUMAN ALDRICH PKWY WEST BLOCTON, AL 35184-2101
Secured Party Information	INTERNAL REVENUE SERVICE 600 S MAESTRI PL STOP 31 NEW ORLEANS, LA 70130

Termination	
Filing Date/Time	5-26-2011 1:09 PM
Pages Filed	1

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Section 32-13-2

Peace officer's responsibility; lien on vehicles removed; removal by property owner, etc.; notice of removal.

(a) Any peace officer who finds a motor vehicle which has been left unattended on a public street, road, or highway or other property for a period of at least seven days, shall be authorized to cause the motor vehicle to be removed to the nearest garage or other place of safety.

[NOTE BY PLAINTIFF: The fact that the officer admits that he violated the above section 32-23-2(a) makes moot the following in that the tow was not lawfully made – AND neither have the following provisions been adhered to, which of themselves also preclude the wrecker service from making a legitimate sale of the vehicle which was unlawfully called for tow and should be returned to its owner.]

Authority to sell; notice; issuance of clear bill of sale.

(a)(1) Any automobile dealer, wrecker service or repair service owner, or any person, firm, or governmental entity on whose property a motor vehicle is lawfully towed at the written request of a law enforcement officer, or the owner or lessee of real property, or his or her agent upon which an abandoned motor vehicle as defined in subdivision (1), (3), or (4) of Section 32-13-1 has become abandoned, and who has the abandoned motor vehicle as defined in subdivision (1), (3), or (4) of Section 32-13-1 on his or her property, may sell the motor vehicle at public auction.

(b) Notice of the date, time, and place of the sale and a description of the motor vehicle to be sold, including the year, make, model, and vehicle identification number, shall be given by publication The first publication or posting, as the case may be, shall be at least 30 days before the date of sale.

Section 32-13-4

Notice of sale; hearing; appeal.

(a) Any automobile dealer, wrecker service, or repair service owner, or any person, firm, or governmental entity on whose property a motor vehicle is lawfully towed at the written request of a law enforcement officer, or the owner or lessee of real property or his or her agent upon which an abandoned motor vehicle as defined in Section 32-13-1 has become abandoned, shall give written notice to the current owners, registrants, secured parties, and lienholders of record, if any, for the motor vehicle at least 30 days prior to the date of the sale of the motor vehicle advising of all of the following items of information:

- (1) The complete description of the motor vehicle and the date and place the motor vehicle was found or taken into possession.
- (2) The approximate amount owed for the cost of repair, towing, and storage of the motor vehicle.
- (3) The location of storage of the motor vehicle.
- (4) The date, time, and place that a sale of the motor vehicle will be held.

NONE OF THE ABOVE HAS BEEN PROPERLY ADHERED TO BY DEFENDANTS

**IN THE CIRCUIT COURT
FOR JEFFERSON COUNTY, BESSEMER DIVISION, ALABAMA**

STEPHEN LLOYD GILBREATH,)

Plaintiff,)

vs.)

ERIC C. PIPPEN,)
HUGH McCALL,)
JACK M. CURTIS, et al.,)

Defendants.)

**Civil Action Number:
CV 2011-0349**

ORDER

THIS MATTER came before this Court on July _____, 2011, _____ on the "Ex Parte Application for Temporary Restraining Order" filed by Plaintiff in pro se. Having reviewed the Pleadings and Papers and good cause appearing,

THE COURT HEREBY FINDS, that the Plaintiff is the owner of a vehicle with the vehicle identification number ("VIN") of 1GCEK14K4RZ251744 (pursuant to Exhibit 2 of Complaint) which vehicle came into the possession of Defendant Sandra McKinney of McKinney Wrecker Service at 4901 Truman Aldrich Parkway, West Blockton, Alabama, on April 23, 2011, and there exists a dispute as to the authority for the tow based on Section 32-13-2(a) of the Code of Alabama 1975, and that certain Defendants desire to sell the herein-identified vehicle which vehicle is the sole asset that Plaintiff seeks to protect by the filing of the Complaint in this matter now before this Court;

THEREFORE, THE COURT ORDERS that to protect the disposition of the sole asset that pertains to the action filed in the instant matter, Defendant Sandra McKinney and all other Defendants (whether now served or to be served) are to do everything in their power to protect the subject vehicle and to prevent it from being sold until such time as this Court makes a further ruling on a Preliminary Injunction to be heard in ten days from the date hereof at 1:30 P.M.

THE COURT FURTHER ORDERS that James Robert Collins, DOB 19-February-1934, is authorized to serve a copy of this Temporary Restraining Order upon Defendant Sandra McKinney and Defendant Gene McKinney, II, or any owner or person apparently in charge of the office at McKinney Wrecker Service, 4901 Truman Aldrich Parkway, West Blocton, Alabama.

Dated: July _____, 2011

Hon. Eugene R. Verin

Plaintiff:

Stephen L. Gilbreath (Pro Se)
c/o Church of God Ministry
44 Southwood Drive
Alabaster, Alabama 35007-5380

Defendants:

Eric C. Phippen
c/o Alabama Department of Public Safety
301 South Ripley Street
Montgomery, AL 36104

Hugh McCall
c/o Alabama Department of Public Safety
301 South Ripley Street
Montgomery, AL 36104

Jack M. Curtis
c/o Alabama Department of Public Safety
301 South Ripley Street
Montgomery, AL 36104

Gene McKinney II
c/o McKinney Wrecker Service
4901 Truman Adrich Parkway
West Blocton, AL 35184

Sandra McKinney
c/o McKinney Wrecker Service
4901 Truman Adrich Parkway
West Blocton, AL 35184

Milton E. McKinney, Jr.
c/o McKinney Wrecker Service
4901 Truman Adrich Parkway
West Blocton, AL 35184