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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

S.C. Court of Appeals Case No. 2020-000968
Circuit Court Case No. 2002-CP-10-1448
and after change of venue:
Circuit Court Case No. 2007-CP-10-1444

C. Holmes, M.D,

Respondent-Appellant,

v.

Manton Grier, James Y. Becker, and
Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Appellant-Respondents.

APPELLANT'S FINAL BRIEF OF THE RESPONDENT/APPELLANT CYNTHIA HOLMES, MD

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Statement of the Case

The parties to this appeal are Dr. Cynthia Holmes (hereinafter referred to as Dr. Holmes) and Haynsworth Sinkler Boyd, P.C. (hereinafter referred to as Haynsworth Sinkler Boyd). Haynsworth Sinkler Boyd was unsuccessful in pursuing a collection of a judgment against Dr. Holmes after supplemental proceedings aimed at obtaining and selling her family home. Haynsworth Sinkler Boyd has appealed the Order of the Court dismissed their attempts to collect after the expiration of a 10-year statute of removes on the judgment. Dr. Holmes has filed a cross appeal, challenging the Orders that were issued by the Special Referee, who was presiding over the supplemental proceedings, Judge Scarborough.

In 2002, Dr. Holmes, filed suit against Haynsworth Sinkler Boyd. (R. P. 156, 172) The caption in this case also includes two individual attorneys from Sinkler Boyd, Mr. Grier and Mr. Becker. Dr. Holmes hired the law firm and the attorneys to represent her regarding claims against a hospital, East Cooper, which was attempting to deny Dr. Holmes medical privileges to perform surgery in the hospital. Dr. Holmes, in her lawsuit against the Respondents, alleged that they had committed legal malpractice when they lost a temporary injunction preserving the doctor's privileges, held off on responding to a motion by the hospital in federal court while demanding more money from Dr. Holmes until the deadline had passed to respond, losing the federal lawsuit claims, and then abandoning Dr. Holmes when the State law claims were declined by the Federal Court and needed to be filed in the Charleston County Circuit Court. (R. P. 156, 172)

In the legal malpractice suit, the Defendants, Haynsworth Sinkler Boyd, Grier, and Becker successfully convinced the Court to transfer jurisdiction to Richland County in July of 2002. (R. P. 1) Eventually, on April 6, 2007, the Richland Circuit Court changed venue again and returned the case to the Charleston County Circuit Court. (R. P. 2) Haynsworth Sinkler Boyd, Grier and Becker moved for Summary Judgment, which was denied by the trial judge, Judge Hughston. (R. P. 29) The Court granted a directed verdict, ending the jury trial before a verdict could be rendered. (R. P. 3) After the directed verdict, Haynsworth Sinkler Boyd, Grier and Becker moved for sanctions against Dr. Holmes and invoked S.C. Code 15-36-10, the South Carolina Frivolous Proceedings Sanctions Act (FPSA). Dr. Holmes responded, arguing that her claims could not be considered frivolous when the Court had found that the record presented a genuine issue of fact for trial by denying summary judgment. (R. P. 195) Ignoring this well-established law and common-sense principal, the trial judge (the same judge who had denied summary judgment) found the action to be frivolous and granted $200,000.00 in sanctions including interest, applying the 2005 version of the FPSA. (R. P. 29) Appellant appealed the directed verdict and the sanctions award, but was unsuccessful.

In 2011, the Appellate Court issued an opinion in a case called *Southeastern Site Prep Llc v. Atl. Coast Builders*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App., 2011). in which it held that the 2005 FPSA, which allowed the Court to judge whether an action was frivolous or not based on a "reasonable attorney" standard (even when applied to non-attorneys) only applied to actions which arose after July of 2005. The Appellant had filed her action in 2002. Appellant filed Rule 59(e) request for reconsideration (R. P. 216) and a Rule 60 motion to alter or amend (R. P. 220) as the 2005 statute clearly would not apply to her case. Neither were ever set for a hearing.

Several months later, Haynsworth Sinkler Boyd mailed a verified petition to Dr. Holmes on December 19, 2016 and filed a petition for supplemental proceedings. (R. P. 228) The Court appointed Judge Scarborough as a special master on 1-3-17. On January 12, 2017, Dr. Holmes moved for sanctions against Haynsworth Sinkler Boyd who, she alleged, had submitted false statements in the verified petition. (R. P. 247) On February 1, 2017, Appellant also moved for the Court to withdraw the

Order appointing a special master and commencing supplemental proceedings because it had been done while her motions to alter or amend the judgment upon which the supplemental proceedings were based were pending. Judge Scarborough, who was presiding over the supplemental proceedings as a special master then issued an ex parte order without notice or a hearing on February 9, 2017, rejecting all of Appellant's previously filed motions. His order cited to a 2009 document which he referred to as an order. The document purports to be from a case Dr. Holmes had pursued against East Cooper Hospital after having been abandoned by Haynsworth Sinkler Boyd. In that document, the Court had authorized clerks to reject any pleadings that Dr. Holmes filed pro se, relating to the challenge to the hospital's denial of her medical privileges. (R. P. 69) On the following day, the Court issued another order vacating the original Order appointing a master and replacing it with another Order, as the initial one was improper due to a lack of a hearing date. (R. P. 71) Dr. Holmes appealed the February 9, 2017 Order on the basis that prohibiting her from filing any motions or taking any action to defend her assets and family home from Respondent's efforts to take affected her substantial rights and constitutionally protected rights to self-representation and due process. Despite the pending appeal and a lack of jurisdiction, Haynsworth Sinkler Boyd and Judge Scarborough went on to require the Appellant to submit to hearings and comply with discovery requests. (R. P. 19) The Judge granted motions to quash her attempts to depose a witness. (R. P. 72) The Judge also sanctioned her and holding her in contempt when she tried to explain that the Circuit Court did not have jurisdiction while the appeal was pending. (R. P. 74, 75, 347) Jurisdiction was returned to the Circuit Court in November of 2017 by remittitur (R. P. 82) after Judge Scarborough had sanctioned Dr. Holmes another $2,500.00 without jurisdiction to do so. On April 29, 2019, the Appellant filed a motion requesting relief on several grounds from the Circuit Court, enumerating the violations of due process and her constitutional rights which she alleged had been denied. (R. P. 616) The Judge's response was to issue an Order entitled "Order Denying Filing." (R. P. 136) In one paragraph Order, the Court cites to the *Doe v. Duncan* case Order from 2009 and quotes “Clerks of Court in this state to refuse to accept further filings from Petitioner in actions related in any way to the revocations of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than Petitioner, licensed to practice law in this state.” The brief Order simply refuses to acknowledge anything that Dr. Holmes filed, thus denying her rights to due process and self-representation yet again. Dr. Holmes timely appealed, challenging the consistent denials of her due process and self-representation rights throughout this case, as she received an order from Judge Scarborough marked “This Order Ends the Case.” (R. P. 127) After she field her initial brief, the Appellate Court dismissed her appeal on a motion to dismiss by Haynsworth Sinkler Boyd, asserting the April 9th Order did not close the case below and finding the appeal untimely. (R. P. 143) Haynsworth Sinkler Boyd then made an attempt to obtain an Order allowing it to sell Dr. Holmes’ family home. Judge Jennifer McCoy of the Charleston County Circuit Court denied the motion, explaining that South Carolina law does not allow collection efforts on a judgment that is over 10 years old. (R. P. 148,152) Haynsworth Sinkler Boyd, Grier and Becker then appealed that order. (R. P. 766) Dr. Holmes filed a notice of cross appeal, as apparently Haynsworth Sinkler Boyd falcims a final order has been issued, and not addresses those orders which were issued during eh supplemental proceedings. The entire supplemental hearing and all orders arising therefrom should be vacated. Dr. Holmes’ initial motions for reconsideration and to set aside the original judgment because of the mis-application of the S.C. Frivolous Proceeding Sanctions Act should be reinstated and heard.

STANDARD OF REVIEW

The issue of interpretation of statutes is a question of law for the court. *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). In a case raising a novel question of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court. *New York Times Co. v. Spartanburg County Sch. Dist. No. 7*, 374 S.C. 307, 309, 649 S.E.2d 28, 29 (2007). Questions of law are reviewed de novo. An appellate court may decide questions of law with no particular deference to the trial court. *In re Campbell*, 379 S.C. 593, 599, 666 S.E.2d 908, 911 (2008). In cases of equity, the appellate court shall review the findings of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside. S.C. Const. art. V, § 5.

ARGUMENT

I. The record reflects the Respondents, Becker and Grier, have admitted lack of standing, therefore, the lower court action, from its inception, must be dismissed as to those parties.

In a motion before the Circuit Court, Respondents James Y. Becker, Manton Grier asserted that they had no interest in the sum being sought by the law firm, Haynsworth Sinkler Boyd, P.A. The Court Granted the Motion. (R. P. 355, 79) The individuals lack standing by their own admission. This deprives the Court of subject matter jurisdiction regarding the individuals' claims. *District v. City of Columbia*, 290 S.C. 93, 348 S.E.2d 363 (1986). All Orders granting Messrs. Becker and Grier any relief in the case below should be vacated, as to those two parties, for lack of jurisdiction, going back to the initial Order granting sanctions from November 18, 2009 and including the supplemental proceedings.

II. The Appellate Court has Jurisdiction to review the Circuit Court's final Order of May 24, 2019, and all prior orders are appealed including, but not limited to, the order(s) of reference and orders entered June 23, 2017, February 9, 2017, and March 14, 2017.

When a party timely files its notice of intent to appeal from a judgment, the appellate court may review any intermediate order necessarily affecting that judgment. *SCDOT v. Faulkenberry*, 337 S.C. 140, 522 S.E.2dS 822 (Ct. App. 1999). The Appellate Court has found that Dr. Holmes' attempt to appeal those orders after receiving an order purporting to end the case in the lower court were untimely and interlocutory. Now that Haynsworth Sinkler Boyd has asserted that the case is ended in order to bring its own appeal, it is likely safe to assume that Haynsworth Sinkler Boyd will not be arguing that the Order it is appealing is interlocutory. Thus, Dr. Holmes has filed her cross appeal addressing the order entered May 24, entered May 24, 2019, and all prior orders in the history of the action below. Those intermediate orders issued during the supplemental proceedings including but not limited to the orders entered June 23, 2017, February 9, 2017, and March 14, 2017 are subject to review by this Court.

III. Because a notice of appeal as to an Order from February 9, 2017 was pending from February 11, 2107 to November of 2017, when Remittitur was returned, the Circuit Court did not have jurisdiction to issue the Orders of March 14, 2017, March 24, 2017 and June 23, 2017.

When deciding a jurisdictional question based on facts, a reviewing court has the power and the duty to review the entire record, find the jurisdictional facts within the entire record, and decide the jurisdictional question in accord with the preponderance of evidence. *Canady v. Chas. Cty. Sch. Dist.*, 265 S.C. 21, 216 S.E.2d 755 (1975). On 2-11-17, Dr. Holmes filed a Notice of Appeal, challenging the Circuit Court's Order of February 9, 2017. (R. P. 342) It was given appellate case number 2017-000266. The February 9th Order had denied her the right to represent herself in her own case and struck all motions that she had filed, pro se. (R. P. 69) In *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), the Supreme Court held that an Order granting a motion to disqualify a party's attorney was immediately appealable. *Id.* At 708 Dr. Holmes reasonably infer from this that an order depriving a citizen of filing any pleadings on her own behalf would be at least, if not more prejudicial than an order disqualifying one's attorney. The Notice of Appeal served on 2-11-17 notice of appeal established jurisdiction over the case in the Appellate Court, depriving the Circuit Court of jurisdiction while the matter was on appeal. Rule 205, SCACR, provides "Upon service of the notice of appeal, the appellate court shall have *exclusive jurisdiction* over the appeal." (Emphasis supplied.) The South Carolina code states that “[T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court.” S.C. Code §14-8-200(a). Thus, from the date of the filing of the notice of appeal of the February 9th Order, February 11, 2017 (R. P. 342) until remittitur on that appeal was entered, on November 30, 2107. (R. P. 77) the Circuit Court did not have jurisdiction over the supplemental proceeding case because the appeal was pending. Whether the Circuit Court Judge who issued the Orders felt he had jurisdiction to issue the orders is inconsequential. The Circuit Court simply does not have jurisdiction to determine whether it has jurisdiction during the pendency of the appeal. Any dispute regarding appellate jurisdiction is resolved in the appellate court. *Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (2014). Authority to resolve disputes concerning the application of automatic stays, such as in Appellate Case Number 2017-000266, does not reside in the lower court. *See State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000). Dr. Holmes gave actual notice of this by sending a letter explaining it to the Haynsworth Sinkler Boyd’s attorney. The Court included this letter in its Supplemental proceeding order after a June 16, 2017 hearing, proving that the Court was aware of its lack of jurisdiction because of the pending appeal. (R. P. 74) The Circuit Court Orders from March 14, 2017 (R. P. 72), and June 23, 2017 (R. P. 75) were issued by the Circuit Court without jurisdiction and should be dismissed.

IV. The February 9th Order from the Court strikes all motions filed by the Appellant and prohibits her from participating in defending her own case and confiscating all filing fees that she paid. The Order should be reversed and the motions that it nullified should be set for hearing before the Court.

The Court’s February 9th Order was designed to and did effectively ensure that Dr. Holmes would not be able to present her legal challenge to of the use of the South Carolina Frivolous Proceeding Sanctions Act (FPSA) to issue the sanctions upon which the Haynsworth Sinkler Boyd’ supplemental proceedings were based. At the time the February 9th Order was issued, Dr. Holmes had filed, but had not been heard on two motions challenging the Court’s FPSA (SC Frivolous Proceedings sanctions act) based sanctions which were the basis of the 2017 supplemental proceedings. The pending motions were a Rule 59(e) request for reconsideration (R. P. 216) and a Rule 60 motion to alter or amend. (R. P. 220) In those motions, Dr. Holmes was making an attempt to have the Court acknowledge that, in the original orders from November 18, 2009 (R. P. 29, 207, 42), the Court had mis-applied the FPSA. New law from 2011 supported her position. Dr. Holmes had filed her complaint, alleging legal malpractice, against Haynsworth Sinkler Boyd in 2002. (R. P. 2) In its 2009 Orders issuing sanctions against Dr. Holmes, the Court applied the 2005 version of the Frivolous Proceedings Sanction Act, which applied a "reasonable attorney" standard rather than the pre 2005 standard of requiring a finding that an action was frivolous to support an award of sanctions over Dr. Holmes' objections. In 2011, the Courts agreed with Dr. Holmes' stance in another case, *Southeastern Site Prep Llc v. Atl. Coast Builders*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App., 2011). As of the 2011 decision, South Carolina law required that the 2005 FPSA be applied prospectively, rather than retR. p.ctively as the legislature indicated that FSPA would apply to causes of action arising on or after July 1, 2005:

> We conclude the Act creates substantive rights and imposes new obligations by effectively changing the standard for imposing sanctions to a "reasonable attorney" standard. Therefore, the Act will apply prospectively absent clear indication to the contrary by the Legislature. In this case, the Legislature provided the revisions in the Act were to apply to causes of action arising on or after the effective date of the statute, July 1, 2005, and we find this indicates the Legislature did not intend retrospective application. Accordingly, we apply the Act as it existed prior to the revisions. *See generally Toth v. Square D Co.,* 298 S.C. 6, 8, 377 S.E.2d 584, 585 (1989) (stating judicial decisions which create liability where none previously existed must be given prospective application).
> *Southeastern Site Prep Llc v. Atl. Coast Builders* at 713 S.E.2d 655

The Court's recognition that the Pre 2005 standard should have applied to Appellant would have been material as her malpractice claims against Haynsworth Sinkler Boyd were upheld on summary judgment by the Circuit Court, legally dispelling any claim that her action was frivolous. Whether or not Dr. Holmes' motions may or may not have been successful is immaterial to this appeal. They were, however, legitimate challenges to an Order issued by Judge Hughston. What the February 9th Order did was to clear the way for the Haynsworth Sinkler Boyd to begin supplemental proceedings against Dr. Holmes. As Dr. Holmes's Rule 59 and Rule 60 motions challenged the Order upon which the judgment that Haynsworth Sinkler Boyd was seeking to enforce was based, it would have been improper to allow supplemental proceedings to begin before resolving them. If the motions were decided against Dr. Holmes, she would have been entitled to appeal rights, and Haynsworth Sinkler Boyd would have had to wait to start proceedings against her. Haynsworth Sinkler Boyd had already sat on the judgment without taking any action for approximately seven years and its attorneys no doubt saw the statute of repose appR. p.ching. Due to the February 9th Order, Dr. Holmes' motions, were removed from the roster and were never heard or considered, nor were her filing fees ever returned. In order for justice to be done here, the Court should vacate the February 9th Order and instruct the Charleston County Circuit Court to reinstate the motions that it vacated.

A. Despite statements in the February 9, 2017, order to the contrary, there was no hearing, no notice, and no opportunity to be heard.

The February 9, 2017, order on appeal provides, "This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered." (R. P. 69) This is simply not true. The record reflects there was no hearing, no notice of any hearing, and, therefore, no opportunity for Dr. Holmes to be heard. There was not even an effort made to allow Dr. Holmes to respond before it was issued. she was stripped of her constitutional right to represent herself in a matter in which a law firm was seeking to take her property without due process. The State, in vacating all the motions she filed, also took the filing fees she had paid, a direct taking, without due process. Procedural due process requires, at the minimum (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008); See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and

XIV. Courts are required to afford due process even before awarding ex parte sanctions under Rule 11. "In order to pass constitutional muster, the persona against whom sanctions are to be imposed must be advised in advance of the charges against him. *Burns v. Universal Health Services, Inc.* 340 S.C. 509, 532 S.E.2d 6 (S.C. App. 2000). There was no notice, no motion, no hearing. The Judge simply issued an ex parte order. From the text of the document itself, it is apparent that the Judge issued the Order, which not only substantially affected, but blatantly denied not only Dr. Holmes' constitutional rights, but prohibited her from defending herself in Court as an ex parte matter, without any notice to her and without any opportunity for her to respond after "being advised by the Clerk of Court's Office" about a document purporting to be an Order from 2009 which instructed the Clerk not to accept filings of motions related to revocation of Dr. Holmes' medical privileges by a hospital. The case in which the February 9, 2017 Order was issued originated from a legal malpractice case by Dr. Holmes against Haynsworth Sinkler Boyd. The matter before the Court was a proceeding in which Haynsworth Sinkler Boyd was seeking to take her home by enforcing a judgment arising from the legal malpractice action. (R. P. 228) Dr. Holmes certainly had grounds to dispute the applicability and the constitutionality of the purported 2009 Order (The document was quoted by Judge Scarborough but was not included with his order, nor, as is pointed out below, does it appear to exist in Court archives). She would successfully have done so if she had been given the opportunity guaranteed to citizens by this State's Constitution and laws.

B. Judge Scarborough, as a special referee, did not have the jurisdictional authority to rule on Dr. Holmes' outstanding motions for reconsideration and motion to set aside a judgment because they addressed Orders issued by another judge.

The February 9, 2017 Order from Judge Scarborough is a de facto denial of Dr. Holmes' Rule 59e motion for reconsideration and her Rule 60 motion to set aside a judgment. The order that those motions were addressing was not issued by Judge Scarborough. The presiding Circuit Court Judge, not the referee/master, had jurisdiction to decide the plaintiff's timely Rule 59(e), SCRCP motion. *See*

Doe v. Berkeley Pub.,322 S.C. 307, 471 S.E.2d 731 (Ct.App. 1996), *rev'd on other grounds*, 329 S.C. 412, 496 S.E.2d 636 (1998) (pursuant to Rule 59(e), SCRCP, jurisdiction vests in the presiding Circuit Court Judge who signed the order which is the subject of the Rule 59(e), SCRCP, motion). Rule 59(f), SCRCP, expressly provides exclusive jurisdiction for the Presiding Judge who issued the January 3, 2017, order, not the referee/master. "One Circuit Court Judge does not have the authority to set aside the order of another." *See Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 304 S.E.2d 546, 547 (1986). See Also *Steele v. Charlotte C. & A. R. Co.*, 14 S.C. 324 (S.C. 1880); *Warren, Wallace & Co. v. Simon*, 16 S.C. 362; *Charles v. Jacobs*, 18 S.C. 598; *State v. Price*, 35 S.C. 273, 14 S.E. 490." *State v. Harrelson*, 211 S.C. 11, 43 S.E.2d 593, 594 (S.C., 1947) Because Judge Scarborough was not the Judge who issued the order being addressed in Dr. Holmes' motions, his Order vacating the motion, and therefore denying them (note that the filing fees were not returned to Dr. Holmes, thus there was no actual "rescission" of the filing of the motions) exceeded his jurisdiction and should be reversed.

C. The Court's reliance on a December 2009 order from an unrelated case between Appellant and another party was not explained and is untenable.

The February 9, 2017 Order recites and relies on a December 2009 document, which it refers to as an "order" in a case called Doe v. Duncan. The February 9, 2017 Order does not include the text of this document, nor does it include the document as an exhibit to the Order. It does not give a cite which could be used to find the alleged order in the Supreme Court archives. It does not even note whether it is a published Order or not. It simply notes that a Clerk told the Judge that it existed. Because Dr. Holmes was not given notice or an opportunity to respond, she was never allowed to request that the Court produce this alleged Order, to address its legitimacy or its applicability to the supplemental proceedings. She was denied any opportunity to argue that the alleged Doe v. Duncan Order, if it was a legitimate order was restricted to one particular topic (the denial of medical privileges). Even the quotation that the Judge cites in the February 9th Order brings into question whether it was meant to apply to the supplemental proceedings in the Holmes v. Haynsworth case, which involves claims of legal malpractice against a law firm, not "actions related in any way to the revocations of her medical staff privileges at East Cooper Community Hospital." (R. P. 69)

D. The Doe v. Duncan document to which the Court cited appears not to exist in the Court's archives as a published order, unpublished order, or in any archived form at all.

The undersigned was unable to find the document cited in Judge Scarborough's Order as "Doe v. Duncan" at all. It does not appear to exist in the records of the South Carolina Supreme Court. To take judicial notice of this and to duplicate the search, simply navigate to the website www.sccourts.org On the upper right, select "Opinions/Orders." Then select "Court Orders" followed by "Judicial/Legal Conduct." Select the year, 2009 and scroll down to December of 2009. There is no Order reported matching the Doe v. Duncan document cited in the February 9, 2017 Order. Neither does any Doe v. Duncan document appear under the headings of "Supreme Court" or "All Court Orders." The only mention of the Doe v. Duncan case at all is in the December 7, 2009 Advance Sheets. The entry notes that a petition was denied, but not that any order was issued. The undersigned asks the Court to take judicial notice of this fact. If the document does not exist in the Court archives, then Judge Scarborough's reliance on it as an Order, especially in light of the fact that it was not produced with his 2-9-17 Order, is in error. This also raises the issue of where and from whom this document originated. The only mention of its origin in Judge Hughston's Order indicates that a clerk told him about it. The only other party to have produced a copy of the document and assert that it is an order is Haynsworth Sinkler Boyd.

E. If the Doe v. Duncan document cited by Judge Scarborough actually exists, and if it is an actual, legitimate, Order from the Supreme Court, then it is an unpublished Order and to use it in a case beyond the one in which it was issued is an error.

If the Doe v. Duncan document to which the Judge cites in the February 9, 2017 Order is actually a valid Order, then, as proven above and from the Supreme Court's own archives, it is, at best, an unpublished order (it is not even that, as it is not even in the archive of unpublished orders). It is certainly not published anywhere in any form that has be discovered by a search of the Supreme Court electronic archives (as set forth above). South Carolina does not allow unpublished Orders to be cited in any case other than the one in which the Order was directly issued (See Rule 268(d)(2) SCACR):

> **RULE 268**
> **CITATION OF SOUTH CAROLINA AUTHORITY**
>
> To provide guidance on citing South Carolina authority, the following forms of citation are given. Once cited in the form given, the authority may thereafter be cited in an abbreviated form. Additional guidance on citation of authority may be found in *A Uniform System of Citation* published by the Harvard Law Review Association, *A Guide to South Carolina Legal Research and Citation* published by the S.C. Bar C.L.E. Division, or other publications.
>
> **(d) Appellate Court Decisions.**
> **(2)** Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved. Memorandum opinions may be cited in the following form: Burns v. Burns, Op. No. 89-MO-110 (S.C. Ct. App. filed July 31, 1989). Unpublished orders may be cited in a similar manner as provided for published orders under Rule 268(d)(1).

If the document is a legitimate issuance of the Supreme Court, and if it is actually an order, then Judge Scarborough erred in applying an unpublished order from one case (Doe v. Duncan) in another case (the supplemental proceedings from Holmes v. Haynsworth, Sinkler & Boyd).

V. The June 23, 2017 Order granting Defendant's motion to Compel and for sanctions

A. The Court sanctioned Plaintiff for failing to produce records, but the record indicates that she did appear on March 10, 2017 to offer the records in court.

On March 10, 2017, Dr. Holmes did appear before the Court to provide the financial information requested. (R. P. 934-844) At that hearing Dr. Holmes told the Court she had brought the information requested and only asked that it be put under seal. When the Judge denied that, she agreed to be put under oath, to present the information, and answer questions about her assets. Dr. Holmes told the Court "I have the information that you requested for me to bring. I'm happy to do that." (R. P. 834) The Court allowed Haynsworth Sinkler Boyd's attorney to review the documents that were provided and declined to put the Appellant under oath at that time. Instead, Judge Scarborough told her "You would be wise to accept their offer to take the deposition because if I have to sit here and listen to your testimony of what your assets are they're going to disappear in the Courtroom at that time. Okay? That's what I'm going to do. All right?" (R. P. 841) For the Court to issue an Order holding her in contempt and fining the Appellant $2,500.00 for refusing to comply after the record appears to clearly show that she did comply by bringing the materials requested and offering to testify before the Court is simply wrong. The undersigned urges the Appellate Court to read the entire hearing transcript in order to really grasp the amount of sheer enmity, hostility, and outright rudeness that the Court heaped on the doctor, including refusing to refer to her as Dr. Holmes when she is an MD, talking down to her, cutting her off, refusing to hear her out, and threatening her when she offered to cooperate by producing documents and testifying. (R. P. 819) Such conduct is, at the very least, unbecoming of an officer of the Court, and especially a Judge.

B. If the sanction was meant to reimburse Haynsworth Sinkler Boyd for attorney's fees, then the Court erred in finding that Haynsworth Sinkler Boyd was entitled to attorney's fees.

As noted above, the Court's Order does not give any basis for an award of "sanctions." Nor does it identify them, particularly as attorney's fees. The only monetary sanctions requested in Haynsworth Sinkler Boyd 's motion were attorney's fees and costs. (R. P. 347) "In order to pass constitutional muster, the person against whom sanctions are to be imposed must be advised in advance of the charges against him. *Burns v. Universal Health Services, Inc.* 340 S.C. 509, 532 S.E.2d 6 (S.C. App. 2000). "It is well settled that ordinarily a party may not receive relief not contemplated in his pleadings." *Loftis v. Loftis*, 286 S.C. 12, 331 S.E.2d 372 (Ct.App.1985). "Due process requires that a litigant be placed on *sufficient* notice of the issues which the court is to consider. *Bass v. Bass*, 272 S.C. 177, 180, 249 S.E.2d 905, 906 (1978)." *Heins v. Heins*, 543 S.E.2d 224, 344 S.C. 146 (S.C. App. 2001) (emphasis supplied). Thus, it stands to reason that the sanction awarded was meant to be attorney's fees. If the $2,500 sanction was meant to be attorney's fees, then it should be reversed as Haynsworth Sinkler Boyd was put on actual notice that the case was stayed by appeal and chose to proceed despite that. The record reflects that Haynsworth Sinkler Boyd received timely notice that an appeal was pending, thereby vesting exclusive jurisdiction in the appellate Court. Dr. Holmes even wrote a letter to the Respondent's attorney explaining this. The letter was made part of the Court record by the Judge who presided at the June 16th hearing. (R. P. 74) The issue of jurisdiction and the pending notice of appeal, which was signed by the undersigned was discussed in open court as well. (R. P. 847) As noted above, the final disposition of the appeal occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. Until that time the case is pending on appeal and the Circuit Court lacks jurisdiction.

VI. The Court's Order of May 24, 2019 provides a metaphorical bookend to the February 9, 2017 Order in this case, highlighting two years of a travesty of justice in which a Citizen was denied the right to file her own pro se motions, violating South Carolina law as well as her constitutional rights to self-representation and due process without giving any explanation or basis for applying a sentence from a 2009 document in an unrelated case that does not appear to have been recorded in the State Archives to Dr. Holmes' attempts to defend her assets and family home.

On April 29, 2019, Dr. Holmes filed a motion requesting relief on several grounds from the Circuit Court. (R. P. 616) The Court's response was to issue an Order entitled "Order Denying Filing." (R. P. 136) In the one paragraph Order, the Court cites to a purported document which he refers to as an order from a different case in 2009, *Doe v. Duncan*. In that document, as noted above, does not actually seem to appear in any Supreme Court Archives as a legitimate order or anything else, the author(s) deny a petition for certiorari and mentions the sanctions award that Haynsworth Sinkler Boyd was trying to collect in supplemental proceedings before Judge Scarborough. The document authorizes "Clerks of Court in this state to refuse to accept further filings from Petitioner in actions related in any way to the revocations of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than Petitioner, licensed to practice law in this state." The instant case arises from legal malpractice claims against Haynsworth Sinkler Boyd. Dr. Holmes' case against Sinkler Boyd is not about a denial of medical privileges. It alleged that the firm committed malpractice when it failed to timely respond to a federal judge's Order while demanding fees from its client (Dr. Holmes), resulting in the loss of a restraining order which was allowing her to continue to treat her patients at the hospital. She had also alleged that Haynsworth Sinkler Boyd abandoned the case after she paid the fees the firm had demanded of her, leaving the viable State claims for her to pursue on her own. (R. P. 156, 172) The Court, in its May 24th Order does not explain why it believed that the 2009 Doe v. Duncan document would give it the authority to deny the Dr. Holmes her constitutional right to defend herself in a supplemental proceeding action, one in which the law firm she had sued for malpractice was seeking to take her family home from her. There are several reasons that this Order should be vacated. They are the same reasons that the February 9th, ex parte Order which effectively did the same thing with the same lack of explanation or support should be vacated. Rather than re-print all of the arguments in the same brief, the undersigned will simply refer to an appellate case in which the Court has succinctly and directly listed the reasons that prohibiting someone from participating in his or her own case violates Constitutional law as well as State and Federal statutory law. In *Brooks v. S.C. Comm'n on Indigent Def.*, 419 S.C. 319, 797 S.E.2d 402 (S.C. App., 2017), the Appellate Court reviewed a case in which an attorney who was representing himself had been precluded from giving testimony in his own case by applying the rules of professional conduct and asserting that an attorney may not participate as an attorney and a witness in a trial. The Appellate Court overturned this, stating:

> The South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40–5–80 (2011) ("[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."); *Washington v. Washington* , 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. S.C. Comm'n on Indigent Def*., 419 S.C. 319, 797 S.E.2d 402 (S.C. App., 2017)
> *Brooks* at 419 S.C. 330

In *State v. Lee-Grigg*, 649 S.E.2d 41, 374 S.C. 388 (S.C. App., 2007), the Court identified certain errors, which affected certain rights as being "structural" as opposed to "procedural." Structural errors, which specifically include the right to self-representation, result in deprivations which completely collapse the integrity of the entire action by fundamentally and fatally crippling basic rights of a party:

> In *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991), the United State Supreme Court explained certain "structural defects in the constitution of the trial mechanism" result in deprivations that affect the entire framework within which the trial is conducted, from beginning to end. These "structural" defects compromise the reliability with which a criminal trial functions as a vehicle for determining guilt or innocence and are not subject to harmless error analysis. *Id. citing Rose v. Clark*, 478 U.S. 570, 577-78, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986). The Fulminante court identified the following examples of structural defects not subject to harmless error analysis: the total deprivation of the right to counsel at trial, *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963); the lack of an impartial judge, *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927); the unlawful exclusion of members of the defendant's race from a grand jury, Vasquez v. Hillery, 474 U.S. 254, 106 S.Ct. 617, 88 L.Ed.2d 598 (1986); the right to self-representation at trial, *McKaskle v. Wiggins*, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984); and the right to public trial, *Waller v. Georgia*, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984).

A review of what has happened to Dr. Holmes in this case should make any licensed attorney or jurist cringe. The United States of America was founded on the ideal that individuals should have certain rights that were supposedly "self-evident." One of those rights, perhaps the most self-evident one is that citizens should have the right to participate in a system that allows them the right to at least defend themselves. The February 9, 2017 Order and the May 24, 2019 Order clearly provide metaphorical bookends to the two-year travesty of justice that occurred here. If this Court cares at all about whether citizens of South Carolina can have faith in this State's Court system in the future, this case must be addressed. All orders issued in the supplemental proceedings case, from the beginning to the end, should be immediately vacated and Dr. Holmes should be entitled to a refund of any sanctions against her that she paid. The motions that she filed and which were vacated at the beginning of the action should be reinstated and set for hearing.

CONCLUSION

This case presents a series of errors with a common theme in that the Court, the Clerk of Court, and Haynsworth Sinkler Boyd consistently and successfully deprived Dr. Holmes of her right and ability to defend herself from sanctions and the enforcement of those sanctions against her, even when her family home was threatened. Fundamental rules regarding jurisdiction, due process, and basic fairness have been put aside during the pendency of the actions in the Circuit Court.

There are novel questions of law raised in this appeal which should be addressed. In *Osprey Inc., v. Cabana Limited Partnership*, 340 S.C. 367, 532 S.E.2d 269 (2000), the Court was asked to address a legal issue which had not been raised since the 1800s. The Supreme Court noted: "We are free to decide a question of law with no particular deference to the lower court. See S.C. Const. art. V, §§ 5 and 9; S.C. Code Ann. §§ 14-3-320 and -330 (1976 & Supp.1999); S.C. Code Ann. § 14-8-200 (Supp.1999) (granting Supreme Court and Court of Appeals the jurisdiction to correct errors of law in both law and equity actions); *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000)." *Osprey, Inc. v. Cabana Ltd. Partnership*, 340 S.C. 367, 532 S.E.2d 269 (S.C., 2000) Dr. Holmes has been subjected to a violation of due process and her constitutional rights to notice, opportunity to be heard, and an impartial judge both at the inception of this case (the 11-18-09 Order granting sanctions) and throughout the supplemental proceedings. Amended S.C. Code Section 15-36-10, the Frivolous proceedings Sanction Act, allows a violation of constitutional due process, as does the application of the alleged Order from the Supreme Court to bR. p.dly prohibit a citizen from participating in her own defense. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. In order for justice to be done in this case, the Court should review the due process issues which have pervaded the action from the initial sanctions Order through the Order of May 24, 2019. All of the Orders from the supplemental proceedings should be vacated. Dr. Holmes should have the sanctions she paid restored to her. The two motions that were removed from the roster by the Judges February 9th order should be reinstated and set for hearing. These wrongs need to be set right.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

S.C. Court of Appeals Case No. 2020-000968
Circuit Court Case No. 2002-CP-10-1448
and after change of venue:
Circuit Court Case No. 2007-CP-10-1444

C. Holmes, M.D,

Respondent-Appellant,

v.

Manton Grier, James Y. Becker, and
Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Appellant-Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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May 22, 2022