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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2015-CP-02-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,.....Appellant,

In Re: Greg Battersby,.....Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead
& Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity Company,.....Defendants

of whom:

J. Kirkman Moorhead and Krause, Moorhead
& Draisen, P.A. are,.....Respondents.

**REPLY TO PETITION FOR REHEARING AND SUGGESTION FOR
REHEARING EN BANC**

COME NOW the Respondents in the above-captioned matter and reply to Appellant’s
Petition for Rehearing and Suggestion for Rehearing *En Banc* as follows:

Respondents incorporate, as if fully set forth herein, all of the allegations and arguments
made in their Motion to Dismiss Appeal and Final Brief of Respondents previously filed in this
matter.

I. The Court has not overlooked or misapprehended the facts or the law applicable to this matter.

In his Petition for Rehearing, with regard to the facts pertinent to the case, Appellant merely rehashes the same factual assertions and arguments that have been made throughout this appeal. The additional (or new) assertions made by Appellants appear to be allegations of judicial misconduct lodged against the trial court. Appellant seems to say that not only did the Defendant and Respondents conspire against Appellant's client and Appellant, but that the trial court was an active participant in the conspiracy, a co-conspirator, and that everyone was out to get them. Respondents, frankly, do not quite know how to respond to such unsupported allegations other than to state that they are preposterous.

The fact that Appellant's client went forward with a trial against Respondents' client and ultimately obtained a verdict against her does not in any way support Appellant's assertions that Respondents "conspired" with the client by filing her lawsuit. That is, such fact does not in any way prove that the filing of the lawsuit by Respondents on behalf of their client was "the joining of two or more persons with the express purpose and intent to cause another harm." Were this to be the law in South Carolina, every lawyer representing a client would, by accepting representation of the client and filing a lawsuit, potentially be a party to a "conspiracy" if ultimately the client's case is not successful. The law is clear that an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client; *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 01, 602 (1995). There are no facts or evidence that show Respondents did so in the instant case.

In determining whether sanctions are appropriate in the instant case, the Court reviews the decision to award sanctions, as well as the terms of those sanctions, under an abuse of discretion standard; *Atl. Coast Builders*, 394 S.C. at 104, 713 S.E.2d at 654. The trial court's factual findings, as determined by this Court, are supported by the record. As a result, the trial court did not abuse its discretion by imposing sanctions against Appellant.

The Court has not overlooked or misapprehended the facts or law applicable to this matter. As such, Appellant's Petition for Rehearing should be denied.

Respectfully submitted,

s/Daniel L. Draisen

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ATTORNEYS FOR THE RESPONDENTS

September 4, 2022
Anderson, South Carolina

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PROOF OF SERVICE

I hereby certify that I have served the Reply to Petition for Rehearing and Suggestion for Hearing En Banc on Donald L. Smith, Esq., Appellant (and attorney for the Appellant), by depositing a copy of same in the United States Mail, postage prepaid, on September 4, 2022 addressed to Donald L. Smith, Esq., 122 North Main Street, Anderson, South Carolina, 29621.

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