

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

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JUN 18 2013

Case No. 2010-CP-28-311

SC Court of Appeals

Theresa BrownAppellant

Janet Butcher and the Butcher Law Firm, P.A.Respondents

Petition for Reconsideration

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Pursuant to Rules 221 and 240, SCARC, Appellant, Theresa M. Brown, hereby petitions this Court to Rehear and Reconsider its ruling in Theresa M. Brown v. Janet Butcher and the Butcher Law Firm, P.A., Unpublished Opinion No. 2013-UP-232 (S.C. Ct. App. filed June 5, 2013). Mrs. Brown asserts this Court overlooked and/or misapprehended the following points in affirming the Circuit Court's ruling:

In the divorce action between the (Appellant) Theresa Brown and Robert Brown, Theresa Brown was represented by (Respondents) Janet Butcher and her law firm. Mrs. Butcher advised Mrs. Brown to enter into an agreement at the final hearing concerning alimony, equitable division, and other collateral issues.

1. This Court of Appeals failed to consider the breach of the standard of care owed to the Appellant by the Respondents, as established in *Crowley v. Harvey & Battey, P.A. and Fuge*, 327 S.C. 68, 488 S.E.2d 334 (1997) and *Sims v. Hall*, 357 S.C. 288, 592 S.E.2d 315 (S.C. App. 2003).

The standard of care concerning the providing of negligent advice was set out by the South Carolina Supreme Court in the case of *Crowley v. Harvey & Battey, P.A. and Fuge*, 327 S.C. 68, 488 S.E.2d 334 (1997). In *Sims v. Hall*, 357 S.C. 288, 592 S.E.2d 315, this Court, the South Carolina Court of Appeals found a violation of the standard of care, when the attorney failed to provide competent advice and the failure to inform the client of the client's rights and interests.

Respondents did not argue against these precedents in their brief.
(emphasis added)

Neither the Respondent, the trial Court, nor this Court in its opinion distinguished the present case from the *Crowley or Sims*' cases.

The South Carolina Supreme Court further held in *Crowley v. Harvey & Battey, P.A. and Fuge*, 327 S.C. 68, 488 S.E.2d 334 (1997) where a client alleges his former attorney was negligent in advising him to accept a settlement, that alleged negligence is not a ground for attacking the settlement itself but rather a **matter left for a malpractice suit between the client and his attorney. (emphasis added)**

2. In determining if expert testimony showed the establishment of the standard of care relating to the advice, concerning the waiver of alimony by Appellant, given by Respondent to Appellant, the Appellant brings to this Court's attention, the following:

"The most noteworthy **damaging (emphasis added)** term of the agreement was the waiver of alimony. Ms. Brown's ex husband made substantially more than Ms. Brown at the time and had more earning potential (there was a \$3,000.00 income disparity to Mr Brown's favor)...I could not understand why Ms. Brown would have been advised to waive alimony in the case unless she was perhaps receiving a larger share of the marital estate.:

Affidavit of Susan Edwards, R. p. 56, paragraph 8.

"Ms. Brown further relied upon statements made to her by Ms. Butcher that the Judge stated that Ms. Brown would not receive alimony." **Affidavit of Susan Edwards, R. p. 56, paragraph 7.**

“Based upon the alimony factors delineated in the South Carolina Code of Laws, sec. 20-3-120, and discussed in numerous cases of the South Carolina Appellate Courts, **in my expert opinion (emphasis added)**, Ms. Brown would have been entitled to a substantial sum of alimony each month.

Affidavit of Susan Edwards, R. p. 57, paragraph 9.

Susan Edwards further established the standard of care in her Affidavit that Ms. Butcher should have considered Ms. Brown’s desires for a full hearing on the merits of the case (divorce case with Mr. Brown); advising to seek alimony, or in the alternative, to seek a settlement, which would she would benefit in some other way. **Affidavit of Susan Edwards, R. p. 58, paragraph 13.**

Susan Edwards testified in her deposition: “I think that in reviewing a standard of (care)—you know, what duty was owed to Ms. Brown, I think that had Ms. Brown walked into Court to try this case, as a litigant to have a trial, she certainly would not have waived alimony had she gone forward to trial. And I think I left that out of my affidavit.” **R. p. 108, l. 23-p. 109, l. 3.**

Mrs. Edwards further stated in her deposition testimony: “So your question now is, if Ms. Butcher recommended to Ms. Brown that she waive alimony, would I think that a breach of her duty of care? If that’s the question, my answer would be yes.” **R. p. 111, ll. 17-20.** Mrs. Edwards reiterated this expert opinion. **R. p. 112, ll. 8-11; R. p. 125, ll. 18-24; R. p. 126, ll. 21-23.**

It is clear from the case law, the affidavit and testimony of the expert witness, Susan Edwards, that Respondents breached the standard of care by providing to Appellant inappropriate advice to settle the case and to waive alimony. There were only two options; if giving inappropriate advice breached the standard of conduct, then the standard of conduct is to give appropriate advice; if settling the case requires the waiver of alimony and is a breach of the standard of conduct, then the standard of conduct is to try the case and seek alimony.

The Respondent testified in her deposition that she had told Theresa Brown (Appellant) that Mr. and Mrs. Brown would never be able to settle the divorce case. This was told to Appellant by Respondent after the attempted negotiations in November (2006). Respondent stated further: "We were fully prepared for trial the next time we went to court." R. p. 224, II. 17-22.

The Respondent, when asked what were you going to be asking for on behalf of Theresa (at the final hearing), responded that we were fighting for everything, including alimony and equitable division. Respondent specifically said: "Alimony, the divorce on adultery, attorney's fees, attorney's fees—all of that. **We had testimony ready for everything. (emphasis added).**" R. p. 224, I. 23-p. 225, I. 13.

Appellant has stated: "And I went into the bathroom where I stayed crying. Because I couldn't believe what was happening again. Because after November 27th she assured me we were going to court. That's why she

upped her fees from \$168 to \$225 then to \$250 because she said we had to go for the adultery charges to get a reasonable settlement.” R. p. 170, II. 2-7.

By implication, the Respondent admits that the advice to Appellant to enter into an agreement, which denied her alimony, an appropriate equitable division, and attorney’s fees, was inappropriate. The advice to enter into the agreement, (which the Appellant states was coerced, R. p. 171, I. 25-p. 172, I. 24) was in contradiction to Respondent’s previous advice. R. p. 224, II. 17-22, 224, I. 23-p. 225, I. 13.

3. In determining if expert testimony showed the establishment of the standard of care relating to the advice, concerning the equitable division of the marital properties, given by Respondent to Appellant, the Appellant brings to this Court’s attention, the following:

The expert witness Affidavit of Susan Edwards states in part, that the Appellant would never receive her one-half equity in the marital residence. “Further, based upon the case and statutory law, Ms. Brown would have been entitled to receive as an equitable division one half of the marital estate.” R. p. 57, paragraph 10.

Appellant has not received any portion of the marital estate.

The Family Court in a Rule to Show Cause action, subsequent to the divorce hearing found that the Family Court had no power to undo the property arrangement, **which Ms. Butcher had advised and instructed Ms.**

Brown to accept. (emphasis added) Affidavit of Susan Edwards, R. p. 57, paragraph 12.

Ms. Edwards, the expert witness, further stated that the Respondent breached the standard of care by advising or instructing Ms. Brown that it was in her best interests to accept a settlement, which denied her any ability to receive any portion of the equity in the marital residence and an appropriate division of the marital properties. **Affidavit of Susan Edwards, R. p. 58, paragraph 13.**

The expert witness, Susan Edwards, further testified that the settlement, which the Respondents advised the Appellant to agree, was inappropriate because “This has the effect of preventing Ms. Brown from ever receiving” **R. p. 113, ll. 8-16; R. p. 134, ll. 4-9.**

As to the damages issue, Mrs. Edwards further testified: that I believe I testified to earlier that I felt like really hurt Theresa was the fact that there was no end date on how the house would eventually be divided—how that would play out, how it would be sold, how it would ever happen on the issue of the house.” **R. p. 143, ll. 12-17.**

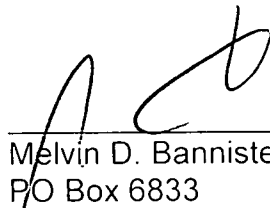
CONCLUSION

In conclusion, Appellant would show that the Respondents breached the standard of care owed to the Appellant, as set out in certain appellate court cases, including, but not limited to, *Crowley v. Harvey & Battey, P.A. and Fuge*, 327 S.C. 68, 488 S.E.2d 334 (1997) and *Sims v. Hall*, 357 S.C. 288,

592 S.E.2d 315 (S.C. App. 2003). The standard of care and the breach of the standard of care has been shown by the expert witness' affidavit and deposition testimony, and by the Respondents' admission in deposition testimony.

ACCORDINGLY, Appellant respectfully requests that this Court grant her petition, withdraw/amend its prior decision, rehear the matter and issue a new decision reversing the prior order (granting summary judgment) of the trial court.

Respectfully submitted,



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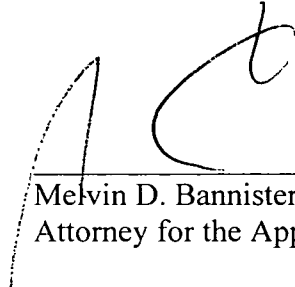
Theresa BrownAppellant

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Proof of Service

I certify that I have served the Petition for Reconsideration on Janet Butcher and the Butcher Law Firm, P.A. by depositing a copy of it in the United States Mail, postage prepaid, on June 18, 2013, addressed to her attorney of record, William L. Howard, Sr. and Russell G. Hines, 25 Calhoun Street, Suite 400, Charleston, SC 29401.

June 18, 2013



Melvin D. Bannister
Attorney for the Appellant