

HSTATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Ex Parte:)

Douglas N. Truslow,)

In re:)

JAMES A. ANASTI,)
Plaintiff,)

vs.)

LANCE WILSON,)
WILLIS GOODWIN,)
GINA L. ANASTI LEE,)
and RICHLAND COUNTY)
CLERK OF COURT,)

Defendants.)



STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

Ex Parte:)

Desa Ballard,)

Pec Dee Health Care P.A.)

Plaintiff,)

Vs.)

Estate of Hugh S. Thompson,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Case No.: 2007-CP-40-0576

**ORDER DENYING TONY R.
MEGNA'S MOTION FOR
RECONSIDERATION OF
SANCTIONS**

FILED
2013 JUN 12 AM 10:52
JEANE TEE W. MERIDIE
C.C.P. & G.S.

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-16-0332

Tony R. Megna moves for reconsideration pursuant to South Carolina Rule of Civil Procedure ("SCRCP") 59 of this Court's sanctions Orders filed February 13, 2013 in the above captioned cases. The motions are denied as set forth herein.

Motions for Rule 11 sanctions were filed seeking awards of sanctions against Tony R. Megna in both cases. In the Richland County case, *Anasti v. Lee*, sanctions were sought by an adverse party against Mr. Megna in connection with discovery abuses. In the Darlington case, *Pee Dee Health Care P.A. v. Estate of Hugh S. Thompson*, non-party Desa A. Ballard also sought sanctions for discovery abuses. The sanctions motions were consolidated for hearing. While separate orders were issued in each case, the motions for reconsideration filed in both cases raise common issues, and were considered together.

The motions for reconsideration were heard on the record, via telephone, on March 7, 2013.¹ Attorney Megna's new counsel, James M. Griffin, Esq., represented Mr. Megna.² Douglas N. Truslow, Esq. represented his client James Anasti in the Richland County case; and Desa A. Ballard, Esq. appeared *pro se* in the Darlington County case. Also present for the hearing were J. Rene Josey, Esq. and John J. James II, Esq., counsel for defendants in the Darlington county case.³ No objections to the scope or manner of conducting the hearing were made. As a preliminary matter, Attorney Truslow raised several procedural issues that may have barred the Court's consideration of the motions for reconsideration, and those objections were

¹ On March 4, 2013, the Court notified the parties that argument should be limited to the amount of sanctions awarded. No objection was made to the notice or limitation.

² Attorney Griffin filed notices of appearance on Mr. Megna's behalf (and others) in August, 2012, several months after the consolidated hearing on the pending sanctions motions, but before issuance of the orders. Mr. Megna continues to be represented by attorney Aimee J. Zmroczek as well as Mr. Megna's law partner, Benjamin R. Matthews, neither of whom signed the Motions for Reconsideration and neither of whom participated in the hearing in this matter.

³ Messrs. Wilson's and Goodwin's counsel had requested that he be excused in that, while interested in the proceeding, he likely had nothing to add that would not otherwise be argued by others in attendance.

noted but not necessary to be ruled upon. The Court has considered all issues raised by the motions for reconsideration and concluded all to be without merit.

The Court heard argument on Mr. Megna's objection to the amount of sanctions awarded in both cases. Mr. Megna asserts the amount of sanctions awarded were unreasonable and excessive and, in the case of Attorney Ballard's motion, unwarranted in that Ms. Ballard represented herself *pro se* and was not eligible to be awarded sanctions under the well-established rule in South Carolina that an attorney proceeding *pro se* may not recovery attorneys' fees on behalf of herself. See *Hopkins v. Hopkins*, 343 S.C. 301, 306-07, 540 S.E.2d 454, 457 (2000).

The Court possesses discretion under Rule 11 to determine an amount of sanction to be awarded based on the unique facts of each case, and significant sanctions are appropriate when "a filing is so patently without merit that no reasonable attorney could have a good faith belief in its propriety." *Ex Parte: Bon Secours et al., In re: Thomas R. Weiters v. Bon-Secours-St. Francis Hospital Inc. et al.*, 393 S.C. 590, 598, 713 S.E.2d 624, 628 (2011). Here, this Court has found that Mr. Megna's conduct far exceeded being "patently without merit." He acted in both cases in such a vexatious manner as to shock the conscience of the Court.

The traditional standard for an award of Rule 11 sanctions is where "no good grounds exist to support the filing." *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). That standard pales here. While the findings of the Court are fully contained in the previous sanctions Orders, Mr. Megna was found to have violated previous Court orders that disqualified him as counsel in the Darlington case, and then used the Richland County case as a vehicle to propound discovery in the Darlington case. This occurred after Mr. Megna's client essentially no longer had an interest at Bar in the Richland case. Mr. Megna clearly intended to vex and

cause substantial inconvenience to Attorney Truslow and his staff and client, for no legitimate purpose, and further intended to intimidate Ms. Ballard, all in an effort to protect his own pecuniary interests notwithstanding his (former) client's lack of interest in the matter. He also acted in direct violation of a Court Order. It is difficult to imagine an award of sanctions not being made under these facts.

Mr. Megna argues the amount of sanctions awarded is substantial and not warranted by his misconduct. This Court disagrees. Mr. Megna is the architect of this situation. A reasonable attorney under these circumstances would have realized the error, or at least questioned the wisdom of his actions, when faced with two (2) motions for sanctions by different movants, both pointing out the extreme impropriety of his conduct. Here, however, after the motions for sanctions were filed, Mr. Megna attempted to divert the Court's attention from his own misconduct by burying the Court and the parties with a volume of documentation that attempted to justify his own misconduct while attacking everyone else. This pattern of misdirection and accusing others has continued into the Motions for Reconsideration.

In Mr. Megna's assertion that the amount of sanctions is unwarranted, he criticizes both Attorney Truslow and Ms. Ballard for spending the substantial time on these matters that was reflected in their time records, although he does not dispute that the time was actually expended by them. He argues that they should not have spent the time they did in responding to his discovery and in seeking sanctions against him. Aside from the question of whether the issue has been properly preserved, that is simply not his decision.

In determining an award of sanctions, the amount of time devoted by the responding party is only one of many factors that can be considered in determining an appropriate amount of sanctions. Sanctions available to the Court are not limited to a mathematical calculation of

attorney fees incurred by the defending party, but the time devoted to defending the matter and seeking sanctions is certainly a factor that the Court can consider in determining an appropriate amount of sanctions. *Ex Parte Bon Secours, supra*. Here, the Court chose to award an amount of sanctions that was tied to the time Attorney Truslow and Ms. Ballard spent in addressing this matter (and in fact addressing the reasonableness of that time), but it need not have done so. This Court has no hesitation in confirming that the amount of sanctions awarded, which are characterized by Mr. Megna as “substantial,” are appropriate remediation for Mr. Megna’s conduct in this matter and commensurate with the level of his offenses. Sanctions are, after all, awarded to “deter” the offending party from continued bad faith actions. *Id*

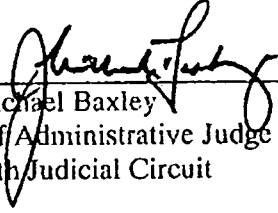
Mr. Megna asserts that Ms. Ballard cannot recover attorney fees, citing *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000) and *Williamson v. Middleton*, 383 S.C. 490, 681 S.E.2d 867 (2009) for the proposition that, since Ms. Ballard did not pay someone else to represent her, she cannot recover for her own time. Ms. Ballard acknowledges that she represented herself *pro se* in responding to the discovery served upon her by Mr. Megna and in seeking sanctions against him.

Ms. Ballard was not awarded attorney fees, she was awarded sanctions. While the sanctions were tied to the amount of work required as a result of Mr. Megna’s defalcations, the sums awarded were still sanctions. Order dated 2-13-2013, ¶¶ 35 – 37. In both *Calhoun* and *Williamson*, the appellate courts construed the applicability of statutes which could be used to shift the payment of attorney fees to a different party in the action, in contravention of the American rule that each party pays their own fees unless otherwise provided by agreement or statute. *Calhoun* involved statutory fee-shifting in family court, and *Williamson* involved fee shifting in a wage claim matter pursuant to S.C.Code Ann. Section 39-65-30. In *Williamson*, the

fee shifting statute specifically required the prevailing party to have "incurred" attorney fees before the obligation to pay could be shifted to the unsuccessful party. Neither case is applicable to an award of sanctions under Rule 11.

Ms. Ballard asked the Court to reduce the amount of sanctions she was awarded by \$1,390.00 based on her error in including two time entries for time expended by her and her staff on April 5, 2012. Since her original request for sanctions, and the award, were based on the time she had spent in responding to the discovery and pursuing sanctions against Mr. Megna, the Court will grant her request to reduce the sanctions award by the amount requested. For that reason, the amount of sanctions awarded to Ms. Ballard in the February 13, 2013 order is reduced by \$1,390.00, from \$17,388.75 to \$15,998.75. The Darlington County Clerk of Court is directed to amend the judgment entered against Mr. Megna in favor of Ms. Ballard to reflect this adjustment. The award of sanctions to Ms. Ballard is \$15,998.75.

For the reasons set forth above, Mr. Megna's motions for reconsideration in both matters are denied.



J. Michael Baxley
Chief Administrative Judge
Fourth Judicial Circuit

June 5, 2013

Hartsville, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
Ex Parte:)
)
 Desa Ballard)
)
In re:)
)
 Pee Dee Health Care P.A.,)
)
 Plaintiff,)
)
 Vs.)
)
 Estate of Hugh S. Thompson)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 Case No. 2007-CP-40-0576

CERTIFICATE OF SERVICE

2013 JUN 12 AM 10:52
 ELEANORE W. McBRIDE
 C.C.P. & G.S.
 RICHMOND
 FILED

I, Mara T. Ballard, an employee with Ballard Watson Weissenstein, do hereby certify that a copy of Order Denying Tony R. Megna's Motion for Reconsideration of Sanctions in the above-captioned case was placed in the US Mail with sufficient postage to:

James M. Griffin, Esquire
 A. Camden Lewis, Esquire
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 Columbia, South Carolina 29211
 Attorney for Tony R. Megna

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Pauling & James, LLP
Post Office Box 507
Darlington South Carolina 29540


Mara T. Ballard, CMA, CFE, Forensic Accountant

June 11, 2013
West Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2007CP4000576

James A Anasti

Lance Wilson

Willis Goodwin

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

RICHLAND COUNTY
 CLERK OF COURT
 2013 JUN 12 PM 3:56
 LEASE
 DEPT. OF S.S.
 OFFICE

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 12 June 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Douglas Neal Truslow

Thomas George Earle
Richard A. Harpootlian
James Mixon Griffin
Charlie Jay Johnson Jr.

Tony Ray Megna
Aimee Jendrzewski Zmroczek
Benjamin Rushton Matthews

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride