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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CLARENDON COUNTY

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Court of Common Pleas

OCT 19 2023

The Honorable Kristi F. Curtis, Circuit Court Judge

SC Court of Appeals

Appellant Case No.: 2020-G000720

Marvin Gipson.....Respondent

v.

Coffey & McKenzie, P.A.....Appellant

PETITION FOR REHEARING

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Attorney for the Respondent

Marvin Gipson,)
)
 Respondent,)
)
 v.)
)
)
)
)
 Coffey & McKenzie, P.A,)
)
 Appellant,)
)
 _____)

**MEMORANDUM IN SUPPORT OF THE
 APPELLANT'S PETITION FOR
 A REHEARING**

The Appellant would show unto this Honorable Court as follows:

1. In its opinion on October 4, 2023, in Opinion No. 2023-UP-324, the South Carolina Court of Appeals (hereinafter "Court") affirmed the decision of the Clarendon County Court of Common Pleas to deny a Directed Verdict at trial for the Appellant and against the Respondent.

The Appellant would show this Court as follows:

- a. The Court affirmed the lower Court's denial of Directed Verdict for the Appellant on the issue of whether or not expert testimony was required to establish the standard of care in this case. The Court stated as follows: "Regardless of whether the suit was one for negligence or legal malpractice, expert testimony was not required to establish something that lends itself to common experience. *See Sims v. Hall*, 357 S.C. 288, 295–96, 592 S.E.2d 315, 319 (Ct. App. 2003) ("Generally, a plaintiff in a legal malpractice case must establish the standard of care by expert testimony, unless the subject matter is of common knowledge to laypersons."); *see also Mali v. Odom*, 295 S.C. 78, 80, 367 S.E.2d 166, 168 (Ct. App. 1988) (noting the rules of evidence in legal malpractice actions are the same as in medical malpractice); *Thomas v. Dootson*, 377 S.C. 293, 296, 659 S.E.2d 253, 255 (Ct. App.

2008) (noting an exception exists to the requirement for expert testimony in medical malpractice cases when the subject matter is within the "common knowledge and experience of laymen")." The Appellant would show that the Court's reliance on the cases cited in support of its holding that expert testimony was not needed to establish the standard of care was misplaced. In *Sims v. Hall*, 357 S.C. 288, 295–96, 592 S.E.2d 315, 319 (Ct. App. 2003) and in *Mali v. Odom*, 295 S.C. 78, 80, 367 S.E.2d 166, 168 (Ct. App. 1988), the Court held that expert testimony was not needed in those case to establish the standard of care. In *Mali*, the plaintiffs brought a legal malpractice action against their attorney alleging negligent misrepresentation at a real estate closing. *Id.* at 79, 367 S.E.2d at 168. The court found the plaintiffs were not required to establish by expert testimony the applicable standard of care because the defendant's attorney conceded in written responses to the plaintiffs' interrogatories that he had a duty to disclose restrictions on the subject property and explain the legal impact of those restrictions to his clients. *Id.* at 81, 367 S.E.2d at 168. In *Sims v. Hall*, 357 S.C. 288, 295–96, 592 S.E.2d 315, 319 (Ct. App. 2003), the Court stated the admission of the standard of care need not be an admission of wrongdoing by the defendant. To the contrary, the purpose of establishing the appropriate standard of care is simply to arm the finder of fact with the appropriate criteria by which to judge the defendant's conduct. Therefore, in both of those cases, the standard of care was established by the admissions of the defendants. In this case, the Appellant did not admit any breach of duty and the Respondent failed to provide expert testimony of the breach. In *Thomas v. Dootson*, 377 S.C. 293, 296, 659 S.E.2d 253, 255 (Ct. App. 2008),

the Court found that it was in the common knowledge of lay persons that a hot surgical drill could burn a dental patient's face. The Court cited two (2) cases in support of its contention in *Dootson*, however, in both of those cited cases, expert testimony was required to establish the standard of care. See *Pederson v. Gould*, 288 S.C. 141, 142, 341 S.E.2d 633, 634 (1986) and *Green v. Lilliewood*, 272 S.C. 186, 192, 249 S.E.2d 910, 913 (1978).

- b. The Court also found that the Appellant's request for a reduction in the award of damages was barred by the collateral source rule. The Record on Appeal would show that the Appellate was able to recover \$1,516.89 for the Respondent and that the total award should be reduced to \$8,789.11 from the verdict of \$10,306.00. The Court cites that the \$1,516.89 came from a collateral source, yet fails to name the collateral source. The evidence in the record is that the recovered money came from the Appellant's trust account (R. p. 189, lines 5-25, and R. p. 190, lines 1-10).

For the aforementioned reasons, the Appellant respectfully requests that the Court grant the Appeal

October 19, 2023

Respectfully submitted,



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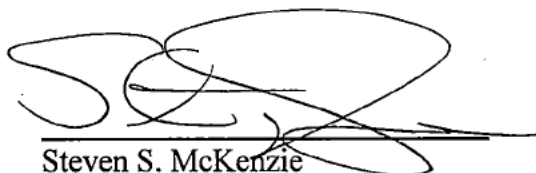
v.

Coffey & McKenzie, P.A.....Appellant

CERTIFICATE OF COUNSEL

I certify that this designation contains no matter which is irrelevant to the appeal.

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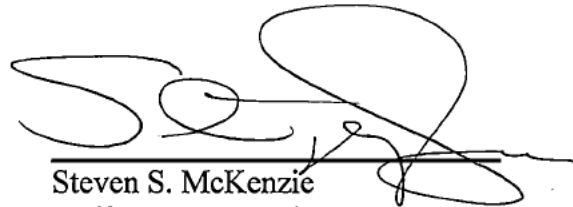
v.

Coffey & McKenzie, P.A.....Appellant

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing of the Appellant by hand delivering a copy of the Petition for Rehearing to Respondent's Attorney of Record, Benjamin A. Dunn, II at 301 Stoneridge Drive, Columbia, South Carolina 29210 on December 15, 2020.

October 19, 2023



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