

STATE OF SOUTH CAROLINA  
In the Supreme Court

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Apr 19 2024

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Walton J. McLeod, Circuit Judge

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Appellate Case No.: 2024-000464

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Desa Ballard and Desa Ballard, P.A.,  
d/b/a Ballard & Watson, Petitioners,

v.

Admiral Insurance Company and Adele R. Pope, individually and as Special  
Administrator of The Estate of Gloria Corley,  
Respondents.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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The Estate of Gloria P. Corley (the “Estate”) by its Special Administrator, Adele Pope (the “SA”), submits that the Court of Appeals correctly affirmed the Orders of the Honorable Walton J. McLeod and that there is no basis for review of the Court of Appeals’ decision by this Court. For the foregoing reasons, the Estate submits that this Court should deny the Petition for Writ of Certiorari, so that this insurance matter may be concluded without further delay or complication of the underlying malpractice suit against Petitioners.

The Estate files this Return primarily to ensure that Ballard’s fictitious recitation of “facts” from the underlying action does not confuse the resolution of the pending malpractice suit against Ballard, which was filed in early 2017. The Estate notes that the Honorable Walton J. McLeod dismissed the Estate of Gloria P. Corley as a defendant in this case in 2019, which order Ballard did not appeal. Judge McLeod specifically found in his unappealed order that Ballard argued “Ms.

Pope and the Estate of Gloria Corley should be bound by the factual findings herein,” but Judge McCleod disagreed. [R. 26] Ballard nonetheless named both the Estate and Adele J. Pope, individually, as Respondents in this appeal in an apparent attempt to have the Court of Appeals and/or this Court adopt Ballard’s wrong version of the facts.<sup>1</sup>

The Estate submits its recitation of facts in its Brief on file in this appeal as being the correct facts actually supported by the record herein. Specifically, the Order of the Honorable Edgar W. Dickson [R. 279-288], made findings of fact related to the claims asserted by Adele J. Pope against Gloria Corley in 2011, including extensive findings of fact regarding the history of the M.L. Corley Trust and Mrs. Pope’s representation of Mrs. Corley.

Ballard, as has been the case throughout the malpractice litigation and this case, wrongly asserts that Adele Pope, individually, is the plaintiff in the underlying case. As is clear from the record, Mrs. Pope’s participation in this matter is as a fiduciary. She was appointed as Special Administrator of the Estate by the Lexington County Probate Court and involved in the malpractice suit solely in her fiduciary capacity. Ballard’s filings in this matter and in the malpractice suit are preoccupied with attacks on Mrs. Pope, presumably to avoid confronting the substantial and valid malpractice claims made against Ballard. The instances of malpractice alleged in the underlying case include Ballard’s failure to appeal a \$248,000+ judgment against its client, as well as its reckless destruction of Mrs. Corley’s substantial guaranteed lifetime income.

The reasons for Ballard’s animus against Mrs. Pope are unknown, but appear to have been a substantial part of Ballard’s reasoning in facilitating the disastrous 2012 settlement which is a subject of the underlying malpractice action. *See* Petition, Page 4, wherein Ballard notes, with

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<sup>1</sup> The Estate submits that Ballard also named it and Mrs. Pope as parties to this appeal in order to legitimize Ballard’s request that the malpractice action be stayed. Ballard was successful in securing a stay, which expired upon the conclusion of proceedings in the Court of Appeals.

incorrect details, that her faulty theory in negotiating the 2012 settlement was that Mrs. Corley should surrender her substantial guaranteed income stream from the Trust in order to contract around paying a modest annual contingency fee to Mrs. Pope.<sup>2</sup>

Ballard refers to an Order from this Court in a proceeding involving the Estate of James Brown as an independent basis for this Court to grant certiorari in this matter, apparently in hopes that this Court will grant Ballard relief – in this case *against Ballard's insurance carrier* – simply because Mrs. Pope's name is in the caption. The Estate submits that Ballard makes this bold suggestion in hopes that the Petition will allow Ballard to seek further delays of the 2017 malpractice case, which is ready for trial.

Ballard's Petition also includes the following inexplicable misstatements of fact:

1. On Pages 4-5 of the Petition, Ballard suggests that Adele J. Pope got a judgment<sup>3</sup> of “more than a million dollars,” which Ballard failed to timely appeal. The order which Ballard failed to timely appeal is actually Judge Dickson's Order granting a judgment against Ballard's client for approximately \$248,000. [R. 279-288]
2. On Page 4 of the Petition, Ballard alleges that the “[M.L. Corley] Trust had already provided for a payment of \$7,500 per month to Mrs. Corley BEFORE Ms. Pope got involved.” In 2013, however, Judge Dickson found that Mrs. Corley had secured no agreement for herself to receive any amount of support from the Trust; that Mrs. Pope's representation had resulted in Mrs. Corley receiving a guaranteed \$145,000 per year

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<sup>2</sup> Ballard's assertion that Mrs. Corley was guaranteed any amount of income from the Trust dates back to the answer Ballard filed on behalf of Mrs. Corley in 2011. The allegation was wrong in 2011 and confirmed to be wrong in Judge Dickson's 2013 Judgment, but Ballard nonetheless asks this Court to accept it in 2024.

<sup>3</sup> The judgment Ballard appears to reference was entered by the Honorable Diane S. Goodstein on July 15, 2016, which granted a judgment against individuals other than Mrs. Corley. Ballard separately refers to the July 15, 2016 judgment in footnote 1, although the order is not in the record.

income stream from the Trust; and that Mrs. Pope had nonetheless limited the application of her contingency fee to funds received by Mrs. Corley in excess of \$90,000 per year. [R. 281-283]

3. On Page 6 of the Petition, Ballard alleges that, “[o]n information and belief, there is some form of agreement reached between Ms. Pope and Ms. Corley’s attorney-in-fact regarding the split of proceeds of the legal malpractice case if it is allowed to move forward.” There is nothing in the record to support this assertion; it is not pled as a fact in Ballard’s pleadings herein; and the Estate confirms that no such agreement exists. Despite Ballard’s continuing obsession with how the Estate is administered and distributed, those matters are among the fiduciary, creditors and beneficiary of the Estate. The malpractice case seeks damages for Ballard’s failures in representing Mrs. Corley, who died penniless and being evicted from her nursing home as a result of Ballard’s representation. [R. 116] Ballard, apparently suffering no compassion for her own client, continues her longstanding attempts hide its malpractice behind conspiracy irrelevant conspiracy theories. The disposition of any recovery in the malpractice case is no business of Ballard’s, and it certainly has no effect on the outcome of this *insurance* case.

Ballard suggests that this case presents novel issues of law, which is the only justification offered under Rule 242 for why this Court should review the matter. While it may be true that South Carolina does not have any published case law on “hammer clauses,” this case does not present a question regarding the enforceability or validity of such clauses. Instead, this case presents quotidian questions of contract interpretation. If there is anything extraordinary at all, it is that Ballard asked the lower courts, and now asks this Court, to adopt her tortured reading of an unambiguous contract term.

As found by Judge McLeod, the Estate is not a party to that contract and should not have been a party to this action. Nonetheless, Ballard continues to use this action to delay the resolution of the malpractice case by delaying the trial and intimidating her insurance carrier out of consummating a settlement with the Estate. As argued in the Court of Appeals, the Estate submits that the most important issue raised by this case is a public policy issue. The Estate submits that public policy does not support allowing a law firm to delay and avoid liability for its own malpractice for over seven (7) years by fabricating a dispute with its carrier.

Many of the facts underlying the malpractice action took place more than a decade ago, and multiple witnesses and counsel have died during the pendency of the case. The Estate respectfully submits that the instant Petition is made to further delay the underlying action and should be denied. In the event the Court elects to review this matter, the Estate asks that the Court explicitly note that the underlying case should not be further delayed by further appellate litigation of this insurance matter.

### **Conclusion**

For the foregoing reasons, the Estate of Gloria P. Corley submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

s/Adam T. Silvernail

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