

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

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**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Walton J. McLeod, Circuit Court Judge**

**Apr 19 2024
S.C. SUPREME COURT**

Supreme Court Case No. 2024-000464

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

**RETURN OF ADELE J. POPE, SPECIAL ADMINISTRATOR, ESTATE OF
GLORIA CORLEY, INDIVIDUALLY,
TO PETITION FOR WRIT OF CERTIORARI**

GENERAL RESPONSE TO PETITION (pp. 1-10)

Ballard’s petition presents questions that are misstated and facts that have no support in the record of this case or the record of the underlying case. They are a work of fiction created by Ballard, a prominent law firm, as it continues its decade-long efforts to “prove” that it did not make a mistake in its representation of Gloria Corley (“Gloria”) when it participated in a disastrous cash buyout of the lifetime \$145,000 annual payment Gloria’s former attorney, now the fiduciary of her estate, secured for Gloria, and which should have provided Gloria with security and comfort for her entire life. Ballard made a mistake. There is no dispute that Ballard’s mistake caused Ballard’s

client Gloria Corley to be liable for \$248,673.87, plus daily interest, plus costs of collection, including attorneys' fees.

After making the first mistake, Ballard made another mistake. Ballard failed to timely appeal the judgment against Gloria Corley, even though Ballard attorneys, Professor Alan Medlin and Ballard's expert Kenneth Wingate, Esq., all believed that if the appeal had been timely, it would have resulted in the reversal of the circuit court's order and a finding that the 1998 fee agreement (less than a 15% contingency on \$145,000 a year) between Gloria Corley and Adele Pope was not enforceable.

Ballard's "Factual Background" cannot be found within any record. As a single example, on p. 4, the petition states: "The trust had already provided for a payment of \$7,5000 per month to Mrs. Corley BEFORE Mrs. Pope got involved." This \$90,000-a-year calculation is simply false. Gloria Corely hired Pope because Sam Corely, Gloria's stepson and trustee, had paid her nothing and the Corley Trust provided Gloria only with "net income" and was funded with assets which produced no income. The plan of Sam Corley was to pay Gloria Corley almost nothing from the Corley Trust. Sam Corley wanted the tax advantage of having the Corely Trust taxed to Gloria's estate when she died, but with the smallest possible payments to Gloria Corley during her lifetime, and everything possible going to Sam Corley and his siblings at Gloria's death.

Ballard's first error was caused, in part, because not a single Ballard attorney spoke with Gloria Corely before making the disastrous lump sum deal. Yet Ballard has spent more than a decade using delaying tactics, including a "hammer clause" in its malpractice insurance policy, to deny Gloria Corley proper redress for its error, compounding the damage done to Ballard's former client in an effort to "prove" that Ballard did nothing wrong. While experts and witnesses to the real facts retire, die and disappear, Ballard keeps hammering away, blaming its mistake on Gloria's

sole devisee, the insurance company, Gloria's former attorney and fiduciary, and the courts. This should stop. The petition should be denied.

RESPONSE TO QUESTIONS PRESENTED (p.2)

Questions 1 through 5 contain factual inaccuracies. The lower court properly framed, asked and answered Ballard's questions. The underlying case never involved a "reasonable dispute." From the time of Ballard's failure to timely file the appeal, Ballard's liability was undisputed based on its own assessment of the changes of the missed appeal. Further, the minimum damage to Gloria Corely was also set at nearly a quarter of a million dollars; daily interest; and costs of collection, including attorneys' fees.

The omission of the undisputed fact of Ballard's liability to Gloria Corley and the inclusion of a false narrative requires a restatement of the questions presented.

1. Where a law firm has undisputedly damaged its client and the minimum damage is liquidated, may the law firm use a "hammer clause" to compel its liability carrier to provide a frivolous defense to the client's lawsuit while refusing to negotiate for a settlement within the policy limits? (No)
2. Did the lower court correctly construe law firm's liability insurance policies? (Yes)
3. Did the lower court and Court of Appeals correctly conclude, without adding any language, that the policy was unambiguous as a matter of law? (Yes)
4. Did the Court of Appeals and lower court correctly state Petitioner's position regarding Admiral's engagement in settlement discussions? (Yes, improper)
5. Did both the Court of Appeals and the trial court correctly conclude that consideration of the "hammer clause" was appropriate under the facts of this case. (Yes)

Each of the questions was resolved by the lower court and Court of Appeals in favor of the just conclusion that Ballard should not have delayed the resolution of Gloria Corely's damage claim against it for more than a decade, compounding the damage to its former clients and her estate and family by the hammer clause.

RESPONSE TO STATEMENT OF THE CASE AND “FACTUAL BACKGROUND”

The facts in the Statement of the Case and “Factual Background” on pages 3 through 7 are inaccurate and misleading. A summary of the case, with appropriate factual background, follows.

M.L. Corley of Lexington, South Carolina and iconic entertainer James Brown of Beech Island, South Carolina had some things in common. Both had more than one spouse and carefully crafted, tax driven Trusts which clearly stated their intentions. Both estates had encounters with a thief. In both estates at least one trustee failed to honor the clear terms of the trust. Both also had spousal claims and valuation issues.

M.L. was Gloria Corley’s third husband, but they had a happy marriage. Sam Corley and his siblings were the children of M.L. Corley’s long-term marriage to his deceased first wife. James Brown had no spouse, but he had a trustee who tried for more than a decade to make Tomirae Hynie appear to be James Brown’s fourth spouse.

In addition, a number of the attorneys involved in the M.L. Corley Trust and the claim of Gloria Corley were involved in the James Brown estate litigation, including at least one attorney from all of the firms listed in the Petition for Writ of Certiorari.

M.L. Corley died in 1997, intending for his spouse to have a “net income” benefit from the Corley Trust for her lifetime, but Sam Corley, his son, did not want Gloria to have what M.L. provided. As a result of Ballard’s disruption of what was secured for Gloria Corley 25 years ago, and Ballard’s use of the “hammer clause” of its insurance policy, Gloria Corley, has not received the share to which she was entitled.

James Brown, died in 2006, and clearly omitted all spouses from his estate plan, giving the bulk of his fortune to his “I Feel Good” education trust to benefit needy students. Yet Tomirae Hynie and her attorneys litigated for thirteen (13) years to try to make Hynie appear to be the

spouse of James Brown despite her handwritten admissions of bigamy discovered within a year of James Brown's death.

In the extended litigation involving each of the two estates, both the Corley and Brown trusts had some fiduciaries and many attorneys who ably represented their clients regardless of their positions. Some fiduciaries and a small number of attorneys in each of the two estates made mistakes, then resorted to personal attacks, delays, and an effort to blame anyone other than themselves for the damage they had caused.

The Ballard firm without meeting Gloria Corley, represented her in a complex transaction which, solely through the fault of Ballard, did not go well for Gloria Corley. More than a decade later, Ballard is still engaged in delays, name calling, personal attacks and blame for the damage it caused Gloria Corley. Recreating the facts and ignoring the law, Ballard is using a "hammer clause" in its malpractice insurance contract to compound the damage it did to Gloria Corley in 2011 and 2012.

M.L. Corley died in 1997 leaving a trust that provided net income for life to Gloria Corley. At Gloria Corley's death, the Corley Trust provided for a payment of fifty thousand (\$50,000) dollars to Gloria's daughter, Andra Williams ("Angie"), with the remainder of the Corley Trust to be distributed to M.L.'s four children. By the time Ballard became involved, the Corley Trust was worth about \$5 million.

After M.L. Corley's death, at the suggestion of her son attorney Hoyt Rowell, Esq., Gloria Corley engaged Adele Pope to represent her. Sam Corley, the trustee and Gloria's stepson, had funded the Corley Trust with non-income producing property along Highway 378 between Columbia and Lexington and property on Lake Murray. Sam Corley was well represented by the firms of Camden Lewis, Esq., and tax attorneys Robert Young, Esq., and David Siddons, Esq.,

By 2002 Pope had secured an agreement for Gloria Corley to receive \$145,000 a year for life from the Corley Trust, with a possibility for more under certain circumstances. The fee agreement between Gloria Corley and Pope provided for Pope to be paid \$18,333 a year and 1/3 of amounts over \$145,000. Pope also prepared a Will and power of attorney (“POA”) with gift provisions for Gloria Corley. Angie was Gloria Corley’s attorney in fact, but both the POA and Will provided that Gloria Corley’s assets go equally to her two children, Hoyt and Angie.

From 1998 until 2010 Sam Corley delivered the final annual check to Pope’s office, and Gloria Corely and Pope met to deposit and distribute the last of the \$145,000 to Gloria Corley and the \$18,333 to Pope.

In 2011 Angie, without Gloria present, declined to deposit the final annual check and distribute it under the fee contract as had been done for a decade. Angie told Pope she was in charge and would pay Pope when she felt like it.

Pope, through Adam Silvernail, Esq., filed a simple declaratory judgment action asking the circuit court to re-issue the final 2010 check; direct that it be disbursed in accordance with the fee agreement; and that the matter be set back on track so that Mrs. Corley could enjoy all except \$18,333 and 1/3 of amounts above \$145,000 that she receive in accordance with the arrangement Pope had reached for Gloria Corley.

David Siddons, Esq., did not represent Sam Corley when the suit was filed. Sam Corley, *pro se*, filed a document saying that as trustee he would abide by the distribution directions of the court.

At Hoyt Rowell’s suggestion, Angie hired Ballard and gave them Gloria’s entire file. At Ballard’s request, Pope also immediately delivered the small file related to the receipts and disbursements of the annual year-end payments.

Without meeting Gloria Corley or discussing her desires. Ballard and Angie, acting under the Pope POA, determined that Gloria Corley's primary goal was to assure that she never pay Pope any portion of the \$18,333 per year.

To support Ballard's position, Ballard hired Kenneth Wingate, Esq., who was suing Pope on behalf of Tomirae Hynie and a number of other clients under a 40% contingency fee. Despite this, Wingate told Ballard that he had no conflict in serving as Gloria Corely's expert against Pope. Over the next year or so, paid \$10,000 by Gloria Corley, Wingate consulted with Ballard attorneys and signed an affidavit in which he stated his belief that Pope's 1998 fee agreement with Gloria Corley, which charged less than 15% on the \$145,000 a year and 1/3 of additional amounts, was "void as against public policy."

Silvernail, for Pope, made repeated offers to end the dispute, but Ballard refused all overtures. At the end of 2011 a Ballard attorney deposed Pope in Pope's home office in Newberry where Pope, to shorten the deposition and reduce the costs to her former client, provided Ballard with an affidavit outlining the entire history of the representation. Pope also invited the Ballard attorney to view her office computer files related to Gloria Corley and the fee payments and disbursements.

A mediation was held in January 2012. Gloria Corley did not appear, and this was the first time Pope learned that Angie was acting under the POA. In addition Richard Breibart, Esq., appeared on behalf of Sam Corley.

Breibart falsely accused Silvernail of impropriety related Sam Corley, then took money from the Corleys and was suspended from the practice of law. Prior to his suspension, however, Breibart and Sam Corley proposed what Ballard firm attorneys considered a good idea to assure that Gloria Corley not pay Pope any fee.

The Corley Trust proposed to distribute \$650,000 in exchange for relinquishment by Gloria Corley of her \$145,000 (or more) annual payments for life and Angie her \$50,000 from the Corley Trust at her mother's death.

By early 2013 the deal had closed; Ballard had distributed less than \$600,000 to Angie for Gloria; and Ballard had presented Gloria with a \$4 million U.S. Gift Tax Return, which she signed, outlining the \$4 million "gift" from the Corley Trust to M.L. Corley's children which has resulted from the Sam Corley/Breibart deal.

By 2014 the circuit court had rejected Ballard's arguments and found that Gloria was liable for the legal fees resulting from the secret Ballard/Corley/Breibart deal.

In 2016 Camden Lewis reappeared, this time to represent Gloria Corley at the request of her court-appointed GAL, Heather Cairns. Gloria was penniless and Lewis tried to negotiate with Ballard. Lewis secured an affidavit from Professor John Freeman outlining how Ballard attorneys had fallen below the standard of care.

On March 31, 2016, Gloria Corley died. Her estate was unable to continue with the Lewis firm because Gloria Corley had no funds to pay the costs required.

Pope was appointed Special Administrator for Gloria Corely's estate. Angie, as the sole devisee under the Ballard-drafted Will, consented to the Pope appointment. Hoyt made no objection to the appointment, asking only that the court protect his interest in the matter.

The Lewis law firm turned over its Gloria Corely file immediately. Ballard and Wingate turned over their files when ordered to do so by the Lexington County Probate Court.

Repeated efforts of Silvernail to settle the matter with Ballard, through counsel, without having to engage a 1/3 contingency fee attorney, were futile.

Gloria Corley's estate sued Ballard in 2017. In addition to the Freeman Affidavit, Pope Johnson, Esq., issued an opinion that Ballard had fallen below the standard of care in multiple ways. Ballard has continued since 2017 to negotiate, even though Gloria Corley's estate was always willing to settle within the policy limits.

Ballard engaged the firm of Bland & Richter, which brought this suit (the "Admiral Suit"). While the suit seeks no relief against either Gloria Corley's estate or her special administrator, individually, Ballard refused to release either Gloria's estate or its fiduciary unless they agreed to be bound by the false narrative in the Admiral Suit complaint.

Since the commencement of the Admiral suit, Gloria Corley's estate and its fiduciary, individually, have been forced keep the estate open and be dragged through the federal district court, the Richland County Court, and the Lexington County Court while Ballard blamed everyone except itself for the problem it had caused Gloria Corley.

When the Honorable Walton McLeod III dismissed Gloria Corley's estate and its fiduciary from this suit, Ballard was undaunted. Ballard just added them to the appeal, then secured a lower court order staying the underlying suit until the final decision of the Court of Appeals was rendered.

Ballard contacted Hoyt to attempt to make him part of Ballard's legal team, but he declined. His deposition in Charleston years after his mother's death confirmed that the damage done by Ballard to Gloria Corley went far beyond the loss of \$145,000 (less an \$18,333 legal fee).

Hoyt testified that he had not challenged his mother's Ballard-prepared Will, even though he – like Pope -- knew it was not what his mother wanted. Ballard had changed the Will without consulting Gloria Corley, knowing that the POA under which Angie was serving, like the Will Pope had prepared, gave Gloria Corley's assets to Hoyt and Angie equally.

More than a decade after Ballard's liability and the minimum damage it had done to Gloria Corley became clear, Ballard is using the hammer clause against its insurance carrier, Gloria Corley's estate and the person Ballard made the sole beneficiary by the Ballard Will.

RESPONSE TO BASIS FOR WRIT

Ballard describes itself as being "kicked to the curb" by the injustices of Admiral and the court. In reality, it is Gloria Corley, her estate, and her family who have been hammered to death by the injustices of Ballard's use of the hammer clause.

RESPONSE TO ARGUMENT

The lower court did not err. The Court of Appeals did not err. Attorneys, even the most prestigious and respected attorneys, make mistakes. When those mistakes damage their clients, it is manifestly unjust to use extraordinary measures; personal attacks and blame of others to avoid liability. That is what had been done here.

Ballard not only damaged Gloria Corley by about a quarter of a millions dollars, but compounded that dramatically by delay and the use of the hammer clause. In addition, without even speaking on the phone to Gloria Corley, some Ballard lawyer cut and pasted Gloria Corley's Will which was consistent with the POA, to exclude Hoyt Rowell, Gloria Corley's son.

The damage to Gloria Corley and her family by Ballard was extreme. It has been compounded by delays; improper use of the hammer clause; and vitriolic personal attacks on Angie Williams, Gloria Corley's sole devisee, and the fiduciary of Gloria Corley's estate.

CONCLUSION

For each reason stated in the opinions of the lower court and the court of appeal, as well as the arguments herein, and in the return of the Estate of Gloria Corly, which is incorporated as fully as if set out herein, Ballard's Petition for Writ of Certiorari should be summarily denied.

Respectfully submitted,

s/ Adele J. Pope, Special Administrator,
Estate of Gloria P. Corley, Individually
Adele J. Pope, Special Administrator,
Estate of Gloria P. Corley, Individually,
pro se.
1228 Walnut Street
Newberry, South Carolina 29108
S.C. Bar No. 4501

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