

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Jennifer B. McCoy
Case No: 2007-CP-10-01444
Ct. App. Case No: 2020-000968

Appellate Case No: 2024-001232

RECEIVED

Aug 29 2024

SC Court of Appeals

Cynthia Holmes, M.D., Respondent/Appellant,

Petitioner

v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler &
Boyd, P.A., Manton Grier and James Y. Becker, Defendants,

Of which Haynsworth Sinkler Boyd, P.A., successor to
Sinkler & Boyd, P.A., is the Appellant/Respondent.

Respondent.

**RETURN IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

s/Mary M. Caskey

Mary M. Caskey, SC Bar No: 76198
HAYNSWORTH SINKLER BOYD, P.A.
Post Office Box 11889
Columbia, SC 29211
Telephone: (803) 779-3080
mcaskey@hsblawfirm.com
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF CONTENTS i

QUESTIONS PRESENTED1

INTRODUCTION2

COUNTERSTATEMENT OF THE CASE AND FACTS3

ARGUMENT8

CONCLUSION12

QUESTIONS PRESENTED

- I. Did the Court of Appeals apply the correct legal analysis in determining that the Judgment did not expire until June 11, 2020, pursuant to 11 U.S.C. § 108?
- II. Did the Court of Appeals correctly find that HSB was entitled to execute on the Judgment?
- III. Did the Court of Appeals correctly find that Holmes cross-appeals were abandoned?

INTRODUCTION

In this action, Haynsworth Sinkler Boyd, P.A. (“HSB”) seeks to enforce a judgment against Cynthia Holmes (“Holmes”) entered on November 18, 2009, in the principal amount of \$200,000 (the “Judgment”).¹ (R. at 29.) HSB began efforts to collect the Judgment in 2016, but further litigation and actions by Holmes hindered HSB’s efforts. Holmes ultimately declared bankruptcy in 2019, in the Bankruptcy Court for the District of South Carolina (the “Bankruptcy Case”), which stayed HSB’s ability to collect the Judgment and tolled the original expiration date of the Judgment. (R. at 599-600.) The automatic stay in the Bankruptcy Case was lifted on May 12, 2020, and HSB sought to execute on the Judgment prior to June 11, 2020, the new expiration date. The circuit court denied HSB’s Motion for Execution of the Judgment on June 11, 2020.

The Court of Appeals correctly determined that HSB was entitled to execute upon the Judgment because it had not expired when HSB sought the execution on May 14, 2020. Specifically, the Court of Appeals held that pursuant to 11 U.S.C. § 108(c)(2), the expiration of the Judgment was stayed until 30 days after the automatic stay under 11 U.S.C. § 362(a)(2) was terminated, which was June 11, 2020. The Court of Appeals correctly centered its analysis on the interpretation and preemption of 11 U.S.C. § 108 over state law in finding that the expiration of the judgment was tolled during Holmes’ Bankruptcy Case. The decision of the Court of Appeals is not in conflict with prior decisions of this Court, and no substantial constitutional issues have been raised.² For these reasons, this case does not warrant discretionary review by this Court.

¹ As of May 13, 2020, the amount due on the Judgment was \$436,924.02. (R. at 680 ¶ 36; R. at 29.)

² Although Holmes vaguely argues in her Petition that her inability to make certain filings *pro se* is a violation of statutory and constitutional law, the numerous filings made by or on behalf of Holmes in this case and her other cases demonstrate that she has not been denied access to the court system in any way. In any event, and as set forth above, South Carolina law provides a clear legal basis supporting the Court of Appeals’ decision in favor of HSB.

COUNTER-STATEMENT OF THE CASE

This appeal is the result of a lengthy period of litigation between the parties. The Judgment arose after Holmes sued HSB for malpractice in connection with HSB's representation of her in litigation against East Cooper Community Hospital concerning the revocation of Holmes's medical staff privileges. (R. at 29.) Holmes's malpractice claims against HSB were ultimately dismissed in their entirety after protracted litigation, and the trial court issued the Judgment as an award for sanctions against Holmes. (R. at 3.) The Judgment was affirmed by the South Carolina Supreme Court on June 4, 2014, in *Holmes v. Haynsworth Sinkler Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014).³

HSB began its efforts to collect the Judgment in 2016 by sending a demand letter to Holmes that went unanswered. (R. at 676 ¶ 4.) The writ of execution was sent to the Charleston County Clerk of Court for attestation on October 19, 2016, and the sheriff returned the writ of execution marked *nulla bona* on December 8, 2016. (R. at 229; 676 ¶ 4.) Thereafter, HSB filed a Verified Petition to commence supplementary proceedings pursuant to S.C. Code § 15-39-310 on January 3, 2017. (R. at 228.)

The Court issued a Rule to Show Cause on January 18, 2017, and scheduled a hearing for March 10, 2017. (R. at 67.) In preparation for the hearing, HSB served discovery and attempted to take Holmes' deposition, but she never responded and failed to appear. (R. at 677.) Instead of complying with her obligations under the South Carolina Rules of Civil Procedure, Holmes filed three motions *pro se* after receiving the Verified Petition, including a motion for sanctions against

³ During the pendency of the litigation between Holmes and HSB, the South Carolina Supreme Court directed the Clerks of Court in South Carolina to refuse to accept any further filings from Holmes that were related in any way to the revocation of Holmes's hospital privileges unless the documents were filed by an attorney, other than Holmes, who was licensed to practice law in South Carolina. (*See* Order, entered in *Doe v. Duncan*, No. 2008-UP-596, (Dec. 2, 2009) (the "Doe Order").)

HSB for pursuing the Judgment and a motion to quash the discovery against her. (R. at 677 ¶ 7.)

Holmes appeared at the hearing on March 10, 2017, but failed to produce the documents as ordered by the Court. (R. at 677 ¶ 8.) The Court informed Holmes that it would not entertain any motions filed by her *pro se* due to the Doe Order. (R. at 677 ¶ 7.) On March 14, 2017, the Court entered its Supplemental Proceedings Order in which Holmes was ordered to provide documentation of her assets to HSB by April 14, 2017. (R. at 73.) However, Holmes never complied with the Supplemental Proceedings Order. (Sanctions Motion, R. at 347.) The only financial documents that Holmes has ever produced to HSB were her 2014 and 2015 tax returns, and she failed to provide all other documentation of her assets and ability to satisfy the Judgment. (R. at 677 ¶ 14; Sanction Order, R. at 75.)

Through its independent efforts, HSB identified the property located at 1611 Poe Avenue, Sullivan's Island, SC 29482 (the "Property") as an asset of Holmes that was available to apply towards the Judgment. (R. at 677 ¶ 10.) After completing a title search on the Property, HSB identified a mortgage held by Bank of America. (R. at 677 ¶ 10.) HSB sent a subpoena to Bank of America to determine the mortgage balance on the Property, but Holmes filed a motion to quash in response without any legitimate reason to support it. (R. at 331.) In light of the motion to quash, Bank of America refused to respond to HSB's subpoena. (R. at 347.)

HSB filed a Motion for Contempt and Sanctions after Holmes refused to comply with the Supplemental Proceedings Order, which was granted following a hearing on Jun 21, 2017. (R. at 347; 75.) The Court ordered Bank of America to respond to HSB's subpoena, ordered Holmes to produce the requested asset information, and imposed a \$2,500.00 sanctions award in favor of HSB. (R. at 76.) On July 28, 2017, Bank of America responded to HSB's subpoena and produced financial documents reflecting a total balance of \$77,272.20 remaining on the mortgage held in

connection with Holmes's interest in the Property. (R. at 677 ¶ 13.) Holmes never complied with the June 21, 2017 Order. (R. at 677-78 ¶ 14.)

In addition to her antics before the trial court, Holmes filed eight appeals to this Court. (R. at 209, 210, 342, 343, 352, 353, 363, 646.) All of them were dismissed. (R. at 77, 82, 84, 86, 87, 143.) She also continued to file motions in the collection action in which she challenged almost every order entered by the Court and attempted to overturn the Court's orders and thwart HSB's attempts at legitimate discovery and collection. (R. at 247, 250, 288, 291, 678 ¶ 15.) Holmes also filed numerous petitions for rehearing and petitions for writ of certiorari with the South Carolina Court of Appeals and the South Carolina Supreme Court, all of which were denied or dismissed. (R. at 41, 79, 112, 131.)

During this time, Holmes also turned to federal court and filed an action against HSB, James Y. Becker, and HSB's attorney collecting the Judgment, Mary M. Caskey, on November 1, 2017. (*Holmes v. Becker et al.*, Case No. 2:17-cv-2949-PMD-BM (the "USDC Action").) In her Complaint, Holmes alleged a variety of state and federal claims arising from HSB's efforts to collect the Judgment. (R. at 356.) Ultimately, the USDC Action, which was amended to add Judge Mikell Scarborough as a defendant, was dismissed on March 29, 2019, after District Court Judge Bruce H. Hendricks entered an Order Adopting the Report and Recommendation of Magistrate Judge Bristow Marchant. (R. at 113.) Holmes appealed the Order dismissing the USDC Action to the Fourth Circuit Court of Appeals, and all Defendants moved to dismiss the appeal. (R. at 679 ¶ 22.) Holmes's Fourth Circuit Appeal was finally dismissed on November 25, 2019, and the Fourth Circuit denies Holmes's subsequent petitions for rehearing *en banc* and her motion to reconsider. (R. at 679 ¶ 22.)

In order to determine if the Judgment could be satisfied, HSB continued its investigation

into Holmes's assets throughout her lawsuits and appeals. (R. at 679 ¶ 23.) Although Holmes never complied with South Carolina law and court orders instructing her to provide HSB with financial records, HSB determined that the Property was an asset that could be sold to pay the Judgment pursuant to S.C. Code Ann. § 15-39-410. (*Id.*) Holmes has a one-half (50%) interest in the Property, which she owns with her ex-husband, Kevin Holmes. (*Id.*)

HSB requested that the Court order the sale of Holmes's interest in the Property on January 2, 2019, but the Court notified HSB that a hearing would be delayed while the USDC Action and subsequent appeals were pending. (R. at 867, 872; 680 ¶ 32-33.) However, HSB requested that the Court move forward with a hearing to allow for ample time to sell the Property prior to the expiration of the Judgment. (R. at 867-69.) The Court agreed and set a hearing for April 8, 2019, to rule on whether or not Holmes's interest in the Property should be sold. (R. at 597.)

To avoid the hearing and the sale of the Property, Holmes filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on March 22, 2019, Case No. 19-10644, in the Bankruptcy Court for the District of South Carolina (the "Bankruptcy Case"). (R. at 600.) The Bankruptcy Case stayed the ability of HSB to collect the Judgment pursuant to 11 U.S.C. § 362. (R. at 599.) During the Bankruptcy Case, Holmes continued to file multiple motions, appeals, and pleadings to try and prevent HSB from pursuing its claim based on the Judgment before it expired. (R. at 609, 679, ¶ 29.)

Prior to the Bankruptcy Case, HSB was prepared to move forward with the execution of the Property as evidenced by the hearing that was scheduled in April 2019, well before the expiration of the Judgment. (R. at 679, ¶ 24-26.) However, while the Bankruptcy Case was pending, HSB was prevented from collecting any amounts due on the Judgment or to enforce the Judgment lien due to the automatic stay. (R. at 680, ¶ 32.) On May 12, 2020, Holmes received a

discharge pursuant to 11 U.S.C. § 727, and the automatic stay was lifted. (R. at 144.) Only then was HSB able to pursue its claim based on the Judgment. (R. at 666.)

Two days after the Discharge Order was entered, on May 14, 2020, HSB filed its Emergency Motion for Expedited Order of Execution and Sale of Property and Issuing Notice of Sale (“Motion for Execution”). (R. at 666.) In its Motion for Execution, HSB requested that the Court issue an execution of the Judgment and order the sale of the Property so that it could be sold no later than June 11, 2020. (R. at 667.) In support of the Motion for Execution, HSB submitted the Affidavit of Mary M. Caskey to detail the efforts HSB took to pursue the Judgment and describe the antics of Holmes to try to avoid the Judgment, including filing affirmative lawsuits against the attorneys involved and the judge who entered the orders against her. (R. at 676.) In pursuing the Judgment and defending itself against the protracted litigation described below, as of the time of Ms. Caskey’s affidavit on May 14, 2020, HSB had incurred attorneys’ fees in the amount of \$117,702.74, and costs in the amount of \$2,291.15 since June 4, 2014. (R. at 680 ¶ 37.)

The Motion for Execution was originally scheduled to be heard by Judge Mikell Scarborough, to whom the case was referred via the Verified Petition and Rule to Show Cause. (R. at 880.) The Court’s staff notified Ms. Caskey that no sale could be held within the thirty (30) days requested due to COVID-19 but that the Court would consider the Motion for Execution. (R. at 877.) However, at the time of the request, Holmes had filed a second action against Judge Scarborough in state court, alleging the same claims against him, (and HSB and its attorneys), that had already been dismissed in the District Court Action. (R. at 681 ¶ 35; 115.) As a result, Judge Scarborough requested that Judge Jennifer McCoy hear the Motion for Execution. (R. at 880.)

HSB’s Motion for Execution was denied in an Order issued by Judge McCoy dated June 11, 2020. (R. at 148.) HSB filed a Motion to Reconsider on June 22, 2020, which was denied in

a Form 4 on June 26, 2020. HSB appealed the Circuit Court’s ruling to the Court of Appeals.

On March 1, 2024, the Court of Appeals reversed the Circuit Court’s ruling and held that the Judgment did not expire until June 11, 2020, pursuant to 11 U.S.C. § 108, and therefore HSB’s Motion for Execution filed on May 14, 2020, should not have been denied. The Court of Appeals further held that Holmes’ “tactics have undeniably caused undue delay and prejudice to HSB and warrant a reversal of the circuit court’s order.”

ARGUMENT

- 1. The Court of Appeals applied the correct legal analysis in determining that the expiration of the Judgment was stayed pursuant to 11 U.S.C. § 108, and did not expire until June 11, 2020.**

Holmes argues that the Court of Appeals’ decision is contradictory to the Supreme Court’s decision in *Carr v. Guerard*, 616 S.E.2d 429 (2005), based on the Supreme Court’s ruling that a creditor loses standing to enforce a judgment once it expires. It is undisputed between Holmes and HSB that judgments expire ten years from the date on which the judgment was entered, absent an intervening event. The issue before the Court of Appeals was to determine the impact of the intervening Bankruptcy Case on the expiration date of the Judgment. The Court of Appeals correctly interpreted 11 U.S.C. § 108(c) in ruling that Section 108(c) extended the expiration of the Judgment until thirty days after the automatic stay was terminated in the Bankruptcy Case. It is undisputed between Holmes and HSB that the automatic stay was lifted on May 12, 2020, when Holmes obtained her discharge from personal liability in the Bankruptcy Case. (R. at 144.) Therefore, the Court of Appeals correctly held that the Judgment did not expire until June 11, 2020. Because the Judgment had not expired as of May 14, 2020, when HSB sought the execution of the Judgment, HSB had standing pursuant to the ruling in *Carr*.

Holmes also relies on *In re DC Dev., Inc.*, 572 B.R. 171, 175 (Bankr. D.S.C. 2017), to argue that the 11 U.S.C. § 108 does not preempt S.C. Code Ann. § 15-39-30. In *In re DC Dev.*

Corp., the Bankruptcy Court for the United States District Court of South Carolina dismissed an involuntary bankruptcy petition because, in relevant part, two of the creditors who filed the bankruptcy court held judgments that had already expired, and therefore were not eligible to be petitioning creditors. The Bankruptcy Court did not make any rulings as to whether or not the filing of a bankruptcy case tolls the expiration of a judgment that has not yet expired when the bankruptcy case is filed, or whether Section 108(c) preempts state law.

In fact, the opinion in *In re DC Dev., Inc.* was written by Bankruptcy Judge David R. Duncan, who was the same judge who presided over Holmes' Bankruptcy Case. In an adversary proceeding filed by HSB against her concerning the dischargeability of the debt due under the Judgment, Holmes filed a Motion to Dismiss and argued that the Judgment had expired. Judge Duncan disagreed and ruled that the expiration of the Judgment was stayed pursuant to 11 U.S.C. § 108(c)(2) for 30 days after the stay was lifted. See *Haynsworth Sinkler Boyd, P.A. v. Holmes*, 610 B.R. 551, 547 (Bankr. D.S.C. 2020).¹ Judge Duncan's order in the Bankruptcy Case, like the Court of Appeals' decision here, follows the correct interpretation of 11 U.S.C. § 108 and its impact on S.C. Code Ann. § 15-39-30. See also *In re Washington*, 581 B.R. 150, 160-62 (Bankr. D.S.C. 2017) (finding that under South Carolina law and section 108, the statute of limitations was tolled during the entire time the bankruptcy case was in effect).

Holmes also argues that the Court of Appeals failed to explain "how it came to the conclusion that applying an extension to a collection deadline authorized under bankruptcy code would have any effect on a party's standing." (Petition at 9.) This argument misses the mark entirely, ignoring both the plain language of 11 U.S.C. § 108 and the Court of Appeals' decision. First, Section 108, which is titled "Extension of Time," specifically states that its provisions are related to "applicable nonbankruptcy law" that "fixes a period for commencing or continuing a

civil action in a court other than a bankruptcy court on a claim against the debtor.” 11 U.S.C. § 108(c). In finding that Section 108 tolled the expiration of the Judgment until after the stay was lifted, the Court of Appeals found that Section 108 impliedly preempted S.C. Code Ann. § 15-39-30, and therefore, Section 108(c) tolled the expiration of the Judgment until June 11, 2020. (Ct. App. Op. at p. 5.) This is consistent with well-settled law that provisions of the bankruptcy code preempt state law when they conflict, as they do here. *In re Citrus Tower Boulevard Imaging Ctr., LLC*, 460 B.R. 334, 340 (Bankr. N.D. Ga. 2011) (“The Bankruptcy Code is federal law that preempts state law where such laws conflict.”); *In re Williams*, No. 06-32921 KRH, 2007 WL 2122131, at *9 (Bankr. E.D. Va. July 19, 2007) (same).

Further, Holmes argues that a statute of repose can never be tolled, but fails to address why a statute of repose cannot be preempted by federal law, which is the basis of the Court of Appeal’s ruling here and consistent with other courts’ interpretation of Section 108. *In Stanley v. Trinchard*, the Fifth Circuit specifically held that Section 108 is applicable to statutes of repose. 579 F.3d 515, 517-518 (5th Cir. 2009). The court held that the bankruptcy code took precedence, stating that although it was “sympathetic to the importance of preserving state law property rights intact in bankruptcy,” “[t]he subject of bankruptcy falls within the express constitutional powers of Congress, and bankruptcy law therefore takes precedence over state laws under the Supremacy Clause.” *Id.* at 519. Further, section 108(c) has been specifically held to preempt state law with respect to the time for a creditor to take certain actions related to a debt or judgment. *See, e.g. In re Perry*, 425 B.R. 323, 397 (Bankr. S.D. Tex. 2010) (holding that that pursuant to 11 U.S.C. § 108(c), the automatic stay has extended the limitations period for the creditor to pursue a deficiency action against a debtor); *In re Lobherr*, 282 B.R. 912, 916 (Bankr. C.D. Cal. 2002) (holding that section 108(c) preempts California law related to the time period for renewing a judgment).

2. The Court of Appeals correctly determined that HSB was entitled to enforce the Judgment because it had not expired when HSB sought execution of the Judgment, and expedited relief was warranted.

Holmes argues that the Court of Appeals erred in finding HSB was also entitled to execute on the Judgment due to Holmes' tactics and conduct, because that was tantamount to finding equitable tolling applied to S.C. Code Ann. § 15-39-30. (Petition at 12.) The Court of Appeal's decision properly determined that the expiration of the Judgment was statutorily tolled pursuant to 11 U.S.C. § 108, and therefore it was unnecessary to make a determination that the expiration of the Judgment was equitably tolled. In fact, HSB's appeal was never based on an argument that the expiration of the Judgment was equitably tolled. HSB offered proof concerning Holmes' behavior in support of its request for expedited relief because it only had thirty days after the automatic stay was lifted to execute on the Judgment. The Court of Appeals correctly found that reversal was warranted due to Holmes' actions that prevented HSB from enforcing the Judgment.

Holmes also argues that HSB "sat on its hands" instead of collecting the Judgment, ignoring all the evidence in the Record that demonstrates the attempts by HSB to gather financial information about Holmes and Holmes' efforts to avoid her liability on the Judgment. Holmes intentionally violated the Supreme Court's order prohibiting her from filing *pro se* documents in the state court, filed multiple lawsuits and motions based on the same facts, even though they were denied and dismissed over and over again, and engaged in personal attacks against the judiciary and the attorneys involved in the case. (*See generally* R. 676.) Because HSB pursued the Judgment with diligence and because HSB's attempts to enforce the Judgment were halted by Holmes' filing of the bankruptcy case, the Court of Appeals correctly found that HSB was entitled to the emergency relief requested in the Motion for Execution.

3. **The Court of Appeals properly determined that Holmes' cross-appeals had been abandoned.**

Holmes' argues that the Court failed to properly consider her cross appeals, and failed to review prior orders that had been appealed and dismissed. However, the Court of Appeals properly made reference to its prior order issued on February 4, 2021, dismissing Holmes cross-appeal in part. The only two orders that remained on appeal were two orders from June 2020, neither of which Holmes addressed in her brief or her petition for rehearing. Holmes merely cited to her prior brief, without any explanation as to how the Court misapprehended or otherwise overlooked the law or facts relevant to the Holmes' cross-appeals. In her Petition, Holmes also makes references to a number of other orders, none of which are the subject of this Appeal, or have any bearing on whether this Court should grant discretionary review.

CONCLUSION

For all of these reasons, the petition does not raise any question for this Court's review under Rule 242, SCACR, and the petition should be denied.

Respectfully submitted,

/s/Mary M. Caskey

Mary M. Caskey

HAYNSWORTH SINKLER BOYD, P.A.

1201 Main Street, Suite 2200

Post Office Drawer 11889 (29211-1889)

Columbia, South Carolina 29201

Telephone: (803) 779-3080

mcaskey@hsblawfirm.com

Attorneys for Appellant/Respondent

August 28, 2024

Columbia, South Carolina