

State of South Carolina
In The Court of Appeals

Appeal From Common Pleas
Spartanburg County

Honorable Martha M. Rivers

C/A. 2024-CP-42-02781

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SC Court of Appeals

Carnie Norris III Appellant

Dr. Gary W. Poliakoff^{v.} Respondent

Reply: Brief of Appellant

Carnie Norris III
Appellant

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Reply

The appellant in the above entitled case respectfully point out to this Court that he received a copy of the Respondent's initial brief on June 10, 2025. Appellant's Reply to the Respondent's initial brief is as follows:

In any proceeding before a tribunal where one party has brought suit against another, there exists a fundamental fairness which ensures that neither party will mislead the tribunal in determining the issues raised in the suit, or engage in conduct involving misrepresentation of the issues of the suit in an attempt to induce the tribunal to find for the party perpetrating the fraud, deceit, dishonesty or misrepresentation. When a party fails to adhere to this fundamental fairness, it not only belittles and degrades the constitutional obligation of the tribunal, but it also infringes upon the rights of the opposing party to a just, fair and impartial decision by the tribunal.

In his Initial Brief Appellant specifically state he is raising the following issues on appeal:

- (A) was the common Plea Court in error in requiring (Prose) Appellant to file affidavit of expert witness?
- (B) Does the Appellant allegation and claims state a cause of action for which relief can be granted?
- (C) Does the statute of limitations under the Tort claims Act apply to this cause of action?
- (D) Did the Defendant/Respondent attempt to use extortion and/or quid pro quo tactics for personal gain for his clients?

The Respondent, in his Initial Brief, has presented an issue which Appellant did not raise in his Brief, and is attempting to present the issue as the one which was raised by Appellant. Specifically, Appellant never raised the issue 2. "whether the circuit court correctly held that Respondent owed no legal duty to Appellant as a non-client." Appellant never raised this issue on appeal. The issue raised by Appellant stated above in (D) deals with the Respondent's use of extortion and

(B)

quid pro quo tactics against Appellant for the personal gain of his clients. An issue which the Respondent has failed to even address in his Initial Brief.

Appellant submits that the Respondent intentionally misconstrued and have misrepresented the issues which he raised on appeal to mislead the tribunal in an attempt to induce the tribunal to find in its favor against Appellant. As their actions were intentional, there can be no other reasons for this fraud, deceit, dishonesty and misrepresentation of the issues on appeal by the Respondents. Rule 407, SCACR, Rules of Prof. Conduct, Rule 3.3 prohibits a lawyer from knowingly making a false statement of fact or law to a tribunal. Rule 407, SCACR, Rule 8.4 prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Respondent's intentional actions misconstruing Appellant's issues on appeal and then misrepresenting them to the tribunal violated these rules of Professional

conduct. Rule 413, SCACR, Rule 7(a)(1) provides a violation of the Rules of Professional Conduct is grounds for discipline. See Matter of Nix, — S.F.2d —, 2025 WL 1646830 (June 11, 2025); In re Given, 411 S.C. 456 (2015).

Appellant further submits that the actions of the Respondent is tantamount to intrinsic fraud. Raby Const., L.H.P. v. Orr, 358 S.C. 10, 594 S.F.2d 478 (2004), (intrinsic fraud is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud). This is exactly what the Respondent is attempting to do by misconstruing the issues on appeal which Appellant has raised and misrepresenting those issues to the tribunal.

The Respondent have conceded to Issue D of the Appellant's Initial Brief. The Respondent have intentionally waived the argument of the quid pro quo tactic used by defendant/Respondent. Relief for the appellant should be granted in his favor because Respondent waived the argument in its Initial Brief. Respondent have abandoned the issue.

(1)

The Brief of Respondent shall conform to the requirements of Rule 208 (b)(1)(A)-(E). Rule 208 (B) specifically state that no point will be considered which is not set forth in the statement of the issue on appeal.

The appellant would show this court that the Respondents have further misrepresented the true and accurate facts in their letter to this court dated June 4, 2023 stating that Respondent served the Appellant with their Designation of matters to be Included in the Record on Appeal. The Respondent have supplied the court and Appellant with false, misleading and perjured accusations in the Proof of Service. The Respondent did not serve the Appellant with their Designation of matters to be Included on Appeal.

Table of Contents

Table of Contents 1

Table of Authorities 2

Statement of Issues on Appeal . . . 3

Statement of the case 4

Argument - 5, 9, 12, 15

Table of Authorities

Cases

- 1) *Knauer v. Pope*
365 U.S. 167, 81 S.Ct. 473
- 2) *Smith v. Haynesworth, Marion, Mackay & Geavord*
322 S.C. 433 (1996)
- 3) *United States v. Classic*
313 U.S. 299, 326
- 4) *Vinson v. Hartley*
324 S.C. 389

Statutes

15-3-535

15-36-100(B)(2)

Rules

407

8.4(a)

8.4(c)

8.4(e)

Statement of Issues on Appeal

Was the common plea court in error in requiring prose appellant to file affidavit of Expert witness?

Does the Appellant allegation and claims state a cause of action for which relief can be granted?

Does the statute of limitation under the Tort Claim Act apply to this cause of action

Did the Defendant attempt to use extortion and/or quid pro quo tactics for personal gain for his clients?

Statement of The Case

The record before this Court will show that the Respondent/Defendant Gary W. Poliakoff conspired and assisted in hiding criminal and fraudulent acts committed by his clients Charles and Clyde Morris. As an officer of the Court, Poliakoff made deliberate and intentional false and misleading statements to a third party (Appellant) and the Common Plea Court pertaining to the Estate of Mary F. Morris.

Respondent/Defendant Poliakoff promoted his client's false and misleading statements as the truth even after it was verified that they were lying. Appellant lost all of the property, house and hidden assets through Poliakoff's acts and omissions, to include concealing verified information that his clients were not forthcoming with truthful factual statements.

was the common plea court in error for requiring the pro se appellant to file a affidavit of Expert witness?

The appellant Carine Morris III filed a Tort cause of action against defendant attorney Gary W. Poliakoff on or about July 30, 2024 in the Spartanburg County Common Plea Court. Title 15-36-100(b)(2) is not applicable to this case. Appellant is not alleging legal malpractice against defendant Poliakoff?

In his complaint, appellant brought the claim that defendant Poliakoff, pursuant to Rule 4.1 Truthfulness in statements to others of the S.C. Rules of Professional Conduct (RPC) had a duty of care to not make a false statement of material fact to appellant, and to not fail to disclose a material fact to appellant when disclosure was necessary to avoid assisting clients Clyde and Charles Morris in a criminal and fraudulent act. Defendant Poliakoff, as an officer of the court, breached this duty of care in a gross negligent way when he made false, misleading and perjured statements in his letters. See letters/ Designated Matters

Defendant attorney Poliakoff deliberately violated Rules of Professional conduct by promoting the misrepresentation of facts as the truth of the matter which was false, misleading and perjured statements. Appellant does not have to produce an Expert Affidavit to identify any negligent act or omission because on an attorney, the standards of Poliakoff's professionalism is of the subject matter within the area of common knowledge and experience of layman, so that not special learning is needed to evaluate his professional conduct.

The rules of professional standards promulgated by the S.C. Bar represent the consensus of the Bar and all members thereof on the standard that lawyers in their practice should follow and uphold.

The Court in Smith v. Hoynsworth, Marion, Mackay + Beusard, 322 S.C. 433 (1996) held that in appropriate cases, the Rules of Professional Conduct (RPC) are relevant and admissible as expert testimony in assessing the legal duty of an attorney.

The court held these appropriate cases in which the (RPC) are intended to protect a person or address a particular norm.

Appellant submits that this case is such a case. Rule 4.1 was promulgated by attorneys sitting on the S.C. Supreme Court to protect a third party from the false statement and concealment of documents by an attorney to assist their clients in criminal and fraudulent acts.

Defendant Poliakoff being fully aware that appellant's mother Mary F. Morris had bequeathed to appellant the very property and assets which he told appellant he could not get access to until he paid defendant's Clyde and Charles Morris the sum of \$16,245.

Defendant Poliakoff made false statements of material facts in his letter to appellant and failed to disclose to appellant that legally the property and assets already belonged to him and he did not have to pay his defendant brothers to gain access to it. Defendant Poliakoff attempted on behalf of his clients to extort \$16,245 from appellant. See letter/designated matters (17)

Appellant have raised a cause of action against defendant Poliakoff for the blatant violation of Rule 4.1 of the (RPC), which he has established by showing defendant's action of deliberate and intentional conspiring to conceal/suppress criminal and fraudulent acts by his clients deviated from the standards, and as such, the requirement of expert testimony is satisfied. Smith v. Haynesworth, Marion, Packay + Beuard, supra, (we concur with the majority of jurisdictions and hold that in appropriate cases, the RPC may be relevant and admissible in assessing the legal duty of an attorney).

Does the Appellant allegation and claims state a Cause of Action for Relief?

Appellant submit that pursuant to the South Carolina Tort Claim Act, a cause of action is stated when the appellant shows:

1. A duty of care owed to him by the defendant.

Assessing the legal duty which defendant Poliakoff owed to appellant, the court can look to the S.C. (RPC). In this case, Rule 4.1 Truthfulness In Statements to others.

2. That the defendant Poliakoff breached this duty of care.

Defendant Poliakoff breached this duty of care owed to appellant when he made false statements to the material facts, concerning the property and assets bequeathed to appellant by his deceased mother. See Affidavit of attorney Zandra-Johnson Scott and draft of will. Defendant Poliakoff attempted to lead appellant to believe that he did not have ownership of the property/house and assets, and could not do so until he paid his clients \$16,245.

3. That as a direct result of defendant Poliakoff actions, the property/house and assets bequeathed to appellant was put into foreclosure and sold because appellant refused to be extorted by defendant Poliakoff and his clients; see letter causing appellant to lose all the property and assets bequeathed to him by his mother.

In the course of representing his clients Clyde and Charles Morris, defendant Poliakoff should not have knowingly made a false statement of material fact or law to a third person, the appellant, or fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal and fraudulent act by his clients Clyde and Charles Morris. Defendant Poliakoff knew well in advance before he wrote his letters that his clients were not being forthcoming with the truth about a valid will and possession of the estate of Mary F. Morris; see affidavit, Email from attorney David Walsh.

The acts and omissions of defendant Poliakoff were intentionally directed at the appellant by and through his clients for personal gain.

There was never an attorney-client relationship between appellant and defendant Polakoff. The defendant Polakoff was in a fiduciary relationship with his clients, See (letters attached) A relationship in which defendant Polakoff was under a duty to act for the benefit of another on matters within the scope of the relationship. Attorney-client require an unusually high degree of care, one who owes to another the duties of good faith, loyalty, due care and disclosure, which was never performed or extended by the defendant Polakoff.

Rule 402 SCACR

Rule 8.4

It is professional misconduct for a lawyer such as defendant Polakoff to:

- (a) violate or attempt to violate the rules or knowingly assist or induce another to do so, or do so through the acts of another,
- (b) commit a criminal act involving moral turpitude
- (c) engage in conduct that is prejudicial to the Administration of justice.

Appellant have stated a prima facie cause of action and pleading upon which relief can be granted. Vinson v. Hartley, 324 S.C. 389 (1996)

Does the statute of limitation under the Tort Claim Act apply to this cause of action?

In accord with the South Carolina Tort claims Act, the statute of limitations to file a claim commences running "after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action".
S.C. Code § 15-3-535

After the passing of Appellant's mother on or about July 30, 2020, appellant was told that his mother had bequeathed to him her entire estate, to include the residence at 305 Foxborough Rd, Spartanburg, South Carolina.

See attached drafted will + Affidavit

Defendant Pliakoff wrote appellant and stated that he was going to represent his clients Charles and Clyde Morris in the Probate matter of Mary F. Morris. Defendant Pliakoff requested and sent the necessary Probate forms for appellant to waive his rights to the Probate formalities, without the consultation of an attorney, appellant refused, to waive any and all rights pursuant to his mother's estate.

Defendant Pliakoff was placed on notice that appellant's deceased mother had in fact executed a valid will by and through attorney Zandra Johnson - Scott 6 months prior to her death. See draft and affidavit by Johnson-Scott and e-mail

The discussion about waiving appellant's probate formality rights went on from December 2020 to on or about March 2022, by and through attorney David H. Walsh, local attorney that was retained to open up Mary F. Morris' estate. Unknownst, attorney Walsh relieved himself from the case in March 2022. Appellant was without the aid of counsel or any consultation pertaining to the estate.

During the course of the foreclosure hearing, it was stated that a family squabble should be in another court, as opposed to the Master in Equity Court. However, on April 1, 2024 the Master in Equity Judge auctioned the residence at 305 Foxborough Rd to be sold to pay Federal Home Loan Mortgage Corporation. Appellant was served notice on or about November 2023 of the foreclosure hearing.

It was at this time through the exercise of reasonable diligence that appellant learned he had a cause of action against defendants Polcatoff, Clyde and Charles Morris for the loss of the residence which was bequeathed to him in his mother's will. These three defendants conspired and assisted each other with criminal and fraudulent acts of covering up the true and accurate facts that appellant Carrie Morris was the sole beneficiary of decedent Mary F. Morris' estate.

If it were not for the misrepresentation of the true and accurate facts of the case by defendant Polakoff, the outcome of the proceedings would have been different. It not for the gross negligent actions and omissions of defendant Polakoff described in the complaint, appellant would have taken possession of the property/residence and assets bequeathed to him and resolved any outstanding bills of his mother and thus retained ownership of the property and assets. Criminal and fraudulent acts by defendant Polakoff kept appellant from doing that.

Appellant submit that the statute of limitations commences when the Master In Equity Judge rendered a decision to sell the residence which was bequeathed to appellant on April 1, 2024.

Appellant filed his Tort Claim Act on or about July 2024 against the Defendant Polakoff. Statute of limitation does not apply to this case.

Did the defendant attempt to use extortion and/or quid pro quo tactics for personal gain for his clients?

The defendant advanced the following comments in a letter directed at the appellant which read as follows:

After further discussion with my clients Clyde and Charles Morris, they have decided that they will allow your client Corine Morris III to have all the assets of the estate which was bequeathed to him. All they ask in return is to be reimbursed for the amounts they have paid for Mary's funeral and other expenses. Then he will be the sole owner/heir of Mary's Estate.

If for any reason Corine chooses not to agree to the above, we will have no choice but to proceed with opening this estate and request an order to sell the house to pay bills. See letter dated December 30, 2021

The ability of the officer of the Court (Prosecutor) to use or refrain from using authority is the "color of official right" which can be invoked in a corrupt way to induce payment of money or to otherwise obtain property. The inducement generates a quid pro quo, under color of official right, that the statute prohibits. The term sweep within the statute these corrupt exercises of authority that the law forbids, but that nevertheless cause damage because the exercise is by an officer of the court.

Kronroze v. Pape, 365 U.S. 167, 81 S. Ct. 473
(“abuse of power, possessed by virtue of state-law
and made possible only because the wrongdoer
(defendant Poliakoff) is clothed with the authority
of state law, is action taken under color of state law”)
(quoting United States v. Classic, 313 U.S. 299, 326).

The requirement of a *quid pro quo* means
that without pretense of any entitlement to the
payment, a officer of the Court (Poliakoff) violates
the statute if he intends the appellant to believe
that absent payment, the (defendant Poliakoff) is
likely to abuse his office and his trust to the detriment
and injury of the prospective payor (appellant) or to give
the appellant less favorable treatment if the *quid
pro quo* is not satisfied. The inducement from the
defendant is criminal if it is express or if it is
implied from his words and actions, so long as he
intends it to be so and the appellant so interprets it.

The criminal law in the usual course concerns
itself with motives and consequences, not formalities
or settlements. And the trier of fact should have
been capable of deciding the intent with which words
were written/spoken or actions taken as well as the
reasonable construction given to them by the
defendant Poliakoff and the appellant. (It goes without
saying that matters of intent are for a jury to consider).
Appellant demands a jury trial on the above
case, or whatever this court deems necessary.

Clay Harris

6-16-25