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Jul 28 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Circuit Court

BENJAMIN CULBERTSON, CIRCUIT COURT JUDGE
J. CORDELL MADDOX, JR., CIRCUIT COURT JUDGE

Case No. 2025-01317

JOHN GALLMAN,

APPELLANT,

vs

WACCAMAW PUBLISHERS, INC.

RESPONDENT.

RESPONSE TO MOTION TO DISMISS

Appellant hereby responds to Respondent's motion to dismiss. The entire basis of the motion is based on the argument that a post trial motion for sanctions arising from that case is collateral to the underlying case and any Order arising from such a motion should be treated separately from the underlying case. There is no South Carolina precedent cited other than dicta in a previous case finding that a notice of appeal filed by SCDOT was timely, reversing a dismissal from the South Carolina Court of Appeals.

1. There is no precedent requiring an appeal be filed before the trial court rules on a post trial motion under the South Carolina Frivolous Proceedings Act.

Respondent cites a favorable reference to a United State Supreme Court opinion dealing with the tolling effect of post-judgment motions in the case of *Elam v. SCDOT*, 361 S.C. 9 (2004). However, the US Supreme Court decision cited with favor had nothing to do with the

South Carolina Frivolous Proceedings Act. This act was drafted and enacted by the South Carolina Legislature with the assistance and approval of the SC Judiciary. Under the statute, a party must move within 30 days of an order of dismissal to seek sanctions. Due to the nature of the statute, the merits of the underlying action are necessarily entwined in the analysis conducted by the lower court. In fact, under South Carolina precedent, if Plaintiff has survived summary judgment, the SC Frivolous Proceedings Act could not be invoked for sanctions. *Southeastern Site Prep, LLC v. Atl. Coast Builders & Contrs., LLC*, 394 S.C. 97, 713 S.E.2d 650 (SC App 2011). Thus, Plaintiff is left with a post trial motion by the opposing party, before the same judge, and all under the same case number. Such a motion must be filed within the 10 day window for post trial motions under the SCRCF. Plaintiff is, according to Respondent, required to file a notice of appeal on the grant of summary judgment within 30 days. In such a scenario, a party is required to file two notices of appeal: one for the grant of summary judgment and another to appeal any grant of sanctions under the act. Moreover, the determination of whether sanctions are proper is inexorably tied to whether the grant of summary judgment was proper. Therefore, under Respondent's argument, a losing party is required to file an appeal that is necessarily dependent on the result of the initial appeal of summary judgment. This opens the door to conflicting appellate decisions in which one panel of this Court finds that summary judgment was improper while another finds that sanctions were also proper. This would directly conflict with the precedent dictating that any matter that survives summary judgment is not subject to sanctions under the Frivolous Proceedings Act.

2. SC Precedent Demonstrates that Respondent's Motion for Sanctions did toll the time limits for the notice of appeal.

In *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 633 S.E.2d 722 (2006), the South

Carolina Supreme Court held that the time limits were tolled by the filing of a motion for sanctions. In that case, the Court held as follows:

Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed. *Ex parte Beard*, 359 S.C. 351, 358, 597 S.E.2d 835, 838 (Ct. App. 2004). An order is not final until it is entered by the clerk of court; and until the order or judgment is entered by the clerk of court, the judge retains control of the case. *Upchurch v. Upchurch*, 367 S.C. 16, 22, 624 S.E.2d 643, 646 (2006). As a result, a motion for sanctions must be filed within ten days of the notice of entry of judgment. *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 432, 570 S.E.2d 187, 189 (Ct. App. 2002).

The Williams Children filed their motion for sanctions on May 14, 2001, which is within the ten day time limit. Therefore, the trial court erred in finding that it lacked jurisdiction to consider the motion. Accordingly, the issue of sanctions pursuant to the FCPSA and Rule 11 should be remanded to the trial court.

Thus, in *Russell*, the Court held that the filing of a Rule 11 motion for sanctions prolonged the trial court's jurisdiction over the matter until that motion was resolved. In the case before the Court, Respondent filed its motion for sanctions on the day the grant of summary judgment was filed. Thus, the lower court maintained jurisdiction of the matter until that motion was heard and decided and the notice of appeal is timely.

As the appellate courts in this State have repeatedly stated, a motion under the Frivolous Proceedings Act is nearly identical to a motion under Rule 11, SCRCF. Hence, a motion for sanctions is necessarily a motion to amend the order of the Court. While the lower court dismissed the action at summary judgment, there was no award of sanctions in that Order. The request for sanctions is essentially a motion to amend the judgment by the prevailing party to change the outcome of the case by adding an award of sanctions to that Order of dismissal.

3. *The Orders Appealed are not Final Orders that end the underlying case.*

The case number for this action in Common Pleas is 2021CP2601096. This case remains ongoing and the lower court retains jurisdiction over all matters involved under that case number that have not been appealed. Due the involvement of numerous SC Legislators, this case has a tortured history of delay and continuances to accommodate those legislators. However, everything involved in this appeal and Respondent's motion to dismiss was conducted under the case number of 2021CP2601096. A final Order on the merits for case number 2021CP2601096 has yet to be issued. This appeal was brought after a mediation resulted in the dismissal of certain defendants and all issues pertaining to Waccamaw Publishers had been decided by the lower court. This Court has previously held that even if all issues with one party are resolved by Order, a party may wait until a final order disposing of the entire case before filing a notice of appeal. *Link v. Sch. Dist. of Pickens Cty.*, 302 S.C. 1, 393 S.E.2d 176 (1990). Therefore, Appellant was allowed to wait until 2021CP2601096 was completely disposed of before the last possible date for filing an appeal of the summary judgment order dismissing Respondent from the case. While Respondent will point to an order early in the case separating from the other Defendants, no new case number was ever issued and, therefore, Waccamaw remained a Defendant under the same case number of 2021CP2601096. Therefore, the notice of appeal for the two previous orders of dismissal was timely and this court has jurisdiction to hear the appeal.

July 28, 2025

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PROOF OF SERVICE

I hereby certify that I served the opposing party by sending the same to the email address jbender@brblegal.com contemporaneously with the filing of this Response.

July 28, 2025

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