THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge
Dale E. Van Slambrook, Circuit Court Judge
Jessica A. Salvini, Circuit Court Judge
Case No.: 2021-CP-10-03379

Appellate Case No. 2025-001304

Carolina Neurosurgery & Orthopedics, Inc., ...….Appellant/Respondent

v.

Michael A. Maucher, Esq. and DeLuca & Maucher, LLP, ... Respondents/Appellants.

FINAL REPLY BRIEF OF RESPONDENTS/APPELLANTS

Douglas W. MacKelcan, Esq.
Skyler C. Wilson, Esq.
Copeland, Stair, Valz & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
Ph: (843) 727-0307
Attorneys for Respondents/Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

ARGUMENT

I. This Court should require findings of fact and conclusions of law in motions deciding sanctions because it facilitates appellate review and does not run afoul of separation of powers.

Carolina Neurosurgery asserts findings of fact and conclusions of law are not required because the court commonly reviews orders without findings. **App./Resp. Resp. Br. at 5.** Carolina Neurosurgery also argues that Rule 52(a), SCRCP, does not require findings of fact or conclusions of law. **App./Resp. Resp. Br. at 5.** In addition, Carolina Neurosurgery asserts DeLuca & Maucher ("D&M") is asking this Court to re-write the Act or the Rules of Civil Procedure and that would violate the separation of powers. **App./Resp. Resp. Br. at 5.** D&M disagrees.

While this Court may review some orders without findings of fact and conclusions of law—like orders granting motions to dismiss or motions for summary judgment—D&M outlined in its Appellant's brief why that should not be the case for motions for sanctions. Importantly, motions for sanctions under Rule 11 and the Act sound in equity. On appeal of such decisions under case law and the South Carolina Constitution, the appellate court reviews the findings of fact of the lower court and, if agreeable, the decision is reviewed for an abuse of discretion. *See Site Prep, L.L.C.*, 394 S.C. at 104, 713 S.E.2d at 654; *see also* S.C. Const. art. V, § 5 ("The Court shall have appellate jurisdiction only in cases of equity, and in such appeals they shall review the findings of fact as well as the law. . . ."). If the lower court does not make any findings of fact or conclusions of law, then the appellate court functionally applies a *de novo* standard of review to the decision.

Also considering the standard of review, analogizing to reviewing orders on motions to dismiss and motions for summary judgment would be improper. An appellate court reviewing orders on those motions does so by applying the same standard as the lower court and as a matter

of law, i.e. *de novo*. *See, e.g.*, *Capital City Ins. Co. v. BP Staff Inc.*, 382 S.C. 92, 99-100, 674 S.E.2d 524, 528 (Ct. App. 2009) (explaining the appellate court applies the same standard as the circuit court on a decision under Rule 12(b)(8), and that because the components are determined as a matter of law the standard is de novo); *see also Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (reviewing order on summary judgment under the same standard as the circuit court and determining if judgment was appropriate under Rule 56(c) as a matter of law).

Carolina Neurosurgery's argument on separation of powers is inapplicable. While the legislature may pass statutes and rules, a primary function of our courts is to interpret those statutes and rules, derive legislative intent, and determine conflicts. *See generally Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (explaining statutory construction rules, how the court must determine the legislative intent of a statute and give it effect, and analyzing whether a conflict existed between statutes). Here, D&M is requesting this Court exercise its authority to interpret rules and statutes, resolve potential conflicts, and require findings of facts and conclusions of law for decisions on motion for sanctions under the Act.

II. Section 15-36-10(D) gave Carolina Neurosurgery 30 days to respond to the motion for sanctions and it failed to do so, waiving any response under the plain language of the statute.

Carolina Neurosurgery argues that it could have waited until notification of a hearing to submit something in response to the motion for sanctions or could have just waited until the hearing to argue orally against the motion. **App./Resp. Resp. Br. at 6**. This argument ignores the plain language of section 15-36-10(D), which stands in stark contrast to "common practice" for motions in state court.

The statute reads:

> (D) A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. **A** court or **party proposing a sanction** pursuant to this section **shall notify the court and all parties of the conduct constituting a violation** of the provisions of this section **and explain the basis for the potential sanction imposed. Upon notification, the attorney, party, or pro se litigant** who allegedly violated subsection (A)(4) **has thirty days to respond to the allegations** as that person considers appropriate including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation.

S.C. Code Ann. § 15-36-10(D) (emphases added). The first sentence gives the accused party the right to notice and an opportunity to respond. The second sentence describes what the "notice" is: it is when a party proposing the sanction notifies the court and accused party of the violation and its basis. Under section 15-36-10(C)(1), the vehicle for that notice is a motion. *See* 15-36-10(C)(1). The third sentence of section 15-36-10(D) describes and restricts the "opportunity to respond" and gives examples: the responding party has "thirty days to respond" and can do so by "filing a motion" or "offering an explanation of mitigation." The circuit court apparently understood this thirty-day notice and opportunity period, waiting 36 days after the motion for sanctions was filed to issue its ruling. *See* **R. p. 68**.

The plain language of the statute describes the procedure and timing for an accused party's response to a motion for sanctions. *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."). Although statutory construction is not necessary for a clear and unambiguous statute, to the extent the statute's language conflicts with unwritten rules of "common practice" in state court for defending motions, the language of the statue prevails because it is more specific. *James v. S.C. Dep't of Transp.*, 393 S.C. 440, 445, 711 S.E.2d 919, 922 (Ct. App. 2011) (explaining construing rules and

statutes should be construed in harmony and when there are conflicts between general and specific statutes, the more specific statute prevails).

In addition, requiring a response within thirty days after the motion for sanctions is filed under the FCPSA's plain language is not unfair or overly burdensome to the accused party compared to the ten-day deadline imposed on the party requesting sanctions to file the motion. *See Pee Dee Health Care, P.A. v. Estate of Thompson*, 424 S.C. 520, 529, 818 S.E.2d 758, 763 (2018). Moreover, our case law is clear that while the criteria for sanctions under Rule 11, SCRCP, and the FCPSA are similar, the timing for the motions under both is different and there is no ten-day time limit for motions under Rule 11. *See id.* at 530-31, 818 S.E.2d at 763-64. Thus, under common motions practice for a motion under Rule 11 a response might not be necessary within thirty days, but a different standard is appropriate for motions under the FCPSA.

Under the plain language of the statute, Carolina Neurosurgery had thirty days to respond to the motion for sanctions under the FCPSA, but failed to do so. By not responding and presumably knowing of the right to respond within 30 days, Carolina Neurosurgery waived its right to respond to the Motion for Sanctions.

III. D&M relies on the arguments in its Appellants' brief as to why the preponderance of the evidence shows Carolina Neurosurgery engaged in sanctionable conduct at various stages of litigation, and addresses additional arguments below.

In defending filing its negligence claim against D&M, Carolina Neurosurgery attempts to distinguish the attorney-immunity doctrine under *Argoe* and claims that the dispute "had nothing to do with legal services" to Client, but instead is a dispute between D&M and Carolina Neurosurgery "where [D&M] was indemnifying" Carolina Neurosurgery. **App./Resp. Resp. Br. at 12**. The argument is specious at best.

Of course attorney-immunity applied because it applies to claims of third parties "arising from the performance of professional activities" as an attorney on behalf of a client. *See Argoe v. Three Rivers Behavioral Center & Psychiatric Solutions*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010). In the absence of an independent duty or acting outside the scope of the representation, immunity applies to actions by third parties. *Id.* Corresponding with medical providers is a common "professional activity" for plaintiffs' personal injury attorneys while representing a plaintiff who is undergoing treatment with a medical provider while pursuing a claim against an at-fault party. Thus, there is no question it applied in this scenario, and it is precisely why the circuit court granted the motion to dismiss. The claim should never have been asserted.

Second, Carolina Neurosurgery's suggestion this dispute is about "indemnification" is alerting. Not in any of the nine causes of actions in three complaints did Carolina Neurosurgery ever assert a right to indemnity. If that is truly what the dispute was about, Carolina Neurosurgery should have asserted a claim for indemnity rather than raising it for the first time on appeal to try and justify bringing a negligence claim.

Last with respect to negligence, Carolina Neurosurgery argues there was an independent duty in this case as a result of the letters of protection and representations about coverage. **App./Resp. Resp. Br. at 14**. It appears that this "duty" is based on conveying truthful information. Further, Carolina Neurosurgery claims attorney-immunity extended to this scenario would absolve lawyers from paying experts or other bills incurred in connection with providing legal services. Both arguments are incorrect. The negligence claim Carolina Neurosurgery asserted was based on an alleged duty to Carolina Neurosurgery "to investigate and ascertain the amount of insurance coverage available" before conveying that information, not on a duty to convey truthful information. **R. p. 97, ¶ 77**. Thus, there is a disparity between Carolina Neurosurgery's current

argument and the claim it actually asserted. Moreover, the duty to convey information is covered under misrepresentation/fraud claims, not general negligence, and Carolina Neurosurgery otherwise asserted fraud and negligent misrepresentation—making the general negligence claim frivolous overkill. In addition, the impact of recognizing attorney-immunity's "general" application to "general" negligence claims by third parties will not absolve attorneys from paying for experts or other bills incurred during representation, which are based on a contract between the attorney and the expert or other party hired to perform the service.

Carolina Neurosurgery argues that its unjust enrichment and fraud claims were not frivolous. **App./Resp. Resp. Br. at 14-15**. D&M relies on its Appellants' brief to address Carolina Neurosurgery's arguments regarding the frivolousness of the unjust enrichment and fraud claims, and adds that if the claims had merit then Carolina Neurosurgery would likely have appealed the motion to dismiss ruling on the claims, but have not.

Carolina Neurosurgery argues that its breach of contract claim was not frivolous. **App./Resp. Resp. Br. at 15-17**. D&M relies on its Appellants' brief to address those arguments. But Carolina Neurosurgery attempts to downplay Dr. Highsmith's false sworn statements in contradiction with his testimony by claiming it was a scrivener's error in the complaint to say Carolina Neurosurgery received the April 2019 email. **App./Resp. Resp. Br. at 16**. The truth is that Dr. Highsmith swore that Carolina Neurosurgery received the email and then testified under oath that Carolina Neurosurgery didn't. Those sworn facts contradict. Carolina Neurosurgery took it even further, however, by making the primary focus of the case the April 2019 email, claiming the medical costs of services to Client as damages because of the email. It is unquestionably frivolous to assert the email caused Carolina Neurosurgery to incur medical costs for Client when Carolina Neurosurgery claims it did not know about the email until after it had

already incurred the medical costs. This Court should find that the changing breach of contract claim was frivolous.

Carolina Neurosurgery next defends its SCUTPA claim and assertion for attorney's fees incurred in suing Client. **App./Resp. Resp. Br. at 17-18**. D&M likewise relies on its Appellants' brief to address those arguments. D&M adds, however, that it is ridiculous to continue to assert the statement about the Client having $1,000,000 in coverage under the One Beacon Policy was false even though the One Beacon Policy had that coverage limit and indicated in its explanation of benefits that Client was covered by that policy. Notably, One Beacon's successor paid what it believed was the "usual and customary" amount for each one of Dr. Highsmith's services and, at least for the first surgery, Dr. Highsmith purported to charge nearly seventeen times that usual and customary amount for such a service. ***See*** **R. pp. 1049-56**.

D&M relies on the arguments in its Appellant's brief to address Carolina Neurosurgery's arguments pertaining to the order refusing to strike the second amended complaint.

CONCLUSION

The preponderance of the evidence establishes no reasonable attorney would believe that most of Carolina Neurosurgery's claims were based on fact or law, or an extension of law, and, therefore, this Court should award the sanctions it deems appropriate under its own view of the evidence.

[SIGNATURE ON FOLLOWING PAG]

This 12th day of May, 2026.

Respectfully submitted,

s/ Skyler C. Wilson
Douglas W. MacKelcan, Esq.
Skyler C. Wilson, Esq.
Copeland, Stair, Valz & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law
swilson@csvl.law
Ph: (843) 727-0307
Attorneys for Respondents/Appellants