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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2026-001886

Sandra Holland, as Administrator of the Estate of Christopher Lee Holland, deceased, and Saleena Ramm, as Parent and Natural Guardian of R.D.H., a Minor Child of Decedent Christopher Lee Holland, ... Respondents,

v.

David A. Brosman, MD, Pain Management ASC, LLC, MPS Solutions, Inc., and Anesthesia Associates of Hilton Head Pain Management, LLC, ... Appellants.

RESPONDENTS' MOTION FOR SANCTIONS AND FOR EXPEDITED CONSIDERATION

Respondents Sandra Holland, as Administrator of the Estate of Christopher Lee Holland, deceased, and Saleena Ramm, as Parent and Natural Guardian of R.D.H., a minor child ("Respondents"), respectfully move this Court pursuant to Rule 269, SCACR, for an order imposing sanctions on Appellants for taking an appeal that was frivolous and taken solely for the purpose of delay. This Court has already dismissed the appeal because the order appealed from was not immediately appealable. The dismissal did not undo the harm. Appellants served their notice of

appeal six days before a date certain trial, the automatic stay took hold, the trial date was lost, and a wrongful death case pending since January 2020 concerning a collision in October 2016 was pushed off the calendar by a notice of appeal from an order that our appellate courts have held for decades is never appealable. Appellants obtained everything they sought the moment they filed.

The frivolousness of the appeal was established by settled, published authority before the notice of appeal was served, and Appellants knew it. Their own return conceded that an order denying summary judgment is not appealable and that a ruling *in limine* is generally not immediately appealable, and it then asked this Court to review the reasoning of the order while disclaiming its result. This Court dismissed the appeal. A materially identical appeal had been dismissed by this Court in a single day in *Barone v. Jaguar Land Rover North America, LLC*, and Respondents placed that order before Appellants and this Court within twenty-four hours of the notice of appeal. Appellants pressed on anyway, because pressing on cost them nothing and purchased the continuance the circuit court would never have granted.

Respondents file this motion now, before any petition for rehearing, for two reasons. *First*, Rule 269 requires ten days' notice before sanctions may be imposed, and Respondents wish that period to run while this Court retains jurisdiction of the appeal. *Second*, Appellants have indicated that they intend to petition for rehearing. Under Rule 221, SCACR, a petition for rehearing received before the remittitur is sent halts the remittitur automatically, and the only function a rehearing petition can serve on a jurisdictional dismissal compelled by settled law is to prolong the stay.

Respondents ask the Court to impose sanctions for the appeal already taken, to treat any petition for rehearing as a further sanctionable filing under Rule 269, and to direct that the remittitur be sent immediately upon the denial of any such petition so that the trial of this action may be reset without further obstruction.

FACTUAL AND PROCEDURAL BACKGROUND

This action arises from a collision on October 13, 2016, in Effingham County, Georgia, in which James Russell Sanders, a pain management patient of Appellants who was under the influence of multiple narcotics they had prescribed, crossed the center line and struck the vehicle of Christopher Lee Holland head on. Mr. Holland died within the hour and left behind a minor child. Respondents filed this action in the Beaufort County Court of Common Pleas on January 13, 2020, asserting negligence claims under *Hardee v. Bio–Medical Applications of South Carolina, Inc.*, 370 S.C. 511, 636 S.E.2d 629 (2006), based upon Appellants' failure to warn Sanders of the dangers of driving on the medications they prescribed.

Appellants have now sought to avoid a jury on the same choice of law theory three times. Their February 2020 motion to dismiss was denied under South Carolina law. Their March 15, 2022 motion for summary judgment, arguing that Georgia law applied under *lex loci delicti* and barred the claims, was denied by the Honorable Jennifer B. McCoy on May 9, 2022. Appellants did not appeal, did not seek a writ of certiorari, and did not seek review of any kind. They litigated for four more years while the case proceeded toward a date certain trial set for August 31, 2026.

On July 17, 2026, six weeks before trial, Appellants renewed the identical motion, styled in the alternative as a motion *in limine* on choice of law issues, and told the circuit court that "the parties need to know what law applies to this case before the trial begins." The circuit court heard the motion on July 30, 2026, received supplemental memoranda, and on August 24, 2026 entered an order denying summary judgment, granting the alternative request for a pretrial ruling *in limine* on the choice of law question, and holding that the substantive law of South Carolina governs. The order adjudicated no claim or defense and left every question of fact for the jury.

Appellants served their notice of appeal on August 25, 2026, the day after the order was entered and six days before trial. Respondents moved to dismiss the appeal that same day, requested expedited consideration and an immediate remittitur, and enclosed the circuit court and appellate orders from *Barone*, in which this Court dismissed an appeal from an order declining to apply Georgia law under *lex loci delicti* and denying summary judgment one day after the appeal arrived. By order transmitted at six minutes before five o'clock on the afternoon of Tuesday, August 25, 2026, this Court directed Appellants to file any return by five o'clock the following afternoon. Appellants filed their return at one minute before five o'clock on Wednesday, August 26, 2026.

The return consisted of roughly nine pages of substantive text, restated in part arguments Appellants had already briefed twice in the circuit court, conceded that denials of summary judgment and rulings *in limine* are not immediately appealable,

and contended that Appellants were appealing only the choice of law reasoning of the order. Respondents replied. This Court dismissed the appeal by order filed August 28, 2026, holding that the order appealed from was not immediately appealable. The remittitur has not been sent. The August 31, 2026 trial date was lost, and the case is currently without a date certain and is not on a trial roster. Appellants have advised that they intend to petition for rehearing.

ARGUMENT

I. The appeal was frivolous because its result was obvious from settled, published authority, and Appellants conceded as much.

Rule 269, SCACR, sets forth this Court's authority to impose sanctions for frivolous appeals:

> Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

Rule 269, SCACR. "An appeal is frivolous if the result is obvious or the arguments of error are wholly without merit." *Coghlan v. Starkey*, 852 F.2d 806, 811 (5th Cir. 1988). The General Assembly has codified the same objective standard for the lower courts, requiring sanctions where a reasonable attorney in the same circumstances would believe that a position is clearly not warranted under existing law and that no good faith argument exists for the extension, modification, or reversal of existing law, or that the position was interposed merely for delay. S.C. Code Ann. § 15-36-10 (Supp. 2025). Frivolousness is measured objectively, and a litigant's subjective hope is no

defense where "no reasonable, good-faith argument" exists for a departure from clearly established law. *Coghlan*, 852 F.2d at 808-09, 814-15.

The result of this appeal was not merely likely. It was obvious. Our Supreme Court held more than two decades ago that "the denial of a motion for summary judgment is not appealable, even after final judgment." *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 168, 580 S.E.2d 440, 444 (2003). It has since described that rule as one so settled that an order denying summary judgment "is never reviewable on appeal." *Bank of N.Y. v. Sumter Cnty.*, 387 S.C. 147, 154, 691 S.E.2d 473, 477 (2010). It has held that a ruling *in limine* is generally not a final order and is not immediately appealable. *S.C. Dep't of Transp. v. McDonald's Corp.*, 375 S.C. 90, 92, 650 S.E.2d 473, 474 (2007). And it has told us precisely what to call an order of the kind Appellants appealed from. "If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment." *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). No published decision of any South Carolina court has ever entertained an interlocutory appeal from a choice of law ruling, and Appellants identified none.

Appellants did not merely have constructive notice of that rule. They conceded it. Their return acknowledged that "an order denying a motion for summary judgment is not appealable" and that rulings *in limine* are generally not immediately appealable, and it announced that Appellants were "not appealing the portion of the trial court's order which denied them summary judgment." (Return at 6, 8). An appellant who concedes that the order it appealed from is unappealable, and who

then asks the appellate court to review the reasoning of that order while disclaiming its result, has confessed the frivolousness of its own appeal. Appellants also relied below on *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994), for the proposition that a denial of summary judgment decides nothing and may be renewed, which is the very authority establishing that such orders are not appealable. Appellants cannot have told the circuit court that the order decides nothing in order to obtain a third hearing and then told this Court that the same species of order was so final that it demanded immediate review. That inconsistency was not an oversight. It was the argument.

The frivolousness of the appeal was confirmed within a day of its filing. Respondents furnished Appellants with the *Barone* orders, in which this Court dismissed a materially identical appeal the day after receiving it, and with the published authorities set out above. Appellants had every opportunity to withdraw the appeal and restore the trial date. They instead filed a return and forced this Court to decide a question that had been answered decades ago. Sanctions are warranted when a litigant cannot reasonably harbor a good faith belief that a court will depart from settled law. *See In re Becraft*, 885 F.2d 547, 548-49 (9th Cir. 1989) (imposing sanctions where the result of a filing was obvious in light of the court's prior holdings). This Court possesses inherent power to protect its processes from appeals that are "manifestly and palpably frivolous and without merit." *Sheil v. Winters*, 45 Okla. 525, 526, 146 P. 220 (1915). Rule 269 supplies the express authority to impose whatever sanctions the circumstances require.

II. The appeal was taken solely for the purpose of delaying a date certain trial, and it succeeded.

Rule 269 independently authorizes sanctions where an appeal is "taken solely for the purposes of delay," and the record here admits of no other explanation. Appellants had the identical adverse ruling in hand from May 2022. They took no appeal, sought no certiorari, and made no application for extraordinary relief for more than four years. Their acquiescence is irreconcilable with any claim that immediate appellate review of the choice of law question was possible and necessary. Then, with a date certain trial six weeks away, they refiled the same motion, told the circuit court that the parties needed the answer before trial, received the answer, and served a notice of appeal the next day, six days before the jury was to be selected. The notice of appeal did not seek review. It sought, and obtained, a continuance that Appellants knew the circuit court would have never granted.

Appellants' conduct of the appeal confirms the purpose. When this Court set a deadline of five o'clock on Wednesday, August 26 for the return, a date certain trial was five days away, and counsel for both sides should have had nothing to do that week but prepare to try the case. The return Appellants filed was roughly nine pages of substantive text that in part restated arguments they had briefed in the circuit court within the preceding six weeks. It could not reasonably have required a full day to prepare. Appellants nonetheless filed it one minute before the deadline, consuming every hour this Court had allotted and pushing the Court's ruling a full day closer to the trial date. A party that believed its appeal had merit and wanted a prompt ruling

would have filed the moment its return was ready. A party whose object was to run out the clock would do exactly what Appellants did.

Courts confronting interlocutory appeals taken on the eve of trial have recognized the incentive at work and the harm it inflicts. Because an appeal halts the underlying case regardless of its merit, "[d]efendants may seek to stall because they gain from delay at plaintiffs' expense, an incentive yielding unjustified appeals." *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989). The costs are borne by everyone but the appellant. "During the appeal memories fade, attorneys' meters tick, judges' schedules become chaotic (to the detriment of litigants in other cases). Plaintiffs' entitlements may be lost or undermined." *Id.* Courts are "not helpless in the face of manipulation" of that kind. *Id.* at 1339. The federal rules likewise authorize damages and double costs for a frivolous appeal, a remedy the Advisory Committee traced to the statutory authority to award "damages for delay." Fed. R. App. P. 38. *See also* 28 U.S.C. § 1912 (providing for damages for delay and single or double costs where a judgment is affirmed on appeal).

Other jurisdictions treat an appeal taken to delay a trial as sanctionable in its own right, without regard to whether the appellant can articulate some argument for it. California authorizes sanctions for "[t]aking a frivolous appeal or appealing solely to cause delay," and the Supreme Court of California has held that an appeal is frivolous "when it is prosecuted for an improper motive" such as "to harass the respondent or delay the effect of an adverse judgment." Cal. R. Ct. 8.276(a)(1); *see In re Marriage of Flaherty*, 31 Cal. 3d 637, 650, 646 P.2d 179, 187 (1982) (defining a

frivolous appeal to include one prosecuted to delay the effect of an adverse ruling). North Carolina permits sanctions where an appeal "was taken or continued for an improper purpose, such as to harass or to cause unnecessary delay." N.C. R. App. P. 34(a)(2). And Georgia, whose law Appellants have spent six years insisting must govern this case, imposes a statutory penalty on any appellant whose appeal was "taken up for delay only." O.C.G.A. § 5-6-6. Appellants cannot be heard to invoke the substantive law of Georgia while treating the appellate courts of South Carolina as a device for delay that Georgia's own courts would penalize.

The harm here is not abstract. A jury venire was summoned for August 31, 2026. Witnesses and experts scheduled for that week were stood down. The circuit court's date certain setting, reserved months in advance by order of the court, was consumed by a case that could not be tried, to the detriment of every other litigant waiting on that court's calendar. And a child who was an infant when his father was killed in 2016 has waited nearly ten years for a jury to hear how he died and now must wait longer still. Every one of those harms was foreseeable to Appellants when they served the notice of appeal, and every one of them was the point.

III. A petition for rehearing would compound the abuse, and the Court should treat it accordingly.

Appellants have indicated that they intend to petition for rehearing. Rule 269 reaches a frivolous or dilatory "petition" as well as an appeal, and a petition for rehearing of a jurisdictional dismissal compelled by *Olson*, *Bank of New York*, and *Mid-State Distributors* would be more obviously frivolous than the appeal itself. *See Becraft*, 885 F.2d at 549 (observing that the result of a petition for rehearing was even

more obvious than the initial appeal and imposing sanctions). The petition would serve one function only. Rule 221, SCACR, provides that a petition for rehearing received before the remittitur is sent halts the remittitur automatically, without any showing by the petitioner and without any order of this Court. A petition filed for that purpose is a petition taken solely for delay within the meaning of Rule 269, and Respondents respectfully ask the Court to say so now, before the petition is filed, so that Appellants make their choice with the consequences in view.

Respondents further request that the Court dispose of any petition for rehearing on an expedited basis and direct that the remittitur be sent immediately upon its denial. The interval between dismissal and remittitur is the only thing standing between this case and a new trial date, and Appellants have already demonstrated their willingness to occupy that interval for as long as the Rules permit.

IV. The circumstances require monetary sanctions sufficient to make delay unprofitable.

Dismissal of the appeal was the correct threshold disposition, but standing alone it imposes no cost on Appellants and leaves them better off than if they had never appealed. That is the problem Rule 269 exists to solve. The rule authorizes "such sanctions as the circumstances of the case and discouragement of like conduct in the future may require," and sanctions serve both to compensate the victimized party for the burden of continued litigation in a settled matter and to discourage frivolous appeals that clog the docket. *See Walker v. Health Int'l Corp.*, 845 F.3d 1148, 1157 (Fed. Cir. 2017) (explaining that sanctions compensate the victimized party and deter frivolous appeals that unnecessarily consume the court's resources).

Respondents request that the Court award them the attorney's fees and costs incurred in moving to dismiss the appeal, replying to the return, and prosecuting this motion, without the limitation imposed by Rule 222, SCACR. The taxation of ordinary costs after remittitur would not begin to address the harm, and it would do nothing to deter a litigant for whom the cost of an appellate filing is a modest price for a continuance. Respondents further request an award of the expenses occasioned by the lost trial date, including expert witness cancellation and rescheduling fees and the costs of trial preparation that must now be repeated, in an amount to be established by affidavit. Finally, Respondents request that the Court impose a fine payable to the Court in an amount sufficient to reflect the judicial resources consumed by an appeal that settled law foreclosed, including the resources of the circuit court whose date certain setting was wasted.

Ten days' notice is required before sanctions may be imposed under Rule 269. Service of this motion supplies that notice, and Respondents request that the Court impose sanctions upon the expiration of the notice period, or upon the filing of any petition for rehearing, whichever occurs first.

CONCLUSION

Appellants took an appeal that settled law foreclosed, conceded the controlling authority in their own return, and obtained the continuance they sought on the day they filed. For the foregoing reasons, Respondents respectfully request that the Court find that the appeal was frivolous and taken solely for the purpose of delay, impose monetary sanctions on Appellants as set forth above, treat any petition for rehearing

as a further sanctionable filing under Rule 269, dispose of any such petition on an expedited basis, and direct that the remittitur be sent immediately upon its denial.

Respectfully submitted,

By: */s/John E. Parker, Jr.*

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September 4, 2026
Hampton, South Carolina

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v.

David A. Brosman, MD, Pain Management ASC, LLC, MPS Solutions, Inc., and Anesthesia Associates of Hilton Head Pain Management, LLC, ... Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Respondent's Motion for Sanctions and for Expedited Consideration has been served upon the following counsel of record by emailing a copy of the same this September 4th, 2026:

Hutson S. Davis, Jr.
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Respectfully submitted

PARKER LAW GROUP, LLP

BY: */s/John E. Parker, Jr.*

September 4, 2026
Hampton, South Carolina

September 4, 2026

RECEIVED
Sep 04 2026
SC Court of Appeals

Ms. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29211

RE: ***Holland v. Brosman, et al.***
Beaufort County Court of Common Pleas, Case No. 2020-CP-07-00065
Appellate Case No. 2026-001886

Dear Ms. Kitchings:

Enclosed please find our check for the filing fee in the amount of $50.00 for the Motion for Sanctions and for Expedited Consideration filed September 4, 2026, regarding the above-referenced matter.

With kind regards, I am

Sincerely,

John E. Parker Jr.

JAY/cc
Enclosures as stated

cc: Hutson S. Davis, Jr., Esq.
Andrew F. Lindemann, Esq.

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