STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
FRANK R. ADDY, CIRCUIT COURT JUDGE
EDGAR W. DICKSON, CIRCUIT COURT JUDGE
Appellate Case No. 2014-000618

Adele J. Pope, ... Respondent,

v.

Gloria P. Corley and Samuel M. Corley, Individually and as Trustee of the M. L. Corley Marital Trust, ... Defendants,

Of whom Gloria P. Corley is ..... Appellant.

MOTION TO DISMISS APPEAL, INCLUDING MEMORANDUM IN SUPPORT OF DISMISSAL

Pursuant to Rules 203(b) and 240, SCACR, Respondent Adele J. Pope ("Respondent") moves this Court to dismiss Appellant Gloria P. Corley's entire appeal herein or, alternatively, her appeal of certain of the Orders listed in her Notice of Appeal, as untimely. The grounds of this motion are as follows:

Background

This case began as a simple action to enforce the rights of Respondent under certain contracts which had then been in effect for more than a decade.[1] The facts of the case are

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[1] Certain claims related to other Defendants and amendment of the complaint to add additional defendants remain pending before the Circuit Court.

set out in detail in the Order of the Honorable Edgar W. Dickson, dated August 21, 2013, which is attached hereto as Exhibit A and incorporated herein.

Appellant appeals Orders of the Honorable Edgar W. Dickson awarding and affirming damages as a result of Appellant's breach of an August 29, 1998 fee contract with Respondent. She also purports to appeal the Orders of the Honorable Frank R. Addy which granted Respondent summary judgment on the validity and enforceability of the contract at issue. Because the Notice of Appeal contains inaccuracies, Respondent sets forth the following chronology of relevant Orders in this case:

- February 13, 2013 – Order of Judge Addy granting summary judgment against Appellant.
- April 8, 2013 – Judge Addy's February 13th Order is distributed to counsel by email of his law clerk.
- May 14, 2013 – Order of Judge Addy denying Appellant's Rule 59(e) motion to alter or amend his February 13, 2013 Order. Confirms summary judgment as to enforceability of the contract and directs damages hearing take place.
- July 15, 2013 – Damages hearing held before Judge Dickson.
- August 21, 2013 – Order of Judge Dickson awarding damages in the amount of $248,673.87.
- January 15, 2014 – Order of Judge Dickson denying Appellant's Rule 59(e) motion to alter or amend his August 21, 2013 Order.
- January 16, 2014 – Counsel for Respondent hand-delivers file-stamped copy of January 15th Order to Appellant's counsel. (See Ex. B, partially redacted)
- March 11, 2013 – Appellant serves Notice of Appeal of all Orders of Judge Addy and Judge Dickson.

Argument

I. THE NOTICE OF APPEAL IS UNTIMELY AS TO ALL ORDERS.

Rule 203(b)(1), *SCACR*, requires that a notice of appeal be filed "within thirty (30) days after receipt of written notice of entry of the order or judgment." Appellant acknowledges that she received written notice of the entry of the January 15, 2014 Order of the Honorable Edgar W. Dickson on January 16, 2014. (Notice of Appeal at 3). This Order denied Appellant's motion for reconsideration and made final the judgment against Appellant.

Appellant refers to an Order of "Circuit Judge Frank R. Addy dated February 3, 2014, received by counsel for Appellant on or about February 11, 2014." (Notice of Appeal at 1) No such Order exists. Instead, it appears that Appellant refers to a Form 4 signed by the Clerk on February 3, 2014, which simply indicates that Judge Dickson's Order was mailed to the parties on that date. The Form 4 is not signed by any judge, and it does not bear the name of any judge. It is simply confirmation that the clerk mailed the Order to the parties.

Our Supreme Court has held that "the moment [the order] is filed by the clerk of court, it becomes the judgment of the court, and fixes the rights of the parties." *Upchurch v. Upchurch*, 367 S.C. 16, 22-23, 624 S.E.2d 643 (2006) (citing *Archer v. Long*, 46 S.C. 292, 295, 24 S.E. 83, 84 (1896). The Court further held that "[e]ntry of the order occurs when the clerk of court files the order." *Id* at 24.

The latest Order in this case was Judge Dickson's January 16, 2014 Order denying Appellant's motion for reconsideration. A file-stamped copy of that Order was served on her counsel on January 16, 2014, which receipt she acknowledges in her Notice of Appeal herein.

(Notice of Appeal at 2; Exhibit B)

She thus received "written notice of entry of the order" on January 16, 2014 pursuant to Rule 203(b)(1) *SCACR*. The claims against Appellant were finally decided by Judge Dickson's Order, and the time for appeal ran from January 16, 2014. Appellant served her notice of appeal **more than 50 days later, on March 11, 2014.**

"The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to "rescue" the delinquent party by extending or ignoring the deadline for service of the notice." *Coker v. Cummings*, 381 S.C. 45, 671 S.E.2d 383 (Ct. App. 2008) (citing *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

Because Appellant's Notice of Appeal herein was filed more than 50 days after she received notice of entry of the January 15, 2014 final Order awarding damages, this appeal must be dismissed in its entirety.

II. ALTERNATIVELY, THE APPEAL OF JUDGE ADDY'S FEBRUARY 23, 2013 AND MAY 14, 2014 ORDERS IS UNTIMELY.

Appellant purports to appeal, among several Orders, the Orders of the Honorable Frank R. Addy, Jr., dated February 23, 2013 and May 14, 2013. These Orders granted summary judgment to Respondent and denied Appellant's motion for reconsideration, respectively. Although her motion to alter or amend pursuant to Rule 59(e), *SCRCP*, was heard and denied, Appellant never filed an appeal of Judge Addy's Orders until purporting to do so nearly a year later herein.

In his May 14, 2013 Order denying reconsideration, Judge Addy stated, "[s]ummary

judgment is granted on Plaintiff's cause of action." (5/14/13 Order, attached as Exhibit C, at 7) Instead of appealing that final determination as to liability, Appellant waited nearly a year. She appealed only after damages in the amount of $248,673.87, plus additional interest and attorneys' fees, was entered.

The South Carolina Supreme Court has held that an Order granting summary judgment as to liability, with damages reserved for another day, is immediately appealable. *Nauful v. Milligan*, 258 S.C. 139, 187 S.E.2d 511 (1972) Because Appellant failed to timely appeal Judge Addy's Orders, they are now the law of the case. If the Court does not dismiss the entire appeal, Respondent respectfully asks that the Court dismiss the appeal as to those Orders.

If the Court declines to dismiss the entire appeal herein, Respondent asks that it dismiss the appeal as to these long-final Orders. To do otherwise would allow Appellant to re-litigate issues she failed to timely appeal and would serve neither justice nor judicial economy.

Conclusion

For the reasons set out above, Respondent moves this Court to dismiss the entire appeal as untimely or, in the alternative, to dismiss the appeal as to the February 23, 2013 and May 14, 2013 Orders of Judge Addy. This motion is based on the *South Carolina Appellate Court Rules*, the entire record herein, including the attached exhibits, and applicable statutory and case law.

Respectfully Submitted,

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1901 Hampton Street
Post Office Box 1898
Columbia, South Carolina 29202
Telephone: (803) 779-1770

Attorney for Respondent Adele J. Pope

April 28, 2014

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Case No. 2011-CP-32-1109
COUNTY OF LEXINGTON	)	
	)	
Adele J. Pope,	)	
	)	
Plaintiff	)	
vs.	)	ORDER GRANTING JUDGMENT TO PLAINTIFF ADELE J. POPE AS TO CLAIMS AGAINST GLORIA P. CORLEY
	)	
Gloria P. Corley and Samuel M. Corley, Individually and as Trustee of the M. L. Corley Marital Trust,	)	
	)	
Defendants.	)	
	)	
	)	

This matter came before me on July 15, 2013 for a damages hearing to set the amount due to Plaintiff Adele J. Pope ("Plaintiff") as a result of Defendant Gloria P. Corley's ("Mrs. Corley") breach of contract. By Orders dated February 13, 2013 and May 14, 2013, the Honorable Frank R. Addy, Jr. found that the fee agreement at issue was valid and enforceable. For the reasons set out below, the Court finds that Plaintiff is entitled to a judgment against Mrs. Corley in the amount of $248,673.87.

Findings of Fact and Conclusions of Law

This case was commenced by the filing of a Summons and Complaint on March 21, 2011. Pope sought to enforce her rights under a fee contract dated August 28, 1998 (the "fee contract") and an Agreement Among Successors dated January 22, 1999 (the "Corley Agreement").

Under the fee contract, Plaintiff is entitled to:

> ONE-THIRD (1/3) OF ALL GROSS MONIES OR PROPERTY [Mrs. Corley receives] from [her] husband's Estate or Trust and/or

his family in excess of $7,500 per month ($90,000 per year) FOR THE REST OF [Mrs. Corley's] LIFE OR RECEIVED BY [her] ESTATE. . . .

Additionally, the Corley Agreement included the following provision:

ARTICLE VI
IRREVOCABLE DESIGNATION BY SPOUSE OF
AGENT TO RECEIVE PROCEEDS

1. Except for the monthly $7,500 payments, which shall be made directly to her, Mrs. Corley irrevocably designates Adele J. Pope as her agent to receive and disburse all amounts payable to her under the Will, the Marital Trust and/or this Agreement.

Both of these contracts had been in force for more than a decade at the time this litigation began, and both had been honored until Mrs. Corley's agent attempted to circumvent both in early 2011. Plaintiff has testified extensively in her deposition and affidavits[1] regarding her representation of Corley and the collection and disbursement of amounts due to Plaintiff and Mrs. Corley over the more-than 10 years since the Settlement. Mrs. Corley has introduced no factual testimony other than an affidavit of A. Hoyt Rowell, Esquire.[2]

In 1997 Mrs. Corley engaged Plaintiff on an hourly basis to represent her in relation to the

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[1] Included with Plaintiff's affidavits are numerous exhibits comprised of historical documents and correspondence generated during Plaintiff's representation of Mrs. Corley and over the years since.

[2] Although Mr. Rowell's affidavit purports to bear on certain facts of this case, it also plainly states that Mr. Rowell has little independent memory of the facts and has not reviewed the relevant documents. Judge Keesley struck a portion of Mr. Rowell's affidavit because it contained what appeared to be expert testimony from a fact witness.

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estate of Mrs. Corley's third husband, M. L. Corley ("Decedent"), who had recently died. The matter was both factually and legally complex. In addition to other assets, Decedent owned over 10 acres on Lake Murray, and a number of large tracts along Highway 378 between Columbia and Lexington. His first wife, to whom he had been married for many years, had predeceased him.

Mrs. Corley did not have a close relationship with Decedent's children. One of Decedent's children, Sam ("Trustee"), is the trustee of the trust established by Decedent's will. Trustee and Theron Peace, Decedent's accountant, were Decedent's personal representatives. Decedent's fiduciaries were represented by litigator Keith Babcock, Esquire, and tax attorneys Robert Young, Esquire and David Siddons, Esquire. Plaintiff was Mrs. Corley's sole attorney.

At the time of the engagement, Plaintiff held an LLM in Estate Planning from the University of Miami and had practiced law for more than 20 years. The fee agreement provided for attorney's fees and costs of collection. It also provided that Plaintiff could speak freely about the matter with Mrs. Corley's daughter Angie or son Hoyt ("Son"), an attorney. The fee agreement included an acknowledgement that Son served as Mrs. Corley's personal attorney and approved the Fee Contract. Although the record does not contain a copy of this document signed by Son, both Mrs. Corley and her Attorney-in-Fact acknowledged that fact by signing the agreement.

Mrs. Corley's goal was to receive regular income "beginning as soon as possible," but there were substantial impediments to this goal. Although Plaintiff worked vigorously, attempts to speed up this process met with considerable resistance from Decedent's fiduciaries and their attorneys. Plaintiff kept Mrs. Corley and Son informed of what actions she was taking and the

resistance with which it was being met.

In July 1998, with hearings scheduled, Mrs. Corley notified Plaintiff that she was too ill to continue the litigation and that her doctor directed that she immediately withdraw. Plaintiff immediately notified the court and other parties of Mrs. Corley's illness, withdrew the actions filed on behalf of Mrs. Corley, and notified the parties of Plaintiff's termination. Approximately three weeks later Plaintiff learned that Mrs. Corley's doctor had not directed her to stop the litigation, but that Mrs. Corley had decided to negotiate with the trust on her own.

By August 1998, Son was in contact with Plaintiff regarding Mrs. Corley's failed negotiations and requesting that Plaintiff take Mrs. Corley back as a client. Plaintiff, in light of Mrs. Corley's unwillingness or inability to bear the ongoing and substantial costs of a full representation on an hourly basis, proposed at least two alternatives. She offered to be engaged on a limited basis as a consultant to Son, who would act as Mrs. Corley's attorney. Alternatively, she was willing to work under a contingency-fee agreement. Mrs. Corley elected the contingency fee agreement. Although Mrs. Corley had not secured any agreement for herself after terminating Plaintiff, the contingency fee relates only to amounts over $90,000 per year Plaintiff was able to secure for Mrs. Corley.

Plaintiff then engaged in negotiations with counsel over fiduciary income and trust concepts and the best way to make Decedent's multi-million dollar estate and trust work for Mrs. Corley and Decedent's children. In January 1999, a detailed agreement was reached, presented to the court, and approved. The settlement, which was thoroughly reviewed by Mrs. Corley and her family, provided Mrs. Corley with a guaranteed income of $145,000 for the rest of her life provided she take no active role in the trust except to allow her own accountant to

review the annual reports. $90,000 was disbursed directly to Mrs. Corley each year, in monthly installments. The remainder, at least $55,000, was paid directly to Plaintiff, as the irrevocably designated agent to receive and disburse, and was intended to be the source of the payment of Plaintiff's fees within the framework set out in the Corley Agreement.

After the approval of the settlement, the estate was wound up and closed within a couple of years. On a few occasions, Trustee made the check out directly to Mrs. Corley rather than to Plaintiff as agent for Mrs. Corley. The Trustee always delivered the checks to Plaintiff. Aside from these minor mistakes, Trustee fully complied with the agreement until after this suit was filed. On those instances where the check was improperly made out, Mrs. Corley signed the check and endorsed it to Plaintiff's trust account instead of returning the check to Trustee and delaying payment. Plaintiff would then disburse the check according to the agreement.

After the settlement, through 2010, Mrs. Corley-- after payments to Plaintiff-- retained at least $125,000 per year. Plaintiff received annual payments of approximately $18,333. The contingency fee paid to Plaintiff each year was less than 15% of the $145,000 she secured for Mrs. Corley.

At one point shortly after the settlement, Mrs. Corley wrote Trustee and directed him to pay the annual check directly to her. Plaintiff engaged John Freeman, Esquire to assist her; Professor Freeman contacted Son and the matter was corrected. However, in March 2011 Mrs. Corley's attorney-in-fact took the check from Plaintiff and announced that she was now in charge and that she would pay Plaintiff what she felt like paying. Plaintiff filed this suit the following week.

Plaintiff and Mrs. Corley filed cross-motions for summary judgment. The court denied

Mrs. Corley's motions and granted Plaintiff's in a form 4 order dated February 13, 2012. Mrs. Corley sought reconsideration of that Order, but the court affirmed its findings by Order dated May 14, 2013. It also ordered a damages hearing, noting that "complicating factors" had arisen during this litigation.

Developments During this Litigation

In 2012, more than a year after this action was commenced, the Trustee and Mrs. Corley's attorney-in-fact reached an agreement to terminate Mrs. Corley's payments under the Corley Agreement in exchange for a lump sum paid to Mrs. Corley in 2012. Despite the pendency of this action, to which both Mrs. Corley and Trustee are parties, Trustee made one or more substantial distributions to Mrs. Corley in contravention of the Corley Agreement which he had honored for more than a decade.

No notice was given to Plaintiff or this Court of the 2012 agreement, and Plaintiff's counsel discovered the agreement in the Probate Court in August 2012.

The 2012 agreement purports to terminate Mrs. Corley's interest in the Trust in exchange for a single, immediate[3] payment of $650,000. According to the terms of the 2012 agreement, Mrs. Corley had already received $22,500 from the Trust in 2012. Thus, the total amount distributed to Mrs. Corley by the Trust in 2012 was $672,500.

The Fee Agreement provides that Plaintiff's fee will be "ONE-THIRD (1/3) OF ALL GROSS MONIES OR PROPERTY you receive from your husband's Estate or Trust and/or his family in excess of $7,500 per month," and Plaintiff has consistently taken the position that she

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[3] Although issues arose as to the timing of the payment, all amounts due to Mrs. Corley under the 2012 Agreement were undisputedly paid in 2012.

is entitled to a corresponding fee from the proceeds received by Mrs. Corley in 2012.

Judge Addy has previously concluded that the fee contract between Plaintiff and Mrs. Corley is valid and enforceable, and that contract provides that Plaintiff is entitled to 1/3 of all amounts received by Mrs. Corley beyond $90,000 per year from the Trust. The Trustee continues to hold the payment originally issued in 2011 of $55,000, which should have been received and disbursed by Plaintiff in accordance with the Corley Agreement and Fee Contract. Plaintiff is entitled to $18,333.33 from that payment, in addition to the amounts set out below. In the complaint herein, Plaintiff requested pre-judgment interest on this amount. Because Plaintiff's fee from the 2011 payment is a sum-certain, she is entitled to pre-judgment interest at the legal rate. *See Dixie Bell, Inc. vs. Redd*, 376 S.C. 361, 656 S.E.2d 765 (Ct. App. 2007).

Instead of the customary $55,000 lump-sum payment to Mrs. Corley in 2012, the Trustee distributed $650,000 to Mrs. Corley in exchange for Mrs. Corley's relinquishing her rights under the Corley Agreement to any future payments. This amount was distributed in addition to $22,500 in monthly payments to Mrs. Corley, so that Mrs. Corley received $672,500 in distributions in 2012.

Although the propriety and effect of the 2012 transactions are in dispute, no party disputes that Mrs. Corley received $672,500 from the Trust in 2012. Thus, Plaintiff asserts that she is entitled to 1/3 of $582,500 under the Fee Agreement.

Upon receipt of the 2012 payment, Mrs. Corley had received more than $2 million from the Trust as a result of Plaintiff's efforts. Plaintiff's total fee, if the Fee Agreement is applied to the 2012 distributions to Mrs. Corley, will be approximately $420,000.

Mrs. Corley argued that there are both questions of law and fact as to whether the fee

agreement between Plaintiff and Mrs. Corley applied to the 2012 disbursement. Plaintiff asserts that she is entitled to 1/3 of $582,500 under the Fee Agreement. I find that the contract at issue is unambiguous, and Plaintiff is entitled to damages based on the amounts paid to Mrs. Corley in 2012. The 2012 settlement agreement explicitly references the Corley Agreement in calculating the lump-sum payment to Mrs. Corley, and I find that the 2012 payment flows directly from the settlement Plaintiff negotiated more than a decade ago.

The above-quoted language in the contract plainly states that Plaintiff's fee shall be calculated as 1/3 of amounts beyond $90,000 per year received by Mrs. Corley, and the Court has previously found the contract to be enforceable. "When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense. *C.A.N. Enterprises, Inc. v. South Carolina Heath and Human Services Finances Com'n*, 373 S.E.2d 584, 296 S.C. 373 (1988).

Mrs. Corley also argued that damages could not be awarded to Plaintiff based on the 2012 payments, because Plaintiff's complaint had sought to enforce the contract in the context of the March 2011 payment. The complaint herein sought to enforce the fee contract, and the Court has found the contract to be enforceable. The 2012 payments were negotiated a year after this action was commenced, and Mrs. Corley was on notice of Plaintiff's proceeding to enforce the contract. To allow circumvention of the contract under these circumstances would be unjust, and I find that the damages set out below are appropriate.

Calculation of Damages

Counsel for Mrs. Corley conceded at the hearing that Plaintiff is entitled to her fee of $18,333.33 from the payment issued in March 2011. Additionally, Mrs. Corley concedes that

Plaintiff is entitled to prejudgment interest and reasonable attorneys' fees under the contract.

I find that Plaintiff, in addition to the amounts due from the 2011 payment, is entitled to $194,166.66 as a result of the 2012 distribution, and I find that this fee remains reasonable under the analysis set out in Judge Addy's Order Denying Motion for Reconsideration. Because this is also a sum-certain, Plaintiff is entitled to pre-judgment interest from January 1, 2013.[4]

The Fee Agreement further provides that Plaintiff is entitled to the reasonable costs of collecting any amounts due under the Fee Agreement, including attorneys' fees. This action to enforce the Fee Agreement and collect the fees due was necessitated by the conduct of Mrs. Corley, through her Attorney-in-Fact. Counsel for Plaintiff has presented an affidavit showing he has spent 125.5 hours on this matter to date and Plaintiff has expended $1,082 in costs. Plaintiff's counsel asks that Plaintiff be awarded $25,100 in attorneys' fees in connection with this action to date, plus the costs incurred.

Under the factors set out in *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), I find that this fee is reasonable. The record shows that this matter was commenced more than 2 years ago, and Plaintiff's counsel has diligently pursued it through discovery, mediation and hearings. This matter, although initially straightforward, was both complicated and drawn out by Mrs. Corley's actions and the 2012 agreement with the Trust and Sam. As set out in this Order, counsel has obtained beneficial results for Plaintiff. An award of $25,100 would compensate Plaintiff's counsel at a rate of $200/hour, which is in line with Mr. Silvernail's experience and time in practice.

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4 Although the record does not show the exact date Mrs. Corley received the 2012 payment(s), all were received by the end of that year.

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I find that $26,182 in fees and costs, plus any additional fees and costs incurred in collecting the amounts due under this Order, is a reasonable award and should be taxed to Mrs. Corley under the fee agreement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff is granted judgment against Gloria P. Corley for the following amounts in actual damages, interest and attorneys' fees and costs:

Fee due Plaintiff from the March 2011 Payment	$ 18,333.33
Fee due Plaintiff from payments to Mrs. Corley in 2012	$194,166.66
Pre-judgment interest on above amounts	$ 9,961.88[1]
Attorneys' fees and costs to date[2]	$ 26,182.00
Total	**$248,673.87**

Additionally, Plaintiff is granted daily interest in the amount of $42.21 from July 15, 2013 to the date of this Order, and such additional reasonable and necessary costs of collection as are provided in the fee contract.

AND IT IS SO ORDERED.

August 21, 2013

Orangeburg, South Carolina

Edgar W. Dickson

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[1] This includes $2,923.34 in interest on the $18,333.33 from March 15, 2011 through July 1, 2013, and $7,038.54 in interest on the $194,166.66 from January 1, 2013 through July 1, 2013.

[2] Payable by Mrs. Corley in accordance with the fee contract.

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EXHIBIT B

LAW OFFICE OF
ADAM T. SILVERNAIL, LLC

POST OFFICE BOX 1898
1901 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29202

January 16, 2014

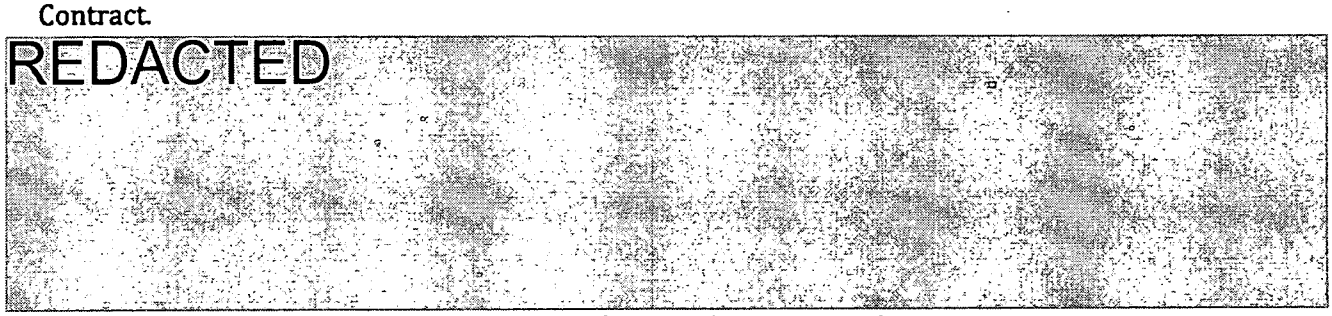
By hand-delivery:
Desa Ballard, Esquire
Stephanie Weissenstein, Esquire
Ballard Watson Weissenstein
Post Office Box 6338
West Columbia, South Carolina 29171

Re: *Pope v. Corley, et al*
Lexington County Case No. 2011-CP-32-1109

Dear Desa and Stephanie:

Enclosed and served upon you is Judge Dickson's Order Denying Defendant Gloria P. Corley's Motion for Reconsideration, which arrived in the mail today and has now been filed.

Based on the daily interest rate set in the Order, more than $7,000 in additional interest has now accrued on the judgment. We have also incurred approximately $3,000 in attorneys' fees and costs in our continued efforts to collect the amounts due under the Fee Contract.



Please do not hesitate to contact me if you wish to discuss this matter.

Sincerely,

Adam T. Silvernail

Enclosures

cc: Adele J. Pope, Esquire

TEL: 803/779-1770 FAX: 803/403-8092 EMAIL: ADAM@SILVERNAILLAWFIRM.COM

EXHIBIT C

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS Case No. 2011-CP-32-1109
Adele J. Pope, Plaintiff, Vs. Gloria P. Corley and Samuel M. Corley, Individually and as Trustee of the M. L. Corley Marital Trust, Defendants.	)	ORDER DENYING MOTION FOR RECONSIDERATION

THIS MATTER CAME BEFORE THE COURT on timely motion of Defendant Gloria P. Corley (Defendant) for reconsideration of this court's February 13, 2013, order granting Plaintiff Adele J. Pope's (Plaintiff) motion for summary judgment on all causes of action and denying Defendant's motion for summary judgment on all defenses and counterclaims. I find as follows:

FACTS

In 1997 Defendant engaged Plaintiff on an hourly basis to represent her in relation to the estate of Defendant's third husband, M. L. Corley (Decedent), who had recently died. The matter was both factually and legally complex. In addition to other assets, Decedent owned over 10 acres on Lake Murray, and a number of large tracts along Highway 378 between Columbia and Lexington. His first wife, to whom he had been married for many years, had predeceased him. Defendant did not have a close relationship with Decedent's children. One of Decedent's children, Sam (Trustee), is the trustee of the trust established by Decedent's will. Trustee and Theron Peace, Decedent's accountant, were Decedent's personal representatives. Decedent's fiduciaries

were represented by litigator Keith Babcock, Esuire, and tax attorneys Robert Young, Esquire and David Siddons, Esquire. Plaintiff was Defendant's sole attorney.

At the time of the engagement, Plaintiff held an LLM in Estate Planning from the University of Miami and had practiced law for more than 20 years. The fee agreement provided for attorney's fees and costs of collection. It also provided that Plaintiff could speak freely about the matter with Defendant's daughter Angie or son Hoyt (Son), an attorney. The fee agreement included an acknowledgement that Son served as Defendant's personal attorney and approved the Agreement. Although the record does not contain a copy of this document signed by Son, both Defendant and her Attorney-in-Fact acknowledged that fact by signing the agreement.

Defendant's goal was to receive regular income "beginning as soon as possible," but there were substantial impediments to this goal. Although Plaintiff worked vigorously, attempts to speed up this process met with considerable resistance from Decedent's fiduciaries and their attorneys. Plaintiff kept Defendant and Son informed of what actions she was taking and the resistance with which it was being met.

In July 1998, with hearings scheduled, Defendant notified Plaintiff that she was too ill to continue the litigation and that her doctor directed that she immediately withdraw. Plaintiff immediately notified the court and other parties of Defendant's illness, withdrew the actions filed on behalf of Defendant, and notified the parties of Plaintiff's termination. Approximately three weeks later Plaintiff learned that Defendant's doctor had not directed her to stop the litigation, but that Defendant had decided to negotiate with the trust on her own.

By August 1998, Son was in contact with Plaintiff regarding Defendant's failed negotiations

and requesting that Plaintiff take Defendant back as a client.[1] Plaintiff, in light of Defendant's unwillingness or inability to bear the ongoing and substantial costs of a full representation on an hourly basis, proposed at least two alternatives. She offered to be engaged on a limited basis as a consultant to Son, who would act as Defendant's attorney. Alternatively, she was willing to work under a contingency-fee agreement. Defendant elected the contingency fee agreement. Although Defendant had not secured any agreement for herself after terminating Plaintiff, the contingency fee relates only to amounts over $90,000 per year Plaintiff was able to secure for Defendant.

Plaintiff then engaged in negotiations with counsel over fiduciary income and trust concepts and the best way to make Decedent's multi-million dollar estate and trust work for Defendant and Decedent's children. In January 1999, a detailed agreement was reached, presented to the court, and approved. The settlement, which was thoroughly reviewed by Defendant and her family, provided Defendant with a guaranteed income of $145,000 for the rest of her life provided she take no active role in the trust except to allow her own accountant to review the annual reports. $90,000 was disbursed directly to Defendant each year, in monthly installments. The other $55,000 was paid directly to Plaintiff's office, as the irrevocably designated agent to receive and disburse, and was intended to be the source of the payment of Plaintiff's fees.[2]

After the approval of the settlement, the estate was wound up and closed within a couple of years. On a few occasions, Trustee made the check out directly to Defendant rather than to Plaintiff as agent for Defendant. Aside from these minor mistakes, Trustee fully complied with the

[1] All parties seem to agree that Defendant's *pro se* efforts obtained no results.

[2] The agreement contained other clauses, specifically a clause relating to some of Decedent's lake property. While not important to the enforceability of the fee agreement, this other clauses do indicate that Plaintiff obtained a favorable result for Defendant.

agreement until after this suit was filed. On those instances where the check was improperly made out, Defendant signed the check and endorsed it to Plaintiff's trust account instead of returning the check to Trustee and delaying payment. Plaintiff would then disburse the check according to the agreement.

After the settlement, through 2010, Defendant -- after payments to Plaintiff -- retained at least $125,000 per year. Plaintiff received annual payments of approximately $18,333. The contingency fee paid to Plaintiff each year was less than 15% of the $145,000 she secured for Defendant.

At one point shortly after the settlement, Defendant wrote Trustee and directed him to pay the annual check directly to her. Plaintiff engaged John Freeman, Esquire to assist her; Professor Freeman contacted Son and the matter was corrected. However, in March 2011 Defendant's attorney-in-fact took the check from Plaintiff and announced that she was now in charge and that she would pay Plaintiff what she felt like paying. Plaintiff filed this suit the following week.[3]

Plaintiff and Defendant filed cross-motions for summary judgment. The court denied Defendants motions and granted Plaintiff's in a form 4 order dated February 13, 2012. Defendant now seeks reconsideration of the court's order on the grounds that the Court erred in finding the fee agreement reasonable and enforceable.

LAW/ANALYSIS

I. The Fee Agreement is neither unconscionable nor void as against public policy.

Generally, South Carolina courts will not enforce a contract that violates public policy. *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 555, 606 S.E.2d 752, 758

[3] After this action was commenced, Defendant and the trust entered into an agreement to terminate Defendant's interest in the trust. The court makes no ruling on the propriety of this agreement at this time, as this issue is best resolved in the context of a future damages hearing.

(2004). Unconscionability is defined as the "absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Id.* (citing *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 472 S.E.2d 242 (1996)). Defendant asserts that she suffered a lack of meaningful choice in entering into the Fee Agreement as a result of her age and unsophistication. The court disagrees.[4]

The evidence shows that Defendant had previously engaged Plaintiff on an hourly basis; subsequently fired Plaintiff and independently undertook negotiations regarding her interest in Decedent's estate and trust during the period after she terminated Plaintiff. Further, Son was kept up to date on the proceedings and corresponded with Plaintiff regarding issues related to the estate and trust.[5]

Defendant had the choice to engage Plaintiff on the limited consultation-only basis if she wished to limit the fees paid to Plaintiff (and if she and Son wished to assume most of the responsibility Plaintiff eventually undertook in the negotiations). Instead, Defendant chose a contingency fee agreement.[6] Finally, Defendant could have consulted with or hired an attorney other than Plaintiff on terms other than those on which the two agreed. Therefore, Defendant did not lack meaningful choice in entering into the fee agreement.

Defendant further asserts that the amounts paid to Plaintiff under the Fee Agreement

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[4] In support of her contention that the Fee Agreement was unconscionable, Defendant offered the 2-page affidavit of expert Ken Wingate, Esquire. However, the court has not considered the affidavit as it contains expert testimony on issues of law that are generally inadmissible *See Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003).

[5] The parties dispute whether Son acted as Defendant's personal attorney during this time. However, from the evidence submitted, it appears that he at least had some involvement in the decision to re-engage Plaintiff on a contingency basis.

[6] The court notes that contingency fee agreements are common in probate representation.

support voiding the contract as unconscionable. The evidence shows that Defendant has received more than $1.5 million from the trust since the settlement. Plaintiff has received less than $225,000. This contingency fee amounts to less than 15% of the amounts Defendant has received as a result of the settlement. Thus, this agreement is not unreasonable based solely on the amount of compensation Plaintiff received. *See Beattie v. DeLong*, 164 A.D.2d 104 (Supreme Court, Appellate Division, First Department, New York 1990) (holding that a contingent fee agreement which resulted in the attorney receiving a 30% interest in copyright royalties was reasonable).[7]

Ultimately, the court finds that the fee agreement is reasonable when analyzed under the applicable factors. In *Glasscock v. Glasscock*, 304 S.C. 158, 403, S.E.2d 313 (1991) our Supreme Court held that, in determining the reasonableness of an attorney's fee, the court should consider (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Furthermore, when evaluating attorney's fees in the context of a dispute with a client, "all of the circumstances surrounding the attorney-client relationship must be considered when determining a reasonable fee to be paid by a client." *Weatherford*, 340 S.C. at 581, 532 S.E.2d at 315.

The court finds that the fee would be reasonable under the *Glasscock* factors, but, moreover, that the fee is unquestionably reasonable in light of the circumstances surrounding this attorney-client relationship, including the results obtained for Defendant. Plaintiff was faced with a legally and factually complex matter as well as a client who was interested in securing regular income for herself right away. Plaintiff's representation produced a comprehensive settlement

[7] Defendant also argues that Plaintiff's fee was unreasonable under *Weatherford v. Price*, 340 S.C. 572, 532 S.E.2d 310 (Ct. App. 2000). That case dealt with the award of *quantum meruit* fees to an attorney where no written fee agreement existed. *Weatherford* is inapposite to the case at bar, where the fee agreement has been in effect and honored for more than a decade.

which provided Defendant with a generous life income, as she desired. Therefore, the fee agreement is neither unreasonable nor unconscionable.

CONCLUSION

WHEREFORE, IT IS ORDERED that Defendant's motion for reconsideration is **DENIED**. Summary judgment is granted on Plaintiff's cause of action. However, the question of damages is complicated by factors that have developed since the filing of this action, and a hearing on this issue is required

THEREFORE, IT IS FURTHER ORDERED that the Clerk of Court set this matter for a hearing on the amount of damages.

IT IS SO ORDERED.

Frank R. Addy, Jr.
Circuit Court Judge

May 14, 2013
Greenwood, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-32-1109

Adele J. Pope
PLAINTIFF(S)

Gloria P. Corley, et al.
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: See attached formal order. This case shall be set for a non-jury term for purposes of a damages hearing.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2159
Judge Code

5-14-13
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Adam Silvernail

ATTORNEY(S) FOR THE PLAINTIFF(S)

Bru Pender, Desa Ballard, Stephanie Weissenstein

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
FRANK R. ADDY, CIRCUIT COURT JUDGE
EDGAR W. DICKSON, CIRCUIT COURT JUDGE
Appellate Case No. 2014-000618

Adele J. Pope, ... Respondent,

v.

Gloria P. Corley and Samuel M. Corley, Individually and as Trustee of the M. L. Corley Marital Trust, ... Defendants,

Of whom Gloria P. Corley is ..... Appellant.

AMENDED PROOF OF SERVICE

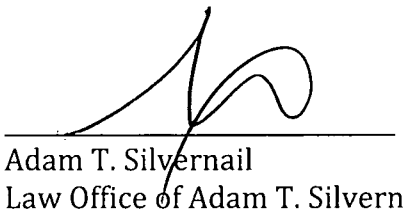
I certify that on the 28th (29TH where shown) day of April, 2014, I have served the Motion to Dismiss on all parties by mailing a copy of same to them or their attorneys of record, by U.S. Mail, First-class postage prepaid, addressed as follows:

Desa Ballard, Esquire
Stephanie Weissenstein, Esquire
Ballard Watson Weissenstein
Post Office Box 6338
West Columbia, South Carolina 29171

Attorneys for Appellant Gloria P. Corley

Charlie M. Pender, Esquire (Served April 29, 2014)
Craig Law Firm, PC
2001 Assembly Street, Suite 201
Columbia, South Carolina 29201

Attorney for Defendant Samuel M. Corley, individually and as Trustee of the M.L. Corley Marital Trust



Adam T. Silvernail
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Telephone: (803) 779-1770

April 29, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
FRANK R. ADDY, CIRCUIT COURT JUDGE
EDGAR W. DICKSON, CIRCUIT COURT JUDGE
Appellate Case No. 2014-000618

Adele J. Pope, ... Respondent,

v.

Gloria P. Corley and Samuel M. Corley, Individually and as Trustee of the M. L. Corley Marital Trust, ... Defendants,

Of whom Gloria P. Corley is ..... Appellant.

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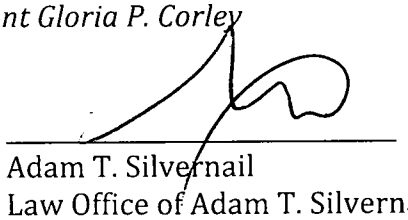
Desa Ballard, Esquire
Stephanie Weissenstein, Esquire
Ballard Watson Weissenstein
Post Office Box 6338
West Columbia, South Carolina 29171

Attorneys for Appellant Gloria P. Corley



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April 28, 2014

LAW OFFICE OF
ADAM T. SILVERNAIL, LLC

POST OFFICE BOX 1898
1901 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29202

April 28, 2014

By U.S. Mail:
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *Pope vs. Corley, et al*
Appellate Case No. 2014-000618

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of our Motion to Dismiss Appeal, Including Memorandum in Support of Dismissal, along with this firm's check for $25.00 to cover the filing fee. Please return a file-stamped copy of the Motion to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, I am serving the Motion on opposing counsel.

Thank you for your assistance with this matter.

Sincerely,

Adam T. Silvernail

Enclosures

cc: Desa A. Ballard, Esquire
Adele J. Pope, Esquire

TEL: 803/779-1770 FAX: 803/403-8092 EMAIL: ADAM@SILVERNAILLAWFIRM.COM