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THE STATE OF SOUTH CAROLINA
In the Supreme Court

JUN 12 2015

SC Court of Appeals

ON PETITION FOR WRIT OF CERIORARI TO THE COURT OF APPEALS
Unpublished Opinion No. 2015-UP-067 (issued February 11, 2015)

APPEAL FROM RICHLAND COUNTY AND DARLINGTON COUNTY
J. Michael Baxley, Circuit Court Judge

Appellate Case No.: 2015-001048

Ex Parte: Tony Megna, Petitioner

Douglas N. Truslow, Respondent,

In re:

James Anasti, Plaintiff,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee and Richland County Clerk of Court,
Defendants.

And

Ex Parte: Tony R. Megna, Petitioner,

Desa Ballard, Respondent,

In re:

Pee Dee Health Care, P.A., Plaintiff,

v.

Estate of Hugh S. Thompson, Defendant.

COPY

**JOINT RETURN BY TRUSLOW AND BALLARD RESPONDENTS TO
PETITION FOR WRIT OF CERTIORARI OF TONY MEGNA**

QUESTIONS PRESENTED

- I. Does the decision of the Court of Appeals warrant this Court's discretionary review under the considerations of SCACR 242(b)?
- II. Did the Court of Appeals err in dismissing the appeal?

STATEMENT OF THE CASE

Petitioner, Tony R. Megna ("Megna") filed separate appeals relative to sanctions imposed upon him in two separate, unrelated cases originating in two different counties. One case ("Anasti") originated in Richland County. (R. pp. 90-102) The other case ("Thompson") originated in Darlington County.¹ (R. pp. 77-89). The cases involved no common questions of law or fact. The attorneys involved were separate and distinct. The only common denominator in these two cases was that Megna represented a party in each case. (R. pp. 641-654; at 649)

From the time of his initial appearance in Anasti, until his representation ended with the conclusive loss of her appeal and denial of the Petition for Writ of Certiorari,

¹ Thompson has never been in Florence County. Megna has, however, been involved in multiple, unrelated cases in Florence County. (R. pp. 1334-1338) He filed an appeal from the dismissal of one Florence case wherein he had sued attorneys Celeste Jones, LeRoy Nettles, the McNair Law Firm, et al. That appeal was dismissed in that Megna did not properly or otherwise timely pursue it. (R. pp. 1334-1337) His appeal in Thompson (from a grant of Summary Judgment) was dismissed as untimely. His Petition for Writ of Certiorari in that case was denied.

Megna acted as attorney for Defendant Gina Lee (hereinafter "Lee"). Thereafter, he had no client as discussed *infra*. and was representing his own interests only.

In Thompson, Megna was disqualified by the Court to act as attorney for Pee Dee Health Care ("PDHC"). (R. pp. 55-63). The terms of his disqualification were repeated by the Court to Megna.

After both Megna's representation of Lee had conclusively ended in Anasti and after he had been disqualified to act as an attorney in Thompson, Megna pursued discovery in each case (against Truslow in Anasti and against Ballard in Thompson), all for self-serving purposes. As a result of separate motions in Anasti and Thompson relative to alleged attorney misconduct by Megna (a) in Anasti after his representation of Lee had ended and (b) in Thompson after his disqualification, a consolidated Anasti/Thompson sanctions hearing was held by the Circuit Court on May 15, 2012.

Sanctions orders were rendered by the Court against Megna in each case on February 11, 2013 (R. pp. 77-102) In Anasti, a monetary sanction was rendered by the Court against Megna. Megna was also ordered to report his misconduct to the Office of Disciplinary Counsel. In Thompson, monetary sanctions were independently rendered against Megna. Megna was also independently ordered to report his misconduct to the Office of Disciplinary Counsel. Megna filed motions to alter or amend the two sanctions Orders pursuant to Rule 59(e), SCRCP. In the motions, he raised issues not properly preserved. Moreover, he again did not object to the process and procedure followed by the Court. Each motion was denied on June 12, 2013. (R. pp. 120-125) Megna appealed the two sanctions Orders against him. Megna's appeals of the two sanctions Orders were consolidated by the Court of Appeals on July 10, 2013, with each of Respondents herein

filing separate briefs. Megna lost both appeals by virtue of an unpublished opinion filed February 11, 2015. As well, his motion for reconsideration was denied on April 16, 2015.

The within Petition for Writ of Certiorari has followed.

ANASTI CASE/RICHLAND (In re: Truslow, Respondent)

Plaintiff James Anasti brought suit against Lee, Wilson and Goodwin and the Richland County Clerk of Court in January, 2007.² The action sought to resolve issues pertaining to title to real estate and claims for damages. (R. pp. 174-178) Megna filed an Answer and Counterclaim on Lee's behalf asserting, *inter alia*, that despite (illegally) selling Plaintiff's property to Wilson and Goodwin, she still owned it [sic]. (R. pp. 186-199) Wilson and Goodwin alleged in their defense that they had in good faith bought the property from Lee by way of "owner financing", believing her at the time to be the true owner, but that when they later learned that Lee did not in fact own the property she had sold to them, they had sued her in a separate action. (R. pp. 179-185) They further asserted in their Answer that a decision favorable to Plaintiff would bolster their fraud and other claims against Lee in the separate, previously filed companion case lawsuit they had initiated against Lee for selling them the property they subsequently discovered she did not own. (R. pp. 143-156)

On October 26, 2007, and over Lee's opposition, the Circuit Court granted Plaintiff Anasti summary judgment against Lee, Wilson and Goodwin as to his ownership of and title to the real estate at issue i.e. declaring Plaintiff to be the sole owner. The summary judgment Order contained a provision directing that a damages hearing against Lee, Wilson

² The Clerk of Court was a stakeholder of certain funds paid into the Court relating to a SCDOT condemnation action. The Clerk of Court has paid those funds to Plaintiff Anasti and has no further interest. Wilson and Goodwin subsequently settled their differences with Plaintiff Anasti, each consenting to a damages Judgment in the sum of \$250,000. They likewise have no further interest in this matter.

and Goodwin was to follow at a subsequent date. The summary judgment Order was filed on October 26, 2007 and duly transmitted to respective counsel. (R. pp. 1-10; 15-19 at page 16 #2; 22-32 at page 23, II)

On November 7, 2007, Plaintiff filed a Rule 11, SCRCP, motion for sanctions against Megna and Lee, in essence, for having pursued a frivolous, bad faith and disingenuous defense. (R. p. 340) No claim was asserted that the motion was untimely.

On November 21, 2007, Megna/Lee filed a facially untimely motion for reconsideration of the summary judgment Order adverse to Lee, *to wit*: a motion purportedly pursuant to SCRCP 59(e). Megna did not at that time allege any late receipt of the Order granting summary judgment or allege any other excuses for his untimely filing. Megna's/Lee's motion for reconsideration was denied on December 6, 2007. At the time of denial, the Circuit Court questioned Megna's timeliness.

Plaintiff's Rule 11 motion for sanctions against Lee and Megna was thereafter scheduled to be heard on January 8, 2008. (R. p. 1072)

On January 4, 2008, and purporting to act on behalf of Lee, Megna filed a notice of intent to appeal the grant of summary judgment to Plaintiff. In conjunction, Megna asserted that neither the Rule 11 sanctions hearing against both he and Lee, nor the damages hearing against Lee, Wilson and Goodwin could be conducted while the appeal remained outstanding.

By Order dated January 8, 2008, both the Rule 11 sanctions hearing and the damages hearing were stayed during the pendency of Lee's appeal being pursued by Megna. (R. p. 11) ³

³ The Circuit Court reiterated by Order dated May 28, 2008 that Plaintiff Anasti's motion for sanctions remained stayed while the case was pending on appeal.

On January 22, 2008, Plaintiff moved for dismissal of Lee's appeal as untimely and hence jurisdictionally defective. Megna admitted he had received the Court's Order granting summary judgment dated October 26, 2007. He contested that he had been untimely in filing the Lee appeal, claiming "late receipt".

The issue of timeliness of the appeal filed by Megna on Lee's ostensible behalf was thereafter remanded to the Court of Common Pleas (hereinafter "Circuit Court") on March 18, 2008, with an indication that it was to be heard as soon as possible.

The remand hearing was duly set by the Court for April 3, 2008. Megna was noticed for the hearing date. The remand Order was called for a hearing on April 3, 2008. Megna did not appear and could not be accounted for. Nonetheless, the Circuit Court considered the entire file, including the Clerk's records reflecting on the date of mailing of the summary judgment Order to Megna and other counsel of record, Megna's affidavits and all other documents, memoranda and arguments Megna had previously submitted relative to the timeliness issue remanded. Upon thorough review, the Circuit Court determined on April 3, 2008 that Megna was untimely in filing the appeal. The Circuit Court further found that Megna had been untruthful, had made gross misrepresentations to the Courts as to the relevant issues under consideration and that he had unjustly attacked opposing counsel. (R. pp. 14-19)

Upon the Circuit Court's Order being filed, the Court of Appeals, dismissed Lee's appeal. Thereafter, Megna alleged that he had not received proper notice for the remanded hearing; he sought to reopen Lee's appeal and have the Circuit Court's April 3, 2008 Order reconsidered. The Court of Appeals provided Megna with yet another opportunity to make whatever timeliness and other arguments he might wish to make; Lee's appeal was

remanded to the Circuit Court once again for a re-determination of Megna's timeliness or lack thereof in properly perfecting Lee's appeal. A second hearing was thereafter held relative to the issue of Megna's timeliness in perfecting Lee's appeal. The Circuit Court again found and concluded in its Order dated April 1, 2009 that Megna's appeal was indeed untimely. (R. pp. 22-32) In conjunction, Megna was once again found by the Circuit Court to have been untruthful. Megna's excuses for failure to attend the April 3, 2008 hearing were found by the Circuit Court to have been contrived, with more emphasis being and specifically directed to the extent of his misconduct.

In response to the Circuit Court's April 1, 2009 Order, Megna/Lee filed another appeal on April 15, 2009 (actually two of them – relating to the Circuit Court's two remand Orders dated April 3, 2008 and April 1, 2009).

On April 15, 2009, Megna/his law partner Benjamin Matthews ("Matthews") filed a debtor bankruptcy action, ostensibly on Lee's behalf.⁴ Megna failed to timely communicate that event (bankruptcy filing) to the Court of Appeals. Lee's appeal was once again dismissed as untimely, based on the filing of the Circuit Court's April 1, 2009.

The legal effect of Lee's debtor bankruptcy filing was that the second dismissal of Lee's appeal(s) had to be set aside and then held in a state of abeyance because it had been subjected to what is commonly known as a Title 11 United States Code "§362" stay, retroactive to the date of Lee's bankruptcy filing. Thus, the dismissal of the appeal, as well

⁴ Megna and Matthews represented Lee throughout all her bankruptcy proceedings (see bankruptcy action 09-02854-JW; readily available on PACER). The word "ostensibly" is used in that the effect of Lee's multiple appeals, multiple motions for reconsideration, multiple bankruptcy filings, multiple bankruptcy appeals and multiple Petitions for Writ of Certiorari was to delay by years the resolution of the November 7, 2007 sanctions motion against Megna as well as the damages hearing against non-bankrupt remaining parties. The November 7, 2007 motion for sanctions against Megna is now at last under consideration by the Circuit Court, having been submitted based on briefs, and is presumed to now be delayed again by this Writ of Certiorari filed by Megna.

as the November 7, 2007 sanctions motion against Megna personally, as well as a damages hearing against Lee, Goodwin and Wilson, were further delayed.

Plaintiff petitioned the Bankruptcy Court to lift the bankruptcy stay, so that Lee's/Megna's State appeal(s) could be concluded. Plaintiff's petition to lift the bankruptcy stay was granted on November 9, 2009. (R. pp. 33-40) Under the circumstances and terms of the Bankruptcy Court's Order(s), Megna was not authorized to proceed further on Lee's behalf in Anasti, other than to conclude her State appeal(s). (R. pp. 851-853)

On February 24, 2010 Megna/Matthews wrote letters and also sent three emails to the Bankruptcy Court, Lee's Bankruptcy Trustee, attorneys in those cases and others, falsely representing that the two remand Orders of the Circuit Court (dated April 3, 2008 and April 1, 2009 -- finding and concluding that Megna had been untimely in filing Lee's appeal and had otherwise engaged in substantial misconduct) had been "disregarded", "set aside", "reversed", and "vacated" by the Court of Appeals. (R. pp. 718-722)

On April 16, 2010, Lee was determined to be bankrupt and her bankruptcy plan was approved.

Upon it clearly being established that the bankruptcy stay relative to Lee/Megna's appeals in Anasti had in fact been lifted (R. pp. 48-50) and that the two remand Orders had not been "disregarded", "set aside", "reversed" or "vacated", the South Carolina Court of Appeals directed that both the record on appeal and briefs were to be limited to the threshold, jurisdictional issue of timeliness. (Supp. R. pp. 7-8) Upon receipt of the final briefs in mid-March, 2011, the Court of Appeals promptly dismissed Lee's appeal(s) on April 1, 2011. (R. pp. 52-54) The appeal was dismissed on the basis of Megna's untimeliness as a threshold matter. The merits were never addressed. Plaintiff's

November 7, 2007 Motion for Rule 11 sanctions was never addressed by the Court of Appeals. The Summary Judgment Order determining that Plaintiff was the rightful owner of the property in question was, however, firmly established. Plaintiff/Respondent Anasti submitted a claim for Rule 269, SCACR sanctions, limited to the time expended during the appeal. The Court of Appeals did not grant relief under Rule 269.⁵

From the loss of Lee's appeal, Lee/Megna filed a petition for writ of certiorari in the State Supreme Court. Lee/Megna's petition was denied. Given Lee's bankruptcy, in conjunction with the Bankruptcy Court's orders and Lee's loss of all appeals, Lee has had no further interest in Anasti since that time, and Megna had no client. Lee has provided an Affidavit to the Court corroborating that circumstance. (R 814 and 815)

Anasti was remitted to the Circuit Court on or about October 7, 2011. At that point, the Rule 11 motion for sanctions against Megna filed November 7, 2007 was ripe for resolution.⁶ As well, the damages hearing against Wilson and Goodwin was then ripe for resolution.

On November 1, 2011 Plaintiff Anasti requested of the Circuit Court a status conference so that the outstanding damages hearing (not involving Megna or Lee) and the outstanding Rule 11 sanctions motion (against Megna) could be scheduled. (R. pp. 554-

⁵ While no reason was given, lack of jurisdiction is the logical conclusion. It would otherwise be difficult to imagine that the Court of Appeals would have approved of Megna's proven, documented misconduct set forth in the Circuit Court's April 3, 2008 and April 1, 2009 Orders, coupled with yet another of the Circuit Court's observation that Lee's defense presented by Megna was a "flim-flam" (R. p. 232, lines 9-12), that "You [Megna] are talking out of four sides [of your mouth] to me" (R. p. 228, lines 16-18) and the separate conclusions of the Bankruptcy Court and the District Court in their Orders -- a tortured history of legal machinations by Megna to avoid the consequences associated with his failure to timely appeal in the first place. (See especially the Order dated January 15, 2010, R. pp. 704-707.)

⁶ Given that Lee was adjudicated bankrupt and was no longer involved, Plaintiff moved to delete Lee from the Rule 11 sanctions motion on November 21, 2011, reiterated an intent to proceed with the sanctions hearing against Megna (R. pp. 441; 554-555; 563-565) and to pursue Plaintiff damages claim against Wilson and Goodwin alone.

555) Megna submitted a letter to the Circuit Court on November 3, 2011 opposing any status conference. Megna essentially, but falsely asserted that: (a) all matters in Anasti remained stayed by virtue of Lee's bankruptcy, (b) Plaintiff had lost the case in the Court of Appeals, (c) the Court of Appeals had ruled adversely to Plaintiff relative to his damages claims, as well as the November 7, 2007 motion for Rule 11 sanctions, and (d) there was nothing left for resolution. (R. pp. 1170-1180 and Exhibits attached at R. pp. 556-562)

On January 18, 2012, the status conference request by Plaintiff Anasti was held by the Circuit Court. (R. pp. 241-259) At that time, it was reconfirmed that neither damages nor sanctions were being pursued against Lee, given her bankruptcy. (R. p. 244, line 18-p. 247, line 2) The Court stated that Plaintiff's damages hearing (involving Plaintiff and Defendants Wilson and Goodwin alone) would be heard, most likely in mid-March, 2012 and that Plaintiff's Rule 11 sanctions motion against Megna was expected to be heard thereafter. At the status conference, Megna repeatedly confirmed to the Court that neither he nor Lee were in anyway involved or interested in the damages hearing. (R. p. 246, line 25-p. 247, line 2 and R. p. 248, line 17) Wilson and Goodwin did not express a desire or need for any further discovery.⁷ Wilson and Goodwin's attorney alerted the Circuit Court at that time that he was ill and may be unable to participate in the damages hearing.

Plaintiff's damages hearing against Wilson and Goodwin was thereafter scheduled to be heard on March 12, 2012. In late February, 2012, Megna discovered that Wilson and Goodwin's attorney (Mr. Earle) was hospitalized, in a coma and would have to withdraw from his legal representation of them. (R. p. 577) On or about February 27, 2012, Mr.

⁷ Megna had previously filed a motion on September 11, 2007 asserting that all discovery was complete and that both he and Lee were unwilling to engage in it further. (R. pp. 1156-1162 at page 1162; 551-552) Megna did not move for discovery on his own behalf, but was nonetheless given a full explanation.

Earle's law partner sought and received consent and then Court approval for Mr. Earle and his law firm to be relieved from the representation of Wilson and Goodwin. Wilson and Goodwin were given until the end of March, 2012 to engage substitute counsel. (R. pp. 74-76; 663-666) The damages hearing against Wilson and Goodwin was continued.⁸ By that point, Wilson and Goodwin had already received an award of damages against Lee in excess of \$216,000 in their independent companion case lawsuit. (R. pp. 200-219) Megna had represented Lee in that case.

In the Order continuing the damages hearing, and with Megna's concurrence, it provided that "Megna is not involved nor is his client in this aspect of the case". (R. p. 74)

Upon being informed in late February, 2012 that Wilson and Goodwin's counsel, Mr. Earle, was in a coma and would not be able to participate in the damages hearing, Megna sent emails, letters, subpoenas and subpoenas duces tecum, interrogatories, requests to produce, and notices for depositions to Plaintiff's counsel and to Mr. Earle [sic]. Megna asserted that he was doing so for the damages hearing [sic] (R. p. 646) and purporting to be doing so on Lee's behalf and independently for Plaintiff [sic]. Continuing well into March, 2012, Megna served subpoenas and other discovery on various persons. (R. pp. 577-638; 424-433) Megna's subpoenas were initially from Darlington County (where he had previously been disqualified in Thompson), but later inexplicably reissued by him from Richland County on behalf of Lee [sic] in Anasti (where he concededly no longer had any client). Megna sought to depose Anasti's bankruptcy attorney, both Anasti's counsel and his paralegal and to retake the deposition of Plaintiff.⁹ Megna noticed the depositions to

⁸ Subsequently, Wilson and Goodwin engaged substitute counsel and ultimately confessed judgment in favor of Plaintiff as to damages.

⁹ At that time, Megna asserted that Plaintiff lived out of the country, but Megna sought to retake his deposition on less than ten days' notice nonetheless and without seeking consent or Court approval to

be taken at the exact same time on less than ten days' notice. Megna's subpoenas were, *inter alia*, subpoenas duces tecum. In them, Megna sought information relative to PDHC (in which Thompson Estate had been granted summary judgment against Megna's employer PDHC), the Thompson Estate Defendant's attorneys and the Thompson case itself – in which Megna had previously been disqualified as attorney for PDHC. As well, Megna attempted to serve discovery on Wilson and Goodwin (whom he claimed to be representing) and require their compliance while they were without actual counsel and were otherwise to be protected by Court Order due to their attorney's illness. In his various discovery submissions under the auspices of Anasti, Megna sought information relative to John James, Rene Josey, Celeste Jones, Kenneth Woodington and Desa Ballard, PDHC, Medicare and Medicaid records, matters regarding unrelated cases in Federal Court and matters involving Megna and/or PDHC in other jurisdictions and venues, including Thompson. He did so despite being disqualified in Thompson and having no client in Anasti. Megna threatened that, if the aforesaid discovery he claimed to be seeking for the damages hearing against Wilson and Goodwin was not forthcoming, he would file for contempt sanctions. (R. p. 580)

On March 9, 2012, Plaintiff Anasti's counsel filed a motion to quash and for protection. (R. pp. 444-508) In conjunction, sanctions were sought against Megna relative to this new misconduct separate and apart from other sanctions independently having been sought for other instances of misconduct. At that point, Ms. Ballard had requested that her pending sanctions motion against Megna filed in Thompson, addressed *infra* and by Ms. Ballard separately, also be heard. Upon notice that the court was prepared to set a

retake it – Megna had previously taken Plaintiff's deposition in full and without reserving any issue relative to it.

consolidated hearing date on May 15, 2011 as to Plaintiff's March 9, 2012 motion in conjunction with Ms. Ballard's outstanding motion against Megna in Thompson (R. pp. 981-982), Megna emailed the Court an unsolicited letter and "Synopsis" on March 19, 2012. (R. pp. 640-654) In his Synopsis, Megna falsely asserted that a) the Court of Appeals had previously both addressed and denied Anasti's March 9, 2012 motion, b) there had been no discovery as to damages in Anasti; and c) that he (Megna) was acting on behalf of the "unrepresented Defendants" (Wilson and Goodwin). In addition in his Synopsis, Megna leveled claims of unethical conduct on the part of a number of attorneys, spanning many different cases.¹⁰ Although remaining disqualified, Megna nonetheless moved as a component of his Synopsis that the court disqualify Defendant's counsel in Thompson.

In support of Anasti's March 9, 2012 motion for sanctions and to refute Megna's Synopsis, Respondent filed, served, requested judicial notice and made a part of the record comprehensive evidence reflecting on the issues to be addressed at the May 15, 2012 scheduled hearing. (R. pp. 509-817) It included: Respondent's affidavit with detailed time records limited to that specific time relating to the March 9, 2012 motion (R. pp. 788-800; 1111-1137); the affidavit of Lee stating that Megna was not representing her, or acting on her behalf or with her knowledge or permission (R. pp. 814-815); an affidavit of a legal assistant in Plaintiff Anasti's attorney's office in which time expended by him had been verified as separate and apart from other sanctions relief sought (R. pp. 801-809); an

¹⁰ Megna had previously submitted a Petition for Writ of Certiorari (which was denied) to the State Supreme Court in Anasti indicating that opposing counsel and others in various unrelated cases in which he was involved were "engaged in inappropriate behavior that is the subject of pending subpoenas and motions for enforcement of the subpoenas in another action pending before the Darlington County Court of Common Pleas". The case referred to by Megna was Thompson (in which Megna was already disqualified). The subpoenas and other actions Megna referred to were those done by Megna subsequent to his disqualification.

affidavit of Plaintiff Anasti; an affidavit of Ms. Ballard essentially verifying that the limited fees then sought by Plaintiff's counsel were appropriate and separate from other sanctions being sought against Megna (R. pp. 1133-1137); detailed memoranda (R. pp. 509-817), and billing records submitted relative to the independent, unrelated Rule 269 motion to establish that they were separate and distinct. As well, Respondent asked that the court take judicial notice of the Clerk of Court's files in Anasti (and its appeal), the Darlington case (Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson, 2010-CP-16-0332 (Thompson)) and any relevant appeal(s); the "Florence cases" (Lake City Community Hospital, et al. v. Tony Megna, Benjamin R. Matthews, et al., 2008-CP-21-706); Matthews, Megna, et al. v. Celeste Jones, Leroy Nettles, et al., 2011-CP-21-841); the "companion case(s)"; and Lee's bankruptcy case (and Megna's multiple appeals in those cases).

The March 9, 2012 motion came to be heard on May 15, 2012. In conjunction with his "Synopsis", Megna submitted a memorandum at the hearing. (R. pp. 818-1029)¹¹ In that memorandum, in an email to the court by Megna's counsel (R. Zmroczek email of May 14, 2012 – Supp. R. pp. 87-88) and at the hearing, the contentions argued by Megna as to why Anasti's March 9, 2012 motion should not be granted were that a) Anasti did not submit an affidavit as to "damages" [sic] and b) that the Court of Appeals had previously addressed the March 9, 2012 motion and had ruled adverse to Anasti [sic].¹² ¹³ Megna submitted no affidavits or properly preserved issues.

¹¹ The memorandum referenced a motion filed by Megna, but no such motion has ever been filed or served on either Respondent. The Memorandum was untimely but considered by the Court for whatever theoretical value it might have had.

¹² Neither a damages hearing (against Wilson and Goodwin alone), nor the November 7, 2007 motion for sanctions, was before that Court at that time. Likewise, the March 9, 2012 motion had obviously never been before the Court of Appeals.

¹³ On May 29, 2012, Megna mailed to the court a memorandum. Megna then asserted through his new counsel that he was not going to utilize or file it, but nonetheless designated it for appeal.

THOMPSON CASE/DARLINGTON (In re: Ballard, Respondent)

Thompson was filed in Darlington County by Megna on behalf of Plaintiff Pee Dee Healthcare (“PDHC”) against the Estate of Thompson. Megna was at all pertinent times CEO of PDHC, and he held himself out as its attorney as well. PDHC was suing the estate of one of its deceased employees (Thompson) for money damages. The case had at its core Medicare and/or Medicaid issues, completely unrelated to Anasti. (R. pp. 55-63)

Megna was disqualified to act as an attorney for PDHC in Thompson by Order dated April 15, 2011. (R. pp. 55-63)

Under the Thompson caption, subsequent to July 30, 2011, despite his disqualification and presumably while he was appealing various Orders in that case, Megna served subpoenas and subpoenas duces tecum on non-party Desa Ballard, the Thompson Defendant’s attorneys and other attorneys in totally unrelated cases. (R. pp. 424-435; 437-438) In the subpoenas, Megna sought, *inter alia*, discovery regarding PDHC and matters relating to Anasti. In the subpoena he served upon Ms. Ballard, Megna sought communications by and between her and other attorneys, including: Mr. James, Mr. Josey, Kenneth Woodington, Douglas Truslow, Mr. Licata, Andrew Savage, Magistrate Judge Caroline Streater, Ashley Stratton, and lawyers in the McNair Law Firm and/or their agents; lawyers in Turner Padgett Law Firm and/or their agents, Thomas Earle and Curtis Dowling.¹⁴

¹⁴ Mr. Woodington had previously represented a party adverse to PDHC in a separate matter in Federal Court many years before (PDHC v. Gov. Sanford, et. al.) that had nothing whatsoever to do with Anasti, Thompson or the Florence cases. Mr. Savage is an attorney in Charleston and had nothing to do with any of the cases. Judge Streater is a Richland County Magistrate Judge who has had no involvement with Thompson, Anasti or any other related cases. Ms. Stratton is an attorney who is believed to be skilled in insurance law and appellate matters. Mr. Truslow, Ms. Ballard, Mr. Earle, Mr. Dowling and the McNair Law Firm had no involvement in Thompson. Megna had (personally) sued the McNair Law Firm and one of its attorneys, Celeste Jones (and other attorneys), in an unrelated Florence case(s) in which they and Megna were involved (dismissed adverse to Megan for continued failure to properly perfect the appeal).

Upon receipt of the subpoena and subpoena duces tecum issued by Megna, Ms. Ballard filed a motion to quash and for sanctions on or about August 4, 2011. . Respondent in Anasti also objected to Megna's subpoenas that had been served upon him under the auspices of Thompson.

In a separate Order dated August 12, 2011, the Court denied Megna's motion for reconsideration of his disqualification and *sua sponte* quashed all motions, subpoenas and filings signed only by disqualified counsel Megna issued after June 17, 2011. (R. pp. 67-68) PDHC's remaining counsel (Megna's law partner Matthews) was directed to personally serve a copy of the Court's Order on all parties affected by the Court's decision.¹⁵

Subsequent to the filing of Truslow's March 9, 2009 motion(s) for protection and sanctions against Megna, a consolidated sanctions hearing with Ms. Ballard's motion for sanctions against Megna in Thompson was held on May 15, 2012. (R. pp. 1198-1199). No objection was entered by Megna to the form, format or procedure to be followed for the hearing.

The Court issued its Orders sanctioning Megna in both Anasti and Thompson. The consolidated appeal followed, and the Court of Appeals affirmed in a memorandum opinion. . *Ex Parte Megna*, Unpublished Opinion No. 2015-U_-067. This Petition for Writ of Certiorari followed.

Mr. Earle was only involved in Anasti and a separate case(s) in which Megna was opposing counsel. Mr. Dowling was involved in a separate case(s) as opposing counsel, wherein Megna had sued a lawyer for malpractice (he lost for reasons that included to Megna his failure to timely pursue the action and caused Lee to incur a judgment in excess of \$216,000). Neither of the undersigned were involved as attorneys in any of those cases.

¹⁵ It does not appear that Matthews or Megna and Matthews ever honored the Court's directive.

ARGUMENT

I. The Decision By the Court of Appeals Does Not Warrant Further Review Pursuant to SCACR 242(b).

The South Carolina Appellate Court Rules provide that a “writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” SCACR 242(b) Typically, the grant of certiorari is limited to cases wherein: (1) there are novel questions of law; (2) there is a dissent in the decision of the Court of Appeals; (3) the decision by the Court of Appeals is in conflict with a prior decision of this Court; (4) substantial constitutional issues are directly involved; or (5) a federal question is included, and the decision by the Court of Appeals conflicts with a decision of the Supreme Court of the United States. SCACR 242(b); see also Toal, Vafai and Muckenfuss, Appellate Practice in South Carolina (2d Ed.) at p. 276.

Contrary to the substantive issues outlined in SCACR 242(b) of the South Carolina Appellate Court Rules, this case involves: no novel or important questions of law; no dissenting opinion in the intermediate appellate court (SCACR 242(b)(2)), no Court of Appeals opinion in conflict with a prior decision of this Court (SCACR 242(b)(3)), no substantial constitutional issues (SCACR 242(b)(4)), and no federal questions (SCACR 242(b)(5)). The present case simply does not fit within any of these categories, and no “special and important” reason exists to merit further review.

While the elements enumerated in SCACR 242(b) are not the exclusive bases upon which this Court may decide to grant or deny certiorari, no other reason exists for this Court to grant Appellant’s Petition. The ruling of the Court of Appeals does not present the significant or far-reaching issues contemplated by SCACR 242(b). Moreover, the analysis by the Court of Appeals is straight-forward and does not involve new or emerging legal doctrines or issues of general public importance sufficient to justify certiorari review.

Accordingly, this case is not appropriate for review by this Court, and Appellant's Petition should be denied.

II. The Court of Appeals Was Correct.

Megna has grossly misconstrued what occurred that led him to being sanctioned in specific instances. Anasti's motion giving rise to the issue of sanctions is dated March 9, 2012 (R. p. 90, Footnote 1). It relates to conduct by Megna commencing in February, 2012 after Megna's representation of Lee had ended. (R. p. 90, paragraphs 4 and F and Footnote 4) The Circuit Court made abundantly clear that the instance(s) of misconduct by Megna were separate and apart from other instances of alleged misconduct that had yet to be concluded and which arose from a separate motion for sanctions dated November 7, 2007.

As is obvious from the record, Megna (when he represented himself and then when he utilized the services of his second counsel Ms. Zmerczek) he argued "facts" and circumstances that were essentially irrelevant and not in accord with what he now asserts. Attempts to excuse Megna's multiple instances of conduct by disingenuously asserting that he was entitled to discovery regarding damages, a matter in which he had previously conceded he nor his (former) client had absolutely no interest (R. pp. 246, 225-247, line 2 and R. p. 248, lines 15-17) is disquieting.

Megna continues to argue that the sanctions award to Ballard is an improper award of attorney's fees. The Court of Appeals specifically ruled to the contrary (as did Judge Baxley). Judge Baxley sanctioned Megna for his misconduct against Ballard, and used as the basis for his sanctions the amount of time she had necessarily devoted to responding to Megna's frivolous discovery pursuit. Judge Baxley could have used another method to calculate the sanctions he awarded against Megna. Here, he chose the simplest and most definitive (and fair) method of calculation: the amount of time the affected attorneys had

to spend in dealing with the abusive discovery requests and/or subpoenas from Megna and in seeking sanctions. That method by which the judge determines the amount of sanction is within his sound discretion. See *Ex Parte Bon Secours-St. Francis Xavier Hospital Inc., In re: Wieters*, 393 S.C. 590, 713 S.E.2d 624 (2011).

Megna continues to argue cases that are irrelevant to the sanctions issue, which (as argued and decided by the Court of Appeals) are irrelevant because they relate to fee-shifting statutes. This was a sanctions order. The misconduct which justified the sanctions included, *inter alia*,

- “[G]ross civility and professionalism violations.” (R. p. 77)
- “Megna made false statements to the circuit court and the appellate court” (R.p.80)
- “Megna provided the Court. . . entitled ‘Synopsis’ . . . a rambling diatribe of challenges of unethical behavior against Truslow, Ballard, and others.” (R. p. 81).
- “. . . [P]art of an improper and impermissible attempt by Megna to engage in discovery for the purposes of defending himself (not his client) against motions for sanctions that were pending against him in the Richland County case.” (R. p. 82).
- “. . . The subpoena . . . constituted a fishing expedition into what other discussions she or others may have had with Truslow, all apparently for the purpose of, *inter alia*, seeking to deflect sanctions against himself in the Richland case.” (R. p. 83).
- “. . . Megna has shown little regard for the Orders of this Court or for the legal limitations imposed upon him in his representative capacity as counsel for his client.” *Id.*

- “. . . he did so, at least in part, as a pretext to harass her and apparently to dissuade her from providing legal advice to Truslow. . . “ *Id*
- “Megna has willfully, deliberately and unapologetically attempted to misuse the legal process through . . . this case and he is in willful violation of this Court’s orders, specifically including the Order disqualifying him as counsel . . . “ *Id*.
- “Megna’s conduct is willful, deliberate and unapologetic.” (R. p. 84).
- “Perhaps the most egregious part of Megna’s conduct is his uncompromised assertion that everyone else is wrong, everyone else is unethical, and he is blameless.” *Id*.
- “The lack of respect Megna has shown for this Court, the legal process, and the purposes of these legal proceedings is unprecedented for this Court.” *Id*.
- “. . . Megna’s conduct is ill-conceived, vitriolic, and abusive. . . [and is] alarming and disturbing. He has engaged in a concerted effort to abuse the legal process . . . for his own purposes, abusing this Court and his colleagues in the process.” *Id*.

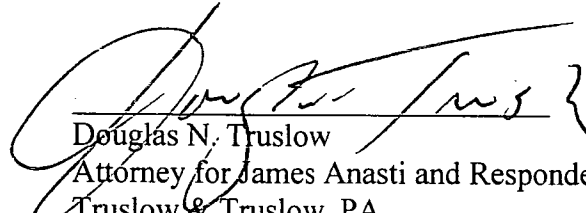
Judge Baxley left little doubt that his award against Megna in favor of Ballard was an award of sanctions. “. . . [S]he should be compensated by way of sanctions against Megna.” (R. p. 86, ¶ 34).

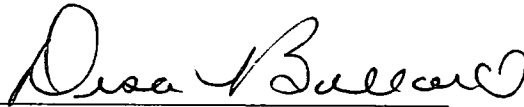
CONCLUSION

As is quite apparent from the within record, Megna has conducted himself in a manner totally inconsistent with the professionalism expected of an attorney. Financial sanctions, as well as requirement for Megna to report to the Office of Disciplinary Counsel were warranted. There are no issues presented which warrant the extraordinary relief of

a discretionary review by this Court. The Petitioner's for Writ of Certiorari should be denied.

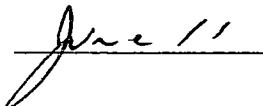
RESPECTFULLY SUBMITTED,


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Columbia, South Carolina

, 2015

(S)

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON PETITION FOR WRIT OF CERIORARI TO THE COURT OF APPEALS
Unpublished Opinion No. 2015-UP-067 (issued February 11, 2015)

APPEAL FROM RICHLAND COUNTY AND DARLINGTON COUNTY
J. Michael Baxley, Circuit Court Judge

Appellate Case No.: 2015-001048

Ex Parte: Tony Megna, Petitioner

Douglas N. Truslow, Respondent,

In re:

James Anasti, Plaintiff,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee and Richland County Clerk of Court,
Defendants.

And

Ex Parte: Tony R. Megna, Petitioner,

Desa Ballard, Respondent,

In re:

Pee Dee Health Care, P.A., Plaintiff,

v.

Estate of Hugh S. Thompson, Defendant.

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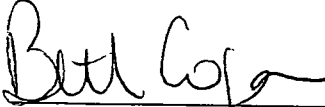
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JUN 12 2015
SC Court of Appeals

PROOF OF SERVICE

I, Beth Cogan, an employee of Ballard & Watson, Attorneys at Law, do hereby certify that on June 12, 2015, I served a copy of the **Return to the Petition for Writ of Certiorari** in the above-captioned case on the following individuals by electronic mail and by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Douglas Truslow, Esquire
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Beth Cogan, Paralegal

June 12, 2015



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Attorneys at Law
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June 12, 2015

Via Hand-Delivery

Honorable Daniel E. Shearouse
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

JUN 12 2015

SC Court of Appeals

Re: *Ex Parte*: Douglas N. Truslow(Desa Ballard)
Appellate Case No: 2015-001048

Dear Mr. Shearouse:

Please find enclosed an original and seven copies of the Return to Petition for a Writ of Certiorari. Please file the original and return the copy via the courier. Please do not hesitate to contact me with any questions. We greatly appreciate your assistance in this matter.

With warm personal regards, I am,

Sincerely yours,

Desa Ballard
desab@desaballard.com

cc. Honorable Jenny Abbott Kitchings, Court of Appeals (via hand-delivery)
Douglas Truslow, Esq. (via email and U.S. Mail)
James Griffin, Esq. (via email and U.S. Mail)

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