THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

Unpublished Opinion No. 2015-UP-067
(Filed February 11, 2015)

Ex Parte: Tony R. Megna, Petitioner,

Ex Parte: 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,

Ex Parte: Desa Ballard, Respondent,

In re:

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

v.

Estate of Hugh S. Thompson, Defendant.

PETITIONER'S REPLY TO RESPONDENTS' JOINT RETURN TO THE PETITION FOR WRIT OF CERTIORARI

Petitioner Tony Megna ("Megna") submits this Reply in response to the Joint Return filed by Respondents. Respondents' Return contains a one-sided recitation of the facts in an attempt to divert this Court's attention from the legal issues. While Petitioner could counter the points, it would serve no useful purpose in determining whether there are novel questions or special or important reasons that warrant a writ of certiorari. These legal issues are discussed fully in the initial Petition, but Megna briefly addresses some of the most crucial issues herein below.

Respondents do not address the question of whether the Court of Appeals improperly refused to consider most of the issues raised by Petitioner on the grounds that they had not been preserved by appeal. The Court of Appeals determined, despite the absence of any South Carolina precedent, that issue raised for the first time in motion to alter or amend[1] are not appealable even though ***the trial court expressly considered all issues raised and ruled on the issues on their merits***. (R.p. 122).[2] This issue of preservation is an important and far-reaching issue that extend far beyond the disputed factual questions of this case.

One of the issues that the Court of Appeals improperly determined was not preserved for appeal (and which Respondents fail to address in their Return), is whether discovery should permitted in sanctions matter, especially where excessive sanctions are sought as in this case. South Carolina have not directly addressed this issue, but other courts have noted that where extreme or severe sanctions are sought, "more process [] will be due." Donaldson v. Clark, 819 F.2d 1551, 1561 (11th Cir. 1987). In other words, while discovery may not be necessary in all

[1] As set forth in his Petition, Megna disputes that the issues were raised for the first time in a motion to alter or amend, but assuming for the purposes of argument that they were, the issues were still preserved for appeal by the trial court's consideration and ruling on the issues.

[2] The trial court's order on the motion to alter or amend stated: "As a preliminary matter, Attorney Truslow raised several procedural issues that may have barred the Court's consideration of the motions for reconsideration, and those objections were noted but not necessary to be ruled upon. **The Court has considered all issued raised by the motions for reconsideration** and concluded all to be without merit." (R. 121-122, emphasis added).

sanctions matters, it should be conducted when the sanctions sought are extreme. Here, as detailed in the initial Petition, Truslow sought damages and sanctions against Petitioner that were expected to exceed $500,000.00. (R. 441-443). Obviously, by any definition, sanctions of half a million dollars is extreme, and this is a significant issue that merits further review.

Respondents also rely on the doctrine of "judicial discretion" for their argument that Judge Baxley's award of sanctions to Ballard, in the amount of her attorney's fees, was proper. However, it is an abuse of discretion to award attorney's fees to a pro se/litigant, in direct contravention to South Carolina law, by calling the award a sanction. See, Calhoun v. Calhoun, 331 S.C. 157, 501 S.E.2d 735 (1998) ("A *pro se* litigant is not entitled to an award of attorney fees, even when the litigant is a practicing attorney"); *See also* Beasley v. Peters, 870 S.W.2d 191, 191 (Tex. App. 1994)(sanction of attorney's fees awarded to an attorney appearing pro se as a litigant was not an appropriate sanction as the pro se attorney neither paid, nor became liable to pay, any attorney's fees). Again, this is an important and far-reaching question of law in South Carolina that should be determined by this Court.

CONCLUSION

As set forth in the initial Petition and herein, the Court of Appeals erred by finding several of Megna's issues on appeal were not properly preserved because South Carolina when the issues were presented to the trial court for the first time on a Rule 59(e) motion yet considered by and ruled upon by the trial court. Issues that have been considered and ruled upon by the lower court are preserved for appellate review. The issue of preservation is an important and far-reaching issue. In addition, whether a lower court can circumvent this Court's prior rulings which prevent pro se attorneys' from obtaining an award of attorneys' fees by simply

labeling the award a sanction is a significant and important question of law. Thus, the Petition for Certiorari should be granted.

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ATTORNEYS FOR PETITIONER
TONY R. MEGNA

Columbia, South Carolina
June 24, 2015

THE STATE OF SOUTH CAROLINA
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CERTIFICATE OF SERVICE

I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin L.L.P, attorney for the Petitioners, do hereby certify that I have served a copy of the foregoing **Petitioner's Reply to Respondent's Joint Return to the Petition for Certiorari** in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Douglas N. Truslow
P.O. Box 1465
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Desa Ballard
Ballard Watson Weissenstein
P.O. Box 6338
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Jaime Harmon

Columbia, South Carolina
June 22, 2015

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June 22, 2015

VIA HAND DELIVERY
The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: ***Ex Parte*: Douglas N. Truslow (Desa Ballard)**
Opinion No. 2015-UP-067, filed February 11, 2015

Dear Mr. Shearouse:

Enclosed please find the original and ten copies of Petitioner's Reply to Respondent's Joint Return to the Petition for Certiorari in the above-referenced case. Please file these documents and return four copies to this office via our courier.

By copy of this letter and as evidenced on the Certificate of Service, I am serving counsel of record.

If you have any questions, please do not hesitate to contact this office.

With kind regards, I am

Very truly yours,

Jaime Harmon
Assistant to James M. Griffin

/jh
Enclosures

cc: Douglas Truslow (Via U.S. Mail)
Desa Ballard (Via U.S. Mail)
The Honorable Jenny Abbott Kitchings (Via U.S. Mail)