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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson
Circuit Court Judge

Case No.: 2012-CP-10-8372
Appellate Case No. 2014-002450

Hattie Mae Greene Appellant

v.

Cindy M. Floyd Respondent

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Statement of Facts 5

Argument 8

I. **THE LOWER COURT ERRED BY CONCLUDING THAT THE FAMILY COURT DID NOT HAVE JURISDICTION TO GRANT APPELLANT THE RELIEF THAT HER EXPERT SOUGHT?** 8

II. **THE LOWER COURT ERRED IN FINDING THAT THE EVIDENCE PROVIDED TO THE COURT THROUGH AFFIDAVITS AND THE DEPOSITION OF APPELLANT’S EXPERT WITNESS DID NOT CONSTITUTE A SCINTILLA OF EVIDENCE TO SUPPORT NEGLIGENCE OR CAUSATION?** 13

III. **THE LOWER COURT ERRED IN FINDING THAT MR. SULLIVAN’S BELATED SUPPLEMENTARY AFFIDAVIT WAS A SHAM AFFIDAVIT?** 13

IV. **THE LOWER COURT ERRED IN FINDING THAT PLAINTIFF’S EXPERT’S SUPPLEMENTARY AFFIDAVIT, EVEN IF ENTITLED TO CONSIDERATION, LACKED SUBSTANCE BECAUSE IT WAS “CONTRARY” TO CONTROLLING PRECEDENT??** 14

Conclusion 15

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Brockbank v. Best Capital Corp.</u> , 341 S.C. 372, 534 S.E.2d 688 (2008)	15, 17
<u>Englert, Inc. v. Netherlands, Ins. Co.</u> , 315 S.C. 300, 433 S.E.2d 871 (Ct.App. 1993)	15
<u>Floyd v. Kosko</u> , 285 S.C. 390, 329 S.E.2d 459 (Ct.App. 1985)	16
<u>Grinnell Corp. v. Wood</u> , 378 S.C. 458, 465, 663 S.E.2d 61, 64 (S.C. Ct.App. 2008) (citation omitted), rev'd on other grounds 389 S.C. 350, 698 S.E.2d 796 (2010).	15
<u>Hatchell v. Jackson</u> , 290 S.C. 256, 349 S.E.2d 407 (Ct.App. 1986)	15
<u>Lawson v. South Carolina Department of Corrections</u> , 340 S.C. 346, 532 S.E.2d 259 (2000)	15, 17
<u>Manning v. Quinn</u> , 294 S.C. 383, 365 S.E.2d 24 (1988)	16
<u>Price v. Price</u> , 325 S.C. 379 279, 480 S.E.2d 92, 128 (1996)	7, 14, 18
<u>Rorrer v. Cooke</u> , 313 N.C. 338, 329 S.E.2d 355 (1985)	16
<u>Tirado v. Tirado</u> , 325 S.C. 379, 530 S.E.2d 128 (2000)	7, 14
<u>Truck South, Inc. v. Patel</u> , 339 S.C. 40, 528 S.E.2d 424 (2000)	15
<u>Worsley Companies, Inc. v. Town of Mount Pleasant</u> , 339 S.C. 51, 528 S.E.2d 657 (2000)	15
 <u>OTHER AUTHORITIES</u>	
2 Legal Malpractice § 22, R. Mallen and S. Smith (3ed 1989)	16

STATEMENT OF ISSUES ON APPEAL

- I. THE LOWER COURT ERRED BY CONCLUDING THAT THE FAMILY COURT DID NOT HAVE JURISDICTION TO GRANT APPELLANT THE RELIEF THAT HER EXPERT SOUGHT?
- II. THE LOWER COURT ERRED IN FINDING THAT THE EVIDENCE PROVIDED TO THE COURT THROUGH AFFIDAVITS AND THE DEPOSITION OF APPELLANT'S EXPERT WITNESS DID NOT CONSTITUTE A SCINTILLA OF EVIDENCE TO SUPPORT NEGLIGENCE OR CAUSATION?
- III. THE LOWER COURT ERRED IN FINDING THAT MR. SULLIVAN'S BELATED SUPPLEMENTARY AFFIDAVIT WAS A SHAM AFFIDAVIT?
- IV. THE LOWER COURT ERRED IN FINDING THAT PLAINTIFF'S EXPERT'S SUPPLEMENTARY AFFIDAVIT, EVEN IF ENTITLED TO CONSIDERATION, LACKED SUBSTANCE BECAUSE IT WAS "CONTRARY" TO CONTROLLING PRECEDENT?

STATEMENT OF THE CASE

This legal malpractice action arises from the representation by Respondent, Cindy M. Floyd ("Floyd") of Hattie Mae Greene, Appellant, in her divorce from her then husband, Joseph Greene, a gunnery sergeant in the United States Marine Corp.

Joseph Greene enlisted in the Marine Corp. in 1978. Sergeant Greene served in Saudi Arabia and Mogadishu during the Gulf War supporting an artillery unit in the invasion of Kuwait. Sergeant Greene served a total of twenty years in the Marine Corp. (See Deposition of Joseph Greene R. pp. 271-319)

As a result of his military service, Sergeant Greene sustained undiagnosed hearing loss and post traumatic stress disorder. Sergeant Greene did not disclose these conditions to his then spouse, Appellant herein, despite having hearing problems and experiencing nightmares during the marriage. (R. pp. 296-303)

Following the divorce in 2002, the Veterans Administration in 2009/2010 diagnosed Sergeant Green with a hearing loss and post traumatic stress disorder and assigned a 10% disability for the hearing loss and a 30% disability for the post traumatic stress disorder despite his fulltime employment at the South Carolina Department of Corrections where he has worked for almost fifteen years. (R. pp. 288-291)

Joseph Greene, following the Veterans Administration finding of a 40% disability, applied for and received Veterans Administration disability benefits. (R. pp. 288-291)

Appellant married Joseph Greene on October 17, 1981. (R. p. 96, lines 2-3) Joseph Greene enlisted in the U.S. Marine Corp. on May 7, 1978 and retired in 1998 and was divorced from Appellant in 2002. (R. pp. 96-97). Of his twenty years of service, Joseph Greene was married to Appellant for seventeen years. (R. p. 96, lines 16-18)

During discovery and the trial of the divorce action, Respondent failed to question Joseph Greene about any potential disability issue (R. pp. 194-206) and failed to ask the court for a provision in the divorce decree that was recommended by the South Carolina Bar Continuing Legal Education material published as "Hot Tips from the Best Domestic Practitioners" in the September 2000 issue and in the "Cool Tips from the Best Domestic Relations Practitioners" May 2000 issue. (R. pp. 480-508)

Respondent has no recollection of discussing with her client of how subsequent discovery of service connected disability of the military spouse affect Mrs. Greene's award of military retirement or of seeking an agreement with counsel for Joseph Greene that would protect her client should Joseph Greene apply for and receive a Veterans

Administration disability rating after a division of military retirement. (Deposition of Cindy Floyd, R. pp. 241-260)

“Hot Tips” September 15, 2000 issue proposed “sample language to be used in a Decree or Agreement relating to military retirement and disability.” (emphasis mine) which would more likely than not have avoided the significant loss experienced by the wife of a seventeen year marriage when Sergeant Greene applied for and received Veterans Administration disability benefits in 2011. (R. pp. 493-508)

When Joseph Greene was awarded Veterans Administration disability after the divorce, for each dollar of Veterans Administration disability received by Joseph Greene, a dollar was forfeited from the military retirement which had been divided by the family court order granting Appellant 60% of Joseph Greene’s military retired pay.

Respondent prepared the order that dealt with the division of James Greene’s military retirement and did not propose to the court the provision recommended in the September 15, 2000 South Carolina Bar publication entitled “Hot Tips from the Best Domestic Law Practitioners” wherein, the sample language to be used in a decree or agreement relating to military retirement included a provision that reads “If the Husband takes any action that prevents, decreases or limits the receipt by the Wife of the sums to be paid herein from the appropriate military pay center...by application for award of...disability compensation...he shall make payments to the Wife directly in an amount sufficient to neutralize, as to the Wife, the effect of the action taken by the Husband.” (See Hot Tips and Cool Tips at R. pp. 480-508)

Appellant contends that Respondent’s failure to seek a provision in the order of the court that provided for indemnification should Appellant’s spouse take any action that

prevents, decreases or limits the receipt by the Appellant of the sums to be paid from a division of military retirement so as to neutralize any loss, as to the Appellant, or to argue to the Court for alimony in an amount that would protect Appellant from the automatic reduction in her share of retirement benefits if her then former spouse was awarded Veterans Administration disability benefits constitute legal malpractice.

Appellant's expert stated in an affidavit dated October 31, 2013 that if facts such as existed in the instant case were presented to the court that to a reasonable degree of certainty the court would have granted relief for Appellant in the form of an indemnification clause and, if denied, Respondent should have advised Appellant to appeal. (R. pp. 458-466) While the South Carolina cases cited below stand for the proposition that absent agreement Veterans Administration disability payments are not subject to the claims of a non-military spouse, Appellant contends that, if asked, the Court would have more likely than not included a provision in any divorce decree which divided military retirement that if the military spouse took unilateral action after the divorce that reduces the amount the non-military spouse has been awarded the military spouse must indemnify her. (See Cool Tips and Hot Tips at R. pp. 480-505; and Affidavit and Supplementary Affidavit of Sullivan R. pp. 458-470)

Appellant's expert reiterated in a supplementary affidavit dated July 21, 2014 that his affidavit of October 31, 2012 was accurate and that more likely than not a trial judge would have granted the relief requested in order to avoid the unilateral reduction of the court's division of military retirement. (R. pp. 467-470)

Evidence of Respondent's (A) failure to conduct discovery; (B) failure to explain to Appellant that without an agreement or order, the division of military retirement was

subject to unilateral extra judicial reduction by the military spouse; (C) failure to advise Appellant of the potential impact of post divorce disability; and (D) failure to incorporate the language proposed by the Family Law Division of the South Carolina Bar into the supplemental order that Respondent prepared established fact issues that prevent the court from granting summary judgment.

Appellant offered evidence in the form of the two (2) affidavits and the deposition testimony of her expert which created a fact issue on the question of whether the court, had it been asked by the Respondent, would have included an indemnification clause as part of the order dividing the military retirement requiring indemnification by Appellant's spouse should the spouse take action to reduce the amount of the award by the family court and had the court refused, Appellant's expert asserted Respondent was required to appeal. The court instead ruled as a matter of law that despite Appellant's expert witness affidavits and any conflict that may have existed between those affidavits and deposition testimony that no issue of fact existed and found as a matter of law that Appellant failed to state a claim.

STATEMENT OF FACTS

Respondent held herself out as a domestic relations lawyer with experience in representing clients in domestic actions in which the dissolution of a military marriage and the division of marital assets was a focus. (R. pp. 213-270)

Appellant was the spouse of Joseph Greene, an E-7 Gunnery Sergeant in the U.S. Marine Corp., for seventeen years out of the total twenty years of military service by Joseph Greene. Prior to his retirement he was married to Appellant.

Respondent represented Appellant at the final hearing on May 14, 2002 on Appellant's entitlement to a final order of separate support and maintenance. Hattie Mae Greene v. Joseph Greene, in the County of Dorchester, State of South Carolina, in the Family Court 01-012-18-0124. (R. pp. 86-212, 476-479, 213-270)

Following the hearing, the Court took the matter under advisement and on November 5, 2002 Respondent drafted a proposed "Supplemental Order, Division of Military Retired Pay" and submitted it to the trial judge, The Honorable William J. Wylie, Jr., and copied counsel for Appellant's spouse, Joseph Greene. (See Respondent's Deposition at R. pp. 213-270)

This proposed order was signed by The Honorable William J. Wylie, Jr., Judge, Family Court of the First Judicial Circuit on November 8, 2002, awarding Appellant "60% of defendant's military retired pay." (See R. pp. 476-479)

At the time this order was signed, the Family Court bar was aware that absent an agreement, if the military spouse, post divorce and after division of military retirement, applied for and was awarded Veterans Administration disability those payments would reduce dollar-for-dollar the military retirement previously divided 60/40 between Appellant and her military spouse.

Respondent did not include or seek in the proposed supplemental order dividing Joseph Greene's military retirement, a provision that should the military spouse ever take the unilateral extra judicial action available to him that prevented, decreased or limited the collection by Appellant her court award of Joseph Greene's military retirement reducing the amount of monthly benefit her 60% award would generate he would be

obligated to make payments to the wife directly in an amount sufficient to neutralize, as to the wife, the effects of the action taken. (R. pp. 476-479)

Respondent failed to identify any discovery that she conducted would have revealed the symptoms of loss of hearing and post-traumatic stress disorder that Joseph Greene was experiencing during the marriage and which formed the basis for Joseph Greene's successful request for Veterans Administration disability which resulted in a finding by the Veterans Administration of a 40% disability, 10% for hearing loss and 30% for Post Traumatic Stress Disorder, but which Joseph Greene admitted existed during the marriage. (R. pp. 312-313)

Respondent failed to identify evidence of any effort to argue for a provision in the Supplemental Order Division of Military Retired Pay that would require the military spouse to make payments directly to the non-military spouse in an amount equal to any reduction caused by the military spouse successful application for Veterans Administration disability. (R. pp. 86-212; 476-479)

When a non-military spouse obtains an order dividing the military spouse's military retired pay such a division is subject to change if the military spouse applies for and is awarded Veterans Administration disability payments. See Price v. Price, 325 S.C. 379, 480 S.E.2d 92 (1996); Tirada v. Tirada, 339 S.C. 649, 530 S.E.2d 128 (2000).

For each dollar of any subsequent Veterans Administration disability award the military retirement previously divided between Appellant and Sergeant Greene was reduced by a dollar so that Appellant's 60% award of Joseph Greene's military retirement became 60% of a markedly lower sum without a notice to or involvement by Appellant.

Appellant was not advised by her lawyer, the Respondent, that a subsequently diagnosed disability of Joseph Greene that Joseph Greene then unilaterally applied for and for which he was awarded Veterans Administration disability payment had the automatic result of reducing the monthly payments that Appellant was awarded by the Family Court in its division of military retirement. (R. pp. 213-268)

Appellant was not advised by Respondent that she would not have any standing to challenge a reduction of her award of monthly retirement benefits if the Veterans Administration approved a finding of disability for which he claimed and was granted Veterans Administration disability payments. (R. pp. 86-212; 213-268)

ARGUMENT

INTRODUCTION

I. **THE LOWER COURT ERRED BY CONCLUDING THAT THE FAMILY COURT DID NOT HAVE JURISDICTION TO GRANT APPELLANT THE RELIEF THAT HER EXPERT SOUGHT?**

Respondent owed Appellant a duty to exercise the competence and diligence normally exercised by lawyers in similar circumstances. *The Law Governing Lawyers* § 52, The Standard of Care. Respondent's failure to exercise competence in this action by failing to explain to Appellant the risks in the action taken and by failing to conduct discovery that would have identified and quantified the risk and given Appellant an effective argument to convince the trial court to include a provision like that suggested in the South Carolina Bar publication *Hot Tips and Cool Tips from the Best Domestic Law Practitioners* for inclusion in any order dividing military retirement benefits constituted malpractice. See deposition of Respondent (R. pp. 213-268) wherein she acknowledges the following:

The following appears in the deposition of Respondent:

Q Did you discuss this with your client?

A Discuss what?

Q The potential for the amount awarded by the court to change, by virtue of the language chosen, to describe what was being divided?

A I don't recall discussing that with her, but we're working on 10 year-old memories.

(R. p. 243, lines 4-10)

When asked whether she "proposed language that would have taken care of this issue and it was resisted by the other side", Respondent testified, "I honestly don't recall . . ." (R. p. 244, lines 12-15)

When Respondent was asked if she had a recollection of explaining the impact of a future disability of her military spouse to Appellant, Respondent's response was that she did not remember. (R. pp. 245-246)

Respondent testified that her choice of language in the final supplemental order dividing military retirement was based on information she received at a seminar. (R. pp. 246-247)

Respondent further testified that she could not incorporate language into the supplemental order she prepared because of "the Family Court's lack of jurisdiction over the matter." (R. p. 247, lines 9-16)

Q Did you discuss with Mrs. Greene the potential of how . . . later disability could impact the ruling of the court?

A I don't recall discussing that with her.

Q That's not your normal routine in these military matters?

A Not if its not brought to my attention There was not indication that he was . . . had any physical problems back then.

Q . . . You didn't discuss it with Mrs. Greene?

A I certainly don't remember discussing it with her.

Q Were you aware of the military background of Mr. Green? In other words, where he had served, was he in combat zones or anything like that?

A I knew he had been in the military. I didn't know anything else about his service.

Q Did you ask about whether or not he had any disabilities or whether he had served in combat zones or anything like that?

A I don't think I asked whether he served in combat zones. At the trial, I did ask about his health and I, my recollection is, . . . he was in good health, and I don't recall Mrs. Greene telling me about any physical problems or health problems he had."

Q Were you aware of the possible reduction of Mrs. Greene's portion of the retirement of Mr. Greene in the event of disability?

A "That is the way the law works."

Q "But were you aware of it?"

A "I was aware. I was aware of the law."

Q "Did you discuss it with Mrs. Green?"

A "I don't recall discussing that particular issue with Mrs. Greene."

(R. pp. 249-256)

During Respondent's representation of Appellant she did not conduct a discovery deposition of Appellant's spouse, Joseph Greene, and she limited her examination of Mr. Greene in the May 14, 2002 hearing seeking an order of separate support and maintenance to issues of fault in the marriage breakup and no inquiry was made that was directed at disclosure of the medical history and the then current condition of Joseph Greene. (See R. pp. 194-205)

Q But did you know what impact disability payments would have on the amount Mrs. Greene received, should a disability develop?

A In general, I had that knowledge.

Q Did you talk to Mrs. Greene about that?

A I don't recall talking to her about that. But she never mentioned any . . . anything about having any physical disabilities

Mark E. Sullivan at R. pp. 458-466 in which Sullivan asserts in an affidavit that Respondent failed to protect Appellant by seeking an indemnification clause, failure to educate the judge about Veterans Administration disability issues and the need for indemnification and for a request for such a provision. Sullivan further asserts in his affidavit that within a reasonable degree of certainty, that the court would have granted relief to Appellant in the form of an indemnification agreement. (R. pp. 467-470) Mark E. Sullivan's Supplementary Affidavit asserts that more likely than not the trial court would have provided a remedy for any unilateral post-divorce reduction of military retired pay due to rules governing Veteran Administration waivers.

Respondent's expert witness, Joseph Todd Manley, testified that service in the U.S. Marine Corp. in Iraq and Kuwait would be places of combat and that it is reasonable

to assume that the stress of service in those areas could develop into disabling conditions. (R. pp. 340-341)

Respondent's expert further characterized a failure to discuss the potential for a reduction of the amount received by the non-military spouse from a division of military retirement by a later award of Veterans Administration disability benefits to the military spouse as potentially falling below the standard of care owed to the non-military spouse by her lawyer. (R. pp. 364-371)

Respondent's expert witness further testified that when the divorce decree was drafted and presented to Respondent that she would have automatically have recognized that it was subject to a reduction by future disability and that information should have been given to Respondent's client. (R. pp. 362-363)

Appellant's expert provided credible evidence that Respondent was negligent in her representation of Appellant and that her negligence proximately resulted in foreseeably exposing Appellant to financial loss. (R. pp. 458-470)

Appellant's expert provided credible evidence that based upon State and Federal decisions throughout the United States including South Carolina, that competent military family law practitioners were or should have been aware that the non-military spouse of a military spouse was entitled to a portion of the military spouse's retirement benefits which were subject to division as family property while simultaneously being subject to a post-divorce reduction in the event the former military spouse requested and received Veterans Administration disability benefits and should have provided/sought protection of the non-military spouse in the proposed order of separate support and maintenance that she prepared. (R. pp. 458-470)

Appellant's expert affidavits provided credible evidence that competent members of the bar practicing in the family court in South Carolina were aware of the financial risk posed to the non-military spouse when the non-military spouse accepted a division of the military spouse's retirement as a significant feature of any division of marital financial assets and were also aware of the available language needed in any agreement or order necessary to protect the non-military spouse. (R. pp. 458-470)

II. THE LOWER COURT ERRED IN FINDING THAT THE EVIDENCE PROVIDED TO THE COURT THROUGH AFFIDAVITS AND THE DEPOSITION OF APPELLANT'S EXPERT WITNESS DID NOT CONSTITUTE A SCINTILLA OF EVIDENCE TO SUPPORT NEGLIGENCE OR CAUSATION?

The deposition of Respondent and the trial transcript in the divorce proceeding between Appellant and her military spouse and the affidavits of Appellant's expert witness provide more than a scintilla of evidence that Respondent deviated from the generally accepted standard of care by (1) failing to advise Appellant of the negative impact of subsequent claim of military related disability could have on any division of retirement benefits; (2) failing to conduct discovery which would have resulted in the disclosure of the military spouse's combat related hearing loss and post traumatic stress disorder; and (3) failing to raise the disability issue with the court.

Appellant's expert's affidavits and deposition provide not just the scintilla of evidence referred to but instead provide a substantial basis for submitting the issues to a jury.

III. THE LOWER COURT ERRED IN FINDING THAT MR. SULLIVAN'S BELATED SUPPLEMENTARY AFFIDAVIT WAS A SHAM AFFIDAVIT?

The materials in Appellant's expert's supplemental affidavit dealt with relevant issues and essentially was a mirror image of the affidavit presented at the initiation of this

action and explained what Respondent contends was an admission in the expert's deposition that was allegedly contrary to the expert's original affidavit, hardly a sham affidavit.

IV. THE LOWER COURT ERRED IN FINDING THAT PLAINTIFF'S EXPERT'S SUPPLEMENTARY AFFIDAVIT, EVEN IF ENTITLED TO CONSIDERATION, LACKED SUBSTANCE BECAUSE IT WAS "CONTRARY" TO CONTROLLING PRECEDENT?

The finding of the court on this issue demonstrates a misunderstanding of the issue. Respondent failed to raise the indemnification issue in the court during the trial or with Appellant. Respondent was negligent in failing to ask the Family Court for relief that was the subject of the South Carolina Bar publication either as an agreement or as part of an order. See S.C. Bar Hot Tips from the Best Domestic Practitioners, September 215, 2000. (See Transcript of Trial Testimony and Deposition of Respondent)

South Carolina precedent, Price v. Price, 325 S.C. 379, 480 S.E.2d 92, 128 (1996) and Tirado v. Tirado, 325 S.C. 379, 530 S.E.2d 128 (2000) has limited enforcement of a court ordered division of military retirement when the corpus is reduced by the unilateral action of the military spouse obtaining a Veterans Administration disability award that has the automatic effect of negatively impacting the court ordered division of military pay to circumstances where the parties have by agreement acknowledged the division of military retirement but that finding does not prevent inclusion of indemnification by the military spouse for actions taken by the military spouse that have the effect of unilaterally reducing an award by the court of a portion of military retirement benefits. (See Hot Tips and Cool Tips supra)

CONCLUSION

When entertaining a motion for summary judgment the court must construe all ambiguities and inferences strongly against the moving party. Hatchell v. Jackson, 290 S.C. 256, 349 S.E.2d 407 (Ct.App. 1986); Englert, Inc. v. Netherlands, Ins. Co., 315 S.C. 300, 433 S.E.2d 871 (Ct.App. 1993).

Summary judgment is not appropriate when further inquiries into the facts of the case is desirable to clarify the application of the law. Brockbank v. Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000).

Summary judgment should not be granted when inquiry into the facts is desirable to clarify the application of the law. Lawson v. South Carolina Department of Corrections, 340 S.C. 346, 532 S.E.2d 259 (2000).

In determining whether any triable issue of fact exists which would preclude summary judgment, Court must view evidence and all inferences which can be reasonably drawn therefrom in light most favorable to the non-moving party. Worsley Companies, Inc. v. Town of Mount Pleasant, 339 S.C. 51, 528 S.E.2d 657 (2000).

A trial judge should deny summary judgment where there is a genuine issue as to any material fact. Truck South, Inc. v. Patel, 339 S.C. 40, 528 S.E.2d 424 (2000).

In South Carolina when “reviewing the grant of a motion for summary judgment, the Appellate Court applies the same standard of review as the trial court under Rule 56, SCRPC.” Grinnell Corp. v. Wood, 378 S.C. 458, 465, 663 S.E.2d 61, 64 (S.C.Ct.App. 2008) (citation omitted), rev’d on other grounds 389 S.C. 350, 698 S.E.2d 796 (2010).

This action is a legal malpractice action brought by Respondent on behalf of Appellant against Appellant's husband of seventeen years, a U.S. Marine Gunnery Sergeant.

Before a client can recover in a legal malpractice action arising from the handling of litigation, the client, the Appellant herein, must establish that but for the attorney's neglect, the litigation would have most probably produced a favorable result for the client. Floyd v. Kosko, 285 S.C. 390, 329 S.E.2d 459 (Ct.App. 1985); Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988); Rorrer, Cooke, 313 N.C. 338, 329 S.E.2d 355 (1985).

A family law practitioner must be familiar with other areas of law that may impact upon her client's affairs. 2 R. Mallen and S. Smith, Legal Malpractice § 22 (3ed. 1989)

Respondent did not conduct discovery to educate herself as to the physical condition of Appellant's military spouse which discovery would have disclosed the presence of hearing impairment and post-traumatic stress syndrome. (See Deposition of Joseph Greene (R. pp. 271-315) and Deposition of Cindy Floyd (R. pp. 213-268).

With that knowledge, Respondent was required to explain to Appellant the negative impact that a successful claim for Veterans Administration disability would have had on any division of military retirement and, if brought to the court's attention, would have more likely than not have resulted in the addition of language to the effect that if the military spouse voluntarily took action that resulted in a reduction of military retirement benefits awarded to the non-military spouse that the military spouse whose

action resulted in a reduction of benefits to the non-military spouse would be required to indemnify the non-military spouse.

No discovery was undertaken to determine the presence of potentially disabling service connected conditions. Had such inquiry been made it is more likely than not that Joseph Greene would have acknowledged the presence of his symptoms of hearing loss and the nightmares he was experiencing as a symptom of Post Traumatic Stress Disorder. With this background there are certainly fact issues which require further inquiry to clarify the application of law to those facts and summary judgment is not appropriate when such inquiry is appropriate. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2008); Lawson v. South Carolina Department of Corrections, 340 S.C. 346, 532 S.E.2d 259 (2000).

In the instant action, evidence is present that:

(1) Respondent did not explain to Appellant the potential for a post-judgment alteration of any award that she received by unilateral action on the part of her military spouse;

(2) Respondent failed to ask the court for inclusion of language in the order drafted by Respondent which would offer protection to Appellant from unilateral action by Appellant's military spouse to reduce the award of 60% of her spouse's military retirement;

(3) that Respondent failed to conduct formal discovery or question her own client relating to potential service connected disability; and

(4) that the failure of Respondent to gather evidence of existing hearing loss and Post Traumatic Stress Disorder during the divorce action between her client, the

Appellant herein, and Joseph Greene, her military spouse who served in combat zones in Kuwait and Iraq and who in fact was suffering from hearing loss and Post Traumatic Stress Disorder was significant in her former spouse's successful unilateral, extra judicial action significantly reducing the value of Appellant's award of 60% of her military retirement by significantly lowering the amount of dollars that were subject to the 60% award.

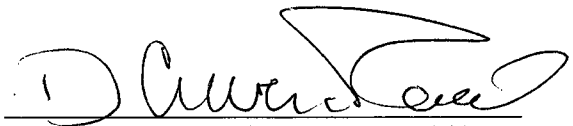
The failure of Respondent to conduct discovery to determine facts that were there to be discovered leaves unanswered the impact such a disclosure would have had on the court and on the actions of Appellant to protect her financial interest in the marriage.

Quoting from the attached affidavit (October 31, 2012) and supplementary affidavit (July 21, 2014) of Attorney at Law, Mark E. Sullivan, licensed to practice in North Carolina who has been certified since 1989 as a family law specialist and Retired Army Reserve JAG Colonel and author of *The Military Divorce Handbook: A Practical Guide to Representing Military Personnel and Their Families* (ABA, 2d Ed 2011), a regular instructor at the Army JAG School in Charlotte, Virginia and who also teaches at the Naval Justice School in Newport, RI, Appellant points to Mr. Sullivan's observations:

Ms. Floyd should have brought to the court's attention the probability of the presence of conditions that would likely trigger disability."

Mr. Sullivan goes on to point out that Ms. Floyd should have discussed the holding in Price v. Price with Appellant and explained that her former spouse could take unilateral extra judicial action that would substantially reduce the 60% award to Appellant of Sergeant Greene's military retirement about which Respondent was so pleased.

With this information, Mr. Sullivan testified in his affidavit, "it is my opinion with a reasonable degree certainty that the court would have granted relief for Ms. Greene in the form of an indemnification clause as the best way to protect her from destruction of part of her pension share due to unilateral, extra judicial post-divorce action by Mr. Greene."



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The Honorable J.C. Nicholson
Circuit Court Judge

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Appellate Case No. 2014-002450

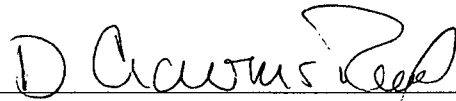
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Appellant complies with
Rule 211(b), SCACR.



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The Honorable J.C. Nicholson
Circuit Court Judge

Case No.: 2012-CP-10-8372
Appellate Case No. 2014-002450

Hattie Mae Greene Appellant

v.

Cindy M. Floyd Respondent

PROOF OF SERVICE

I, Tricia Ruggiero, paralegal to D. Cravens Ravenel, attorney for the Appellant, do hereby certify that I have this 21st day of April 2015, served a copy of the Final Brief of Appellant upon counsel for Respondent by delivering via U.S. Mail, first class postage pre-paid, to said counsel at the following address:

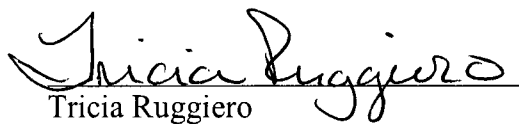
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April 21, 2015
Columbia, South Carolina