

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9TH Judicial Circuit Court Judge

Case No. 2007-CP-10-1444
Appellate Case No. 2017-000266

RECEIVED

MAY 08 2017

SC Court of Appeals

C. Holmes,

Appellant,

v.

J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

**RESPONDENTS' RESPONSE IN OPPOSITION
TO HOLMES' MOTION TO REINSTATE**

Respondents Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker (collectively, "Respondents") submit this memorandum in response to the "Amended Notice of Appeal" filed by plaintiff Cynthia Holmes ("Holmes") on April 21, 2017, which the Court has stated that it will treat as a Motion to Reinstate Holmes' Appeal (the "Motion to Reinstate").

Background

On April 6, 2007, Holmes commenced this malpractice action against Respondents arising from litigation against East Cooper Community Hospital (“East Cooper”) after the revocation of Holmes’ medical staff privileges at the hospital. Holmes’ claims against the Respondents were dismissed in their entirety after protracted litigation, and the trial court issued an order of sanctions against Holmes in the amount of \$200,000.00 (the “Judgment”). The Judgment was affirmed by the South Carolina Supreme Court on June 4, 2014. *See Holmes v. Haynsworth Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014).

During the pendency of the litigation between Holmes and the Respondents, the South Carolina Supreme Court directed the Clerks of Court in South Carolina to refuse to accept any further filings from Holmes that were related in any way to the revocation of her medical staff privileges at East Cooper unless the documents were filed by an attorney, other than Holmes, who was licensed to practice law in South Carolina. (See Order, entered in *Doe v. Duncan*, No. 2008-UP-596, (Dec. 2, 2009), a copy of which is attached as **Exhibit 1**.) Holmes’ license was later suspended for a period of two years. *See In re Collie*, 410 S.C. 556, 569, 765 S.E.2d 835, 841 (2014). As of the date of filing this memorandum, Holmes has not been reinstated.

In November 2016, the Respondents commenced formal efforts to collect the Judgment. Respondents filed a Verified Petition on January 3, 2017, to commence supplementary proceedings to determine whether Holmes has assets to apply toward satisfaction of the Judgment. On January 18, 2017, the Court issued a Rule to Show Cause, requiring Holmes to produce certain documents and appear, and a hearing was scheduled for March 10, 2017.

In the meantime, Holmes filed two motions for sanctions, a Rule 59(e) motion, a Rule 60 motion, and a motion to dismiss, all of which attempted to set aside the Judgment and claim that

Respondents acted fraudulently in trying to collect the Judgments. Holmes signed each of these motions herself, without another attorney. On February 9, 2017, the Court of Common Pleas for Charleston County entered an order striking all of Holmes' motions, due to the December 2009 Supreme Court order. Holmes subsequently filed a notice of appeal on February 19, 2017, appealing the order. This Court dismissed Holmes' appeal on April 7, 2017, finding that her *pro se* filings were all related to the East Cooper litigation. Holmes now attempts to once again resurrect the malpractice action arising from the East Cooper litigation by having the Appeal reinstated. Her Motion to Reinstate attempts to appeal two orders: The February 9, 2017 order rejecting her filings in Charleston County, and a March 14, 2017, order from the Master in Equity for Charleston County requiring her to produce financial information requested as part of the supplemental proceedings.

Argument

First, as recognized by this Court in its Order filed on April 7, 2017, the original appeal should never have been accepted because it clearly related to the East Cooper litigation. Accordingly, the only notice of appeal at issue is the Amended Notice of Appeal served on April 21, 2017, which was signed by an attorney, but it is untimely. The South Carolina Appellate Court Rules clearly provide that “[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order of judgment.” Rule 203(b)(1), SCACR. Moreover, courts interpreting this rule have unequivocally held that it is jurisdictional, and that ““if a party misses the deadline [to serve the notice of appeal], 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.”” *USAA Prop. And Cas.*

Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (quoting *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004)).

Here, the Amended Notice of Appeal was served on April 21, 2017, which is well beyond the thirty day deadline Holmes had to appeal the February 9th order. Moreover, the parties received notice of the court's March 14th order on March 20, 2017, which would have made the deadline to serve a notice of appeal from that order April 19, 2017. Therefore, the Amended Notice of Appeal served on April 21st was untimely, and the Court should deny Holmes' Motion to Reinstate.

Second, both of the orders at issue are un-appealable interlocutory orders and, accordingly, any appeal based on those orders should not be reinstated. The law is well-settled that "[t]here are only four basic situations from which a party may appeal: (1) intermediate judgments, orders or decrees involving the merits, (2) orders affecting substantial rights when such orders in effect determine the action and prevent a judgment from which an appeal may be taken or when the orders discontinue the action, (3) a final order in special proceedings, and (4) interlocutory orders continuing, modifying, or refusing injunctions." *Crout v. South Carolina Nat'l Bank*, 278 S.C. 120, 124, 293 S.E.2d 422, 424 (1982).

Here, the Circuit Court orders Holmes seeks to appeal do not fall under any of the appealable categories, as neither of them terminate the litigation, purport to be a final order in a special proceeding, or concern any injunction. Moreover, the only matter before the Circuit Court is Respondents' Rule to Show Cause, the purpose of which is to determine whether Holmes has assets to apply toward satisfaction of the Judgment. None of Holmes' motions giving rise to the February 9, 2017 order, however, relate in any way to the Rule to Show Cause, but instead attempt to re-litigate the underlying malpractice action and frustrate Respondents'

attempts to collect on the Judgment. As a result, the orders are un-appealable, and this Court should deny Holmes' Motion to Reinstate.

Third, Holmes has not and cannot demonstrate that good cause exists to reinstate her appeal. SCACR Rule 260 notes that a case may only be reinstated "by leave of the court, upon good cause shown, after notice to all parties." Rule 260(a), SCACR. Here, Holmes has failed to state, much less demonstrate, that good cause exists to reinstate her appeal. As stated above, Holmes has been prohibited from submitting for filing any documents related to the East Cooper litigation since 2009. For almost eight years, then, Holmes has been aware that she would need an attorney to sign any pleadings, motions, or other court filings related to the East Cooper litigation, yet she still refused to retain an attorney to sign her original notice of appeal. Such a refusal was a direct violation of the Supreme Court's 2009 order. Accordingly, Holmes has not properly demonstrated that good cause exists to reinstate her appeal and this court should deny her Motion to Reinstate.

Conclusion

For the aforementioned reasons, Respondents request that this Court deny Holmes' Motion to Reinstate the Appeal, and grant such other and further relief as may be just and proper.



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May 8, 2017
Columbia, South Carolina

ATTORNEYS FOR RESPONDENTS

The Supreme Court of South Carolina

J. Doe,¹

Petitioner,

v.

Richard L. Duncan, Meredith
Bond, Sidney Gilreath and
Gilreath & Associates,

Respondents.

ORDER

Petitioner has filed a petition for a writ of certiorari seeking review of the Court of Appeals' decision in Doe v. Duncan, Op. No. 2008-UP-596 (S.C. Ct. App. filed Oct. 17, 2008). The petition is denied.

However, this action is just one in a number of frivolous actions petitioner has filed relating to the revocation of her medical staff privileges at East Cooper Community Hospital *in 1997*.² Because we find petitioner has

¹ It is unclear why petitioner was allowed to proceed anonymously in this action. We note further that petitioner has at various times in other actions gone by the name Cynthia Holmes and Cynthia Collic. In order to avoid any confusion, we point out that J. Doe, Cynthia Holmes and Cynthia Collic are one and the same.

² A circuit court judge presiding over one of petitioner's lawsuits, found the following in a recent order imposing sanctions on petitioner:

Throughout the history of this case, Dr. Holmes has proven herself to be profoundly litigious. Since being assigned to Courtesy Staff at East Cooper Hospital in 1997, Dr. Homes engaged in a lengthy, albeit fruitless, administrative appeal of the



Hospital's decision. She then sued the Hospital in federal court, and failing there, in state court. She sued Mr. Becker and Mr. Grier and their law firm over the handling of the federal case. She sued two Tennessee lawyers in both South Carolina and Tennessee state courts over their role in achieving a settlement of her state court case against the Hospital. In 2005, Dr. Holmes sued the Hospital in a second action, alleging a wide array of complaints against the Hospital and several physicians, the gist of which was that the Hospital continued to refuse to increase her level of privileges. In Dr. Holmes' 2005 case against East Cooper Hospital, which the Court deemed to be barred by her settlement of the 2000 case, the Court imposed a \$90,000 sanction for violation of the [South Carolina Frivolous Proceedings] Act. In each of the cases Plaintiff has filed *pro se* since settling her 2000 state court case against East Cooper Hospital, Plaintiff has asserted baseless and frivolous claims for which she lacked any evidentiary support. She has launched numerous pointless appeals, every one of which has been resolved in favor of the respondents. Throughout, Plaintiff has made baseless, maybe scandalous, allegations against numerous physicians and lawyers without care, and in absence of evidentiary support. Her tactics have been dilatory, vexatious, that is brought without sufficient grounds, oppressive and unreasonable.

Plaintiff[s] conduct through the case appears to have been nothing but vexatious, that is, brought without sufficient grounds, and the maintenance of this completely frivolous claim can only be characterized as unreasonable. As before, Dr. Holmes was the losing party in a lawsuit a decade ago. She has persisted in pursuing this case for nearly a decade yet has never adduced a shred of evidence that anything the Defendants did made any difference in the outcome of the federal court action about which she complains.

Clearly, Plaintiff has abused the judicial system generally, and these Defendants in particular, with her unreasonable and ill-considered frivolous lawsuit. Throughout this matter, and in her other cases, Dr. Holmes has repeatedly shown that she is unwilling and unable to evaluate the merits of her own cases, and that she is unable to present any evidence to support her claims. She has evidenced a pattern of abusing the legal process in bringing frivolous actions and the potential remains for her to continue that practice unless severe sanctions are levied against her.

engaged, and continues to engage in, vexatious litigation related to that issue, we hereby direct the Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice law in this state.³

³ In addition to the above captioned action, petitioner has filed notices of appeal and petitions for a writ of certiorari in the following actions:

J. Doe v. Manton Grier James Y. Becker and Haynsworth Sinkler Boyd, P. A., as successor to Sinkler & Boyd, P. A. (2002-CP-01-1448 and 2002-CP-40-3705)



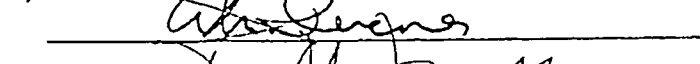
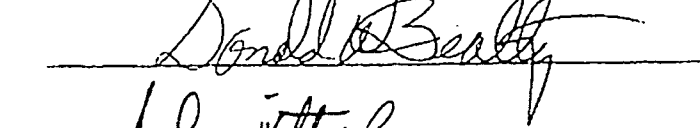
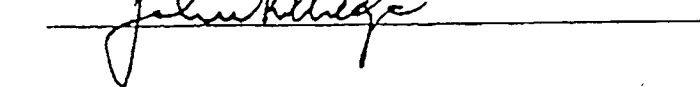
Cynthia Holmes, M.D. v. Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier, and James Y. Becker (2007-CP-10-1444)

Cynthia Holmes, M.D. v. East Cooper Community Hospital, Inc.; Tenet Healthsystem Medical, Inc.; John Grady, M.D.; Paul Yantis, M.D. (2005-CP-10-5113)

The latter action is now pending in this Court. Only the appeal at issue has resulted in the issuance of an opinion by the Court of Appeals. The remaining appeals were dismissed by order of the Court of Appeals prior to the issuance of an opinion because the appeals were interlocutory. We note that in these matters, petitioner has filed numerous frivolous motions, indicating her lack of knowledge of or complete disregard for the appellate process.

We also note that petitioner has recently been sanctioned in two of these matters (2005-CP-10-5113 and 2007-CP-10-1444) by the circuit court. By order dated July 27, 2009, the circuit court ordered petitioner to pay \$90,000 in attorney's fees to opposing counsel based on her frivolous initiation and continuation of the proceeding. By order dated November 18, 2009, the circuit court, as noted in footnote 1 above, sanctioned petitioner and entered judgment against her in the amount of \$200,000, noting the amount was not as much as was justified by the facts.

IT IS SO ORDERED.


C.J.

J.

J.

J.

J.

Columbia, South Carolina .

December 2, 2009

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Court of Common Pleas

9TH Judicial Circuit Court Judge

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Respondents.

PROOF OF SERVICE

I certify that on May 8, 2017 a copy of the foregoing **Respondents' Memorandum in Opposition to Holmes' Motion to Reinstate** has been served upon the Appellant by placing the same in the United States mail to the following party:

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May 8, 2017

VIA HAND DELIVERY

Jenny Abbot Kitchings
Clerk of the SC Court of Appeals
1200 Senate Street
Columbia, SC 29201

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MAY 08 2017

SC Court of Appeals

RE: *Cynthia Holmes v. Haynsworth Sinkler Boyd, et al.*
Appellate Case No. 2017-000266
HSB File: 04625.1439

Dear Ms. Kitchings:

With regard to the above-referenced matter, enclosed for filing please find the original and seven copies of Respondents' Memorandum in Opposition to Holmes' Motion to Reinstate, along with a Proof of Service. Please date-stamp the enclosed extra copy and return via our courier.

Sincerely,



Mary Cothonneau Eldridge

MCE/ajw

cc: Chalmers C. Johnson, Esq. (via U.S. Mail)