

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DARLINGTON COUNTY
Court Of Common Pleas

J. Michael Baxley, Circuit Court Judge

Opinion No. 5451 (S.C. Ct. App. Filed November 2, 2016)

Pee Dee Health Care, P.A.Respondent,
v.
Estate of Hugh S. ThompsonPetitioner.

REPLY IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI

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S.C. SUPREME COURT

INDEX

ARGUMENT1

I. Appropriate Factual Focus: A Timeline Of Events Not A Singular Point In Time.

II. The Need For Clarity. The Chance To Create Consistency.

III. The Trial Court's Inherent Powers And Constitutional Due Process:

No State Guidance At All.

CONCLUSION9

TABLE OF AUTHORITIES

	Page
I. STATUTES AND COURT RULES	
South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code § 15-36-10 et. Seq.	5-8
S.C. Code § 15-36-10(C) (1)	6,7
S.C. Code § 15-77-310	7
S.C. Code § 29-5-10	7
Rule 11, South Carolina Rules of Civil Procedure	1-5, 7,8
Rule 242(b), South Carolina Rules of Appellate Procedure	8
II. CASES	
<u>Ex parte Beard</u> , 359 S.C. 351, 358, 597 S.E.2d 835, 838 (Ct. App. 2004)	5
<u>Brooks v. Brooks</u> , 16 S.C. 621 (1881)	5
<u>Cox v. Fleetwood Homes of Georgia, Inc.</u> , 334 S.C. 55, 512 S.E.2d 498,500 (1999)	5
<u>Hamm v. Southern Bell</u> , 305 S.C. 1, 406 S.E.2d 157 (1991)	5
<u>Hicks vs. Southern Maryland Health Systems Agency</u> , 805 F. 2d 1165 (4 th Cir. 1987).	4
<u>Holmes v. Haynsworth, Sinkler & Boyd</u> , 408 S.C. 620 , 760 S.E. 2d 399 (2014)	4
<u>McDowell V. South Carolina Department Of Social Services</u> , 300 S.C. 24; 386 S.E.2d 280 (Ct. App. 1989)	5
<u>Muller v. Myrtle Beach Golf & Yacht Club</u> , 313 S.C. 412, 438 S.E.2d 248 (1993)	5
<u>Pitman v. Republic Leasing Company, Inc.</u> , 351 S.C. 429, 570 S.E.2d 187 (Ct. App. 2002)	5,6
<u>Russell v. Wachovia</u> , 370 S.C. 5, 633 S.E.2d 722 (2006)	4,8
<u>State v. Wise</u> , 33 S.C. 582, 12 S.E. 556 (1891)	5

ARGUMENT

Appropriate Factual Focus: A Timeline Of Events Not A Singular Point In Time.

In its Response, the Respondent focuses on the summary judgment ruling and the 33 month period between that ruling and the filing of the sanctions motion; the Respondent suggests that the Court of Appeals concluded that this amount of time is inherently unreasonable for a Rule 11 Sanctions motion. Response at 4. The Court of Appeals did not focus, however, on the number of months between summary judgment and the Rule 11 motion but rather on the deterrence and efficiency purposes of Rule 11. (Appendix at 13).

Respondent's focus on length of time alone is misplaced since the summary judgment ruling was merely one procedural milestone amongst a long and continuing pattern of abusive conduct and frivolous positions. Certainly it is understandable that Respondent would want the details of the trial court experience minimized and neutralized by a benign description. Yet, the conduct here was *not* benign; it was "ill-conceived, vitriolic, and abusive."

It is the totality of the case timeline and the total pattern of behavior that is relevant to any court's consideration of sanctions. Contrary to any implications of the Respondents or the Court of Appeals, the "right" time to file for sanctions cannot be reduced to a neat mathematical algorithm. Sanctionable conduct is not neat and such acts and behaviors are always unique to the situation and players involved.

The trial judge here lived through the painful experience; the "fact intensive inquiry"¹ was done first hand. So pervasive was the trial court's experience along the

¹ In its effort to discourage review, the Respondent suggests that review by this Court

totality of the case time line that he further concluded “[t]he lack of respect Megna has shown for this Court, the legal process, and the purposes of these proceedings is unprecedented for this Court.” (emphasis added).

Despite this passionate first-hand account by the trial judge, the Court of Appeals decided that an earlier Rule 11 motion would have deterred the sometimes bizarre conduct in this case and proved more efficient for the Courts. This wishful conclusion is unsupported by the voluminous record. Moreover, the law of this case is that counsel could not be deterred; as the trial Court stated in its affirmed² sanction’s order of February 11, 2013, “Megna has shown little regard for the Orders of this Court Megna has willfully, deliberately, and unapologetically attempted to misuse the legal process ... he is in willful violation of this Court’s orders....”³

In response to the motion for his disqualification, disqualified counsel shared an undeterred rant claiming a vast Pee Dee conspiracy involving the family of a Judge. R. pp. 565-567. Disqualified counsel also repeatedly suggested the trial judge’s recusal without any rational support and without ever formally filing a motion for such recusal. See, e.g., R. pp. 548-595 (in a motion response), R. pp. 680-690 (in a letter). *Even after* disqualified counsel was questioned directly regarding his disqualification in the Court of Appeals on June 5, 2013, his undeterred partner filed, *in the Court of Appeals*, a “Motion

would merely be a “fact intensive inquiry.” (Response page 5). ***In reality, this Petition seeks guidance and clarification with regard to legal issues of jurisdiction, statutory interpretation, inherent court power, and constitutional due process.***

² See In Re: Pee Dee Health Care, P.A. v. Thompson, Unpublished Opinion No. 2015-UP-067 (February 11, 2015).

³ R. p. 34-46 ¶¶ 23-29.

to Vactate” the trial court’s summary judgment (one of rulings already on appeal and argued June 5th) and the undeterred partner responded to a letter objecting to that motion by faxing a June 17, 2013 letter to the Court of Appeals suggesting ethical violations by the undersigned.

In short, there was no deterring Respondent or its counsel at earlier stages of the matter, and the Thompson Estate “did not want to trigger further “vitriolic” responses by a litigant who most surely would have accused the Estate of seeking to misuse a sanctions effort to somehow prejudice the merits of pending matters.” (Petition for Rehearing, Court of Appeals, Appendix at 26). Under these circumstances, the trial court’s determination of Rule 11 timeliness was certainly not an abuse of discretion “controlled by an error of law” as the Court of Appeals opined (Appendix at 14) – particularly when the same opinion conceded that no controlling law was in existence (Appendix at 9).

In similar sanitizing fashion, Respondent suggests that not all of its three appeals (Response footnote 2) and the countless underlying trial court procedural moves are relevant to the sanctions consideration. To the contrary, the interwoven procedural machinations of the Respondent make up the bombardment of things requiring the costly response of your Petitioner. As noted in the Petition (footnote 16), this bombardment, and the personalities behind it, is precisely why the Estate made the informed decision to consolidate its trial court sanctions request⁴ at the conclusion of the matter.⁵ This

⁴ PDHC’s Response seems to suggest (Response page 3) that Petitioner sought to sanction the same conduct twice or sought to collect the same recompense twice – both in the trial court and the appellate court. *This is not correct.* While the Petitioner did seek sanctions at both levels of proceedings for similar, on-going, patterns of conduct, a complete review of the record will confirm that Petitioner was very careful to segregate the time-line (and associated costs) of conduct at each level of proceedings. Moreover, the motion for appellate sanctions was filed after the Court of Appeals issued its primary

consolidation represented an efficiency determination that the first-hand battle-scarred trial judge approved. This Court should affirm that first-hand assessment.

The Need For Clarity. The Chance To Create Consistency.

The response of Pee Dee Health Care to the Petition for Certiorari only serves to accentuate the need for this Court’s clarifying guidance for Rule 11 motions as well as all sanctions motions. Contrary to the suggestion that this is merely a factual determination of a “reasonable” time span within which to seek Rule 11 sanctions, the Court of Appeals actually held that the Rule 11 motion for sanctions was jurisdictionally too late (Appendix page 6); thus, intended or not, and without clearly stating as such, the Court of Appeals *did* impose a bright line bar to a Rule 11 sanctions motion (contrary to footnote 5 of the Response) – because, under the Court’s opinion, no motion filed after a remand could ever be timely – contrary to parallel federal case law.⁶

This Court has not imposed such bright line bar and it is this Court’s prerogative to do so, if needed and appropriate. Russell v. Wachovia Bank, N. A., 370 S.C. 5, 633 S.E.2d 722 (2006) expressly declined establishing a hardline for the time to file Rule 11 motions.

Again, contrary to footnote 5 of the Response, Petitioner does *not* seek a ruling that a Rule 11 sanctions motion within 10 days of remand is *always* timely – but such a

opinion on the merits of the due-diligence summary judgment, the timeliness of the Probate Court appeal, and its dicta supportive of counsel’s disqualification. While no appellate sanctions were awarded, it certainly was not because of any express approval of Respondent’s positions by the Court of Appeals.

⁵ As noted in the Petition (footnote 16), the sanctioned conduct here is strikingly similar to that observed in Holmes v. Haynsworth, Sinkler & Boyd, 408 S.C. 620 , 760 S.E. 2d 399 (2014) (involving a 7 year time-line of scorched earth conduct, multiple frivolous motions, and multiple interlocutory appeals).

⁶ Hicks vs. Southern Maryland Health Systems Agency, 805 F. 2d 1165 (4th Cir. 1987).

motion should always be within the Court's well-established window of general jurisdiction. The Court of Appeals opinion ignores this window and thereby creates confusion and conflict with the established jurisprudence and conflict with the inherent need for follow-up general jurisdiction, however brief, after remand for implementation and enforcement of the "law-of-the-case" and matters consistent therewith.⁷

The need to clarify the interrelation of remand jurisdiction and sanctions jurisdiction (whether under the Frivolous Civil Proceedings Sanctions Act (FCPSA), Rule 11, or the inherent power of the Court) is further illustrated by the Court of Appeals indication that Petitioner was "mounting, in essence, a direct challenge" to precedent and seeking an "expansive" reading of the FCPSA. Respectfully, Petitioner disagrees but will seek leave to argue against precedent if necessary to bring clarity to that precedent.

Respondent follows the lead of the Court of Appeals in reliance on an artificially restrictive application of Pitman v. Republic Leasing Company, Inc., 351 S.C. 429, 570 S.E.2d 187 (Ct. App. 2002) and Ex parte Beard, 359 S.C. 351, 358, 597 S.E.2d 835, 838 (Ct. App. 2004) – neither of which involved a request for sanctions after a long time-line of bad behavior terminating upon an appellate remand. PDHC's Response incorporates this line from the Court of Appeal's opinion, "If the General Assembly wished to extend

⁷ Again, this jurisprudence includes: Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 438 S.E.2d 248 (1993) ("Once the remittitur is sent down from this Court, the Circuit Court acquires jurisdiction to enforce the judgment and take any action consistent with the Supreme Court ruling.") (emphasis added) (citing Hamm v. Southern Bell, 305 S.C. 1, 406 S.E.2d 157 (1991)⁷); McDowell v. South Carolina Department Of Social Services, 300 S.C. 24; 386 S.E.2d 280 (Ct. App. 1989); State v. Wise, 33 S.C. 582, 12 S.E. 556 (1891); Brooks v. Brooks, 16 S.C. 621 (1881)); and Cox v. Fleetwood Homes of Georgia, Inc., 334 S.C. 55, 512 S.E.2d 498,500 (1999) (Supreme Court recognized that original trial judge may exercise jurisdiction following an appeal – in a manner consistent with the appellate decision – even if that original judge is not a resident of or then assigned to the circuit where the case arose).

the time window to ten days following remitter, as opposed to ten days following judgment, then it would have included that in the list found in subsection 15-36-10(C)(1).” PDHC Response at 6.

The fallacy is, however, that the statute itself does not specify a ten-day limit at all; such a limit was validly derived in Pitman from the jurisprudence regarding the trial court’s post-trial jurisdiction. Now, however, that jurisprudence is being artificially constricted at the cost of constitutional due process in dispute resolution. The language actually provided by the General Assembly only states that a claim to sanctions under the FCPSA must wait until after “the conclusion” of the matter. Petitioner is not, respectfully, trying to read this provision expansively; rather, Petitioner suggest the Court of Appeals has read it more narrow than the General Assembly intended – certainly the 10 day period of general remittitur jurisdiction, *known and existing under jurisprudence at the time of enactment of the FCPSA*, is at “the conclusion” of the matter.

Writing for the Court of Appeals in Pitman, Justice Hearn did not allow the Court to be misdirected by isolated terms in the statute -- noting that the term “trial”, used in the statute, was itself a misnomer since any case surviving to trial is presumptively *not* frivolous. Likewise, the Court now should not elevate the statute’s use of “summary judgment” over its use of “at the conclusion.” The Pitman Court instead focused on existing jurisprudence and determined that it was *not* going to vary from the “established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.”⁸ Petitioner here seeks the same consistency of reading the statute

⁸ In Pitman, the party seeking sanctions waited some two months after an order of summary judgment that was not appealed. Our appellate courts have not addressed a request for sanctions under FCPSA after the successful defense of multi-staged appeals.

as a whole, in coordination with the existing case law, supporting a window of jurisdiction upon remand. *This is not an expansive request.*

The Petition also provides the Court with the chance to reconcile interpretations of statutory triggering provisions that cry out for consistency. The triggering language for the FCPSA (*after* “the conclusion”⁹) is much the same as the triggering language for the fee provision of the mechanics lien statute (*after* a party has “prevailed”¹⁰) and the triggering language for the State-action fee provision (*after* the “final disposition”¹¹). All of these finality-based triggers serve to avoid the interlocutory piece-meal approach of filing multiple requests during on-going trial litigation – this is also the inefficiency that the Estate sought to avoid – contrary to the Court of Appeals unwarranted conclusion of inefficiency.

Petitioner suggests that the distinctions among these statutory triggers are without differences; however, Court confirmation would be useful guidance to litigants and lower court. In contrast, the Court of Appeals’ restrictive reading provides no useful guidance to its proclaimed novel question other than to vaguely encourage sanctions motions early and often; surely that is not always a good idea.

This Petition also presents the Court with an opportunity to provide the bar and lower courts with guidance on the appropriate time to file a motion for sanctions under Rule 11, the FCPSA, and the inherent power of the courts. But more than that, this

⁹ South Carolina Code § 15-36-10(C)(1).

¹⁰ South Carolina Code § 29-5-10.

¹¹ South Carolina Code § 15-77-310.

Petition offers the Court to bring the standards and time constraints of each basis into greater harmony.

The Trial Court's Inherent Powers And Constitutional Due Process:

No State Guidance At All.

PDHC's response (page 6) admits that "the ruling involves an interpretation of the South Carolina Rules of Civil Procedure *and the application of the court's equitable authority.*" The response further suggests that this admission is supportive of its conclusion that "[n]one of these [SCRAP 242(b)] factors apply." (Response at page 6). PDHC's response merely states in conclusory fashion that "[t]here are no constitutional issues directly involved...." Yes, the fundamental provisions of the Constitution are very much involved and guidance related to these constitutional guarantees is very much needed.

The Court of Appeals opinion fails to address or provide any guidance regarding the "court's equitable authority" pursuant to its inherent power as well recognized by federal common law. Indeed, there is scant State authority addressing a trial court's inherent authority and its relationship to preserving the constitutional guarantees of due process.

Petitioner has argued that the Russell decision, together with other precedents, allows for a renewed 10-day window of trial court jurisdiction after an appellate remand for any kind of sanctions motion – whether under the FCPSA, Rule 11, or the inherent power of the Court. The Petitioner further argued the integral relationship between the use of a trial court's inherent authority and the trial court's duty to preserve the constitutional process of fair dispute resolution. This needs to be addressed.

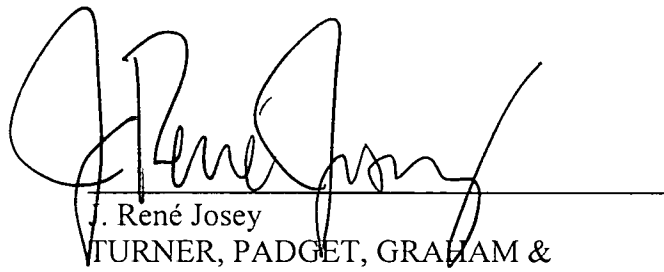
CONCLUSION

The Court has the opportunity to provide a clear bright-line remand window of time consistent with its prior precedents. The Court also has an opportunity to re-affirm the inherent power and authority of the trial courts to issue sanctions as needed to deter “ill-conceived, vitriolic, and abusive” conduct as necessary to provide constitutional adjudications – free from the lack of respect shown in this matter – one that truly is a “just, speedy, and inexpensive determination” of the matter.

The Thompson estate respectfully submits that its motion for sanctions was timely. In light of the novelty of issues under South Carolina law and in light of the guidance given by federal courts, to hold otherwise is to reward the party which polluted the stream of justice and taxed judicial resources to their utmost. To hold otherwise will also pass those litigious costs onto the innocent young heirs of the Thompson estate and to leave them disillusioned and frustrated with their constitution’s process of adjudication. For all of the reasons set forth herein, the Thompson estate respectfully petitions this Court for review of the Court of Appeals decision.

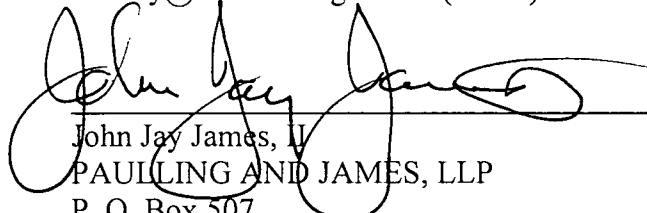
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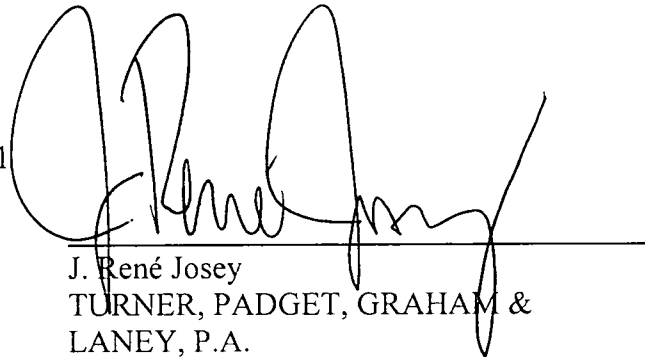
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PROOF OF SERVICE

I certify that I have served the Petition for a Writ of Certiorari on Pee Dee Health Care, P.A. by depositing one (1) copy of it in the United States Mail, postage prepaid, on March 21, 2017, addressed to: mailing it their attorneys of record,

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