

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

RECEIVED

JUL 10 2017

SC Court of Appeals

Cynthia Holmes,

Appellant,

v.

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

Respondents.

Petition for Rehearing

Chalmers C. Johnson
1155 Bethel Ave.
Port Orchard, WA 98366
425.999.0900
Attorney for Appellant

By and through counsel, appellant respectfully files Petition for Rehearing of the Order entered June 26, 2017, and respectfully submits that the Court has overlooked or misapprehended the following errors of material fact and law.

Facts

The Appellant contends that the Court has overlooked material facts in making its determination on the Order of June 26, 2017. The lower court order entered March 14, 2017, was timely appealed by notice of appeal filed and served by Attorney for the Appellant on April 21, 2017. Written notice of the lower court order entered March 14, 2017, was postmarked on March 16, 2017, and received on March 24, 2017. Attached to this petition are the amended notice of appeal and an affidavit regarding dates of receipt and service by the Appellant. Accordingly, pursuant to Rule 203, SCACR, the notice of appeal was timely served within 30 days after receipt of written notice of entry of the order. The Court or the Clerk apparently decided to treat the amended notice of appeal as a motion to reinstate and the grounds for the original dismissal were not absolutely clear.

I. The order is appealable under S.C. Code Section 14-3-330(1).

The order is appealable under S.C. Code Section 14-3-330(1) because it involves the merits. An order “involving the merits” is one that “must finally determine some substantial matter forming the whole or a part of some cause of action or defense.”

Mid-State Distributors, Inc., v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777

(1993). In the case below, the appellant is denied any defense or ability to file

objections thereby “necessarily affecting the judgment.” *Link v. School District of*

Pickens Cty., 302 S.C. 1, 393 S.E.2d 176 (1990).

II. The Order is appealable under S.C. Code Section 14-3-330(2).

The order is appealable under S.C. Code Section 14-3-330(2)(a) because it affects a substantial right when such order “in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action.” In this case, the Appellant is effectively foreclosed from contesting the case on the merits in the Circuit Court because the Court will not recognize her filings, which affects a substantial right and is immediately appealable. *McLaughlin v. Strickland*, 279 513, 309 787 (Ct. App. 1983).

The order is appealable under S.C. Code Section 14-3-330(2)(c) because it affects a substantial right when such order “strikes out an answer or any part thereof or any pleading in any action.” This case involves striking any and all pleadings, answers, and/or defense, therefore, there is no record for meaningful judicial review on appeal

necessarily preventing any substantial ability to appeal. The Order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

III. The Order is appealable under S.C. Code Section 14-3-330(3).

The order is appealable under S.C. Code Section 14-3-330(3) which allows appellate review of orders affecting a substantial right “made in any special proceeding or upon a summary application in any action after judgment.” In the instant case, the lower court proceeding is not a traditional action. It is a “special proceeding.” *See Allen v. Partlow*, 3 S.C. 417 (1872). Denial of the right to defend and to file affects a substantial right in this special proceeding. The Order is appealable.

IV. The order is appealable under S.C. Code Section 14-3-330(4).

The order is appealable under S.C. Code Section 14-3-330(4) because it is an interlocutory order or decree ... “granting, continuing, modifying, or refusing the appointment of a receiver.” S.C. Code Section 14-3-330(4). The March 14, 2017, order provides “thereafter a receiver will be appointed.” March, 14, 2017, Order on appeal. Accordingly, the order is appealable under S.C. Code Section 14-3-330(4). *See Williams v. Northwestern Securities Life Ins. Co.*, 307 S.C. 462, 415 S.E.2d 809 (1992).

V. Pursuant to Rule 205, SCACR, the appellate court obtains exclusive jurisdiction upon the timely service of the notice of appeal.

The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code §14-8-200(a) is as

follows:

[T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code §14-8-200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9. In a direct appeal, the focus is on the propriety of rulings made by the circuit court. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal *et al.*, *Appellate Practice in South Carolina* (3d ed. 2016), p. 11. The instant matter is a direct appeal. Under Rules 205 and 241, SCACR, the lower court may not act or issue orders that affect an issue on appeal. In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. S.C. Code Section 14-3-330(2); see *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005); *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017).

New case law in the *Brooks* case, *infra*, provides that the South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) ("[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own

cause, if he so desires.”); *Washington v. Washington*, 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

VI. The money judgment exception to automatic stay does not apply because the matter herein does not constitute a “money judgment” in the underlying claim within the contemplation of S.C. Code Section 18-9-130; rather the matter is incidental to the underlying claim.

The money judgment exception to automatic stay does not apply because the matter herein does not constitute a “money judgment” in the underlying claim within the contemplation of S.C. Code Section 18-9-130; rather the matter is incidental to the underlying claim. *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000); *Toal et al*, *Appellate Practice in South Carolina*, 3rd edition (2016), p. 341. In the instant case, the underlying claims ended with directed verdict for the defendants. Significantly and materially, there was no counterclaim. Accordingly, the matter herein is not a traditional money judgment and, therefore, it is subject to automatic stay under Rule

241(a), SCACR. Toal *et al*, *Appellate Practice in South Carolina*, 3rd edition (2016), p. 340. In the alternative, any dispute regarding the application of automatic stay is resolved in the appellate court. *See Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (2014). In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

VII. The lower court's reliance on the December 2009 order is not only clearly misplaced, but the result is a violation of State and federal statutory and Constitutional law.

The Court's Order that Appellant is challenging has restricted her from filing any motions on her own behalf in an action where she is defending pro se. The action is basically a supplemental proceeding to collect a judgment against her. The judgment arises from a sanction ordered in a case where she sued the Respondent for malpractice in handling a legal case for her in Federal Court. The Order under appeal stated:

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: A supplemental proceedings hearing is scheduled to take place in this matter on March 10, 2017. The court is advised by the Clerk of Court's office that Cynthia Holmes, M.D., has filed several motions in this matter in violation of the Supreme Court's order filed December 3, 2009 directing 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 of law in this state." Given the broad language of this directive and the fact that the motions have been filed by Dr. Holmes, pro se, the court orders the Clerk of Court's office to strike all motions filed by Dr. Holmes in this matter as well as all future motions, if any.

The language of the Order itself shows the fallacy of the basis for the decision. The

Judge notes "broad language" of a 2009 Order, but quotes that very language, which is anything but broad. On its face, the 2009 order only applies in cases where Dr. Holmes is engaged in litigation related to revocation of medical privileges at East Cooper Hospital. The Order that she is attempting to appeal arises out of supplemental proceedings to collect on a judgment from a malpractice case which did not involve East Cooper as a party. This order, on its face, seems to invite review rather strongly.

There is also new case law in the *Brooks* case, *infra*, provides that the South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) ("[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."); *Washington v. Washington*, 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

VIII. When deciding a jurisdictional question based on facts, a reviewing court has the duty to review the entire record and find the jurisdictional facts within the entire record.

When deciding a jurisdictional question based on facts, a reviewing court has the power and the duty to review the entire record, find the jurisdictional facts within the entire record, and decide the jurisdictional question in accord with the preponderance of evidence. *Canady v. Chas. Cty. Sch. Dist.*, 265 S.C. 21, 216 S.E.2d 755 (1975). It is not clear that there was an adequate record to make a finding on the jurisdictional question.

Conclusion

The Appellant respectfully requests that the Court reconsider its Order of June 26, 2017 and reinstate this appeal. It raises some serious issues regarding the rights of Pro Se parties, which the Court should review.

Respectfully submitted,



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Attorney for Appellant

7-10-17

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

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

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SC Court of Appeals

C. Holmes,

Appellant,

v.

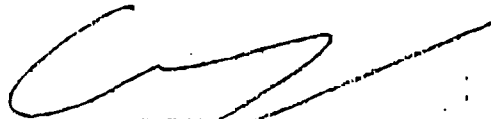
J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

AMENDED NOTICE OF APPEAL

The Appellant appeals the attached orders of the 9th Judicial Circuit Judge entered February 9, 2017, and March 14, 2017. Pursuant to Rule 203 and 206. The original notices of appeal in this case were timely filed. The rulings of February 9 and March 14 denied the Appellant the right to participate, pro se, in her own case and order proceedings to continue against her after dismissing all of her attempts to file pro se. This appeal will include reference to *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017), *Turner v. Rogers*, 564 U.S. 431 (2011), and *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005) (see *Toal et al, Appellate Practice in South Carolina*, 3rd edition, 2016).

Dated April 21, 2017



Chalmers C. Johnson
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(425) 999-0900
Attorney for the Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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9th Judicial Circuit Court Judge

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Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

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and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the foregoing on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed to M.M. Caskey on this date at 1201 Main St., 22nd flr., Columbia, SC 29201.

Dated April 21, 2017



Chalmers C. Johnson
Attorney for the Appellant

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C. Holmes,

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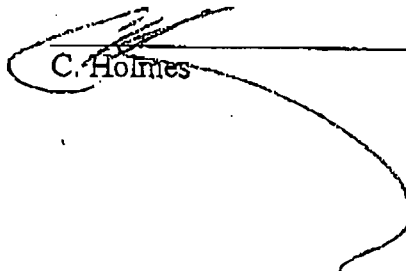
v.

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


Respondents.

AFFIDAVIT

FURTHER THE AFFIANT SAITH NOT.


C. Holmes

Subscribed and sworn to before me,
Notary Public, this 12 day

of May, 2018. 7 

Elizabeth G. Anderson

NOTARY PUBLIC

My commission expires: 4/4/23

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PRESORTED
FIRST CLASS

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July 10, 2017

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Clerk, South Carolina Court of Appeals
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JUL 10 2017

SC Court of Appeals

Re: Holmes v. Haynsworth et al
App. Case No. 2017-000266

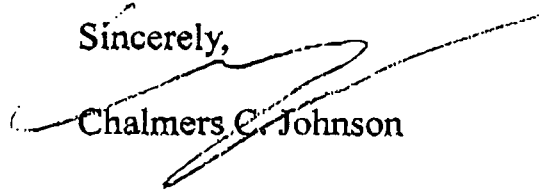
Dear Clerk of Court:

Enclosed for filing is the original with abeyance request in the above case. Also, enclosed are the following:

- 1) The filing fee,
- 2) Seven copies,
- 3) Proof of Service and a copy, and
- 4) SASE for return.

Would you please file the original and copies and return the extra clocked copies to me in the enclosed envelope? Thank you.

Sincerely,



Chalmers C. Johnson

cc:
Ms. Mary M. Caskey, Esq.
1201 Main St., 22nd fl., Ste 2200
Columbia, SC 29201

THE STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

I certify that I have served a copy of the foregoing on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed to Respondents on this date at 1201 Main St., 22nd flr., Columbia, SC 29201, addressed to their attorney of record, Ms. Mary M. Caskey, Esq.

Dated 7-10-17



Chalmers C. Johnson
1155 Bethel Ave.
Port Orchard, WA 98366
425.999.0900
Attorney for Appellant