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JUL 28 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Craig D. Brown, Circuit Court Judge

Appellate Case No. 2015-001941

Elizabeth J. Langley Appellant,
v.
Wendy J. Lynch, Rebecca M. Lynch,
James M. Lynch, II, Donald Jordan, III,
Jimmy White and S. Porter Stewart, II, as
Personal Representative of the Estate of
James M. Lynch Defendants
Of Whom Wendy J. Lynch is the Respondent.

**RESPONDENT’S RETURN TO APPELLANT’S
AMENDED MOTION TO RECALL REMITTITUR, AMENDED MOTION FOR
EXTENSION OF TIME, AMENDED MOTION TO CORRECT ERRORS, AND
AMENDED MOTION FOR ATTORNEY FEE REIMBURSEMENT**

The Respondent, by and through undersigned counsel, opposes Appellant’s four motions filed on July 19, 2017. In short, Appellant’s Motion to Recall Remittitur has already been denied by this Court, and the appellate court lacks jurisdiction to entertain such motions. Specifically, Appellant, through counsel, filed a Motion to Recall Remittitur on June 13, 2017 which was denied by this Honorable Court by Order dated July 11, 2017. In its Order, this Court held:

When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter.

The only exception to this rule is when the remittitur is sent down by mistake, error, or inadvertence of the court. The remittitur was correctly sent as Appellant did not, through her counsel, file a petition for rehearing before fifteen days had elapsed from the date of the opinion finally disposing of the appeal. . . Accordingly, the motion to recall the remittitur is denied.

Id. (emphasis added)(internal citations omitted).

This is Appellant’s *second* Motion to Recall Remittitur, and Appellant has failed to set forth any “mistake, error, or inadvertence of the court” in sending down the remittitur. Respondent’s sole claim in support of this successive motion to recall remittitur appears to be that her attorney “left” her on June 1, 2017 and had he not done so, Appellant could have timely filed. This argument, in addition to not meeting the standard for recall set forth above, is meritless. Appellant’s own admissions demonstrate that as early as May 26, 2017, she was on notice of the June 8, 2017 petition deadline. Amended Motion for Attorney Fee Reimbursement, p.2. Although on notice of the June 8th deadline as early as May 26th, Appellant made no effort – through the various attorneys she was consulting or by way of request to Mr. Josey - to request an extension of time.

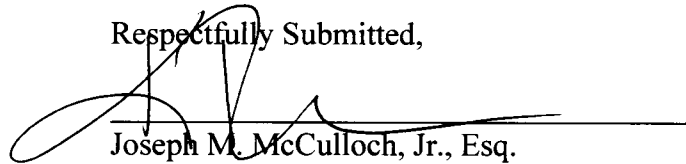
Moreover, Appellant’s filings¹ do not support her assertion that Mr. Josey “left” her on June 1st. Indeed, it appears she began consulting other attorneys, and there is no evidence that Appellant notified Mr. Josey that Appellant was indeed planning to pursue

¹ Appellant has attached to her motions what appear to be e-mail communications between Appellant and her former counsel. As Appellant has voluntarily attached these communications and as these communications form the basis for her argument herein, it appears she has distinctly and unequivocally waived the attorney-client privilege. See Marshall v. Marshall, 282 S.C. 534, 538, 320 S.E.2d 44, 46-47 (Ct. App. 1984)(“Any voluntary disclosure by a client to a third party waives the attorney-client privilege . . .); see generally Drayton v. Industrial Life & Health Ins., 205 S.C. 98, 31 S.E.2d 148 (1944).

a Petition for Rehearing as such filing was against Mr. Josey's advice.² The amount Appellant paid, whether in lump sum or a refundable retainer, is wholly irrelevant.

As such, Respondent requests this Court deny the Amended Motion to Recall Remittitur, Amended Motion for Extension of Time, Amended Motion to Correct Errors, and Amended Motion for Attorney Fee Reimbursement. Additionally, in order to deter such future conduct, Respondent requests this Court find the motions filed to be frivolous, and to award to Respondent attorney fees and costs in responding to these motions.

Respectfully Submitted,



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ATTORNEYS FOR RESPONDENT

This 28th day of July, 2017

Columbia, South Carolina

² Exhibit A to Appellant's Motion to Recall the Remittitur, ROA 3.

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PROOF OF SERVICE

I certify that I have served the **RESPONDENT'S RETURN TO APPELLANT'S AMENDED MOTION FOR EXTENSION OF TIME, AMENDED MOTION TO RECALL REMITTITUR, AMENDED MOTION TO CORRECT ERRORS AND AMENDED MOTION FOR ATTORNEY FEE REIMBURSEMENT** by depositing one copy of same in the United States Mail, first-class mail, postage prepaid, on July 28, 2017, addressed to:

J. Rene Josey, Esquire
Turner, Padget, Graham & Laney, P.A.
Post Office Box 5478
Florence, SC 29502

James T. Irvin, Esquire,
P.O. Box 2677
Myrtle Beach, SC, 29578

Elizabeth Langley
1225 Edgewood Avenue
Florence, SC 29501

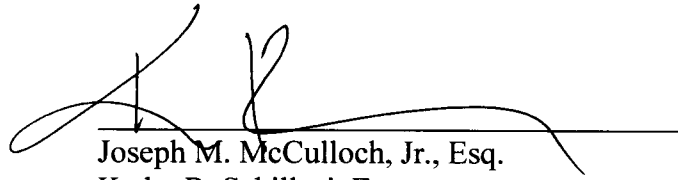
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Columbia, SC

A handwritten signature in black ink, appearing to read 'J.M. McCulloch, Jr.', is written over a horizontal line. The signature is fluid and cursive.

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