

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SEP 08 2017

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

9TH Judicial Circuit Court Judge

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

C. Holmes,

Appellant/Petitioner,

v.

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

Respondents.

**RETURN OF RESPONDENT HAYNSWORTH SINKLER BOYD, P.A. TO
C. HOLMES' PETITION FOR WRIT OF CERTIORARI**

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Attorneys for Respondents

INTRODUCTION

This Petition for a Writ of Certiorari (the “Petition”) arises from a unanimous opinion of the Court of Appeals filed on June 26, 2017 (the “Order”). The Petition does not present any novel questions of law; does not present substantial constitutional issues; does not conflict with any prior decision of this Court or the Court of Appeals; and does not include a federal question. Moreover, the Petition fails to clearly identify any question presented for this Court’s review. Holmes’ Petition does vaguely state that the petition for rehearing was timely filed and “wrongfully returned” by the Clerk of the Court of Appeals. (Petition at 4). However, Holmes simply makes this contention in the Petition’s Certification of Counsel and Statement of the Case sections, and does not actually identify the Clerk’s decision to return the petition for reinstatement as a question for this Court to review. Instead, the Petition merely regurgitates the same arguments Holmes attempted to make to the Court of Appeals without addressing any error of law made by the Court of Appeals. Accordingly, this case does not warrant discretionary review by this Court pursuant to Rule 242, SCACR.

QUESTIONS PRESENTED

I. DID THE COURT OF APPEALS ERR IN DISMISSING HOLMES’ APPEALS?

COUNTER-STATEMENT OF THE CASE AND FACTS

The underlying action stems from litigation commenced by Holmes against East Cooper Community Hospital (“East Cooper”), during which she was represented by Haynsworth Sinkler Boyd, P.A., James Y. Becker, and Manton M. Grier (collectively, “Respondents”). The facts surrounding this litigation are not in dispute. On April 6, 2007, Holmes brought a malpractice action against Respondents arising from litigation Holmes commenced against East Cooper following the hospital’s decision to revoke her medical staff privileges. On Holmes’ behalf, the Respondents unsuccessfully appealed for reinstatement of admitting privileges through East

Cooper's administrative process and, later, filed a lawsuit in federal court. The relationship between Holmes and the Respondents deteriorated, and Holmes subsequently filed the malpractice action. After protracted litigation over Respondents' handling of her case against East Cooper, Holmes' claims against the Respondents were dismissed, 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 this 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 malpractice action, this Court issued an order directing Clerks of Court in South Carolina to refuse to accept further *pro se* filings from Holmes in actions related to the East Cooper Litigation. (*See Order*, entered in *Doe v. Duncan*, No. 2008-UP-596, (Dec. 2, 2009)) (the "*Doe Order*"). 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 September 8, 2017, it appears Holmes has not been reinstated.

In November 2016, the Respondents commenced formal efforts to collect the Judgment. As part of these efforts, the Respondents filed their Verified Petition on January 3, 2017, in the Court of Common Pleas for Charleston County.¹ Meanwhile, Holmes filed two motions for sanctions, a Rule 59(e) motion, a Rule 60 motion, and a motion to dismiss, all of which attempt to set aside the Judgment, reopen the malpractice action, and claim that the Respondents have acted fraudulently in trying to collect the Judgment (collectively, the "Motions"). On February 9, 2017, the circuit court entered a judgment striking all motions filed by Holmes (the "Circuit Court Order") because she filed the motions *pro se*, in direct violation of the *Doe Order*.

¹ The Verified Petition to commence supplemental proceedings inadvertently included James Y. Becker and Manton Grier as Defendants attempting to collect the amounts owed under the Judgment. Defendants Becker and Grier are employees of Defendant Haynsworth Sinkler Boyd, P.A., and are not attempting to collect the Judgment in their individual capacities. Respondents are in the process of addressing this issue in the trial court, which has retained jurisdiction because no bond was filed pursuant to Rule 241 (b), (c), SCACR.

Holmes filed a *pro se* notice of appeal with the South Carolina Court of Appeals on February 19, 2017, appealing the Circuit Court Order. After seeking clarification from Holmes and Respondents concerning the applicability of the *Doe* Order to the Judgment, the Court of Appeals dismissed the appeal on April 7, 2017, finding that the *pro se* filings were all related to the East Cooper litigation and, accordingly, fell within the category of filings prohibited by the *Doe* Order. Holmes then filed an “Amended Notice of Appeal” through her attorney on April 21, 2017. The Court of Appeals treated as a Motion to Reinstate Holmes’ Appeal, and unanimously denied the motion in an order filed June 26, 2017. In response, Holmes filed a Petition for Rehearing on July 12, 2017, which the Court of Appeals declined to consider pursuant to Rule 221, SCACR. Finally, Holmes filed the instant Petition on or about August 15, 2017.

ARGUMENT

1. Holmes has failed to state, much less demonstrate, that any special and important reasons exist to justify this Court’s granting her Petition.

The SCACR clearly establishes that “[a] writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR. Although not exhaustive, the Rules identify several factors that “indicate the character of reasons which will be considered.” *Id.* Such factors include instances where: (1) there are novel questions of law; (2) there is a dissent in the Court of Appeals’ decision; (3) “. . . the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court”; (4) substantial constitutional issues are involved; and (5) “. . . a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.” *Id.* Considering the foregoing, it is clear that Holmes has failed to demonstrate, or even acknowledge, that such factors exist in the present matter.

First, there are no novel questions of law at issue, and the Court of Appeals' decisions do not conflict with a prior decision of this Court or reflect a dissent in the Court of Appeals. As set forth above, Holmes' appeals are patently untimely and improper under clearly-established South Carolina law. Holmes' also has failed to specifically identify any novel issues of law that are present in this case. There is also no federal question present in this case.

Moreover, there are no substantial constitutional issues involved in this matter. Although Holmes vaguely argues in her Petition that the *Doe* Order is a violation of statutory and constitutional law, the numerous filings made by or on behalf of Homes in this case demonstrate that she has not been denied access to the court system in any way. In any event, and as set forth above, South Carolina law provides a clear legal basis supporting the Court of Appeals' decision to dismiss her appeals. Given the foregoing, it is clear that none of the factors that weigh in favor of granting Holmes' Petition exist in this matter.

2. The Court of Appeals correctly dismissed Holmes' appeals because they were improper, untimely, and sought to appeal unappealable interlocutory orders.

As recognized by the Court of Appeals, Holmes' original Notice of Appeal should never have been accepted because it clearly relates to the East Cooper Litigation. Accordingly, the Court of Appeals acted properly by dismissing Holmes' Notice of Appeal. Further, the Amended Notice of Appeal, which was signed by Holmes' counsel, was properly dismissed because it was 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 Circuit Court Order. Therefore, the Amended Notice of Appeal served on April 21, 2017 was untimely, and the Court of Appeals properly denied the Motion to Reinstate.

Moreover, the Circuit Court Order is an un-appealable interlocutory order and, accordingly, the Court of Appeals properly declined to reinstate Holmes’ appeal based on those orders. 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 Order does not fall under any of the appealable categories, as it does not terminate the litigation, purport to be a final order in a special proceeding, or concern any injunction. Moreover, the only matter currently pending 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 Circuit Court Order, however, relate in any way to the Rule to Show Cause. Rather, the motions 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 the Court properly denied Holmes' Motion to Reinstate.

Finally, SCACR Rule 260 notes that an appeal may only be reinstate "by leave of court, upon good cause shown, after notice to all parties." Rule 260(a), SCACR. Holmes simply failed to demonstrate that good cause existed to reinstate her appeal. As set forth 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 clear and direct violation of the *Doe* Order. Accordingly, Holmes failed to demonstrate that good cause existed to reinstate her appeal, and the Court of Appeals acted properly in declining to reinstate the appeal.

CONCLUSION

Holmes has failed to present any argument in her Petition that implicates the considerations listed in Rule 242(b), SCACR. Nothing about the Court of Appeals' decisions are inconsistent with well-established South Carolina law, nor do the appeals at issue implicate any federal questions or substantial constitutional issues. Accordingly, this Court should deny Holmes' Petition.

Respectfully submitted,



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September 8, 2017
Columbia, South Carolina

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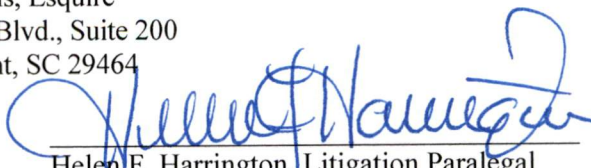
Respondents.

PROOF OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have, this 8th day of September 2017, caused the foregoing *Return of Respondent Haynsworth Sinkler Boyd, P.A. to C. Holmes' Petition for Writ of Certiorari* to be served via U.S. mail, postage prepaid, on counsel of record at the addresses shown below:

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