

STATE OF SOUTH CAROLINA  
COUNTY OF Florence  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 16-CP-21-1435

Deborah B. Harwell 2017 APR 12 PM 2:45

Robert Bryan Harwell, et al

PLAINTIFF(S)

DEFENDANT(S)

CLERK OF COURT  
FLORENCE COUNTY, SC

Low Office of Dieder W. Edmunds et al

Submitted by:

Attorney for:  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk :

CERTIFIED: A TRUE COPY  
Jana R. J. Hoffman  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.  
RECEIVED  
JAN 04 2018  
SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
<u>Robert Bryan Harwell et al.</u>	<u>Deborah B. Harwell</u>	<u>\$ 40,000.00</u>
<u>" " " "</u>	<u>low off. Deborah W. Edmunds</u>	<u>\$ 5,000.00</u>
	<u>et al. P.A</u>	<u>\$</u>

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]  
Circuit Court Judge

2135  
Judge Code

4/6/16  
Date

For Clerk of Court Office Use Only

This judgment was entered on the 12 day of Apr, 20 17 and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of Apr, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Desa Ballard  
PO Box 6338 W. Columbia SC 29171

ATTORNEY(S) FOR THE PLAINTIFF(S)

K. Benth - PO Box 107 - Florence SC - Hand Del.  
Genal P. BIVIN PO Box 2527 Florence SC 29503  
Barbara Woytice PO Drawer # Charleston SC 29402

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara  
CLERK OF COURT  
M. Dawes Cook, Jr. PO Drawer #  
Charleston SC 29402

**Court Reporter:**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Lined area for additional information regarding the court decision.

STATE OF SOUTH CAROLINA  
COUNTY OF Florence  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 16-CP-21-1435

Deborah B. Harwell 2017 APR 12 PM 2:45

Robert Bryan Harwell, et al

PLAINTIFF(S)

DEFENDANT(S)

CLERK OF COURT  
FLORENCE COUNTY, SC

Low Office of Dieder W. Edmunds et al

Submitted by:

Attorney for:  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk :

CERTIFIED: A TRUE COPY  
FLORENCE COUNTY, S.C.  
CLERK OF COURT C.P. & G.S.  
Low Office of  
RECEIVED  
JAN 04 2018  
SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
<u>Robert Bryan Harwell et al.</u>	<u>Deborah B. Harwell</u>	<u>\$ 40,000.00</u>
<u>" " " "</u>	<u>low off. Deborah W. Edmunds</u>	<u>\$ 5,000.00</u>
	<u>et al. P.A</u>	<u>\$</u>

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]  
Circuit Court Judge

2135  
Judge Code

4/6/16  
Date

For Clerk of Court Office Use Only

This judgment was entered on the 12 day of Apr, 20 17 and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of Apr, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Desa Ballard  
PO Box 6338 W. Columbia SC 29171

ATTORNEY(S) FOR THE PLAINTIFF(S)

K. Benth - PO Box 107 - Florence SC - Hand Del.  
Genal P. BIVIN PO Box 2527 Florence SC 29503  
Barbara Woytice PO Drawer # Charleston SC 29402

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara  
CLERK OF COURT  
M. Dawes Cook, Jr. PO Drawer #  
Charleston SC 29402

**Court Reporter:**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Lined area for additional information regarding the court decision.

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF FLORENCE )

IN THE COURT OF COMMON PLEAS  
C.A. No. 16-CP-21-1435

Deborah B. Harwell )  
Plaintiff, )

v. )

Robert Bryan Harwell, individually )  
And as the Personal Representative )  
Of the Estate of David W. Harwell; )  
And the South Carolina Department )  
Of Health and Environmental )  
Control, Div. of Vital Records )  
Defendants, )

v. )

Law Office of Deidre W. Edmunds, )  
P.A/ and Deidre W. Edmunds, )  
Individually, )  
Third Party Defendants. )

**ORDER**

**RECEIVED**  
JAN 04 2018  
SC Court of Appeals

FILED  
JAN 12 PM 2:45  
CLERK OF COURT  
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY  
*Janis Parks O'Hara*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

This matter is before this court on a motion by the Defendant Robert Bryant Harwell, individually and as the Personal Representative of the Estate of David W. Harwell seeking sanctions against Deborah B. Harwell, Deirdre W, Edmonds and the Law Office of Deidre W. Edmonds, P.A. . The sanctions are sought under Rule 11 of the South Carolina Rules of Civil Procedure (SCRCP) and the South Carolina Frivolous Civil Proceedings Sanctions Act as contained in S.C. Code Ann., Section 15-36-10, et.seq. Sanctions are sought against Deborah B. Harwell for the filing of legal claims and actions by her against the Estate of David W. Harwell

*Roll*  
*P!*

and its Personal Representation Robert Bryan. The legal actions complained of include the filing by Deborah B. Harwell, pro se, of Probate Court creditor's claims for payment for the publication of an obituary, money from the Estate for alleged claims involving a prenuptial agreement, and a claim of entitlement to an elective share. There is a claim against Deidre Edmonds and her law firm for refiling the above reference creditor's claims in the Probate Court, for filing actions to enforce the creditor's claims and for the filing of an action in the Probate Court for the amendment of the death certificate of David W. Harwell.

### STATEMENT OF FACTS

David W. Harwell and Deborah B. Harwell were legally separated and a complete property settlement Order was filed in the Florence County Family Court by Order on July 21, 2015. Thereafter, David W. Harwell died on September 30, 2015.

Deborah Harwell filed, pro se, on January 14, 2016, claims in the Florence County Probate court seeking an "elective share" from the estate of \$3,100,00.00 based on a "prenuptial agreement." At the same time she filed, pro se, a claim for \$1,440.00 against the estate for reimbursement for the costs of publication an obituary by her.

Mrs. Harwell met with Attorney Edmonds on February 6, 2015, and shown her a copy of the death certificate of David W. Harwell that did not indicate that she was a surviving spouse. She had obtained that copy from the Florence County Probate Court. The death certificate as then written would not have allowed Ms. Harwell to obtain certain retirement and/or social security benefits that may be available to a surviving spouse.

That copy of the certificate indicated that Robert Bryan Harwell was the informant. Thereafter, Edmonds contacted Angie Saleeby, the Director of Vital Records at DHEC to learn

ABC  
P2

the proper method by which to have the certificate amended. Edmonds was told that the informant on the certificate could have it corrected or she would have to obtain a court order directing that it be amended.

At the February meeting she was shown a copy of the Application for Probate or Appointment filed with the Florence County Probate Court on October 12, 2015. That document appeared to have been altered by the whiting out of an entry in the surviving spouse blank of that form. Edmonds did not believe that this was the proper way to report that actual marital status of the decedent to the Probate Court.

On about March 1, 2016, Deirdre Edmonds assumed representation of Mrs. Harwell only in the matters involving the Probate Court and her husband's estate. Edmonds did not assume representation of Mrs. Harwell concerning any issue involving the Family Court since she does not practice in that court. Ms. Edmonds filed a petition in the Probate Court on behalf of Mrs. Harwell seeking an adjudication of Deborah as the surviving spouse, and also seeking the amendment of David Harwell's death certificate so as to have Deborah listed as the Surviving Spouse on the certificate. Ms. Edmonds refiled in the Probate Court the creditor's claims previously filed by Mrs. Harwell, pro se, in the David W. Harwell Estate on March 9, 2016.

In the weeks that followed Edmonds was provided information concerning the death certificate by Kevin Barth, attorney for Bryan Harwell and by subpoena from DHEC. At some point in time Barth offered to have Bryan apply for an amended death certificate should Mrs. Harwell dismiss her claims against the Estate. This offer was rejected by Mrs. Harwell.

The claim filed by Mrs. Harwell for an elective share is barred by the terms of the Property Settlement Order filed in the Family Court. As of that time the Family Court Order had

*all  
p 3*

not been appealed from and no action seeking further relief from that Order had been filed by Mrs. Harwell.

Prio to Mr. Harwell's death, during the spring and early summer of 2015 David W. Harwell and Deborah B. Harwell were negotiating a marital property settlement. On July 21, 2015, in the case of David W. Harwell v. Deborah B. Harwell, 15-DR-26-691, the Horry County Family Court issued an Order approving a mediated separation and property settlement. The agreement was incorporated into the order. The Order stated in part in Paragraph #2 that, "the parties have settled all of the issues arising out of their marriage and of the prenuptial agreement." In Paragraph # 12 the Order stated further, "both parties waive any and all rights that may have in the estate of the other or to make claims upon or against the estate of the other." That Order has never been amended or appealed. It remains the law of their property settlement.

On February 8, 2016 Edmonds was informed of the existence of the pro se claims in the Probate Court filed by Mrs. Harwell. By March 3, 2016, Edmonds had received sufficient information to determine that the pro se claims had been denied by the Personal Representative and that unless an action was begun in the Probate Court to enforce the claims they would be barred by statute and lost. An action on the claims would have to be brought in the Probate Court by March 12, 2016 in order to preserve the possibility of a Rule 60 claim. The action to enforce the pro se claims was filed by Edmonds on March 9, 2016. She states that this was done to protect Mrs. Harwell's right to pursue a Rule 60 reopening of the Family Court Order approving the property settlement agreement, based on her allegations of fraud and misrepresentation of assets by her husband at the time of the mediation. Edmonds claims a lack of expertise in Family Court matters and that she had informed Mrs. Harwell of the need for her to obtain other representation in the Family Court to be able to pursue the Rule 60 Motion.

*P2C*  
*P4*

At the initial meeting between Mrs. Harwell and Edmonds, Harwell told Edmonds that she felt that she had been misinformed concerning the assets of her husband at the time that the Property Settlement was negotiated and approved in the Family Court. At some point in time it became apparent to Edmonds that Mrs. Harwell would have to pursue her claims of fraud and misrepresentation concerning the mediated Property Settlement agreement by the filing in the Family Court of a Rule 60 motion to set aside or seek relief from the Order approving and adopting the property settlement agreement. Edmonds claims to have filed her petitions regarding the claims for monetary relief in the Probate Court in order to preserve Mrs. Harwell's ability to seek relief in the Family Court from the Mediated Property Settlement Order. Those probate claims would be deemed abandoned if action is not taken in a timely fashion to enforce them following their disallowance by the Personal Representative. Edmonds refused to assume representation of Harwell in the Family Court matters since she did to believe herself to be competent in those matters.

The actions seeking a monetary recovery from the Estate were filed by Mrs. Harwell in the Probate Court as Creditor's Claims. The Personal Representative of the Estate filed a denial of the claims. Then the Personal Representative on April 1, 2016, filed Motions to Dismiss the Probate Court Petitions and seeking sanctions, attorney's fees and costs because of the alleged frivolous claims and Rule 11 SCRCV violations by Deborah and Ms. Edmunds. The sanctions were requested from both Mrs. Harwell and Attorney Edmonds.

On April 12, 2016, Dawes Cooks appeared as attorney for Edmonds defending her and her firm in the claims filed by the Estate and the personal Representative. On May 3, 2016 Adam Silvernail assumed representation of Mrs. Harwell in the probate matters from Edmonds.

*ASL*  
*PS*

Silvernail later assists Mrs. Harwell in preparing and filing her later pro se pleadings in the Family Court.

There follows in early May various Motions on both sides for dismissal of the claims and actions.

A contempt hearing against Mrs. Harwell was conducted in the Family Court beginning May 20, 2016. An Order was filed on July 21, 2016 by Judge Buckhannon which resulted in Mrs. Harwell being held to be in contempt of Court and incarcerated for a period of time as a result of this contempt.

A hearing on the Motions for Sanctions and the Motions to Dismiss filed by both sides was held before the undersigned on July 21, 2016. At that hearing Desa Ballard appeared as counsel for Mrs. Harwell having been hired by her on the day prior to the hearing. At that hearing Ms. Ballard requested additional time in which to familiarize herself with the facts and issues involved in the case and to make an attempt to resolve some of the matters before the court. An Order substituting her as counsel was filed on August 31, 2016.

On August 31, 2016, Mrs. Harwell through her attorney Ms. Ballard filed a partial Stipulation of Dismissal which dismissed the claim for and Elective Share with prejudice and other claims (with the exception of the claim for amendment of the Death Certificate) without prejudice. The issues of Rule 11 and Frivolous Actions sanctions remains open.

## CONCLUSIONS OF LAW

### 1. South Carolina Rules of Civil Procedure:

*22*  
*06*

**RULE 11**  
**SIGNING OF PLEADINGS; ATTORNEYS**

(a) **Signature.** Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign his pleading, motion or other paper and state his address..... The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

.....

If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

**2. Ex Parte Gregory, 378 S.C. 430, 430-437-39, 663 S.E. 2d 46, 50 (2008)**

Under Rule 11(a), SCRCP, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Runyon v. Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Id.* The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature \*438 designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Id.* Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. *Id.* A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanction imposed. *Id.* Ex parte Gregory, 378 S.C. 430, 437-38, 663 S.E.2d 46, 50 (2008)

The South Carolina Frivolous Civil Proceedings Sanction Act provides for liability for attorney fees and costs of frivolous suits. South Carolina Code Ann. § 15-36-10 (2005) provides that any

*Bel*  
*07*

person who takes part in the procurement, initiation, and continuation of any civil proceeding is subject to being \*\*51 assessed for payment of all or a portion of the attorney fees and court costs of the other party if (1) he does so primarily for a purpose other than that of securing the proper adjudication of the claim upon which the proceedings are based, and (2) the proceedings have terminated in favor of the person seeking an assessment of the fees and costs.  
Ex parte Gregory, 378 S.C. 430, 438, 663 S.E.2d 46, 50-51 (2008)

### 3. South Carolina Code of Laws: Section 15-36-10

**SECTION 15-36-10.** Frivolous lawsuits; signing pleadings; imposition of sanctions; notice and opportunity to respond; reporting violations.

(A)

(2) A document filed in a civil or administrative action by a party who is not represented by an attorney must be signed by the party and must include the address and telephone number of the party.

(3) The signature of an attorney or a pro se litigant constitutes a certificate to the court that:

(a) the person has read the document;

(b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law;

(c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and

(d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

*APL*  
*08*

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

(B)(1) If a document is not signed or does not otherwise comply with this section, it must be stricken unless it is signed promptly or amended to comply with this section after the omission is called to the attention of the attorney or the party.

(2) If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.

(C)(1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or

*P26*  
*P9*

(c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

(2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

**4, Pee Dee Health Care, P.A. v. Estate of Thompson, 418 S.C. 557, 567, 795 S.E.2d 40, 46 (Ct. App. 2016), reh'g denied (Jan. 17, 2017)**

“Under Rule 11, the primary purpose of sanctions against counsel is not to compensate the prevailing party, but to ‘deter future litigation abuse.’” *Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 151 (4th Cir. 2002) (quoting *In re Kunstler*, 914 F.2d 505, 522 (4th Cir. 1990)). The expenses opposing counsel incurs in combatting frivolous claims is an appropriate factor for a court to consider when determining whether to issue a monetary sanction. *In re Kunstler*, 914 F.2d at 522. “[O]ther purposes of the rule include compensating the victims of the Rule 11 violation, as well as punishing present litigation abuse, streamlining court dockets[,] and facilitating court management.” *Moore v. Southtrust Corp.*, 392 F.Supp.2d 724, 736 (E.D. Va. 2005) (quoting *In re Kunstler*, 914 F.2d at 522).

Pee Dee Health Care, P.A. v. Estate of Thompson, 418 S.C. 557, 567, 795 S.E.2d 40, 46 (Ct. App. 2016), reh'g denied (Jan. 17, 2017)

**5. *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)**

“A willful act is one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law.” (internal quotation marks omitted); *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)

**CONCLUSIONS AND RULINGS**

*Roll*  
10

As to the pleadings filed by Deborah Harwell. I find that the Creditor's Claims filed pro se by her were filed without merit and frivolous. I have seen no credible evidence or claim that would indicate that Mrs. Harwell was entitled to any money or property from the Estate of David W. Harwell. All such claims were barred by the express terms of the Property Agreement as embodied in the Order of the Probate Court approving and adopting that agreement. Mrs. Harwell appears to have been represented by what appears to be competent counsel at the time that the Family Court approved the terms of the property settlement. She had employed experts to assist her in the negotiation of that agreement. She was fully aware that the agreement and Family Court Order did not allow her to make the claims that she was making. The only possible justification for such action would have been if she was bringing an action to set aside the Order and Agreement, which is an action that she took much later. That Rule 60 motion has now been terminated by the withdrawal of that claim without any credible allegations or evidence presented to advance the claim. It is my further finding that Mrs. Harwell advanced these claims willfully and with a total disregard for the application of the law or the respect due to a valid Court Order affecting the parties before the Court. I find that she was motivated by an ongoing personal dispute with the heirs of David W. Harwell, and her actions were intended to delay the settlement of his estate and to seek a recovery to which she was not entitled. Also, I find no basis for Mrs. Harwell's claim for reimbursement for the obituary which she caused to be published.

As to the claims by Mrs. Harwell for Amendment of the Death Certificate I find that claim to have been justified as stated below.

Concerning the Petition seeking the Amendment of the Death Certificate advanced by Mrs. Harwell and Ms. Edmonds. I find that the relief sought in that action was justified and that

*See  
p 10*

the action was necessary. While it is clear that some of the allegations contained in that petition concerning the alleged actions of the personal representation were false and ultimately found to be without justification, it is my finding that these allegations were the result of what appears to be an almost paranoid belief on the part of the parties to these actions concerning the evaluation of the motives of the other side. The allegations of intentional wrong doing Bryan Harwell were false, but may have been the product of the ongoing distrust between these parties and beliefs based on physical evidence (such as the whiting out of pertinent information on probate forms) which turned out to be meaningless. This is an equitable matter and I must consider that possibility that Bryan Harwell could have taken concrete steps to resolve the problem early in the life of this Death Certificate issue to resolve this matter, (See S.C. Reg. 61-19 Section 30), but instead used this issue as a bargaining chip to seek a withdrawal of the other unrelated claims. At any rate, the claim was necessary since the Death Certificate was incorrect in the manner in which it did not reflect the existence of a surviving spouse. It is my finding that Ms. Edmunds preparation of this pleading was based on information provided to her by DHEC and Mrs. Harwell. While some of her allegation were not later proven to be true and were perhaps over zealous when made, it did result in obtaining the relief her client needed in that situation. The case of In Re Gregory, cited above does impose on a claimant's attorney some duty to investigate a claim based on information provided to the attorney by the client before filing a petition on that information. However, this duty is only mandatory as it applies to the narrow circumstance involving the fiduciary relationship of an attorney/client. Such a fiduciary relationship did not exist in this case. I find that the investigation related by Ms. Edmunds and the information supplied by the client would have allowed Edmunds enough justification in filing the death certificate claim in question.

A handwritten signature in black ink, appearing to be 'JEL' or similar, with a date '1/12' written below it.

As to the filings by Edmunds concerning the creditor's claims based on "the prenuptial agreement" I find them to have been justified on Edmunds part. She has consistently taken the position that she was not a Family Court Practitioner. As such she claimed no knowledge of the facts or the issues involved in those proceedings. Clearly, at the time she was faced with the questions surrounding those claims she perceived herself to be in a time constraint. The time was fast approaching that the claims would be lost if not sued upon in the Probate Court. She had been told by her client that she intended to take action in that court to seek relief from the Settlement Order by way of a Rule 60 Motion for Relief. In fact Mrs. Harwell did file such a motion, pro se, when she was unable to get an attorney to take the case. While all of those claims and motions have now been withdrawn, I cannot consider this question in the light of 20/20 hindsight. I agree with Ms. Edmunds experts that she took the actions necessary to preserve her client's opportunity to have her claims litigated.

I find that Edmunds was not justified in filing or pursuing the claim for the reimbursement of the obituary publication.

### SANCTIONS

1. In determining Rule 11 Sanctions this court should consider the following language from the Rule:

The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature \*438 designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Id.* Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith

PJC  
P13

2. In determining the amount due under the South Carolina Frivolous Civil Proceedings Sanction Act:

The South Carolina Frivolous Civil Proceedings Sanction Act provides for liability for attorney fees and costs of frivolous suits. South Carolina Code Ann. § 15-36-10 (2005) provides that any person who takes part in the procurement, initiation, and continuation of any civil proceeding is subject to being \*\*51 assessed for payment of all or a portion of the attorney fees and court costs of the other party if (1) he does so primarily for a purpose other than that of securing the proper adjudication of the claim upon which the proceedings are based, and (2) the proceedings have terminated in favor of the person seeking an assessment of the fees and costs.

3. The attorney's fees claimed were as follows:

a) Barth:	\$15,312.78
b) Ervin:	\$19,530.00
c) Protopapas:	\$17,054.28

Total Fees: \$51,897.06

I am reducing the amount that would otherwise be due to Bryan Harwell, personally and as Personal Representative by 10% because of the fact that he could have reduced the fees incurred had he gone forward with correcting the Death Certificate at the beginning of the litigation. This reduces total fees incurred of \$46, 707.35.

I am assessing sanctions against Law Office of Deirdre W. Edmonds, P.A and Deidre W. Edmonds for her participation in the claim for the cost of the Obituary Publication the sum of \$5,000.00.

A handwritten signature in black ink, appearing to read "P224" over "P17".

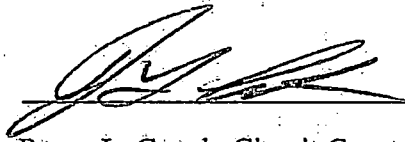
I am assessing sanctions against Deborah B. Harwell in the sum of \$40,000.00, to be reduced by any sums which she may have already paid pursuant to the Family Court award of \$25,000.00 in attorney's fees as provided in its Contempt Order.

The sanctions assessed herein shall be paid to R. Bryan Harwell personally and as Personal Representative in partial repayment of fees and costs incurred by them in defending these claims.

**IT IS SO ORDERED:**


Spartanburg, SC

4/6/17

 (SEAL)  
Roger L. Couch, Circuit Court Judge

2017 APR 12 PM 2:45  
DORIS M. O'HARA  
CLERK OF COURT  
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY  
  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.