

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

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SC Court of Appeals

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COURT CLERK
FLORENCE COUNTY, SC

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Dec 11

This matter is before this court on motions under Rule 59(e) of the South Carolina Rules of Civil Procedure by all parties in this matter.

A.) I will first address those issues raised by the Defendant Robert Bryant Harwell, individually and as the Personal Representative of the Estate of David W. Harwell, in as much as that party was the moving party before me.

1. The Personal Representative and the Estate have moved that I reconsider the provision in my Order which provides for the reduction of the amount that I awarded under Rule 11 and the Frivolous Claims Act by any portion of the Family Court Award of attorney's fees which is actually paid by Ms. Harwell. I was made aware at this hearing that she had paid nothing on that award as of the time of the hearing. I was informed that Ms. Harwell had been sanctioned by the Family Court for filing the same actions that were complained of in the Motion before me in this matter. This Family Court action resulted in her being ordered to pay attorney's fees of \$25,000.00, and she was to be jailed for a period of 45 days for contempt. I am aware that she served a portion (about 18 days) of that sentence.

In setting the appropriate measure of Sanctions to be assessed in a case under Rule 11 or the Frivolous Claims Act the amount of costs and attorney's fees incurred is certainly a factor to be considered by a court. Rule 11 seeks of a reasonable costs and attorney's fees may be assessed. The Frivolous Claims act talks of an assessment of all or a portion of the attorney's fees incurred in defending a claim be a possible award. One my concerns in is matter is that the issues in the Probate Court, this court and the Family Court involve the filing and merits of the same claims. In some areas the facts and the legal arguments over lap. Further, I was not given any information as to Ms. Harwell's financial ability to pay sanctions. Certainly that is a factor to consider

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when considering the issues addressed recently in the Pee Dee Health Care case. In that case the Court of Appeals examined the origins and purposes of an Order for sanctions under Rule 11, SCRPC. While attorney's fees and costs are to be considered, there are many other factors to be considered. The Court made the point that the sanctions are intended to end the litigation and to prevent the filing of future frivolous actions. 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). It is my finding that the sanctions that I Ordered will put an end to the useless litigation when taken into consideration with all sanctions imposed in both this case and in the Family court action.

2. The Defendant Personal Representative asks that this Court to clarify the actions taken by the Ms, Harwell which are the subject of the sanctions issued by this Court. After a review of my Order I would agree that this does need clarification. It was my intention to include the actions filed by Ms. Harwell for an Elective Share and an Action for Reimbursement for the obituary written by her as part of the actions for which there was no justification. Ms. Harwell had waived any claims against the Estate in the Family Court Order that she agreed to. Until and unless that Order is vacated it is the Order that binds her. It was improper for her to begin any action for these items against the Estate. To this extent my previous Order is hereby amended to include these actions as improper and frivolous and therefore the proper subject for sanctions.
3. The Defendant seeks to have this Court revisit and reconsider its rulings and findings concerning Dedre Edmonds. I have reviewed my findings and rulings and see no basis upon which I would change or amend my Order concerning these rulings.

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PJ*

4. The Defendant asks the Court to reconsider its finding and rulings in regard to the Death Certificate issue. Specifically, that the omission of the surviving spouse on the Original Death Certificate prevented Ms. Harwell from receiving certain benefits to which she was entitled which they dispute. This information and finding was taken by this Court from testimony given in the Family Court by Ms. Harwell and repeated in certain Affidavits submitted by Ms. Edmonds. This testimony was to the effect that this omission in the Death Certificate delayed her receiving certain of her benefits. In any case, it was the ruling of this Court that as soon as this death certificate matter was pointed out to the Personal Representative, it should have been researched and corrected. This did not happen and is the basis for this Court's rulings concerning this issue. Therefore, I do not amend or alter my rulings on these matters.

B) Next I will consider the issues raised by Third Party Defendant Deidre W. Edmonds in her Rule 59(e) Motion for Reconsideration.

1. She raises the issue that the claim for reimbursement for the obituary was not a frivolous claim. This court made that finding based on the fact that Ms. Harwell had waived any and all claims, including future claims that she might have had against David Harwell or his estate. Her decision to run and alternate obituary was made by her with full knowledge of this waiver of past, current and future claims. When she ran the Obituary she was in no position to bind the estate or to contract on it's behalf. I see no reason to amend my ruling that the claim should not have been made and was without legal basis. I am not aware of any case or statute that allows a family member or an in-law to take independent actions that create a legally binding obligation on the part of an estate unless that person has been given the legal authority to do so. I know of no such authority in this case.

DJC
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2. Secondly, she questions the amount of the award of attorney's fees or sanctions issued in this matter. I have considered the usual factors in awarding attorney's fees such as the nature and complexity of the action, the professional standing of the attorneys involved, the contingency of the action, the results achieved, the customary fees for similar services and the time necessarily expended in defending the action.

In awarding the sanctions that I did also consider what amount of sanctions would assure that the action would be ended and the future conduct of such a nature would be discouraged.

The sanctions awarded against Ms. Edmonds of \$5,000.00 would amount to 20 hours of legal work if billed at \$250.00/ per hour. That amount of time and that level of compensation is found by this court to be reasonable concerning this issue given the work in this matter that this court has observed, the complexities of the case, the results achieved and the professional standing of counsel involved. Further, the court finds that this amount would also serve to discourage future actions such as this. Therefore, this court has determined that the sanctions awarded are proper.

C) Finally, I will consider the issues raised by Deborah B. Harwell in her Rule 59(e) Motion to Reconsider.

1. Ms. Harwell raises several issues of fact which she says are not disputed. The Court has reviewed the four such factual issues that she raises, and after reviewing these matters finds that they do not provide a basis to amend it previous Order concerning these issues.

2. Next she raises the issue that she was incarcerated by the Family Court and that this fact should negate the need for sanctions concerning the matter before this Court. First of all it should be noted that this court did take the actions of the Family Court concerning costs and

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attorney's fees by giving her a credit for those fees and cost against the fees and court awarded by this court in this case, However, her incarceration by the Family Court was for contempt. This court has made no finding of Contempt against her and the issue is not before me in this case. My sanctions are for misconduct under Rule 11 of the SCRPC and the Frivolous Claims Act. Therefore, the actions by the Family Court in connection with a contempt citation would not preclude this court's action in the matters before me, but were considered by me along with other factors in reaching my conclusions in this matter.

3. She next raises the issue of her inability to pay sanction being the only evidence in the record as precluding the issuance of any monetary sanctions in this matter against her. This court noted that there was ample evidence in the record that Ms. Harwell had received a substantial marital settlement from Judge Harwell including a mountain home that was unencumbered. She indicated that she made numerous attempt to employ attorneys and never mentioned that a lack of funds prevented her from doing so. It appears to the court that she was able to afford and employ attorneys at the time of this action.

4. She raises the issue that the Court found that she was motivated by an ongoing personal dispute with the heirs of David Harwell. The Court's finding in this regard was based on the lack of communication that was apparent from the handling of the death certificate issue, the refusal to allow Ms, Harwell to view the body of her husband at the funeral home, and observations made by the Court during the hearing. These disputes seem to be mutual in nature but did exist.

5. The court's finding that as Ms. Harwell proceeded to make her claims in the Probate Court that she was disregarding Orders of a court were based on the fact that there was and stil is a valid Family Court Order in effect in which she had specifically waived the very claims that

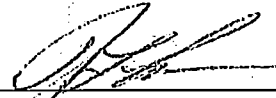
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she was advancing without having had that Order set aside. This conduct justifies this court's findings in this regard.

IT IS SO ORDERED:

Spartanburg, SC

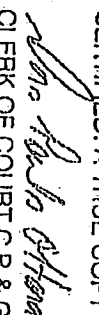
9/27/17



(SEAL)
Roger L. Couch, Circuit Court Judge

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