

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

FEB 07 2018

9TH Judicial Circuit Court Judge

SC Court of Appeals

Case No. 2007-CP-10-1444
Appellate Case No. 2017-002403

Cynthia Holmes, M.D.,

Appellant/Petitioner,

v.

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

Respondents.

**RESPONDENTS' MOTION TO DISMISS APPEAL
AND TO HOLD DEADLINES IN ABEYANCE**

Mary M. Caskey, SC Bar No. 76198
Mary Cothonneau Eldridge, SC Bar No. 102698
Haynsworth Sinkler Boyd, P.A.
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Post Office Box 11889 (29211)
Columbia, South Carolina
Attorneys for Respondents

INTRODUCTION

Respondents James Y. Becker, Manton Grier, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A. (“Respondents”), file their Motion to Dismiss Appellant Cynthia Holmes’ (“Holmes”) Appeal (the “Appeal”) on the grounds that: (1) the Appeal violates the order entered by the Supreme Court of South Carolina in *Doe v. Duncan*; (2) the Appeal is untimely; and (3) the order at issue is an un-appealable interlocutory order. Respondents also request that this Court stay Respondent’s deadline to file its response to Holmes’ initial brief pending the outcome of this Motion to Dismiss.

STATEMENT OF THE FACTS

The underlying action stems from litigation commenced by Holmes against East Cooper Community Hospital (“East Cooper”), during which she was represented by 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, 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 Respondents deteriorated, and Holmes subsequently filed the malpractice action. After protracted litigation over Respondents’ handling of her case against East Cooper, Holmes’ claims against 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*”) (a copy is attached as **Exhibit A**). 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 February 7, 2018, Holmes has not been reinstated.

In November 2016, Respondents commenced formal efforts to collect the Judgment. As part of these efforts, Respondents filed a Verified Petition on January 3, 2017, in the Court of Common Pleas for Charleston County (the “Circuit Court”). 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. However, Messrs. Becker and Grier are employees of Haynsworth Sinkler Boyd and are not attempting to collect the Judgment in their individual capacities. Respondents therefore filed their Motion to Dismiss Certain Parties on or about September 22, 2017. The Circuit Court filed its order granting the Motion to Dismiss on September 29, 2017 (the “Order”). On November 20, 2017, Holmes filed her Notice of Appeal (the “Notice”), and now seeks to appeal the Order.

ARGUMENT

1. The Notice violates the *Doe Order* and must be rejected.

As noted above, the Order Holmes seeks to appeal arises from supplemental proceedings Respondent initiated in order to collect on the Judgment. Because the Judgment was awarded in response to the East Cooper Litigation, it follows that the supplemental proceedings Respondents initiated to collect the Judgment, and thus any orders issued in the supplemental proceedings, likewise arise from the East Cooper Litigation. Thus, any filings made in this matter fall within

the scope of the *Doe* Order. Here, however, the Notice is not signed by an attorney—other than Holmes—who is licensed to practice law in South Carolina, but is signed by Holmes herself. This filing clearly violates the *Doe* Order, and Holmes’ Notice must be rejected. Indeed, this Court has already dismissed another appeal arising from the supplemental proceedings for this exact reason. *See* Order, entered in *Holmes v. Haynsworth, Sinkler & Boyd, P.A., et al*, No. 2017-001460 (S.C. Ct. App. July 7, 2017 (a copy is attached as **Exhibit B**.)

2. The Appeal is untimely and must be dismissed.

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. “[T]he time to file a notice of appeal pursuant to Rule 203(b), SCACR, begins to run when written notice that the order has been entered into the record by the clerk of court has been received.” *Upchurch v. Upchurch*, 367 S.C. 16, 25, 624 S.E.2d 643, 647 (2006). 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)).

As stated above, the Circuit Court filed the Order on September 29, 2017, and Holmes specifically stated in the Notice that notice of the Order was “postmarked” October 4, 2017. (*See* Notice of Appeal 1). However, Holmes did not file the Notice until November 20, 2017—almost two months after the Circuit Court’s notice was postmarked, and well beyond the thirty day

deadline Holmes had to appeal the Order. Therefore, the Notice was untimely, and this Court must dismiss the Appeal.

3. The Order is an un-appealable interlocutory order.

The Order is an un-appealable interlocutory order and, accordingly, the Appeal is impermissible. 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 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 Respondent’s Rule to Show Cause, the purpose of which is to determine whether Holmes has assets to apply toward satisfaction of the Judgment. Simply dismissing parties who do not claim any ownership rights or interests in the Judgment, then, does not affect the merits of the matter before the Circuit Court. Thus, the Order is un-appealable, and the Appeal must be dismissed.

CONCLUSION

Holmes’ Appeal must be dismissed because the Notice violates the *Doe* Order, the Notice is untimely, and the Order on appeal is an un-appealable order. Thus, this Court should grant Respondent’s Motion to Dismiss. In addition, based on the foregoing, Respondent respectfully

requests that this Court hold all deadlines, including the deadline for Respondent to file its response to Holmes' initial brief, in abeyance pending resolution of this Motion to Dismiss.

Respectfully submitted,



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(803) 765-1243 (fax)

Attorneys for Respondents

February 7, 2017
Columbia, South Carolina

The Supreme Court of South Carolina

J. Doe,¹

Petitioner,

v.

Richard L. Duncan, Meredith
Bond, Sidney Gilreath and
Gilreath & Associates,

Respondents.

ORDER

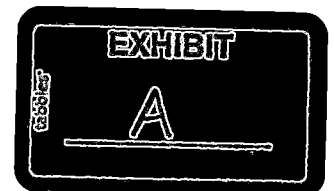
Petitioner has filed a petition for a writ of certiorari seeking review of the Court of Appeals' decision in Doe v. Duncan, Op. No. 2008-UP-596 (S.C. Ct. App. filed Oct. 17, 2008). The petition is denied.

However, this action is just one in a number of frivolous actions petitioner has filed relating to the revocation of her medical staff privileges at East Cooper Community Hospital *in 1997*.² Because we find petitioner has

¹ It is unclear why petitioner was allowed to proceed anonymously in this action. We note further that petitioner has at various times in other actions gone by the name Cynthia Holmes and Cynthia Collic. In order to avoid any confusion, we point out that J. Doe, Cynthia Holmes and Cynthia Collic are one and the same.

² A circuit court judge presiding over one of petitioner's lawsuits, found the following in a recent order imposing sanctions on petitioner:

Throughout the history of this case, Dr. Holmes has proven herself to be profoundly litigious. Since being assigned to Courtesy Staff at East Cooper Hospital in 1997, Dr. Homes engaged in a lengthy, albeit fruitless, administrative appeal of the



The South Carolina Court of Appeals

Cynthia Holmes, Appellant,

v.

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

Of whom Manton Grier and James Y. Becker are Respondents.

Appellate Case No. 2017-001460

ORDER

The appellant filed a pro se notice of appeal from an order of the circuit court indicating a formal order is forthcoming. This appeal is dismissed because the order on appeal is not a final order. *See Metts v. Mims*, 384 S.C. 491, 499, 682 S.E.2d 813, 817 (2009) (finding a form order indicating a formal order will follow is not in any way final). Furthermore, this Court is prohibited from accepting any further pro se filings from the appellant in actions related in any way to the revocation of her medical staff privileges. *Doe v. Duncan*, S.C. Sup. Ct. order dated December 2, 2009. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Columbia, South Carolina


FOR THE COURT

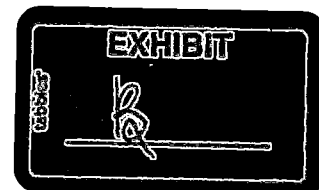
cc:

Cynthia Holmes

Mary M Caskey, Esquire

FILED

July 7, 2017



Hospital's decision. She then sued the Hospital in federal court, and failing there, in state court. She sued Mr. Becker and Mr. Grier and their law firm over the handling of the federal case. She sued two Tennessee lawyers in both South Carolina and Tennessee state courts over their role in achieving a settlement of her state court case against the Hospital. In 2005, Dr. Holmes sued the Hospital in a second action, alleging a wide array of complaints against the Hospital and several physicians, the gist of which was that the Hospital continued to refuse to increase her level of privileges. In Dr. Holmes' 2005 case against East Cooper Hospital, which the Court deemed to be barred by her settlement of the 2000 case, the Court imposed a \$90,000 sanction for violation of the [South Carolina Frivolous Proceedings] Act. In each of the cases Plaintiff has filed *pro se* since settling her 2000 state court case against East Cooper Hospital, Plaintiff has asserted baseless and frivolous claims for which she lacked any evidentiary support. She has launched numerous pointless appeals, every one of which has been resolved in favor of the respondents. Throughout, Plaintiff has made baseless, maybe scandalous, allegations against numerous physicians and lawyers without care, and in absence of evidentiary support. Her tactics have been dilatory, vexatious, that is brought without sufficient grounds, oppressive and unreasonable.

Plaintiff's conduct through the case appears to have been nothing but vexatious, that is, brought without sufficient grounds, and the maintenance of this completely frivolous claim can only be characterized as unreasonable. As before, Dr. Holmes was the losing party in a lawsuit a decade ago. She has persisted in pursuing this case for nearly a decade yet has never adduced a shred of evidence that anything the Defendants did made any difference in the outcome of the federal court action about which she complains.

Clearly, Plaintiff has abused the judicial system generally, and these Defendants in particular, with her unreasonable and ill-considered frivolous lawsuit. Throughout this matter, and in her other cases, Dr. Holmes has repeatedly shown that she is unwilling and unable to evaluate the merits of her own cases, and that she is unable to present any evidence to support her claims. She has evidenced a pattern of abusing the legal process in bringing frivolous actions and the potential remains for her to continue that practice unless severe sanctions are levied against her.

engaged, and continues to engage in, vexatious litigation related to that issue, we hereby direct 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 law in this state.³

³ In addition to the above captioned action, petitioner has filed notices of appeal and petitions for a writ of certiorari in the following actions:

J. Doe v. Manton Grier James Y. Becker and Haynsworth Sinkler Boyd, P. A., as successor to Sinkler & Boyd, P. A. (2002-CP-01-1448 and 2002-CP-40-3705)


Cynthia Holmes, M.D. v. Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier, and James Y. Becker (2007-CP-10-1444)

Cynthia Holmes, M.D. v. East Cooper Community Hospital, Inc.; Tenet Healthsystem Medical, Inc.; John Grady, M.D.; Paul Yantis, M.D. (2005-CP-10-5113)


The latter action is now pending in this Court. Only the appeal at issue has resulted in the issuance of an opinion by the Court of Appeals. The remaining appeals were dismissed by order of the Court of Appeals prior to the issuance of an opinion because the appeals were interlocutory. We note that in these matters, petitioner has filed numerous frivolous motions, indicating her lack of knowledge of or complete disregard for the appellate process.

We also note that petitioner has recently been sanctioned in two of these matters (2005-CP-10-5113 and 2007-CP-10-1444) by the circuit court. By order dated July 27, 2009, the circuit court ordered petitioner to pay \$90,000 in attorney's fees to opposing counsel based on her frivolous initiation and continuation of the proceeding. By order dated November 18, 2009, the circuit court, as noted in footnote 1 above, sanctioned petitioner and entered judgment against her in the amount of \$200,000, noting the amount was not as much as was justified by the facts.


IT IS SO ORDERED.



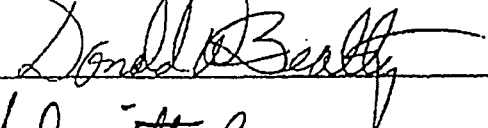
C.J.



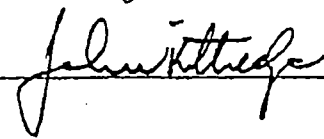
J.



J.



J.



J.

Columbia, South Carolina

December 2, 2009

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9TH Judicial Circuit Court Judge

Case No. 2007-CP-10-1444
Appellate Case No. 2017-002403

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SC Court of Appeals

Cynthia Holmes, M.D.,

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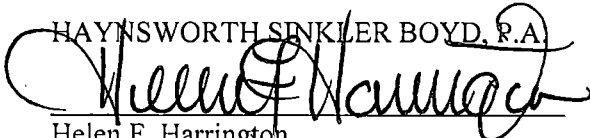
CERTIFICATE OF SERVICE

I, Helen F. Harrington, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused a copy of the **Respondents' Motion to Dismiss Appeal and to Hold Deadlines in Abeyance** to be placed in the U.S. Mail, postage prepaid, addressed to Plaintiff at her last known address, which address is as follows:

Cynthia Holmes, M.D.
Post Office Box 187
Sullivans Island, SC 29482

this 7th day of February, 2018.

HAYNSWORTH SINKLER BOYD, P.A.


Helen F. Harrington
Litigation Paralegal

Columbia, South Carolina

Haynsworth
Sinkler Boyd, P.A.

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February 7, 2018

VIA HAND DELIVERY

The Honorable Jenny Abbot Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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FEB 07 2018
SC Court of Appeals

Re: *C. Holmes, M.D. v. James Y. Becker, Manton Grier, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.*
Case No. 2007-CP-10-1444
Appellate Case No. 2017-002403
HSB File No. 04625.1439

Dear Ms. Kitchings:

Enclosed in connection with the referenced matter is an original and (6) copies of the Respondents' Motion to Dismiss, together with our Proof of Service on Appellant and this firm's check in the amount of \$25.00. We would appreciate your having the originals filed and returning one clocked copy to me via my courier.

Thank you for your attention to this matter, and please let me know if you have any questions.

Sincerely yours,



Mary Cothonneau Eldridge

MCE/rhb

Cc: Cynthia Holmes, M.D.
Mary M. Caskey, Esq. (via e-mail only)