

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM DARLINGTON COUNTY S.C. SUPREME COURT
Circuit Court

J. Michael Baxley and Paul M. Burch, Circuit Court Judges
Case No. 10-CP-16-0332
Appellate Case No. 2017-00681

Pee Dee Health Care, P.A. Respondent.

v.

Estate of Hugh S. Thompson Petitioner.

BRIEF OF RESPONDENT

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Statement of the Case

This matter was initiated in 2010 in Darlington County. Respondent Pee Dee Health Care (“Pee Dee”), Tony R. Megna (“Megna) and Matthews & Megna, LLC (“Law Firm”)¹ previously appealed certain rulings to the Court of Appeals.² While that appeal was pending, Petitioner Estate of Thompson (“Petitioner”) moved for costs and attorney’s fees, which were granted by the Court of Appeal’s Order dated March 28, 2014, and for sanctions, which were denied by separate order on the same date.

After remand to the Circuit Court, Petitioner filed another Motion for Sanctions against Pee Dee’s prior counsel, Tony R. Megna and Benjamin R. Matthews, and their law firm. A hearing was held on March 27, 2014 (the day before the Court of Appeals granted certain fees to Respondent). On April 15, 2014, the Honorable J. Michael Baxley issued an Order Granting Rule 11 Sanctions Against Pee Dee, Megna and Law Firm, and any Successors or Assigns. Judge Baxley rejected as untimely Petitioner’s motion for sanctions under the Frivolous Civil Proceedings Sanctions Act (FCPSA). Pee Dee, Megna and Law Firm moved to alter or amend the order. By Order dated May 12, 2014, the Honorable Paul M. Burch³ denied the motion and this appeal followed.

¹While the Circuit Court’s was directed to Pee Dee, and its counsel Tony Megna, and Matthews & Megna, and all of these entities or individuals filed the Notice of Appeal, the appellate courts have provided the above-case caption which only included Pee Dee as a party.

² The two appeals that have some relevance to this case were given Tracking Nos. 2011103391 and 2011197671. Some references to those cases may be made herein, and this Court can take judicial notice “of its own records, files and proceedings for all proper purposes including facts established in its records.” *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984).

³ After the issuance of the order granting sanctions, Judge Baxley retired. Judge Burch, as the Chief Administrative Judge for the Fourth Judicial Circuit thus undertook review of the motion.

On November 2, 2016, the Court of Appeals, in a unanimous published opinion authored by the Honorable Bruce Williams, vacated the Circuit Court's Rule 11 sanctions order, concluding that Petitioner's delay of more twenty-eight (28) to thirty-three (33) months before filing the Rule 11 sanctions motion was unreasonable and therefore the motion was untimely. The Court of Appeals affirmed the Circuit Court's ruling that Petitioner's FCPSA motion for sanctions was untimely.

Petitioner petitioned the Court of Appeals for a re-hearing, *en banc* suggestion, and on February 21, 2017, the Court of Appeals denied the petition. Petitioner then sought certiorari from this Court, which was granted. In their Brief to this Court, Petitioner has improperly raised issues for the first time, argued against precedent, and seeks the institution of a new rule that should not be applied to Respondent.

Statement of Facts

This case has a long history, having originally been filed in 2010, and having already had certain issues appealed. Pee Dee sued an employee, Dr. Thompson (R. 62-81). Pee Dee paid Dr. Thompson to treat patients and in exchange, Dr. Thompson assigned to Pee Dee his Medicare payments for treating patients. (Id.) Pee Dee billed Medicare for those services pursuant to its assignment with Dr. Thompson. However, unbeknownst to Pee Dee, Dr. Thompson was not approved by Medicare to receive payment for treating patients and in 2007, the Centers for Medicare and Medicaid demanded that Pee Dee repay over \$200,000. Pee Dee sought reimbursement from Dr. Thompson (or his estate). Id.

During the litigation, Petitioner sought to disqualify Pee Dee's attorney, Megna. By order of April 19, 2011, Megna was disqualified, and he appealed this order (R. 1-9). While the appeal on disqualification was pending, the Circuit Court issued an order granting Petitioner summary

judgment on August 29, 2011. (R. 12-27).⁴ Pee Dee's Notice of Appeal was filed on November 7, 2011. (R. 10-11).⁵ Importantly, Petitioner did not file a motion for sanctions after the summary judgment (either after the informal ruling by the judge or the formal summary judgment order) and before the notice of appeal.

By unpublished decision filed July 3, 2011, the Court of Appeals dismissed Pee Dee's appeal of the summary judgment ruling as untimely. The Court did not determine the merits of the disqualification, finding it was mooted by the dismissal of the summary judgment appeal. Pee Dee filed a Petition for Rehearing, which was denied on August 8, 2013. Pee Dee filed a Petition for Writ of Certiorari which was declined.

While the matter was pending on appeal, Petitioner filed motions for attorney's fees and for sanctions in the Court of Appeals. In addition, Petitioner filed a motion for sanctions under the South Carolina Frivolous Proceedings Act and Rule 11 of the South Carolina Rules of Civil Procedure in Circuit Court on January 7, 2014. At the March 27, 2014 hearing held in Circuit Court, counsel for Petitioner informed the court that a motion for sanctions was pending before the Court of Appeals for the same essential reasons as set forth in the Motion for Sanctions before the Circuit Court (R. 169-170). By order dated March 28, 2014, the Court of Appeals denied Petitioner's Motion for Sanctions against Pee Dee and its counsel.

On April 21, 2014, the Circuit Court granted the Motion for Sanctions under Rule 11 only, but it limited compensation to time spent by Petitioner's attorneys in three areas, that it categorized as follows:

⁴ The trial court had actually issued a letter on August 12, 2011, indicating that Thompson would be granted summary judgment and that a formal order would follow.

⁵ In the interim, a motion to reconsider was filed and denied. (R. 28).

- 1) Mr. Megna's continuing failure to accept the court's ruling on disqualification;
- 2) Responding to various subpoenas; and
- 3) Pursuing the motion for sanctions.

(R. 57). The lower court requested that Petitioner's counsel submit an amended fee affidavit for those areas only. *Id.* Petitioner submitted an affidavit in the amount of \$60,300, to which Pee Dee objected. The lower court ultimately awarded \$6,910 on the disqualification issue; \$9,070.00 for discovery requests issued by Mr. Megna; and \$18,170.00 for time spent on the sanctions motion. *Id.* The Circuit Court, however, denied Petitioner's motion for sanctions under the FCPSA, concluding that the motion was untimely.

Pee Dee moved to alter or amend the lower court's order, and on May 12, 2014, the court denied the motion. This appeal followed.

The Court of Appeals vacated the Circuit Court's Rule 11 sanctions order, concluding that Petitioner's delay of more than twenty-eight (28) months after the circuit court awarded summary judgment and more than thirty-three (33) months from the order of disqualification before filing the Rule 11 sanctions motion was unreasonable and therefore the motion was untimely. The Court of Appeals also affirmed the Circuit Court's ruling that Petitioner's motion for sanctions under the FCPSA was untimely.

Argument

I. The Court of Appeals' decision correctly determined that a thirty-three (33) month delay before the filing of a Rule 11 sanctions motion was unreasonable and no clarification or new "bright line" rule is needed.

There is nothing novel or even remarkable about the Court of Appeals' decision that Petitioner's thirty-three (33) month delay before filing the Rule 11 sanctions motion was unreasonable and therefore the motion was untimely. Petitioner argued before the Court of Appeals that Rule 11 sanctions motions are not governed by the same ten (10) day deadline as

motions under the FCPSA. The Court of Appeals agreed.

Rather, after carefully reviewing this Court's precedent, the South Carolina Rules of Civil Procedure, decisions from other states' appellate courts, and the law interpreting the federal Rule 11, the Court of Appeals concluded that Rule 11 motions for sanctions must be filed "within a reasonable time after discovering the alleged improprieties." Petitioner claims a new "bright-line" rule must be established allowing a party that prevailed in the trial court, to have ten days after remittitur from an appellate court, to seek sanctions.⁶ The Court of Appeals decision is consistent with the case law and the rules, and no "bright-line" rule needs to be established. However, even if such a rule is established, it should not be retroactively applied to this case. See, *Wells Fargo Bank, N.A. V. Fallon Properties South Carolina, LLC*, Shearouse Adv. Sh. February 28, 2018, p. 104. ("Nevertheless, fairness dictates that our holding on this issue be applied prospectively given the novelty of the issue....").

II. Rule 54, SCRPC, does not provide Petitioner with a new ten-day window after remittitur in which to file a motion for sanctions.

Petitioner, citing Rule 54(d), SCRPC, claims that there is a clearly recognized period of jurisdiction upon remittitur by an appellate court, thereby allowing it to file, for the first time, a motion for sanctions either under the FCPSA or Rule 11.⁷ Petitioner raised this issue for the first time in the petition for certiorari, and as this Court has clearly held:

It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C.

⁶ This appears to be slightly different than the relief initially sought in the Petition for Certiorari. In that document, Petitioner acknowledged the existence of time constraints under Rule 11. Petition, p. 7. However, the Petitioner seemed to disagree with the Court of Appeals factual determination that thirty-three (33) months was an unreasonable delay.

⁷ Rule 54 addresses a motion for costs but not a motion for sanctions under Rule 11 or the Frivolous Proceedings Act.

24, 491 S.E.2d 571 (1997).

Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Furthermore:

an issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge. *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733; *see also S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 641 S.E.2d 903 (2007) (finding that although SCDOT did not phrase objection in the exact terms used in the issues on appeal, the objection was sufficiently specific to allow the trial court to rule on the issue).

Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011).

While Petitioner has previously claimed that the motion for sanctions was timely, it did not raise Rule 54, SCRCP, to the trial court or even to the Court of Appeals. In other words, neither the Circuit Court nor the Court of Appeals had the opportunity to interpret Rule 54 in the context of this case. Since the matter was neither raised, nor ruled upon, it should not be considered for the first time by this Court.

Moreover, even if Petitioner's argument is considered, Rule 54(d) does not apply here. Petitioner, while claiming that Rule 54(d) supports a delay when seeking costs in appealed case, is disingenuous in only citing a portion of the rule. In reviewing the first part of Rule 54(d), it is clear that the rule presumes that a prevailing party filed a motion within ten days of the judgment and prior to any appeal:

A motion for costs, supported by an affidavit that the costs are correct and were necessarily incurred in the action, may be filed by the prevailing party within 10 days of the receipt of written notice of the entry of final judgment. Upon notice that the matter has been appealed, the clerk may delay the taxation of costs until the appeal is completed.

Rule 54(d), SCRCP. In addition, Petitioner's claim that costs may be sought in the ten day window following "written notice of entry of the final judgment *after* appeal" (Pet. Brief, p. 13, emphasis in original) ignores the fact that this window only applies to who lost in the trial court and then prevailed on appeal:

A party *who prevails for the first time on appeal* may file a motion for costs, as provided herein, within 10 days of written notice of the entry of the final judgment after appeal.

(emphasis added). Petitioner was the prevailing party at the summary judgment hearing in August 2011. Thus, even if the issue of Rule 54 is considered in this appeal, it would not apply to a post-appeal motion by the Petitioner, who prevailed in the trial court but who failed to timely file a motion for sanctions in that court.

III. The Court of Appeals' decision is consistent with the case law on the FCPSA and Rule 11.

A. The FCSPA

There is nothing novel about the Court of Appeals' ruling that Petitioner's motion under the FCPSA made more than ten (10) days after the entry of the lower court's summary judgment order was untimely. This Court in *Pittman v. Republic Leasing Co., Inc.* 351 S.C. 429, 570 S.E.2d 187 (2002), ruled that a party must file a motion under the FCPSA within the ten (10) day time limit applicable to post-trial motions under Rule 59. Furthermore, if the party does not file the motion within the ten (10) days as provided under Rule 59, the trial judge loses jurisdiction to hear the matter. Specifically, this Court explained:

Because a trial judge retains jurisdiction pursuant to Rule 59(e), SCRCP, to alter or amend a judgment within ten days of its issuance, a motion for sanctions would be timely if filed within ten days of judgment. Here, however, Republic Leasing waited until almost two months after the grant of summary judgment to move for sanctions under the Act. At that time, the trial judge no longer had jurisdiction over the case... Absent specific statutory language vesting the trial judge with continuing jurisdiction, we refuse to hold that a trial judge retains jurisdiction to consider a motion for sanctions beyond ten days after entry of the judgment.

351 S.C. at 432-433, 570 S.E.2d at 189-190.

Two years later in *In re: Beard*, 359 S.C. 351, 597 S.E.2d 835 (2004), this Court re-affirmed this ruling stating "[t]he established case law is that a trial judge loses jurisdiction over

a case when the time to file post-trial motions has elapsed.” *Id.* at 358; 597 S.E.2d at 838.

Petitioner wants to argue against the precedent set by *Pittman, Beard*, and *Russell v. Wachovia* (discussed *infra*) and claim that because this was an appeal from the summary judgment order, this ten (10) day window is expanded. Petitioner also claims that since the motion was filed within ten days of remittitur from the Court of Appeals, it should have been found to be timely.

The Court of Appeals correctly concluded that Petitioner is “mounting, in essence, a direct challenge to” this Court’s precedent. As the Court of Appeals recognized, if the General Assembly wanted to extend the time for a motion to ten days after remittitur, it could amend the FCPSA. However, under the statute and the precedent interpreting it, the Circuit Court lost jurisdiction to rule on a FCPSA motion that was not filed within ten days of the grant of summary judgment or the order denying reconsideration.

Petitioner also mischaracterizes *Russell v. Wachovia*, 370 S.C. 5, 633 S.E.2d 722 (2006), claiming that it, along with Rule 54(d), SCRCP,⁸ allows for a renewed ten day window after remittitur for either Rule 11 or FCPSA sanctions. Petitioner is mistaken. In *Russell*, unlike this case, the moving party filed for sanctions in the trial court prior to appeal, within ten days of the filing of the order granting summary judgment. The timeliness issue in that case was whether the motion for sanctions was timely filed where the clerk indicated the order was being filed on April 27, 2001, but the order was not actually entered until May 8, 2001. Because the moving party filed within ten days of the entry date of the order, the motion was held to be timely. There is simply nothing in *Russell* that supports Petitioner’s argument that a motion for sanctions can be filed months after a “triggering event” -- i.e., the grant of summary judgment -- as long as it is

⁸ There is no analysis of Rule 54 in *Russell*. Moreover, as noted above, Rule 54 only provides for filing for costs after remittitur if the moving party prevailed for the first time on appeal and thus, provides no support for Petitioner’s arguments.

filed within ten days of remittitur. In fact, *Russell* reinforces the holdings of *Pitman* and *Beard* -- that a judge loses jurisdiction when the time for post-trial motion elapses.

Similarly, Petitioner's reliance on *Rutland v. Holler, Dennis, Corbett, Ormond & Garner (Law Firm)*, 371 S.C. 91, 637 S.E.2d 316 (Ct. App. 2006) is misplaced. *Rutland* does not extend a trial court's jurisdiction to consider a FCPSA motion that is filed more than ten days after judgment. In that case, the court issued a Form 4 order indicating that more formal order dismissing the case would follow. The prevailing party filed a motion under the FCPSA more than ten days after the Form 4 order, but months before the formal order and judgment were filed. The Court of Appeals held that the motion was timely.

Like the other cases Petitioner cites, *Rutland* has no application here. Petitioner did not file a motion for sanctions either after the court issued an informal ruling on summary judgment (August 12, 2011); the denial of reconsideration of the order disqualifying Mr. Megna (August 12, 2011); the formal summary judgment order (filed September 1, 2011); or the order denying Respondent's motion for reconsideration of summary judgment (filed September 28, 2011). Had Petitioner filed at any point in that time frame or within ten days of the denial of reconsideration, there would be no question that the motion was timely.

B. Rule 11, SCRCP

While Rule 11 is silent as to the time in which a motion should be filed, the Court of Appeals properly recognized that the purpose of the rule provides guidance as to why the time for filing is not dependent on an appellate decision: "Under Rule 11, the primary purpose of sanction against counsel is not to compensate the prevailing party, but to 'deter future litigation abuse.'" App. 9, citing *Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 151 (4th Cir. 2002)

In determining whether a Rule 11 motion was timely, the court must consider whether it

was filed “within a reasonable time after discovering the inappropriate conduct.” (App. 13). Petitioner attempts to invoke *Hicks v. Southern Maryland Health Systems Agency*, 805 F.2d 1165 (4th Cir. 1987), for the proposition that judicial efficiency favors the filing of a Rule 11 motion after the appeal is concluded. However, *Hicks* is not controlling and involves the interpretation of federal case law and a federal rule on the timing of a motion for fees.⁹ The court in *Hicks* merely stated that a ten-day requirement, like that of Rule 59(e), did not apply to Rule 11, but it did not address the reasonableness of the timing Rule 11 motion. *Id.* at 1166. Furthermore, while the court upheld the fees awarded by the district court several months after remittitur from the appellate court, it was ambivalent as to whether a motion should be filed before or during an appeal of the merits, or after the appeal’s conclusion, stating: “It is not for us, however, to speculate whether it was better pressed earlier than later.” *Hicks* at 1167. The Court of Appeals, however, properly determined that promptness was key in filing a motion for sanctions in order to serve deterrence and efficiency purposes of Rule 11. (App. 13).

Here, as noted above, the Circuit Court’s order granting summary judgment was filed September 1, 2011.¹⁰ Petitioner claims that the allegedly sanctionable actions took began in 2010. However, the Motion for Sanctions was not filed until January 16, 2014--over two years later after

⁹ Similarly, other federal case “precedent” cited by Petitioner does not apply. In *White v. New Hampshire Dep’t of Employment Sec.*, 455 U.S. 445 (1982), the court simply held that a motion for attorney fees under 47 U.S.C.A. § 1988 was not subject to a ten-day limitation. That case did not even mention a motion for sanctions or Rule 11. In *Chambers v. NASCO, Inc.*, 501 U.S. 32, 56 (1991), the court held that that the District Court’s award of inherent power to order sanctions years later than judgment did not represent an end run around the notice requirements of Rule 11. Or course, this Court declined to grant certiorari as to the question of a Circuit Court’s inherent power and thus, *Chambers* has no application here.

¹⁰ While Respondent filed a Rule 59(e) motion on September 13, 2011 (R. 28), Petitioner could have filed its own post-trial motion for sanctions in that same time period.

summary judgment and more than three years after the allegedly sanctionable conduct began. In addition, the Petitioner had over a month between the order denying consideration of summary judgment (September 28, 2011) and the filing of the appeal (November 7, 2011)¹¹ in which to file a motion for sanctions, but it failed to do so.

Furthermore, the deadline Petitioner seeks ignores the logic and holding of *Griffin v. Sweet*, 525 S.E.2d 504 (N.C. App. 2000), in which the court determined that the crucial point is the reasonableness of the time period after discovering the conduct that forms the basis for the motion:

Although Rule 11 does not specify a time limit for filing a sanctions motion, this Court has held that “a party should make a Rule 11 motion within a reasonable time after he discovers an alleged impropriety.”

Griffin at 506. In *Griffin*, the North Carolina court noted that the plaintiff had been put on notice of the allegedly sanctionable conduct at both the answer and summary judgment stage. Thus, the time frame for the reasonableness of the motion for sanctions began at that time, as it should here. Instead, Petitioner filed thirty-three the months after it had notice of the allegedly sanctionable conduct. By Petitioner’s own admission, it became aware the conduct which it claims warrant sanctions in 2010 or early 2011, demonstrating the Petitioner’s inappropriate delay in filing the Rule 11 motion almost three years later.

C. Judicial efficiency

Petitioner claims that filing after remittitur promotes judicial efficiency, relying on *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014).¹² Petitioner claims

¹¹ As noted in the Statement of Facts, that appeal was ultimately dismissed as untimely.

¹² Of course, as the Court of Appeals pointed out: “While the [Petitioner] argues that waiting until the conclusion of the case was more efficient, we respectfully disagree. The fact that this court is reviewing yet another issue in this contentious case in a separate appeal only further

that even though the motion for sanctions came at the conclusion of trial (and not an appeal), the trial was seven years after the litigation was instituted, a longer delay than Petitioner's in this case.

Of course, in that case, the moving party did not prevail until the close of trial, and thus could not seek sanctions under the FCSPA until that time. See, S.C. Code § 15-36-10 (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.") (emphasis added). Here, of course, Petitioner prevailed on summary judgment in 2011 and could have (and should have) promptly moved for sanctions.¹³

While Rule 11 does not expressly say that sanctions are available only to a "prevailing party," the "criteria for Rule 11 sanctions are essentially the same as those for sanctions under the [FCPSA]." *In re Beard*, 359 S.C. 351, 360, 597 S.E.2d 835, 839 (Ct. App. 2004). In addition, *Burns v. Universal Health Services, Inc.*, 340 S.C. 509, 513, 532 S.E.2d 6, 9 (Ct. App. 2000) stated that under Rule 11, "an attorney may be sanctioned for filing a frivolous proceeding, motion, or other paper, or for making frivolous arguments." The only way to determine whether there a filing or argument was frivolous or supported by was good grounds is after a court ruling, i.e., a determination of the "prevailing party." Again, the moving party in *Holmes* did not prevail until directed verdict at trial whereas Petitioner prevailed at summary judgment (and the prevailing party *Holmes* timely filed a sanctions motion). Moreover, the issue of the timeliness of the motion for

demonstrates the point that it was inefficient for the Petitioner to delay in bringing the motion for sanctions." (App. 13).

¹³ In *Holmes*, the trial court had denied a motion for summary judgment because it determined that it did not have time "on the eve of trial" to review the extensive file in the case. At trial, the moving party prevailed on a motion for directed verdict.

sanctions (whether under the FCPSA or Rule 11) after an appeal was not raised in *Holmes* and therefore not addressed by that court.¹⁴ That case provides no support for Petitioner's position.¹⁵

IV. Given the untimeliness of Petitioner's motion, Petitioner is not entitled to any amount of sanctions.

Petitioner claims even though the case resolved in its favor, it cannot be made whole until it is awarded the full amount of sanctions initially sought due to Mr. Megna's conduct. However, Petitioner had an obligation to timely submit a motion for sanctions for any allegedly sanctionable conduct. Having failed to do so, it is not entitled to any amount. Plaintiff should not be rewarded for its failure to act timely.

Moreover, even if this Court fashions a new "bright line" rule allowing a motion for sanction to be filed, for the first time, within ten days after remittitur from the appellate courts, this new rule or remedy must be applied prospectively. See, *Wells Fargo Bank, N.A. V. Fallon Properties South Carolina, LLC*, Shearouse Adv. Sh. February 28, 2018, p. 104. ("Nevertheless, fairness dictates that our holding on this issue be applied prospectively given the novelty of the issue....). Therefore, Petitioner would not be entitled to any amount of sanctions.¹⁶

¹⁴ "[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *Langley v. Boyter*, 284 S.C. 162, 181–82, 325 S.E.2d 550, 561 (Ct. App. 1984), opinion quashed on other grounds, 286 S.C. 85, 332 S.E.2d 100 (1985).

¹⁵ Petitioner also suggests that the trial court has "inherent authority" to award sanctions independent of Rule 11 or FCPSA. Pet. Brief, p. 4. To allow such inherent authority without any limitation as to time or scope would eviscerate both Rule 11 and FCPSA (and precedential interpretations) and should not be permitted. Moreover, this Court refused to grant certiorari to review this issue raised in question number II of the Petition. Thus this issue is not properly before the court.

¹⁶ As Petitioner notes, having determined the motion was untimely, the Court of Appeals did not address the Petitioner's cross-appeal for additional sanctions. The Petition for Certiorari did not even include the amount of sanctions awarded and thus, it does not appear that grant of certiorari includes the propriety of the amount. However, as fully set forth in Respondent's briefs to the Court of Appeals, the Circuit Court correctly declined to include certain matters in the Rule 11

Conclusion

There is no need for the Court to fashion a new rule creating a ten day window after remittitur file a motion for sanctions, either under the FCPSA or Rule 11. The determination that Petitioner's motion for sanctions was untimely is consistent with this Court's precedent, the South Carolina Rules of Civil Procedure, and court rulings interpreting Federal Rule 11. Furthermore, Rule 54, SCRCP does not, as Petitioner claims, support a new ten-day window after remittitur for a party that prevailed at the trial court to file for sanctions either under the FCPSA or Rule 11. As the prevailing party at summary judgment, the Petitioner's failure to file before any appeal, thus leading to at least a twenty-eight (28) delay before seeking sanctions, is unreasonable. However, should this Court decide to create a new rule regarding the time to file after remittitur, any such rule should be applied prospectively only and not to the case at bar.

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award of sanctions, though Respondent argued that even those allowed by the Circuit Court were not supported by the law or the evidence. Respondent's arguments regarding the amount of sanctions are reincorporated herein, but are in effect, moot, because the Petitioner's motion was untimely. Should this Court rule that Petitioner's motion (or any portion thereof) was timely, this matter should be remanded to the Court of Appeals to determine any amount of sanctions.

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J. Michael Baxley and Paul M. Burch, Circuit Court Judges
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Appellate Case No. 2017-00681

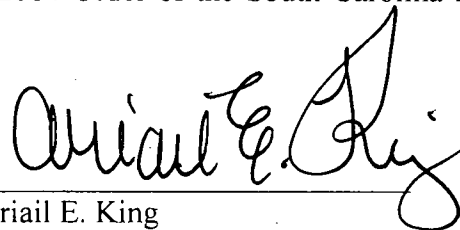
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Estate of Hugh S. Thompson.....Petitioner.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Brief of Respondent as Respondent complies with Rule 211(b) SCACR and with the August 15, 2014 Order of the South Carolina Supreme Court regarding personal identifiers.



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Columbia, South Carolina
March 7, 2018

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APPEAL FROM DARLINGTON COUNTY
Circuit Court

MAR 08 2018

S.C. SUPREME COURT

J. Michael Baxley and Paul M. Burch, Circuit Court Judges
Case No. 10-CP-16-0332
Appellate Case No. 2017-000681

Pee Dee Health Care, P.A.....Respondent,

v.


Estate of Hugh S. Thompson.....Petitioner.

PROOF OF SERVICE

I, Kathy A. Collins, legal assistant with the law firm of Lewis Babcock, L.L.P., do hereby certify that I have served a copy of the Brief of Respondent's upon opposing counsel by mailing a copy of same, postage prepaid and return address clearly indicated, to said opposing counsel addressed as follows:

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Kathy A. Collins

March 8, 2018.

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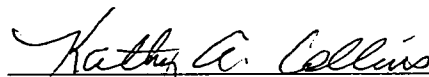
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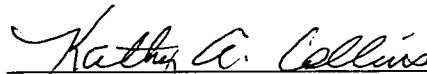
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