

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

2018 FEB 19 AM 10:32
MARY P. BROWN,
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED
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AMY KOVACH,

Plaintiff,

v.

Civil Action No. 2015-CP-08-2380

JOSHUA S. WHITLEY and
KAREN WHITLEY in her
Individual Capacity,

Defendants.

JOSHUA S. WHITLEY,

Defendant/Counterclaimant,

v.

AMY KOVACH,

Plaintiff/Counterclaim Defendant.

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SC Court of Appeals

JOSHUA S. WHITLEY,

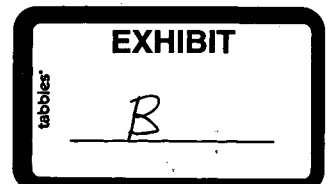
Defendant/Third-Party Plaintiff,

v.

RODNEY THOMPSON

Third-Party Defendants.

#18183



**ORDER DENYING MOTIONS FOR RECONSIDERATION AND
AWARDING SANCTIONS**

This matter is before the Court on the Motions for Reconsideration filed herein by Plaintiff Amy Kovach ("Ms. Kovach" or "Plaintiff") and her former counsel, Nancy Bloodgood, Esq. ("Ms. Bloodgood"), in which they seek reconsideration of the Court's Order entered on October 21, 2016 (the "October 21 Order") granting the motions for sanctions filed herein by Defendants, Josh Whitley ("Mr. Whitley") and Karen Whitley ("Dr. Whitley") (together, "the Whitleys"), under Rule 11 of the South Carolina Rules of Civil Procedure ("SCRCP"), and the South Carolina Frivolous Civil Proceedings Sanctions Act ("FCPSA"), S.C. Code Ann. § 15-36-10, *et seq.*

Upon consideration of the arguments raised in the parties' briefs and during oral argument on January 17, 2017, the Court DENIES the respective motions to reconsider, but will amend several factual errors in the October 21 Order that were brought to the Court's attention during the hearing on January 17, 2017. The merits of the October 21 Order awarding sanctions against both Ms. Kovach and Ms. Bloodgood under both Rule 11, SCRCP, and the FCPSA, remain in effect, and the factual findings and conclusions of law in the October 21 Order are incorporated herein by reference.

Having denied the motions for reconsideration, the Court has considered the amount of sanctions to be awarded. The Court finds that Ms. Kovach deliberately and intentionally pursued a lawsuit against the Whitleys and others premised on facts at complete variance with her sworn admissions to the comprehensive factual recital of the Attorney General in her original pleas as well as her admission to the specific elements of the two counts to which she entered pleas of guilty on August 28, 2015. Ms. Kovach has

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since blamed Ms. Bloodgood for her part in the frivolous filing and has never been able to unconditionally accept responsibility for her actions in this matter.

The Court further finds that Ms. Bloodgood originally lodged the suit against the Whitleys based on an affidavit created by Ms. Kovach in connection with the pursuit of an employment grievance against the Berkeley County School District. Ms. Bloodgood only learned after she filed the suit on October 15, 2015, that the plea judge, the Honorable W. Jeffrey Young, would conduct a Rule to Show Cause hearing on February 8, 2016, on the question of whether the matters alleged in the grievance filing and in the Complaint were false in light of Ms. Kovach's earlier plea. However, as the Court observed in its October 21 Order, Ms. Bloodgood had knowledge that Ms. Kovach's claims against the Whitleys lacked viability prior to the filing of the Complaint, yet she filed it anyway. Ms. Bloodgood cannot claim that she had to rely merely upon her client's representations, because she had in her possession, and had reviewed, (1) the hearing transcript from the August 28, 2015, plea hearing; and (2) the letter of Deputy Assistant Attorney General Creighton Waters dated August 31, 2015, detailing the facts supporting the charges that Ms. Kovach admitted to during the guilty plea proceedings, and therefore should have known that her client's sworn admissions and the facts detailed in Waters' letter were at complete variance with the allegations of her Complaint. As such, Ms. Bloodgood unreasonably trusted Ms. Kovach's assertions. The Court regards Ms. Bloodgood's sins as sins of omission, in that she did not tell a very aggressive client "no." The Court notes that Ms. Bloodgood did make efforts to dismiss the lawsuit against the Whitleys, but only after the hearing on the Rule to Show Cause on February 8, 2016.

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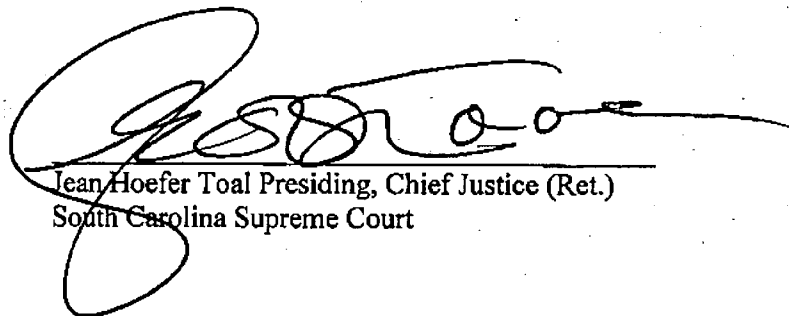
In accordance with the foregoing findings, and upon consideration of the sanctions available under Rule 11, SCRCP, and Section 15-36-10G(1) of the FCPSA, the Court awards the following attorneys' fees and costs, which account for the legal fees occurring at various stages after the filing of the frivolous lawsuit, efforts on the part of Ms. Bloodgood and Ms. Kovach to dismiss the matter, and the efforts of counsel to pursue sanctions:

The Court finds that Dr. Whitley is entitled to a total of \$15,000 in attorneys' fees. Ms. Kovach shall pay \$13,000, and Ms. Bloodgood shall pay \$2,000 of the fee.

The Court further finds that Mr. Whitley is entitled to a total of \$50,000 in attorneys' fees. Ms. Kovach shall pay \$35,000, and Ms. Bloodgood shall pay \$15,000 of the fee.

Payment on the sanctions award shall be made within thirty days of the entry of this Order.

IT IS SO ORDERED.



Jean Hofer Toal Presiding, Chief Justice (Ret.)
South Carolina Supreme Court

Feb. 13
January __, 2018

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