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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Roger L. Couch, Circuit Court Judge

Case Nos. 2016-ES-01-00302, 2016-CP-21-1435, 2015-ES-21-00778
Appellate Case No. 2017-002290

Deborah B. Harwell, Respondent/Appellant,

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,
Division of Vital Records, Defendants,

Of whom Robert Bryan Harwell, individually
and as the Personal Representative of the
Estate of David W. Harwell is the Respondent/Appellant,

And the South Carolina Department of
Health and Environmental Control,
Division of Vital Records is the Respondent,

v.

Law Office of Deidre W. Edmunds, P.A.
and Deidre W. Edmunds, Individually, .. Appellants/Respondents.

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STATEMENT OF ISSUES ON APPEAL

- I. Did the circuit court err in failing to sanction a lawyer for claiming in civil litigation that an opposing litigant had committed a felony when the allegation lacked any reasonable basis and had no conceivably proper purpose?
- II. Did the circuit court err in failing to sanction a lawyer for continuing to assert a claim that was barred by an order in prior litigation when there was no objectively reasonable basis for believing a good ground supported the claim's continued assertion?
- III. Whether the circuit court erred in reducing the sanctions awarded in this case by the separate sanctions awarded in family court when those sanctions concerned different instances of misconduct?

STATEMENT OF THE CASE

A. Beginning Summary

This appeal involves the unpleasant subject of sanctions. This case began in probate court, but the story of this litigation actually starts with a family court mediation.

David Harwell brought a family court suit against his wife Debbie in March of 2015. (RBH 4/1/16 Ans. to Creditors Claims, Ex.A, p.3). David sought a decree of separate support and an order enforcing the parties' prenuptial agreement. *Id.*

The parties successfully mediated the case in July of 2015 and executed a "mediation agreement" memorializing the case's settlement. (Id.Ex.B, pp.1-4). The family court approved the mediation agreement and incorporated it into a final order. (Id.pp.3-7).

These two settlement documents—the mediation agreement and the final order approving it—play a central role in everything that comes later.

The settlement documents resolved all issues arising out of David and Debbie's marriage except the divorce itself. (Id.p.3, ¶8 & p.1, ¶2). Debbie got the parties' house in

North Carolina, a one-time payment of \$75,000 in alimony, certain health and retirement benefits, and other items of personal property. (Id.pp.1-2, ¶¶3-8). The parties were also explicitly restrained from disparaging each other, disparaging each other's family, and from contacting each other. (Id.p.3, ¶10). The settlement documents included straightforward waivers of the right to make a claim against the other party's estate. (Id.p.3, ¶12).

David died in September of 2015, two months after the mediation agreement and the family court order. (RBH 4/1/16 Ans. to Surviving Spouse Claim, Ex.2, p.1).

David's death certificate indicates his marital status as "married but separated." (Death Cert.). It indicates "NA" for his surviving spouse. *Id.* As with the settlement documents, the death certificate played a prominent role in the ensuing litigation.

B. Formal Proceedings up to the Order of Sanctions

In January of 2016, about four months after David died, Debbie filed two pro se claims against David's estate. (4/12/17Or.p.2). One sought \$3.1 million based on a "prenuptial agreement." *Id.* The other sought payment for an obituary Debbie published.

David's estate disallowed the claims and began contempt proceedings in family court. The estate claimed multiple violations of the settlement agreement. (RBH 4/1/16 Ans. to Surviving Spouse Claim, Ex.4, pp.9-29). The alleged violations included misappropriating David's cell phone, stealing David's mail, failing to honor the parties' agreement regarding their 2014 tax refund, violating the agreement's mutual restraining order, interfering with David's financial accounts, and bringing the monetary claims against David's estate. *Id.*

Debbie made a third claim against the estate in March. This sought amendment of David's death certificate to reflect Debbie as David's surviving spouse. (3/1/16 Pet., pp.1-7).

A few days after filing the suit over whether she was David's surviving spouse, Debbie filed two petitions from the personal representative's decision disallowing her monetary claims against David's estate. (3/9/16 Petitions).

These three probate court filings in March of 2016—the surviving spouse petition and the two monetary petitions—were filed on Debbie's behalf by attorney Dierdre Edmonds.

The estate brought counterclaims in probate court and sought sanctions against Debbie as well as Edmonds. (RBH 4/1/16 Answers). This was in addition to the contempt proceedings that were already pending against Debbie in family court.

Two things about the estate's case are particularly important. First, recall that the settlement agreement barred Debbie from making any claims against David's estate. The estate's answer to Debbie's claims directly referenced this waiver. (RBH 4/1/16 Ans. to Creditor Claims, pp.2-3 ¶¶4-5). Second, the estate alleged Debbie was not David's surviving spouse and supported this allegation with specific direction to the probate code. (RBH 4/1/16 Ans. to Surv. Spouse Claim, p.3 ¶8). Someone is not a "surviving spouse" for succession purposes if there is an order terminating all marital rights between the parties and if the parties are not living together as husband and wife at the time of the decedent's death. *Id.* (citing S.C. Code Ann. § 62-2-802(3) (Supp. ____)). This statute specifically references the elective share statute. See § 62-2-802(b) (referencing S.C. Code Ann. § 62-2-201 (Supp. ____)). These arguments are important because Debbie's filings did not reference these bars to relief or give any indication about how Debbie could overcome them.

This appeal also focuses on something Debbie alleged—and Edmonds signed—in presenting the surviving spouse claim. Debbie's surviving spouse petition accused Bryan

Harwell, the personal representative of David's estate, of committing a crime with respect to reporting the information for David's death certificate. Debbie acknowledged Bryan reported David's marital status as "married but separated." (3/1/16 Pet.p.4, ¶15). She then claimed Bryan "knowingly and willfully supplied false information" by allegedly stating "NA" for David's surviving spouse. (Id.pp.4-5, ¶¶16-19). Debbie's petition conspicuously quoted the relevant statutes explaining willfully supplying false information for a birth or death certificate is a felony. (Citing S.C. Code Ann. § 44-63-161 (Supp. ____)).

Much of what happened in the months after Bryan and the estate answered Debbie's claims is not particularly critical to the issues on appeal, but it is nevertheless instructive in understanding how this litigation proceeded forward.

Parties filed dispositive motions and the probate case was removed to circuit court. In May of 2016, the family court held the first day of contempt hearings. (4/12/17 Or.p.6).

A few days after the first day of contempt hearings Debbie filed a fourth claim against David's estate. (5/25/16 Pet.). This was a pro se claim for an elective share. *Id.*

That same day, Debbie filed a pro se motion in family court to set the settlement agreement aside. (RBH Rule 59 Mot., Ex.A). The motion alleged "fraud, misrepresentation and other misconduct of an adverse party." *Id.* There was no further explanation.

In June of 2016 the family court conducted the second day of contempt hearings. In July of 2016 it issued a lengthy order holding Debbie in contempt. (Contempt Or.pp.1-16). Debbie has appealed the contempt order. See C-TRACK Appellate Case No. 2016-002058.

In August of 2016, shortly after the circuit court convened a hearing on the motions to dismiss, Debbie dismissed her monetary claims against the estate. (9/1/16 Stip.).

In October, the parties filed a joint stipulation noting the surviving spouse claim would be dismissed as moot because the death certificate had already been amended. (10/19/16 Stip.p.3, ¶3). The Department of Health and Environmental Control was dismissed as a party. (Id.p.3, ¶4). The case's caption, however, was not amended.

From this point forward, the only things remaining in the case were the counterclaims against Debbie and the request for sanctions against Debbie and Edmonds. (Id.p.2-3, ¶¶6-8).

C. Summary of the Circuit Court's Sanctions Decision

In February of 2017 the circuit court conducting a hearing on the motion for sanctions. (2/2/17 Tr.pp.1-75).

In April of 2017 the circuit court issued its order imposing sanctions. (4/12/17 Or.pp.1-15). The circuit court's findings are in the order's final four pages. (Id.pp.11-15).

The circuit court found all Debbie's monetary claims against the estate were "without merit and frivolous," were barred by the settlement agreement, and that Debbie had been "fully aware [] the agreement and family court order did not allow her to make the claims she was making." (Id.p.11). The circuit court found Debbie took this action willfully, with total disregard for the law, and that her actions were intended to delay the estate and to seek recovery to which she was not entitled. *Id.*

The circuit court took a different approach to Edmonds. It found the obituary claim was frivolous, but it found her action in filing Debbie's \$3.1 million claim was justified because Edmonds did not hold herself out as a family court practitioner. (Id.p.13). The court found Debbie had indicated she intended to challenge the marital settlement in family court and that Edmonds had been in a time constraint for initiating claims in probate court. *Id.*

The circuit court did not award any sanctions with respect to Debbie's surviving spouse claim and found Debbie was justified in bringing that petition. (Id.p.11).

Respecting the allegations that Bryan Harwell had committed a felony, the circuit court found these were "false" and "perhaps overzealous when made," but the court believed these allegations were the product of ongoing distrust between the parties and that Bryan could have acted sooner and resolved the death certificate issue earlier in the litigation. (Id.pp.11-12).

The court assessed a \$5,000 sanction against Edmonds and a \$40,000 sanction against Debbie. (Id.p.14). This was a 10% reduction of the monetary sanctions Bryan sought. The court attributed this reduction to its estimate of fees Bryan could have saved if he had agreed to change David's death certificate at the beginning of the litigation. *Id.* The order also explained Debbie's sanction would be reduced by any money she paid towards the \$25,000 sanction imposed by the family court. (Id.p.15).

All parties filed motions for reconsideration. Among other issues, Bryan contested Debbie's offset for the family court sanction, the failure to sanction Edmonds for accusing Bryan of committing a felony, and the failure to sanction Edmonds for continuing the \$3.1 million claim in the absence of any objectively reasonable basis for concluding there was a good ground supporting such claim. (RBH Rule 59 Mot.pp.2-6).

The court heard the motions to reconsider in July of 2017. (7/19/17 Tr.pp.1-33).

In October of 2017 the circuit court issued its order declining to significantly modify its previous decision. (10/2/17 Or.pp.1-7). The order clarified its prior order in one respect, explaining all Debbie's actions on her monetary claims were improper and frivolous. (Id.p3).

ARGUMENT

The standard of review is de novo because the decision to impose sanctions sounds in equity. *Father v. S.C. Dep't of Soc. Servs.*, 353 S.C. 254, 260-61, 578 S.E.2d 11, 14-15 (2003). Precedent indicates the appellate court applies the abuse of discretion standard to the sanctions if it agrees with the trial court's factual findings. *Id.* at 261, 578 S.E.2d at 14.

Three errors warrant a partial reversal of the circuit court's judgment.

First, the circuit court erred in failing to sanction Edmonds for claiming Bryan Harwell committed a felony. This allegation lacked any reasonable basis and had no conceivably proper purpose. Nobody likes dealing with sanctions, but the reasons the circuit court gave for not sanctioning this conduct do not withstand legitimate scrutiny.

Second, the circuit court erred in failing to sanction Edmonds for continuing Debbie's \$3.1 million claim when there was not an objectively reasonable basis for believing a good ground supported this claim. No reasonable lawyer would think this claim was colorable. The claim did not begin in a way that a reasonable lawyer would see as stating a legitimate claim. No sensible explanation of a good ground for the claim has ever been given.

Third, the circuit court erred in reducing Debbie's sanctions by the separate sanctions the family court assessed. The circuit court and family court dealt with different misconduct. Again, nobody likes pressing sanctions, but this was abusive litigation designed to harass the estate and intimidate it into a settlement. Neither the estate nor the personal representative should have to bear any more than the 10% reduction they agreed to bear below.

This Court should reverse on these points, order additional sanctions, and also award appellate costs and fees as the fees and costs incurred in seeking sanctions are recoverable.

I. The circuit court erred in failing to sanction Edmonds for claiming Bryan Harwell committed a felony. The allegation lacked a reasonable basis and had no conceivably proper purpose.

The circuit court erred in failing to sanction Edmonds for claiming Bryan Harwell committed a felony. Allegations that lack a reasonable basis and have no conceivably proper purpose violate Rule 11, SCRCP, and the Frivolous Civil Proceedings Sanctions Act. The felony allegation is sanctionable precisely because of these deficiencies—there is no reasonable basis or conceivably proper purpose for alleging Bryan committed a felony. The circuit court gave reasons for not sanctioning this misconduct, but those reasons do not withstand legitimate scrutiny. This Court should reverse the circuit court. A suggested sanction for this misconduct is at the end of this brief, just before the conclusion.

a. Allegations made without a reasonable basis and for an improper purpose are sanctionable under Rule 11, SCRCP, and under the Sanctions Act.

When an attorney signs a pleading, the signature is an endorsement that the attorney feels there is merit to the claim. Rule 11(a) says an attorney's signature certifies that the attorney has read the document and "that to the best of his knowledge, information and belief there is good ground to support it." The Frivolous Civil Proceedings Sanctions Act explains an attorney may be sanctioned for "making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts." S.C. Code Ann. § 15-36-10(A)(4)(b) (Supp. ____). These requirements put some of the attorney's skin in the game.

An attorney's signature also certifies that the pleading is not imposed for an improper purpose. Precedent explains Rule 11 allows the court to impose sanctions for making

frivolous arguments and for acting with an improper motive, *regardless* of whether there is good grounds for the underlying suit. *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008) (citing *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996)).

Rule 11 is generally evaluated by a subjective standard, but the rule is nevertheless violated by “a filing [] so patently without merit that no reasonable attorney could have a good faith belief in its propriety.” *Ex parte Bon Secours-St. Francis Xavier Hosp.*, 393 S.C. 590, 598, 713 S.E.2d 624, 628 (2011).

The Sanctions Act speaks of “a reasonable attorney,” imposing an objective standard. This objective standard was one result of the Sanctions Act’s 2005 revisions, as this Court recognized in *Southeastern Site Prep v. Atlantic Coast Builders & Contractors*, 394 S.C. 97, 105, 713 S.E.2d 650, 654 (Ct. App. 2011).

Precedent explains appropriate sanctions may include reasonable costs and attorney fees, a reasonable fine paid to the court, a monetary penalty paid to the opposing litigant, or a directive of a nonmonetary nature designed to deter “future frivolous action or action in bad faith.” *Ex parte Gregory*, 378 S.C. at 437–38, 663 S.E.2d at 50.

b. There was no reasonable basis or conceivably proper purpose for gratuitously alleging Bryan Harwell committed a felony.

Debbie’s surviving spouse petition specifically alleged Bryan was guilty of a felony and of willfully giving DHEC false information in connection with David’s death certificate. This allegation is stated as though it is an indisputable fact. Paragraphs 17 and 18 reference the relevant statute. (3/1/16 Pet.p.5). Then paragraph 19 says “[Bryan] individually, knowingly and willfully supplied false information . . . in violation of [the statute].” *Id.*

There was no reasonable basis for this allegation.

First, consider the original death certificate, which quite plainly stated David was “married but separated.” (Death Cert.). Debbie’s own petition acknowledges this information came from Bryan. (3/1/16 Pet.p.4, ¶15). It is hard to understand the alleged falsehood. It is not as though someone else’s name was entered as David’s surviving spouse or David was designated as widowed, divorced, never married, or unknown. See (RBH 4/1/16 Ans. to Surv. Spouse Claim, Ex.2,p.1) (the DHEC death certificate worksheet). It is difficult to follow the argument that the omission of Debbie’s name from the death certificate was the result of a “willful” and “false” statement by the very same person (Bryan) who specifically informed DHEC that David Harwell was married but separated when he died.

Second, consider one of Edmonds’ offered justifications for this allegation. She believed Bryan did not complete a particular probate court form correctly.

The form in question has a space to list contact information for “intestate heirs who are not devisees.” (RBH 1/31/17 2d Supp. Sanctions Mem.Ex.A, p.2). The copy of the form in the record indicates Bryan originally wrote Debbie’s name as an heir who was not a devisee before erasing her name and writing “(see mediator/separation agreement filed 7-21-15) Case # 2015-DR-26-961 Family Court Order Horry County” instead. *Id.*

Here too, it is difficult to understand the argument that this somehow supports the allegation Bryan willfully lied to DHEC. Edmonds told the circuit court she believed this form had been completed improperly because Debbie’s name should have been included as an “heir not a devisee” instead of a reference to the family court order and settlement agreement. (7/15/16 Aff.p.3, ¶9). It is hard to see how directly referencing the order settling

Debbie's and David's marital rights tends to show Bryan gave "false" information in the process of giving DHEC the data for David's death certificate. Edmonds' opinion is also directly contradicted by the probate code, which specifically indicates Debbie is *not* one of David's "heirs." See § 62-2-802(3). The form in the record is 100% accurate.

Third, consider Edmonds made the felony allegation not once, but twice. The first time was in the original surviving spouse petition. (3/1/16 Pet., p.5). The second time was in the amended petition filed nearly two months later. (4/28/16 Am.Pet.p.5).

This is a problem because within 10 days of Edmonds filing the first surviving spouse petition Bryan's lawyer gave Edmonds the worksheet Bryan completed for DHEC and an affidavit from the funeral home director. (7/15/16 Aff.p.4, ¶¶11-12). Any research would quickly reveal a statute explaining the funeral director is responsible for electronically filing death certificates with DHEC after obtaining the decedent's personal data. S.C. Code Ann. § 44-63-74 (Supp. ____). In light of this information, the allegation would have to be that Bryan lied about saying he wrote Debbie's name on the DHEC worksheet and then convinced the funeral home director to falsely corroborate Bryan's story, all in a plot to mislead DHEC about David Harwell's surviving spouse *even though* they specifically told DHEC that David was "married but separated." The felony allegation makes no sense on its own and was directly contradicted by the funeral director's affidavit, yet, it was repeated.

The felony allegation also had no conceivably proper purpose. The petition's stated goal was to have David's death certificate amended. This did not require anything more than alleging negligence if Bryan had refused to cooperate in asking DHEC for guidance on whether the original death certificate was accurate. Bryan offered an expert affidavit to this

effect. See (Protopapas Aff.pp.11-12). There was truly no legitimate purpose whatsoever in accusing Bryan of committing a felony. This allegation's purpose could only have been to intimidate Bryan or harass him and the estate into a settlement.

c. The circuit court's reasons for not sanctioning this conduct do not withstand meaningful scrutiny.

The circuit court found the felony allegations were "false" and "perhaps overzealous when made," but the court believed these allegations were the product of ongoing distrust between the parties and that Bryan could have acted sooner to resolve the death certificate issue. (Id.pp.11-12). The court also noted Debbie obtained the relief she requested—the death certificate *was* amended. *Id.* These reasons do not withstand meaningful scrutiny as reasons for not sanctioning the senseless allegation of a felony.

There was no legitimate basis for the finding that "ongoing distrust" justifies accusing someone of a crime. This finding does not makes sense on its own terms. The circuit court cited the probate form where Debbie's name had been replaced with a reference to the family court settlement, *id.*, but as the previous section of this brief explains, the idea that this form supports the allegation of Bryan committing a felony makes no sense given the form's overt reference to the family court case. (RBH 1/31/17 2d Supp. Sanctions Mem.Ex.A, p.2). And—as the previous section of this brief also mentioned—the form was accurate.

It is also hard to see why Bryan should have acted sooner to "resolve" the death certificate "problem." Consider Bryan's position. There was an unappealed family court order specifically barring Debbie from filing claims against David's estate. The probate code says Debbie is not an heir of the estate. Debbie was nevertheless making three claims against

the estate, she had not said anything about challenging the family court order, and nobody from the funeral home or DHEC indicated there was a problem with the death certificate. Bryan was skeptical of Debbie's claims. Anyone would be skeptical in those circumstances. Skepticism does not justify two pleadings accusing Bryan of committing a felony. Any rational person in Bryan's position would have believed this was all frivolous harassment.

Finally, it does not matter that Debbie's claim to be David's surviving spouse was justified. Sanctions are appropriate when a filing is made in bad faith, regardless of whether there is a good ground for the claim. *Ex parte Gregory*, 378 S.C. at 437, 663 S.E.2d at 50; *Runyon*, 322 S.C. at 19, 471 S.E.2d at 162; see also § 15-36-10(C)(1) (recognizing sanctions may be appropriate even though a party has a genuine dispute warranting a trial on the merits) and *Holmes v. E. Cooper Cmty. Hosp.*, 408 S.C. 138, 153, 758 S.E.2d 483, 491 (2014) (same). The death certificate was amended "with Bryan's consent." (10/19/16 Stip.p.2, ¶3). The fact that the death certificate was amended has nothing to do with whether there was any legitimate basis for alleging Bryan committed a felony.

There was no legitimate basis and no proper purpose for the gratuitous felony allegation. This Court should reverse the circuit court and sanction Edmonds for signing two pleadings alleging Bryan Harwell committed a felony.

II. The circuit court erred in failing to sanction Edmonds for continuing to assert Debbie's \$3.1 million claim when there was not an objectively reasonable basis for believing a good ground supported such a claim.

The circuit court erred in failing to sanction Edmonds for continuing to assert Debbie's \$3.1 million claim against David's estate.

a. The Sanctions Act prohibits a lawyer from continuing a claim if no reasonable lawyer would believe good grounds support the claim.

Signing requirements put the lawyer's skin in the game by imposing what one court has described as "a duty to look before leaping." *Lieb v. Topstone Indus.*, 788 F.2d 151, 157 (3d Cir. 1986). This duty extends beyond the lawsuit's beginning stages—the Sanctions Act explains an attorney's signature certifies "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." See § 15-36-10(2)(c) (emphasis added).

Russell v. Wachovia Bank is an example of a case where sanctions were imposed against a litigant for continuing litigation without justification. That case involved sanctions awarded against a litigant who continued challenging a will after she should have realized the challenge was frivolous. 370 S.C. 5, 17, 633 S.E.2d 722, 728 (2006). The case turned on whether the decedent had the mental capacity to execute a will. Shortly after the will was challenged, the defendants to the challenge produced an affidavit from the decedent's attorney, affidavits from the decedent's colleagues, and affidavits from the decedent's friends. *Id.* at 18, 633 S.E.2d at 729. The Supreme Court upheld the circuit court's finding that the challenger should not have continued the litigation after receiving this information.

This case involves a twist on the scenario from *Russell*. Here, we are dealing with the lawyer as well as the litigant. The circuit court issued strong findings against Debbie, holding all of Debbie's financial claims were frivolous and that she brought them with an improper purpose. (4/12/17 Or.pp.11). Yet, the court did not sanction Edmonds for initiating Debbie's \$3.1 million claim against the estate, explaining Edmonds did not hold

herself out as a family court practitioner and that Debbie had allegedly indicated she intended to challenge the marital settlement in family court. (Id.p.13). The circuit court did not address Edmonds' continuing the \$3.1 million claim. This was error, as no reasonable lawyer would have believed there were good grounds for this claim's continuation.

b. No reasonable lawyer would believe there were grounds for continuing Debbie's \$3.1 million "prenuptial" claim.

It is difficult to see how the evidence of record supports the circuit court's finding that Edmonds initiated Debbie's \$3.1 million claim in probate court because Debbie had indicated she would be pursuing a separate action in family court.

First, that is not the story Edmonds gave. Edmonds filed a supplemental affidavit explaining *she determined* Debbie needed to file an action in family court. (Aff.p.2, ¶6). Debbie had allegedly received "a great deal of information" indicating David had not fully disclosed his assets. *Id.*, ¶5. Edmonds "initially believed" Debbie might be able to proceed in probate court, but Edmonds "later determined" Debbie would need to set the prior family court order aside. *Id.*, ¶6. This version has Edmonds serving as the clearinghouse, taking in Debbie's information and sending Debbie to seek relief in family court.

Second, the petition itself does not support the circuit court's version or Edmonds' version. The only explanation on the \$3.1 million petition that Edmonds signed are the words "prenuptial agreement." (3/9/16 Pet. for \$3.1m). Debbie used these same words as the "basis of [her] claim" on her pro se petition. (1/14/16 Pet.). It is difficult to see how the parties' prenuptial agreement has anything to do with making a creditor's claim against David's estate or a forthcoming action to set aside David and Debbie's settlement agreement

in family court. Prenuptial agreements tend to bar claims, not grant them. Debbie had already received the assets awarded in the agreement. The petition did not allege David had committed fraud or indicate future family court filings are on the horizon. It is hard to see how a reasonable lawyer would take this petition as stating anything other than nonsense.

Debbie's answer to the motion for sanctions did not say anything about filing a Rule 60 motion based on fraud in family court. (6/6/16 Ans. to Counterclaims). Edmonds did not say anything about Rule 60 in her first filing opposing the sanctions request, summarily explaining she had a good faith belief that there were grounds for Debbie's claims but never explaining what those grounds were. (7/18/16 Memo Opposing Sanctions, p.3). Edmonds' first affidavit did not mention a Rule 60 motion. (7/15/16 Aff.pp.1-7). The only paragraph pertinent to monetary claims against the estate is paragraph 21, which says Edmonds filed the monetary petitions as placeholders due to the impending deadline. (Id.pp.6-7, ¶21).

As with the petition itself, it seems like it would have been easy to briefly reference the fact that Debbie would be challenging the family court settlement if that was truly the plan. Then, Bryan and the estate would have a lucid explanation for why someone was filing claims that were explicitly barred by an unchallenged, unappealed, and valid court order.

And the estate has never gotten any substantive explanation of why Edmonds had "good grounds" for believing Debbie had a \$3.1 million claim against David's estate. Edmonds herself says she advised Debbie to pursue a claim in family court, but Edmonds has never shared what justified that decision. Contrast this case with *In re Beard*, a case where sanctions were denied even though a claim was not successful and was eventually withdrawn. Those lawyers produced evidence they had relied on an expert's opinion in

making the claim. 359 S.C. 351, 361, 597 S.E.2d 835, 840 (Ct. App. 2004). Here, David's estate has never gotten a real explanation of the purported good grounds for continuing the \$3.1 million claim. The circuit court relied on "exigency," but that would have been satisfied by assisting Debbie with pro se filings or withdrawing as counsel after any deadline was protected. It does not justify continuing the claim, which the circuit court did not address.

A final precedent that may be instructive on this point is *Culbertson v. Clemens*, which explains a lawyer may not limit his or her obligations under the rules by limiting the scope of the attorney-client relationship. *Culbertson* rejected the argument that a lawyer did not have to seek the court's permission to withdraw from a case if the lawyer had agreed to a limited relationship with the client. 322 S.C. 20, 24-25, 471 S.E.2d 163, 165 (1996). Of additional relevance to this case is the opinion's suggestion that if an attorney is employed for a limited purpose the situation should be fully disclosed, preferably in writing. *Id.*

This case raises the same sort of rule-avoiding concerns. There no substance to a lawyer's obligation to certify there are good grounds for continuing a claim if the lawyer can initiate placeholder filings in one forum while sending the client to another forum in which the lawyer disclaims any competence. That is precisely what is being attempted here. The only explanation the estate has ever gotten is exigency, which is no explanation at all for why this claim was continued for months before being quickly withdrawn, by a different lawyer.

III. The circuit court erred in reducing Debbie's sanctions by the separate sanctions assessed against her in family court.

The circuit court and family court ultimately dealt with distinct types of misconduct. The family court sanctioned Debbie for various misconduct including her failure to cooperate

regarding a tax refund, (Contempt Or.p.8¶¶16-18), for coming to the funeral home after David died and threatening Bryan with “controversy” if her demands were not met, (Id.p.10, ¶24), and for willfully violating the settlement’s requirements regarding David’s cell phone. (Id.p.11, ¶26-27). The family court awarded the estate \$25,000 in attorneys fees, specifically noting this constituted only part of the fees and costs the estate incurred. (Id.p.15, ¶41).

The family court refused to sanction Debbie for pursuing the monetary claims against David’s estate in probate court. The family court did not believe it had the authority to require Debbie to withdraw those claims. (Id.p.13, ¶¶34-36). Thus, the \$25,000 sanction awarded by the family court necessarily excludes any fees associated with the probate claims. The circuit court’s credit took punishment for more misconduct and gave it less sting.

Fairness requires acknowledging one area of overlap. The family court sanctioned Debbie for making disparaging charges against Bryan. (Id.p.9, ¶21). Those charges include accusations Bryan gave DHEC false information respecting David’s death certificate as well as alleging Bryan stole estate funds. *Id.* Still, that cuts against Debbie, because the circuit court did not sanction Debbie for the death certificate claim. The problem remains that the circuit court folded the penalties together even though the misconduct was different.

At the reconsideration hearing the circuit court explained Debbie’s misconduct was “very similar or the same,” Debbie should not be punished twice for the same misconduct, and that the primary purpose of sanctions is not compensation for the injured party but to craft a penalty that will stop the frivolous litigation. (7/19/17 Tr.p.5, line 5 - p.6, line 7).

Taking those points in reverse, the frivolous litigation obviously has not stopped. Debbie has appealed the circuit court and the family court decisions to this Court. It is also

very hard to understand why the estate and the personal representative should have to bear any of the cost of litigation the circuit court found was abusive and initiated for the specific purpose of harassing the estate. The circuit court said Debbie's monetary claims were brought without a proper basis and for the improper purpose of "delay[ing] the settlement of [David's] estate and to seek a recovery to which she was not entitled." (4/12/17 Or.p.11).

Litigation is expensive. Precedent has observed how estate litigation frequently brings to light "matters of private concern that ought never be made public" and that the reason people employ certain estate planning tools is to "protect estate from costly and time-consuming litigation." *Russell*, 370 S.C. at 12, 633 S.E.2d at 725-26 (internal citations omitted). David's estate was not afforded the easy administration David undoubtedly envisioned when he and Debbie signed a settlement agreement waiving these claims. The estate accepted the circuit court's 10% reduction in the requested sanctions, (RBH Rule 59 Mot.p.2), but as the estate told the circuit court in the estate's motion for reconsideration, the estate has incurred substantially more fees in defending Debbie's claims than the combined sums awarded by the circuit court and family court.

Appropriate sanctions include reasonable costs and attorney fees, a reasonable fine to the court, a monetary penalty paid to the opposing litigant, or a directive of a nonmonetary nature designed to deter future misconduct. *Ex parte Gregory*, 378 S.C. at 437-38, 663 S.E.2d at 50. The Sanctions Act articulates basically the same options. See § 15-36-10(G).

Debbie was sanctioned \$40,000 but given credit for any payments made towards the \$25,000 sanction imposed in family court. (Id.p.15). That credit should be reversed outright.

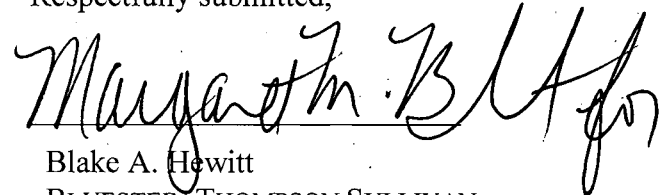
Edmonds was sanctioned \$5,000 for the obituary claim, see (4/12/17 Or.p.14), but she should have also been sanctioned for the baseless felony accusation against Bryan and for continuing Debbie's \$3.1 million claim against the estate. These additional violations may warrant a nonmonetary sanction designed to deter future baseless allegations. They may also warrant monetary sanctions if the Court lets any of Debbie's \$25,000 credit stand.

Finally, this Court should also award the estate and the personal representative the costs of these appellate proceedings. *In re Gregory* specifically holds the costs incurred in seeking sanctions are recoverable. 378 S.C. at 440, 663 S.E.2d at 52. This would seem to be equally true when the process of seeking sanctions requires a party to litigate an appeal.

CONCLUSION

This Court should reverse in part and order additional sanctions as outlined above.

Respectfully submitted,



Blake A. Hewitt
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April 6, 2018

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APR 06 2018

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Roger L. Couch, Circuit Court Judge

Case Nos. 2016-ES-01-00302, 2016-CP-21-1435, 2015-ES-21-00778
Appellate Case No. 2017-002290

Deborah B. Harwell, Respondent/Appellant,

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,
Division of Vital Records, Defendants,

Of whom Robert Bryan Harwell, individually
and as the Personal Representative of the
Estate of David W. Harwell is the Respondent/Appellant,

And the South Carolina Department of
Health and Environmental Control,
Division of Vital Records is the Respondent,

v.

Law Office of Deidre W. Edmunds, P.A.
and Deidre W. Edmunds, Individually, .. Appellants/Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served the
pro se party Deborah Harwell and counsel of record with a copy of *R. Bryan Harwell's
Initial Brief of Appellant and Designation of Matter to be Included in the Record on
Appeal* by mailing copies of the same by United States Mail with first class postage
prepaid to the following addresses:

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S.C. Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201


Erin Bridges

April 6, 2018

April 6, 2018

VIA HAND DELIVERY

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

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APR 06 2018

SC Court of Appeals

Re: Deborah Harwell v. Robert Harwell
Case Tracking No. 2017-002290

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of R. Bryan Harwell's Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal in the above referenced matter. I have also enclosed a proof of service of these documents on the *pro se* party and counsel of record. Please return the additional filed copies to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,



Erin Bridges

Bluestein Thompson Sullivan, LLC

/emb

Enclosures

cc: Kevin Barth, Esquire
Gena Phillips Ervin, Esquire
Barbara J. Wagner, Esquire
M. Dawes Cooke, Jr., Esquire
Deborah B. Harwell
John Harleston, Esquire