

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Presiding Judge

Appellate Case No. 2018-000823
Lower Case No. 2017-CP-40-00580

TARA DAWN SHURLING,

v.

Appellant,

JOHN DANIEL SPRINGER, #294365

Respondent.

PETITION FOR ORDER STAYING DISTRIBUTION
OF FEE DISPUTE AWARD

Appellant is the attorney against whom Respondent filed a Fee Dispute Application through the South Carolina Bar. Following a hearing by a three person panel, Appellant was directed to refund \$5,000.00 of her fee to the Respondent, John Daniel Springer. Prior to the hearing, Appellant was denied the opportunity to submit a written response to Respondent's claims. The report issued by the panel clearly reflected that its findings were based upon several readily demonstrable factual errors. Appellant served the panel with a detailed Motion to Reconsider which she was informed, by the panel and the committee chair, would not be considered because the rules governing fee disputes did not provide for a request for rehearing or reconsideration to be heard. The Request for Reconsideration served by Appellant clearly demonstrated the errors upon which the panel's conclusions were founded.

Appellant filed an appeal from the panel findings in the Richland County Court of Common Pleas where it was heard by the Honorable G. Thomas cooper, presiding circuit judge. The Order dismissing Appellant's appeal simply referenced Rule 416, SCACR, Resolution of Fee Dispute Board, Rule 20(f), and did not make findings of fact and conclusions of law regarding Appellant's arguments. Appellant filed a detailed Motion to Alter or Amend pursuant to Rule 59(e), SCRCR, which was denied without further comment on the issues. Appellant has, as is required by the rules, deposited funds to cover the amount awarded the Respondent in trust with the South Carolina Bar.

On appeal Appellant plans to argue against precedent¹ and encourage this Honorable Court to revisit its previous ruling with an eye toward creating some avenue for review where a party can demonstrate that the finding(s) of the Fee Dispute Board were predicated on demonstrable error. As a threshold matter, however, Appellant will demonstrate that the panel assigned to this case exceeded its authority in directing Appellant to refund money to Respondent which was paid to Appellant by a third party payer², with whom she had a written contract, but *was not* a party to this fee dispute. As noted by Appellant in her circuit court appeal, the Fee Dispute Board has no authority to direct the *refund* of funds to Respondent which were not paid by him. Furthermore, under the rules governing the Fee Dispute Board the third party payer could have joined in Respondent's fee dispute application, with his express written consent, by being listed as a party to the application *and signing it*. As she did not comply with the rules, Katherine Hurst is not a party to this fee dispute. Rule 416, Resolution of Fee Disputes Board, SCACR, Rule 2, addresses the jurisdiction of the Fee Disputes Board. Under that provision, the Board has jurisdiction over a fee dispute between a client and an attorney who is a member of the South Carolina Bar. Rule 10, Rule 416, SCACR, states,

¹ *Hiesha Wright v. James H. Dickey*, 370 S.C. 517, 636 S.E.2d (2006)

² The third party payer in this case was Respondent's mother, Katherine Virginia Hurst.

If the applicant is a client, but is not the person who paid for the lawyer's services, the third party payer, with the written consent of the client-applicant, may jointly file with the client-applicant, *with both signatures affixed to the application*. (Emphasis added).

Katherine Hurst *did not* comply with this rule and therefore, is not a party to this fee dispute. Therefore, the Fee Dispute Board does not have jurisdiction over her contract with Appellant. Respondent's Fee Dispute Application acknowledges that he had no contract with Appellant, either oral or written, and that Appellant had contracted with a third party for payment. ROA, p. 6, item 4.³ Said contract was entered between Appellant and Katherine Virginia Hurst on March 19, 2015. ROA, pgs. 15-17. Lawrence Hurst, husband to Katherine Hurst, was likewise not a party to the fee contract. In his Fee Dispute Contract, Respondent listed Katherine and Larry Hurst as persons designated "to act on [his] behalf regarding this dispute and to receive correspondence or notices for [him]." ROA, p. 9, Item 24. The Fee Dispute Application was signed by Respondent, John Daniel Springer only. ROA, p. 10, Item 4. Therefore, the panel did not have the authority to direct counsel to refund fees to Respondent, nor would they have had the jurisdiction to direct a refund to the third party payer, his mother, where she was not a party to the Application.

Under the rules, the only remedy on appeal from a panel finding is a remand for a *de novo* hearing. Where, as here, the panel ordered a refund it did not have the authority to direct, the sole remedy is the remand of the fee dispute for a *de novo* hearing. Rule 20(g), Rule 416, SCACR,

While Appellant sincerely hopes this case will prompt a review of holding in *Wright v. Dickey*, *supra*, and a change in the current interpretation of Rule 20, Rule 416, SCACR, which affords a party virtually no redress no matter how faulty the findings of the Fee Dispute Board, are the reality exists that the direction issued by the Fee Dispute Board in this case is jurisdictionally defective. Rule 416, SCACR, gives the Board authority over Fee Dispute Applicants and the

³ Citations to the ROA herein reference the ROA filed by Appellant, by order of the circuit court, in the circuit court appeal.

members of the Bar against whom they are brought. It, as previously noted, contains strict rules for how and when a third party may join in such a fee dispute. Those rules were not complied with by the third party payer in the case, Katherine Hurst. Therefore, the Fee Dispute Board was without jurisdiction to order Appellant to issue the refund directed by the panel.

Under the rules governing fee disputes, the funds placed in trust are to be disbursed once the ruling in this case becomes final. Rule 20 (d), Rule 416, SCACR. Appellant, subsequent to the circuit court ruling and the filing of her Notice of Appeal, wrote the Fee Dispute Board and gave notice of her objection to the disbursement of these funds to Respondent, John Daniel Springer. Appellant advised the Board that in her professional opinion the Bar did not have the jurisdiction to order her to refund money to Respondent that was not paid to her law firm by him. Appellant advised the Bar, that in her professional opinion, the Bar could have liability issues should they do so. If this Honorable Court finds the panel acted outside its jurisdiction pursuant to Rule 20, Rule 416, SCACR, and did not have authority to direct the refund, a problem could arise getting the funds back from a Respondent who is an inmate in the custody of the South Carolina Department of Corrections. Additionally, Katherine Hurst, would have a claim against the Bar for refunding money originating with her to Respondent.

On May 16, 2018, Appellant received correspondent from Lex A. Rogerson, Jr., Esquire, State Chair of the Resolution of Fee Disputes Board of the South Carolina Bar, advising Appellant that unless she obtains a Court Order directing that disbursement be stayed in this matter by June 1, 2018, it was the intent of the Board to disburse the funds in question to Katherine Hurst and Lawrence Hurst. *See, Attachment A.* Appellant strenuously objects to the disbursement proposed in this correspondent for several reasons. They are as follows.

1. The panel decision directs a refund to Daniel Springer *not* his mother or her husband.

2. The panel report was reviewed and approved by the Board and the Board made no effort to correct this error, or any of the other errors, in the panel report.
3. The Board does not have the authority to modify or amend the panel findings *after* the Report was approved and adopted by the Board.
4. The Board does not have the authority to amend the directives contained in the report *after* the circuit court appeal is completely, thereby depriving Appellant the opportunity to appeal their authority to make such a modification *after* the Board adopted and approved the Report as issued by the panel.
5. The panel did not have had the authority at any point to direct a refund to Katherine Hurst as a third party payer, even if they had attempted to do so, where Katherine Hurst did not comply with the express requirements of the rules for becoming a party to this dispute.
6. The Board now proposes to improperly modify the panel's directive as found in its Report by changing the party to receive the refund, and proposes to issue the refund to Katherine Hurst and her husband, Lawrence Hurst. As previously noted, Appellant's Fee Contract was between her law firm and with Katherine Hurst. ROA, pgs. 15-17. There were three payments made on Appellant's flat fee as provided by the contract entered with Katherine Hurst. Two wire payments were made to Appellant's corporate account. Those payments were made in the amounts of \$2,500.00 and \$6,000.00. The paperwork lists the Debit Party for those transfers, as Lawrence Hurst or Katherine Hurst. ROA, pg. 13-14. The third payment was for \$7,500.00 and was paid by certified check from Katherine Hurst. ROA, p. 12. Lawrence Hurst was not a party to Appellant's fee contract and he, like Katherine Hurst, did not comply with the rules to become a party to this fee dispute. Rule 10, Rule 416, SCACR.

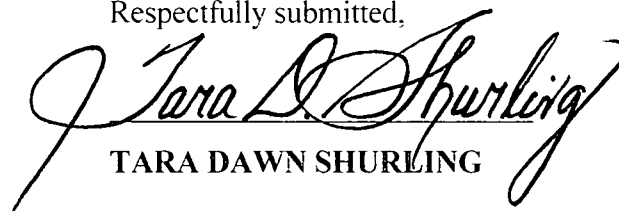
CONCLUSION

For all the above reasons, Appellant most respectfully submits that the fee dispute panel did not have jurisdiction to direct Appellant to issue a refund to Respondent. Likewise, the panel would not have had jurisdiction to order a refund to a third party payer, who was not a party to the Fee Dispute Application inasmuch as they had not complied with the requirements of Rule 10, Rule 416, SCACR, for joining in the Fee Dispute filed by Respondent.

The Fee Dispute Board clearly does not have jurisdiction to disburse the funds in trust with the South Carolina Bar to individuals who were not lawful parties to this Fee Dispute. The fact that

Respondent designated his mother, Katherine Hurst and Lawrence Hurst as parties to act on his behalf regarding this dispute, and to receive correspondence or notices for him, did not make them parties to the fee dispute in this case. Likewise, Respondent listing Katherine Hurst and Larry Hurst as third party payers due actual refund does not comply with the requirements of the rules governing the Fee Dispute Board for these individuals to “jointly file with the client-applicant” and therefore, did not confer jurisdiction over the Fee Dispute Board to disburse the funds held in trust with the South Carolina Bar to a non-party to the Fee Dispute Application. The Fee Dispute Board did not have jurisdiction to add parties to this fee dispute at any point in the review of Respondent’s Application, and they certainly do not have jurisdiction to do so after the panel report was approved by the Board and an appeal has been finally decided by the Court of Common Pleas. For these reasons, Appellant seeks this Honorable Court’s Order directing that all action involving this fee dispute, including the disbursement of the funds held in trust, be stayed pending finality in Appellant’s pending appeal to this Honorable Court and any subsequent appeal to the Supreme Court of South Carolina which might be perfected in the future.

Respectfully submitted,



TARA DAWN SHURLING

Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

APPELLANT
Acting pro se

May 24, 2018

LEX A. ROGERSON, JR.

Attorney at Law

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AND DEBTOR-CREDITOR LAW

FACSIMILE (803) 359-5555
lexlaw@windstream.net

May 16, 2018

PERSONAL AND CONFIDENTIAL

Via e-mail and First Class Mail

Tara Dawn Shurling, Esquire
3614 Landmark Drive, Suite A
Columbia, SC 29204

Re: John Daniel Springer v. Tara Dawn Shurling
Resolution of Fee Disputes Board

Dear Tara:

I am writing as state chair of the Resolution of Fee Disputes Board of the South Carolina Bar. The Bar staff has made the executive council aware of your appeal from the decision of the circuit court in this matter. Pursuant to Rule 20(d) of the board's rules (Rule 416, SCACR), the Bar is holding your payment of the refund ordered by the board's appellate panel pending final disposition of this matter.

Rule 20(d) states:

The Bar shall remit the disputed sum to the prevailing party within ten (10) days of the final disposition of the dispute.

As you have acknowledged, under existing case law, this dispute became final on March 2 when Judge Cooper sustained the appellate panel decision. The executive council believes the Bar is now obligated to remit the funds it holds to the prevailing party. Because the applicant has officially stated in his application that Katherine Hurst and Larry Hurst are the "third party payees due [the] actual refund," the executive council has requested the Bar to remit the funds to Mr. and Mrs. Hurst unless otherwise ordered by a court of competent jurisdiction.

At the same time, we are aware you contend that the Court of Appeals should reconsider the precedent of *Wright v. Dickey* and permit fee dispute appeals beyond the circuit court. If that contention succeeds, it might ultimately be determined that this matter was not final at this point. For this reason, we have requested the Bar to delay disbursement for 15 days from the date of this letter to afford you an opportunity to apply to the appropriate court for an order staying disbursement.

[continued next page]

Absent notice of any such order, the Bar will disburse to Mr. and Mrs. Hurst on or shortly after June 1, 2018.

Sincerely,

Lex

Lex A. Rogerson, Jr.
Attorney at Law

LARjr/lar

cc: Michelle Dennis
John Daniel Springer
Katherine and Larry Hurst

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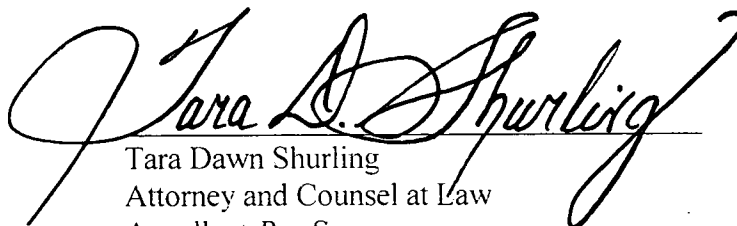
JOHN DANIEL SPRINGER, #294365

Respondent.

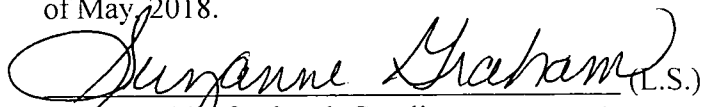
CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Petition for Order Staying Distribution of Fee Dispute Award in the above-entitled cause has been served upon Respondent, John Daniel Springer, #294365, by mailing certified mail in an envelope properly addressed with postage prepaid on this 24th day of May, 2018.

John Daniel Springer, #294365
McDougall Correctional Institution
B2C-0002-B
1516 Old Gilliard Road
Ridgeville, SC 29472


Tara Dawn Shurling
Attorney and Counsel at Law
Appellant *Pro Se*

SWORN TO BEFORE me this 24th day
of May, 2018.


(L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA
In The Court of Appeals

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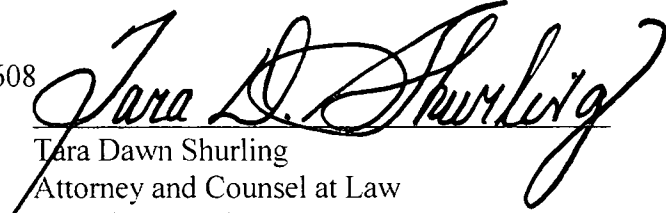
JOHN DANIEL SPRINGER, #294365

Respondent.


CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Petition for Order Staying Distribution of Fee Dispute Award in the above-entitled cause has been served upon Cynthia A. Coker, Esquire by mailing in an envelope properly addressed with postage prepaid on this 24th day of May, 2018.

Cynthia A. Coker, Esquire
Public Services Director
for the South Carolina Bar
Post Office Box 608
Columbia, South Carolina 29202-0608


Tara Dawn Shurling
Attorney and Counsel at Law
Appellant *Pro Se*

SWORN TO BEFORE me this 24th day
of May, 2018.


Notary Public for South Carolina
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA
In The Court of Appeals

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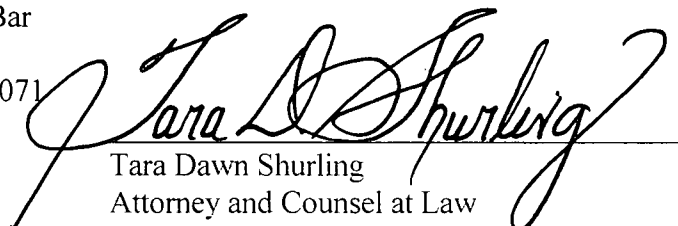
CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Petition for Order Staying Distribution of Fee Dispute Award in the above-entitled cause has been served upon Lex A.

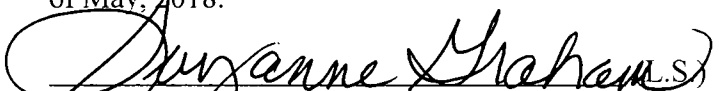
Rogerson, Jr., Esquire by mailing in an envelope properly addressed with postage prepaid on this

24th day of May, 2018.

Lex A. Rogerson, Jr., Esquire
State Chair of the Resolution of Fee Disputes
Board of the South Carolina Bar
Post Office Box 365
Lexington, South Carolina 29071


Tara Dawn Shurling
Attorney and Counsel at Law
Appellant *Pro Se*

SWORN TO BEFORE me this 24th day
of May, 2018.


Notary Public for South Carolina
My Commission Expires: 2/28/24

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorney and Counselor at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

(803) 738-8622

(Fax) (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

May 24, 2018

**VIA HAND DELIVERY
URGENT ATTENTION REQUIRED**

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Tara Dawn Shurling v. John Daniel Springer, #294365
Appellate Case No. 2018-000823.

Dear Ms. Kitchings:

Attached please find for filing my Petition for an Order from the Court Staying Disbursement of Funds held in trust in this fee dispute matter. As the petition states, it is my position that the panel who issued the report did not have jurisdiction to direct me to issue a partial refund of my fees to the Applicant where he did not pay the fees. Likewise, they would not have had the jurisdiction to order a refund to the third party payer where the payer(s) was not a party to the fee dispute under the rules governing the Fee Dispute Board. Now, after the circuit court appeal, the Board proposes to disburse the funds in question to third party payers who are not parties to the fee dispute, and who were not named recipients of a refund in the panel report adopted by the Board. It is their intent to disburse these funds by June 1, 2018 if the court does not issue an order staying the refund. For that reason, I ask for the Court's immediate attention to this request. I apologize for the urgent request. I received the letter from Lee Rogerson right before I left for a short vacation, and despite my best efforts I was not able to get this petition completed before my departure. I just got back late Tuesday evening. Thank you very much.

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Attachments

cc: Cynthia A. Coker, Esquire, Public Services Director for the SC Bar (by U.S. Mail w/enclosure)
Lex A. Rogerson, Jr, Esquire, State Chair of the Resolution of Fee Disputes for the SC Bar (by U.S. Mail w/enclosure)
John Daniel Springer, #294365 (by Certified U.S. Mail w/enclosure)