

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

In the Courts of Common Pleas of Beaufort and Florence Counties
Trial Court Case Nos. 2016-ES-07-00302, 2016-CP-21-01435, and 2015-ES-21-00778

The Honorable Kenneth E. Fulp, Jr. and
The Honorable Roger L. Couch

Appellate Case No. 2017-002290

Deborah B. HarwellRespondent/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

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SC Court of Appeals

Of Whom: Robert Bryan Harwell, individually and as the Personal
Representative of the Estate of David W. Harwell is theRespondent/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,
individuallyAppellants/Respondents

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ARGUMENT

I. ATTORNEY EDMONDS HAD A GOOD FAITH BASIS TO ASSERT THE "OBITUARY CLAIM" ON BEHALF OF HER CLIENT

In his Initial Respondent's Brief, Respondent/Appellant Robert Bryan Harwell, individually and as the Personal Representative of the Estate of David W. Harwell ("Bryan Harwell" or "Respondent") argues that sanctions were proper against Appellants/Respondents Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds, individually ("Attorney Edmonds") because there was no good faith basis for her to assert or maintain a claim on behalf of Respondent/Appellant Deborah B. Harwell ("Client"). Specifically, Respondent argues that the trial judge properly assessed \$5,000 in sanctions for Attorney Edmonds' assertion of a \$1,447.25 claim against the Estate of David W. Harwell ("Husband") for obituaries of Husband published in the Sun News and The State newspapers. Respondent's argument (and the trial judge's imposition of sanctions) misses the mark because: (a) there has never been a determination of the merits on the obituary claim; and (b) Attorney Edmonds had a reasonable factual and legal basis for asserting that claim.

Respondent argues that — even though no court has ever adjudicated the merits of the obituary claim — "The obituary claim's quick withdrawal is some indication that minimal scrutiny would have revealed the claim's lack of a reasonable basis." (*See* Respondent's Br., at 9). This is utter speculation, lacking any evidentiary support. Client made the decision to withdraw the obituary claim, as she withdrew all of her claims against Husband's estate. There is nothing supporting that the withdrawal of the obituary claim was an indicator, in any way, of the weakness or lack of merit of that claim. Indeed, no discovery was conducted regarding the merits of the obituary claim and there was no trial or even a hearing on that claim: no adjudication whatsoever. In other words, no judge has ever considered and decided the question of whether that claim actually lacks merit. The only analysis of this issue in Judge Couch's 15-page Order is the unsupported statement that "I find no basis for Mrs. Harwell's claim for reimbursement for the obituary which she caused to be published." (*See* April 12, 2017 Order, at

11). Notably, the trial court never undertook any consideration or analysis of the actual merits of the obituary claim.

If the trial judge had undertaken a complete analysis, he would have concluded that, at the very least, Attorney Edmonds had good grounds for that claim and that it was not frivolous.

Under South Carolina law, claims against a decedent's estate may be asserted:

After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article [Sections 62-3-101 et seq.]. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in Section 62-3-1004 or from a former personal representative individually liable as provided in Section 62-3-1005.

See S.C. Code § 62-3-104. Respondent does not contend that Attorney Edmonds failed to follow the proper procedure for the assertion of a claim. Rather, he claims that there was no substantive legal or factual basis for the obituary claim.

Respondent cites no law that would have precluded the Probate Court from approving Client's claim. In fact, her claim was quite supportable under equitable principles of quantum meruit and restitution. The obituary that she published was complete and accurate, whereas the one that the Estate had published was grossly inaccurate in pointedly omitting any reference to her, the surviving spouse. "To prevail on a quantum meruit claim, a plaintiff must establish (1) She conferred a benefit upon the defendant; (2) the defendant realized that benefit; and (3) retention of the benefit by the defendant under the circumstances make it inequitable for the defendant to retain it without paying its value." *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012) (citing *Swanson v. Stratos*, 350 S.C. 116, 121, 564 S.E.2d 117, 119 (Ct. App. 2002); accord *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616–17, 703 S.E.2d 221, 225 (2010) (providing the same requirements)). As this Court has noted:

"Restitution is a remedy designed to prevent unjust enrichment." *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003); see also *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988) ("Unjust enrichment is an equitable doctrine, akin to restitution, which

permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff.”). “The terms ‘restitution’ and ‘unjust enrichment’ are modern designations for the older doctrine of quasi-contracts.” *Ellis*, 294 S.C. at 473, 366 S.E.2d at 14. “[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy.” *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct. App. 2004) (internal quotation marks and citations omitted).

“Implied in law or quasi-contracts are not considered contracts at all, but are akin to restitution which permits recovery of that amount the defendant has been benefitted at the expense of the plaintiff in order to preclude unjust enrichment.” *Costa & Sons Constr. Co. v. Long*, 306 S.C. 465, 468 n. 1, 412 S.E.2d 450, 452 n. 1 (Ct. App. 1991). “Absent an express contract, recovery under quantum meruit is based on quasi-contract.” *Earthscapes Unlimited, Inc.*, 390 S.C. at 616, 703 S.E.2d at 225. “This Court has recognized quantum meruit as an equitable doctrine to allow recovery for unjust enrichment.” *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 466, 684 S.E.2d 756, 764 (2009) (internal quotation marks and citations omitted).

See JASDIP Properties SC, LLC v. Estate of Richardson, 395 S.C. 633, 640, 720 S.E.2d 485, 488–89 (Ct. App. 2011).

At the very least, Attorney Edmonds had a colorable basis for asserting the obituary claim on behalf of Client. Husband's original obituary that the Estate published identified Husband's survivors as his children, his grandchildren, his sister, his sisters-in-law, and numerous nieces and nephews. It even lovingly acknowledged Husband's black Labrador retriever dog, by name. However, this obituary omitted any mention whatsoever of Client, who was indisputably Husband's surviving spouse. (See <https://www.legacy.com/obituaries/thestate/obituary.aspx?n=david-walkerharwell&pid=175994265> (visited August 23, 2018)). Client and Attorney Edmonds were justified in claiming that the original Obituary did not benefit the Estate or carry out Husband's wishes, but rather was intended to punish and humiliate Client. Respondent has not presented any justification for omitting Client from the original obituary. It is not at all unreasonable to imagine that, had she pursued her claim to conclusion, the Probate Court would have approved some or all of it.

II. SANCTIONS WERE NOT PROPER BECAUSE THERE WAS NEVER AN ADJUDICATION OF THE OBITUARY CLAIM

Attorney Edmonds reiterates her assertion that sanctions were improper because the trial court never ruled upon the merits of the obituary claim. Instead, such claim was voluntarily dismissed by Client. Respondent has not cited any legal authority warranting the imposition of sanctions (under Rule 11 or statutory law) in the absence of a favorable ruling on the merits of the underlying claim.

Bryan Harwell based his request for sanctions, in part, upon Rule 11 of the South Carolina Rules of Civil Procedure, which authorizes the sanctioning of attorneys who file pleadings without sufficient grounds:

The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. . . . If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

See S.C.R. Civ. P. 11(a). Pursuant to Rule 11, "An attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments." *See Burns v. Universal Health Servs., Inc.*, 340 S.C. 509, 513, 532 S.E.2d 6, 9 (Ct. App. 2000). Respondent has not cited any authority analyzing the question of whether Rule 11 permits the imposition of sanctions where the alleged offending party dismissed her pleading voluntarily (and before any substantial expense is incurred by the other party defending against that pleading). Except in the rare case where a claim is facially meritless, Rule 11 permits imposition of sanctions only when the lack of merits of the claim – and thus the violation of Rule 11 — has been proven. After all, the Rule provides for award of attorney's fees "incurred because of the filing of the pleading" that "is signed in violation of this Rule".

Bryan Harwell's request for sanctions was also based on the South Carolina Frivolous Civil Proceedings Sanction Act, S.C. Code § 15-36-10. That statute provides, in relevant part, that sanctions may be imposed following final disposition of a claim by verdict or dispositive motion:

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. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

See S.C. Code § 15-36-10(C)(1). Respondent disregards this section by asserting that "[t]hat is not the same as requiring a case be litigated on the merits for the court to sanction a frivolous claim or argument. Sanctions are not limited to frivolous claims that make it to summary judgment or to trial. Sanctions may be imposed for any frivolous act." (Respondent's Br. at 10).

In support of his argument, Respondent relies upon two cases that he contends "dealt with that exact scenario," where sanctions are "imposed on frivolous claims that are withdrawn instead of denied on the merits." (*See* Respondent's Br., at 10). The Court of Appeals case cited by Respondent is *Kilcawley v. Kilcawley*, 312 S.C. 425, 427, 440 S.E.2d 892, 893 (Ct. App. 1994), and *Ex parte Gregory*, 378 S.C. 430, 432, 663 S.E.2d 46, 48 (2008). Those cases are inapplicable, because they were decided under a *prior version* of the statute, which stated that:

Any person who takes part in the procurement, initiation, continuation, or defense of any civil proceeding is subject to being assessed for payment of all or a portion of the attorney's fees and court costs of the other party if:

- (1) he does so primarily for a purpose other than that of securing the proper discovery, joinder of parties, or adjudication of the claim upon which the proceedings are based; and
- (2) *the proceedings have terminated in favor of the person seeking an assessment of the fees and costs.*

See S.C. Code § 15-36-10 (version in effect for causes of action accruing before July 1, 2005) (1988 Act No. 432, § 6); *accord* S.C. Code 15-36-40(2) (repealed) (1988 Act No. 432, § 6)

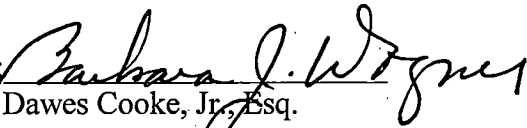
(noting that party moving for sanctions must prove, *inter alia*, "the proceedings were terminated in his favor."). Respectfully, that version of the statute plainly requires only that the litigation be terminated in favor of the moving party, which could include voluntary dismissal. The current version of the Act only provides for the imposition of sanctions following a trial or decision on the merits by summary judgment or some other similar motion. The Act only contemplates sanctions following an actual decision against the sanctioned party on the merits.

The public policy implications of affirmance of this sanctions award — however modest it might seem — would be grave. An affirmance would force attorneys and their clients to press their claims to conclusion, whether they want to or not, rather than risk having a voluntary dismissal be taken as an admission that they were meritless. To be sure, some claims are facially meritless; however, Client's obituary claim manifestly was not.

CONCLUSION

For the reasons set forth above and in Attorney Edmonds' previous Brief of Appellant, this Court should reverse and vacate the trial judge's imposition of sanctions upon her and her firm.

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PROOF OF SERVICE

I certify that I have served the Appellants' Initial Reply Appellants Brief of Appellants/Respondents on the above-referenced Respondent/Appellant's and Respondent by depositing a copy of it in the United States Mail, postage prepaid, on August __, 2018, addressed to them or to their attorneys of record, as follows:

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VIA U.S. MAIL

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Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Deborah B. Harwell v. Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records, and Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually
Case Nos.: 2016-ES-07-00302, 2016-CP-21-01435, and 2015-ES-21-00778
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Dear Ms. Kitchings:

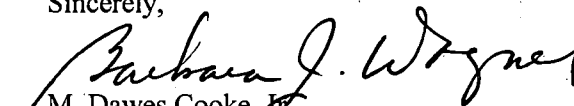
Enclosed for filing please find the original and one (1) copy of each of the following:

- (1) Initial Reply Appellants Brief of Appellants/Respondents;
- (2) Appellant/Respondent's Designation of Record; and
- (3) Proofs of Service.

We would appreciate if you would file the original documents and return the filed, stamped copies to us in the self-addressed, stamped envelope provided.

By copy of this letter, we are serving copies of the enclosures upon counsel of record.

Sincerely,


M. Dawes Cooke, Jr.
Barbara J. Wagner

MDCjr/BJW/jgc
Enclosures (as stated)

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