

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9TH Judicial Circuit Court Judge

Case No. 2007-CP-10-1444
Court of Appeals Case No. 2017-001717
Appellate Case No. 2018-001968

RECEIVED

DEC 28 2018

S.C. SUPREME COURT

C. Holmes,

Appellant/Petitioner,

v.

J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

**RETURN OF RESPONDENT HAYNSWORTH SINKLER BOYD, P.A. TO
C. HOLMES' PETITION FOR WRIT OF CERTIORARI**

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Attorneys for Respondents

INTRODUCTION

This Petition for a Writ of Certiorari (the “Petition”) arises from a unanimous opinion of the Court of Appeals filed on October 16, 2018 (the “Order”). The Petition does not present any novel questions of law; does not present substantial constitutional issues; does not conflict with any prior decision of this Court or the Court of Appeals; and does not include a federal question. Moreover, the Petition fails to clearly identify any question presented for this Court’s review. Instead, the Petition merely regurgitates the same arguments Holmes attempted to make to the Court of Appeals without addressing any error of law made by the Court of Appeals. Accordingly, this case does not warrant discretionary review by this Court pursuant to Rule 242, SCACR.

QUESTIONS PRESENTED

I. DID THE COURT OF APPEALS ERR IN DISMISSING HOLMES’ APPEAL?

COUNTER-STATEMENT OF THE CASE AND FACTS

The underlying action stems from litigation commenced by Holmes against East Cooper Community Hospital (“East Cooper”), during which she was represented by Haynsworth Sinkler Boyd, P.A., James Y. Becker, and Manton M. Grier (collectively, “Respondents). The facts surrounding this litigation are not in dispute. On April 6, 2007, Holmes brought a malpractice action against Respondents arising from litigation Holmes commenced against East Cooper following the hospital’s decision to revoke her medical staff privileges. On Holmes’ behalf, the Respondents unsuccessfully appealed for reinstatement of admitting privileges through East Cooper’s administrative process and, later, filed a lawsuit in federal court. The relationship between Holmes and the Respondents deteriorated, and Holmes subsequently filed the malpractice action. After protracted litigation over Respondents’ handling of her case against

East Cooper, Holmes' claims against the Respondents were dismissed, and the trial court issued an order of sanctions against Holmes in the amount of \$200,000.00 (the "Judgment"). The Judgment was affirmed by this Court on June 4, 2014. *See Holmes v. Haynsworth Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014).

During the pendency of the malpractice action, this Court issued an order directing Clerks of Court in South Carolina to refuse to accept further *pro se* filings from Holmes in actions related to the East Cooper Litigation. (*See Order*, entered in *Doe v. Duncan*, No. 2008-UP-596, (Dec. 2, 2009)) (the "*Doe Order*"). Holmes' license was later suspended for a period of two years. *See In re Collie*, 410 S.C. 556, 569, 765 S.E.2d 835, 841 (2014). As of December 28, 2018, it appears Holmes has not been reinstated.

In November 2016, the Respondents commenced formal efforts to collect the Judgment. As part of these efforts, the Respondents commenced supplemental proceedings to determine whether Holmes has assets to apply toward satisfaction of the Judgment, and subsequently filed their Verified Petition on January 3, 2017, in the Court of Common Pleas for Charleston County. On January 18, 2017, the Court issued a Rule to Show Cause, requiring Holmes to produce certain documents and appear at a hearing scheduled for March 10, 2017. At the hearing, the Court orally informed Holmes that it would not entertain any motions filed by Holmes unless a South Carolina licensed attorney filed the motions. The Court further directed her to produce the documents requested by Respondents, and filed its Supplemental Proceedings Order on March 9, 2017, commanding Holmes to provide documentation of her assets to Respondents by April 14, 2017. After Holmes failed to produce all of the documents set forth in the Supplemental Proceedings Order, the Court issued a form order compelling Holmes to produce the documents

and granting Respondents' requests for sanctions on June 21, 2017, and filed its formal Order Granting Respondents' Motion to Compel and for Sanctions on June 23, 2017 (the "Order").

Holmes served a *pro se* notice of appeal on Respondents on July 29, 2017, and subsequently retained counsel to file a notice of appeal with the South Carolina Court of Appeals on August 9, 2017, appealing the Order (the "Appeal"). After seeking clarification from Holmes and Respondents concerning whether Holmes' Appeal was timely served and filed in compliance with the *Doe* Order, the Court of Appeals entered an order allowing the Appeal to proceed on March 29, 2018.

Thereafter, Respondents filed their Motion to Dismiss on April 18, 2018, arguing that Holmes' Appeal should be dismissed because it is an un-appealable interlocutory order. The Court of Appeals agreed with Respondents, and entered an order dismissing the Appeal on June 27, 2018. Holmes subsequently filed a Petition for Rehearing on July 30, 2018, which the Court unanimously denied on October 16, 2018. Finally, Holmes filed the instant Petition on or about December 18, 2018.

ARGUMENT

1. Holmes has failed to state that any special and important reasons exist to justify this Court's granting her Petition.

The SCACR clearly establishes that "[a] writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. Although not exhaustive, the Rules identify several factors that "indicate the character of reasons which will be considered." *Id.* Such factors include instances where: (1) there are novel questions of law; (2) there is a dissent in the Court of Appeals' decision; (3) "... the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court"; (4) substantial constitutional issues are involved; and (5) "... a federal

question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.” *Id.* Considering the foregoing, it is clear that Holmes has failed to demonstrate, or even acknowledge, that such factors exist in the present matter.

First, there are no novel questions of law at issue, and the Court of Appeals’ decisions do not conflict with a prior decision of this Court or reflect a dissent in the Court of Appeals. Holmes’ Appeal seeks to appeal an underlying discovery order that is not immediately appealable under clearly-established South Carolina law. *Patterson v. Spector Broad. Corp.*, 287 S.C. 249, 249, 335 S.E.2d 803, 803 (1985) (“an order compelling discovery . . . is interlocutory and not directly appealable”) (internal citation omitted). Holmes’ also has failed to specifically identify any novel issues of law that are present in this case, and there is no federal question present in this case.

Moreover, there are no substantial constitutional issues involved in this matter. Although Holmes vaguely argues in her Petition that the *Doe* Order is a violation of statutory and constitutional law, the legion filings made by or on behalf of Homes in this case demonstrate that she has not been denied access to the court system in any way.¹ In any event, and as set forth above, South Carolina law provides a clear legal basis supporting the Court of Appeals’ decision to dismiss her appeals. Given the foregoing, it is clear that none of the factors that weigh in favor of granting Holmes’ Petition exist in this matter.

¹ As of December 28, 2018, Holmes has filed a total of six separate appeals arising out of Respondents’ attempts to collect on the Judgment with the Court of Appeals, and this is Holmes’ third Petition for a Writ of Certiorari arising out of those appeals. This is not to mention the case Holmes has pending against Respondents in the District of South Carolina, again arising out of the collection attempts, and appeal arising out of an order issued in the federal case, which is currently pending in the Fourth Circuit Court of Appeals.

2. The Court of Appeals correctly dismissed the Appeal because it was improper and sought to appeal an un-appealable interlocutory order.

As recognized by the Court of Appeals, the Order is an un-appealable interlocutory order and, accordingly, the Court of Appeals properly declined to rehear Holmes' Appeal based on the Order. The law is well-settled that "[t]here are only four basic situations from which a party may appeal: (1) intermediate judgments, orders or decrees involving the merits, (2) orders affecting substantial rights when such orders in effect determine the action and prevent a judgment from which an appeal may be taken or when the orders discontinue the action, (3) a final order in special proceedings, and (4) interlocutory orders continuing, modifying, or refusing injunctions." *Crout v. South Carolina Nat'l Bank*, 278 S.C. 120, 124, 293 S.E.2d 422, 424 (1982).

Here, the Order does not fall under any of the appealable categories, as it does not terminate the litigation, purport to be a final order in a special proceeding, or concern any injunction. Moreover, this Court has previously held that orders that compel discovery, such as the Order at issue here, are simply not directly appealable. *Patterson v. Spector Broad. Corp.*, 287 S.C. 249, 249, 335 S.E.2d 803, 803 (1985) ("an order compelling discovery . . . is interlocutory and not directly appealable") (internal citation omitted). As a result, the order is un-appealable, and the Court properly denied Holmes' Petition for Rehearing.

While Holmes sets forth numerous legal issues in her Petition, these issues have been recycled almost verbatim from her opposition to Respondents' Motion to Dismiss and her Petition for Rehearing. Holmes has set forth no new legal issues or questions for this Court to consider, but instead attempts to have a second bite at the apple by regurgitating the same failed legal arguments for a new audience. Accordingly, Holmes failed to demonstrate that good cause existed to rehear the Appeal, and the Court of Appeals acted properly in denying her Petition for Rehearing.

CONCLUSION

Holmes has failed to present any argument in her Petition that implicates the considerations listed in Rule 242(b), SCACR. Nothing about the Court of Appeals' decisions are inconsistent with well-established South Carolina law, nor do the appeals at issue implicate any federal questions or substantial constitutional issues. Accordingly, this Court should deny Holmes' Petition.

Respectfully submitted,



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December 28, 2018
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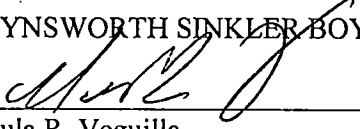
Respondents.

PROOF OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have, this 28th day of December 2018, caused the foregoing *Return of Respondent Haynsworth Sinkler Boyd, P.A. to C. Holmes' Petition for Writ of Certiorari* to be served via U.S. Mail, postage prepaid, on counsel of record at the address shown below:

Chalmers C. Johnson
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