

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

) C/A # 2016-CP-02-2576

In the Matter of Albert D. Bone,
An incapacitated person,

Vivy Haynes Bone,

) Appellant,

v.

Robert G. Bone, Conservator, and Liberty
Mutual Insurance Company,

) Respondent(s).

ORDER

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SC Court of Appeals

THIS MATTER comes before the Court on two motions by Petitioner Vivy Haynes Bone dated September 25, 2017: (1) a motion captioned as "Motion to Void the Probate Court Order of July 24, 2017 for Lack of: Jurisdiction; Compliance with the South Carolina Probate Code; and to Transfer this Matter to a Probate Court Outside the Second Judicial Circuit" (the "Motion to Void") and (2) a motion captioned as "Motion to Extend Time to Submit Designation, record and Appellant's Initial Brief and Return to Liberty Mutual's Motion to Dismiss" (the "Motion to Extend"). Additionally, and in response to Petitioner's motions, Liberty Mutual Insurance Company ("Liberty Mutual") filed a Motion for Sanctions on October 10, 2017, which was amended on January 9, 2018. Present at the hearing on these motions on February 20, 2018 were John E. Cheatham on behalf of the Petitioner, and Bryan P. Kelley on behalf of Liberty Mutual. Each of the motions are addressed herein.

The Court initially addresses the Motion to Void. Based on the pleadings of record and the arguments of counsel, it is readily evident that the Motion is without merit. Petitioner has failed to articulate a cohesive argument in support of the relief sought and has failed to cite any

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binding or persuasive authority allowing the Court to take the requested action. Therefore, the Motion should be and therefore is DENIED.

The Court finds the Motion to Extend to be equally meritless. The Motion essentially asks this Court to rule on matters currently under the jurisdiction of The Honorable Edgar W. Dickson. This Court will take no such action. Issues of jurisdiction notwithstanding, Petitioner has failed to set forth any persuasive argument in support of the relief sought. Therefore, Petitioner's Motion should be and therefore is DENIED.

The Court now turns to Liberty Mutual's Motion for Sanctions. S.C.R.Civ.P. 11(a) provides that a party or the party's attorney may be sanctioned for filing a frivolous pleading or motion, or for making frivolous arguments. *Ex parte Gregory*, 378 S.C. 430, 663 S.E.2d 46, *Runyon v. Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be sanctioned for filing a pleading, motion or other paper in bad faith whether or not there is good ground to support it. *Id.* The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Id.* Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. *Id.*

Petitioner's Motions were brought on her behalf by John E. Cheatham, an attorney in good standing who has held a license to practice law in South Carolina since 1970. The Court is informed and believes that Mr. Cheatham has the requisite knowledge and experience needed to understand the Rules of Civil Procedure and the applicable law.

However, it is clear to the Court that Petitioner's motions are frivolous, and that Mr. Cheatham's conduct in pursuing them is deserving of sanctions under Rule 11. As stated above, Mr. Cheatham has failed to articulate a cohesive and logical argument in support of the relief sought. These Motions were brought either out of complete ignorance of the law or in bad faith. In either case, sanctions are appropriate.

It appears the intent of the Motion to Void was to subject a Probate Court order entered in July of 2017 to appellate review by this Court. S.C. Code Ann. § 62-1-308 *et seq.* confers appellate jurisdiction upon this Court for appeals from the probate court. Mr. Cheatham demonstrated some degree of familiarity with this statute by filing the probate court appeal currently before this Court in November 2016. However, in filing the Motion to Void he either failed to follow the statutory scheme set forth in § 62-1-308 or chose to ignore it. The Court will not allow Mr. Cheatham to circumvent the clear and unambiguous statutory authority that provides for appeals from the probate court.

Further, the Motion to Void relates to a probate court order entered approximately eight months after Mr. Cheatham filed this appeal. The notion that this appeal could encompass a subsequently entered order defies logic and common sense. Therefore, I find the Motion to Void to be frivolous and deserving of sanctions.

It is noted that, near the end of the hearing on these motions, Mr. Cheatham appeared to realize his error in filing the Motion to Void and orally withdrew it. However, this last-minute withdrawal does not excuse the frivolity of his prior conduct. Mr. Cheatham pursued this Motion for five months prior to the hearing and continued to pursue it during the vast majority of the hearing. This resulted in significant cost and expense to Liberty Mutual, for which Mr. Cheatham will now be sanctioned.

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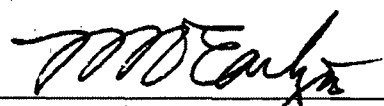
The Motion to Extend is also frivolous. The Motion seemingly seeks a time extension within which Petitioner may file her appellate brief, which appears to have been due eleven months ago. More importantly, Liberty Mutual previously filed a Motion to Dismiss the instant matter based on Petitioner's purported failure to prosecute this appeal and comply with the briefing deadline. Judge Dickson holds that Motion under advisement. In pursuing the instant motion, Mr. Cheatham asks this Court to rule on matters that are clearly under Judge Dickson's jurisdiction. The Court refuses to do so, and finds Mr. Cheatham's request to be frivolous and in violation of Rule 11.

Based on the foregoing, the Court finds that Liberty Mutual's Motion for Sanctions should be and therefore is GRANTED.

The Court finds that the attorney's fees and costs charged in defending Petitioner's motions and prosecuting its Motion for Sanctions as set forth in Liberty Mutual's Affidavit of Attorney's Fees are fair and reasonable. Liberty Mutual has advised the Court that some of the incurred fees are the result of the numerous continuances of this hearing that were each given at Mr. Cheatham's request. One such request was made due to his admitted lack of preparation for the hearing. The Court includes the costs and fees incurred as a result of these continuances in its sanction.

John E. Cheatham is hereby SANCTIONED in the amount of \$13,479.90 and is directed to submit this amount to counsel for Liberty Mutual within ten days of the date of this Order. If sanctions are not submitted as ordered, Petitioner's counsel may be held in contempt of court, which could result in a fine and/or jail sentence.

IT IS SO ORDERED.



The Honorable Doyet A. Early, III
Presiding Judge

4-18, 2018
Bombay, South Carolina