

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas
DeAndrea G. Benjamin, Circuit Court Judge

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FEB 19 2019

SC Court of Appeals

Case No. 2014-CP-28-00940
Appellate Case No. 2016-000804

Jean P. Derrick,

Respondent,

v.

Lisa C. Moore,

Appellant.

RESPONDENT'S RETURN TO
APPELLANT'S PETITION FOR REHEARING

Respondent, Jean P. Derrick, by and through her undersigned counsel, files this return to the petition for rehearing filed by appellant, Lisa C. Moore. The Court should deny appellant's petition for rehearing.

Appellant incorrectly asserts that the decisions of the lower court and of the Court of Appeals in this case effectively rewrite Rule 9 of Rule 416 of the South Carolina Appellate Court Rules. No such effect occurs.

This action began with the service and filing of a complaint seeking payment of the attorney's fees owed by appellant ("Client") to respondent ("Attorney") under the fee agreement entered into by the parties at the outset of Attorney's representation of Client. That agreement provided: "Any dispute concerning the fee due pursuant to this agreement shall be submitted by the dissatisfied party for a full, final resolution to the Resolution Fee Disputes Board of the South Carolina Bar, pursuant to Rule 416 of the South Carolina Appellate Court Rules." R. p. 34. At the time the complaint was filed by Attorney, Client had never before disputed the amount of Attorney's fees, therefore no dispute existed for Attorney to seek to have resolved by the Resolution of Fee Disputes Board ("Board").

Client filed an answer and counterclaim in which, for the first time, she disputed the reasonableness and propriety of Attorney's fees. Thus, for the first time, a dispute existed as to which either party could seek resolution by the Board. Attorney moved to have Client compelled to resolve the dispute through the Board, on the basis of Client's prior agreement to do so. Based on the agreement in which Client consented to the Board's jurisdiction, the lower court held, "[b]ecause [Client] disputes the fee for numerous alleged reasons, this Court finds that it is proper to take these matters up with the [Board]." R. p. 24. Accordingly, the court granted the motion to compel. R. p. 24. The court's ruling was correct, and this Court properly affirmed that ruling.

Client now asserts that this result alters the mechanism for bringing a fee dispute before the Board, because no application has been filed with the Board for resolution of the dispute. No application has yet been filed because the issue first arose in this litigation. Until the court ruled on the motion to compel, and until that ruling becomes

final at the conclusion of the appeal process, no application could be filed. If at the conclusion of this appeal, the lower court's order is affirmed, Attorney will file the application, accompanied by Client's written consent, thereby invoking the jurisdiction of the Board in accordance with Rule 9(b) of Rule 416. It is simply incorrect that the effect of this Court's decision affirming the lower court's grant of the motion to compel is to alter the procedure for bringing a fee dispute before the Board. This claim of the petition for rehearing is without merit.

This claim of the petition for rehearing is also not properly before the appellate court. In the lower court, Client never raised a contention that the granting of the motion to compel has the effect of rewriting Rule 9 of Rule 416 by eliminating the requirement of an application, as she now argues. In her appellate brief, Client made an argument premised on Rule 10 with respect to the method for commencing a Rule 416 proceeding, but that argument also had not been made in the court below. *See* Final Brief of Appellant, page 5. No argument was asserted in the court below with respect to the method for commencing a proceeding under Rule 416, a preservation deficiency pointed out in the Final Brief of Respondent, page 12-13, *citing Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *Easterling v. Burger King Corp.*, 416 S.C. 437, 453, 786 S.E.2d 443, 451 (Ct.App. 2016). This new version of the argument premised on Rule 10, raised for the first time on appeal, should not be entertained because it is procedurally barred.

Finally, Client continues to maintain in her petition for rehearing that the effect of the court's ruling is to "compel arbitration." As this Court correctly held, attorney-client fee disputes are specifically excluded from the ambit of South Carolina's Uniform

Arbitration Act. *See* S.C. Code Ann. § 15-48-10(b)(3). The dispute resolution methodology of Rule 416, while similar to arbitration, is not arbitration subject to the requirements of the arbitration act, and the lower court order and appellate decision in this case do not “compel arbitration.”

Contrary to Client’s assertions in her petition for rehearing, nothing in the Court’s analysis of the issue before it alters the procedures for bringing a matter before the Board. That procedure will be initiated through application accompanied by the client’s written consent to the jurisdiction of the Board, as required by Rule 9(b) of Rule 416, when the lower court’s order becomes final upon the completion of this appeal.

For all these reasons, the appellant’s petition for rehearing should be denied.

Respectfully submitted,



William S. Tetterton
Tetterton Law Firm, LLC
608 Lafayette Avenue
Post Office Box 530
Camden, South Carolina 29021
Telephone: (803) 432-1496
South Carolina Bar no. 5509

Katherine Carruth Goode
229 South Congress Street
Post Office Box 1175
Winnsboro, South Carolina 29180
Telephone: (803) 799-4440
South Carolina Bar no. 8951

Attorneys for Respondent

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PROOF OF SERVICE

I certify that I served the Respondent's Return to Appellant's Petition for Rehearing, by mailing a copy, postage pre-paid, to Appellant's counsel of record, Robert D. Dodson, Law Offices of Robert Dodson, P.A., 1722 Main Street, Suite 200, Columbia, South Carolina 29201, on February 19, 2019.



Katherine Carruth Goode
229 South Congress Street
Post Office Box 1175
Winnsboro, South Carolina 29180
Telephone: (803) 799-4440
South Carolina Bar no. 8951
Attorney for Respondent