THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY AND DARLINGTON
Circuit Court

J. Michael Baxley, Circuit Court Judge
Case No. 07-CP-40-0576
J. Michael Baxley, Circuit Court Judge
Case No. 40-CP-16-0332
Appellant Case No. 2013-001461

Ex Parte: Douglas N.Truslow, Respondent,

Ex Parte: Tony R. Megna, Appellant,

In re:

James Anasti, Plaintiff,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee and Richland County Clerk of Court, Defendants.

And

Ex Parte: Desa Ballard, Respondent,

Ex Parte: Tony R. Megna, Appellant,

In re:

Pee Dee Health Care, P.A., Plaintiff,

v.

Estate of Hugh S. Thompson, Defendant.

APPELLANT'S FINAL BRIEF

RECEIVED
MAR 25 2014
SC Court of Appeals

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Statement of the Case

This appeal involves two separate cases in two different counties. James Anasti v. Lance Wilson et al. ("the Anasti case") was a case that originated in Richland County Circuit Court. Pee Dee Health Care v. Estate of Thompson ("the Thompson case") challenged the denial of a probate claim and was filed in Florence County Circuit Court. Appellant Tony R. Megna served as counsel for Defendant Gina Anasti in the Richland case and as counsel for Plaintiff Pee Dee Health Care ("Pee Dee") in the Florence case.

RICHLAND/ANASTI CASE

In Anasti, attorney Doug Truslow ("Truslow") brought suit on behalf of his client, James Anasti, against several defendants, including Appellant's client Gina Lee. (R. 90-119). The Circuit Court granted summary judgment to Anasti, and Gina Lee, though Appellant appealed to this Court.[1] After the Court of Appeals dismissed Gina Lee's appeals, Truslow filed a Motion in this Court seeking sanctions against Appellant. (R. 368-420). The attachments to the Motion for sanctions indicates that Truslow conferred with attorney Desa Ballard on the matter starting in 2008 and conferred with attorneys and parties in the Florence litigation (Jay James and Rene Josey.) Id. Truslow also conferred with attorneys (Celeste Jones and Bobby Stepp) that are representing parties in other litigation in which Appellant and Pee Dee are involved. Id. The Court of Appeals denied Truslow's motion for sanctions. (R. 64-66).

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1 Gina Lee actually appealed two orders of the Circuit Court which were consolidated for appeal. She also filed for Bankruptcy which resulted in a stay of the appeal for a short period.

The Anasti appeal was remitted to the Circuit Court on October 7, 2011. (R. 72). On November 22, 2011, Truslow filed a motion for sanctions against Appellant in the Circuit Court. (R. 441-443). In this motion, Truslow sought damages and sanctions against Appellant that were expected to exceed $500,000.00. Id. Truslow requested a status conference as to the motion where he indicated that he planned to call several witnesses as to the amount of damages: Desa Ballard, Rene Josey, Celeste Jones, and Bobby Stepp. (R.1181-1183; 241-260). The Honorable James R. Barber found that Truslow should be limited to two or three witnesses. Judge Barber did not impose any other limitations.

Following the status conference, Appellant served 11 interrogatories and 13 requests for production on Truslow and noticed witness depositions, in order to determine the specific damages that Truslow claimed amounted to $500,000.00. Truslow moved to quash the discovery requests and for sanctions. (R. 490-508 and R. 441-443).

The matter was assigned to the Honorable J. Michael Baxley, along with the Thompson case (which is discussed below). (R. 1198-1216). Judge Baxley's stated intention was to hold a consolidated hearing, and he also found that no live testimony was necessary. Id. Instead, Judge Baxley requested that any necessary evidence be presented by affidavit. Id.

Judge Baxley held a hearing on May 16, 2012 (R. 261-313). Appellant, through his counsel, submitted a Memorandum in opposition to the sanctions. (R. 818-1029). Judge Baxley heard arguments of counsel, but no witnesses testimony was taken. (R. 261-313). Appellant also submitted a supplemental memorandum after the hearing (R. 1030-1054).

By order dated February 13, 2013, the Circuit Court awarded Truslow $31,842.39 in fees and costs. (R. 90-119).[2] Appellant filed a motion to alter to amend, which was denied on June 12, 2013. (R. 1065-1071; 120-127). This appeal followed.

FLORENCE/THOMPSON CASE

In the Thompson case, Pee Dee sought to recover reimbursement for losses created by the actions of the Decedent, Hugh Thompson, while he was employed by Pee Dee.[3] The Defendant Estate was originally represented by attorney Jay James.4 Mr. James then associated attorney Rene Josey of Turner Padget Graham and Laney, P.A. However, Mr. Josey's partner, Brad Hylton, had been representing Pee Dee on a workers' compensation case that had been ongoing since 1994. Pee Dee notified Mr. Josey of the conflict and refused to waive it. Ultimately, Turner Padget unilaterally withdrew from representation in Pee Dee's worker's compensation case, and continued representing the Defendant Estate in the Florence case. Pee Dee sought disqualification of Josey while the Thompson case

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2 On July 26, 2012, Judge Baxley issued a preliminary ruling in a letter to counsel, in which he not only granted the motions of Truslow and Ballard, but sua sponte found that Appellant had violated a court order which warranted additional sanctions of thirty days in jail. (R. 1298-1302). After objection by Appellant's counsel, Judge Baxley recognized that due process required that Appellant be given a hearing on that issue. (R. 314-339).

3 After Thompson left Pee Dee's employment, Pee Dee was notified by Medicare that it owed more than $200,000 for "overpayments" because Thompson, who had been suspended from participation in the program at one point, had not been reinstated by the Medicare Office at the time the Medicare payments for Thompson's services had been made.

4 These facts are drawn from the appeal of Pee Dee Health Care, P.A., v. Estate of Hugh Thompson, 10-CP-16-0332, which the appellant there moved this Court, on August 24, 2011, to disqualify Mr. Josey and his firm (SR. 58-72). Appellant has not included all of the Record on Appeal from that case but for any records not so included, the Court can take judicial notice of them. *See*, Freeman v. McBee, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct.App.1984). ("A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.")

was on appeal, but ultimately, the Court of Appeals refused to disqualify Josey from representing that defendant.

The Defendant Estate moved to disqualify Mr. Megna on the grounds that he was a necessary witness.[5] The Circuit Court granted the Motion by Order dated April 15, 2011, but provided an exception that Appellant would be permitted to argue the pending Motion for Summary Judgment. (R. 55-63). On May 2, 2011, Appellant filed a Motion to Alter or Amend the order of disqualification under Rule 59(e), SCRCP. (R 67). Upon denial of that Motion (R. 67-68), Appellant filed a Notice of Appeal of the disqualification. While that appeal was pending, the Circuit Court granted the Defendant Estate's Motion for Summary Judgment. Appellant filed a Motion to Alter or Amend the summary judgment order on behalf of Pee Dee. The Court denied the motion and Pee Dee appealed that order.[6]

In 2010, while the Thompson case was pending and Anasti was on appeal, Appellant contacted Desa Ballard regarding representation of himself, Pee Dee, and others in litigation arising out of Lake City, South Carolina (the "Lake City litigation") (R. 1165-1167). On October 15, 2010, Ballard's partner sent Appellant an email, indicating that the packet of information he sent was under review by Ballard and indicated their offer to represent Appellant and others for an hourly fee. Id. Ballard did not disclose at that time that she had been working with Truslow on the Anasti case, and on matters directly adverse to Appellant, and that as a part of that case, Truslow and Ballard had conferred with Rene

5 Appellant is the CEO of Pee Dee.

6 On July 3, 2013, this Court issued an unpublished opinion on both of those appeals (as well as a third appeal) that had been consolidated for purposes of oral argument. The Opinion declined to reverse the Circuit Court's orders. Appellant intends to file a petition for certiorari on the disqualification issue.

Josey and Jay James in the Thompson case (as well as Celeste Jones and Bobby Stepp in the Lake City litigation), whose interests were adverse to Pee Dee. Id.

On May 9, 2011, Ballard provided an affidavit to Truslow in the Anasti case, for Truslow's Motion for Sanctions filed in the Court of Appeals. (SR. 81-83). It was only at this time that Appellant learned of Ballard's involvement with Truslow (and others). On July 27, 2011, Appellant issued a subpoena, under the Thompson caption, to Ballard requesting certain documentation to determine the context of her conversations with Rene Josey and other attorneys that were adverse to Appellant and/or Pee Dee in the Thompson case and in the Lake City litigation. (R. 424-433). Ballard filed an objection and moved for sanctions. (R. 436-440).

On August 12, 2011, Judge Baxley denied Appellant's Motion to alter or amend the disqualification. Judge Baxley also considered Ballard's Motion to Quash and granted it, but did not address sanctions. Appellant appealed the disqualification issue. However, Ballard did not cross appeal, or file a Rule 59(e) motion regarding the Circuit Court's failure to award sanctions.

Ballard later sought a hearing in the Circuit Court on her motion for sanctions. This matter was also assigned to Judge Baxley. (R. 1198-1216). The hearing on Ballard's motion (as well as the hearing on Truslow's motion in the Anasti case) took place on May 15, 2012. (R. 261-313). Appellant's counsel appeared to oppose the sanctions, and submitted a memorandum in opposition (R. 818-1030).[7] By Order dated February 13, 2013, Judge Baxley awarded $17,388.75 to Ballard. (R. 77-89). Appellant moved to alter or

7 In addition, the Supplemental Reply to Anasti's Motion to Quash, dated May 29, 2012 (R. 1030-1054), also addressed the issues raised by Ballard at the hearing.

amend. (R. 1065-1071). Judge Baxley did change the amount awarded to $15,998.75 to reflect a billing error by Ballard, but declined to otherwise alter the Order. (R. 128-133). This appeal followed.

STANDARD OF REVIEW

When reviewing judge's order of sanctions, the appellate court takes its own view of the facts. Father v. S.C. Dep't of Soc. Servs., 353 S.C. 254, 260–61, 578 S.E.2d 11, 14 (2003). "[W]here the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions, as well as the terms of those sanctions, under an abuse of discretion standard." Id. at 261, 578 S.E.2d at 14. An abuse of discretion occurs where the decision is controlled by an error of law or is based on unsupported factual conclusions. Id.

ARGUMENT

I. The lower court erred in finding that Appellant's service of discovery violated the order of disqualification in the Thompson case because that order was the subject of a motion to alter or amend and thus not yet final.

Judge Baxley's order states that Appellant "violated previous Court orders that disqualified him as counsel in the [Thompson] case..." (R. 79). The Order disqualifying Appellant in the Thompson case was filed April 19, 2011 and received by Appellant on April 21, 2103. Appellant then filed a motion to alter or amend, under Rule 59(e), SCRCP on May 2, 2011. The filing of that motion divested the order of its finality and enforceability. *See,* Southeastern Housing Found. v. Smith, 380 S.C. 621, 640, 670 S.E.2d 680, 690 (Ct. App. 2008) (indicating that a Rule 59(e) motion removes the finality of the challenged judgment); Coward Hund Const. Co., Inc. v. Ball Corp., 336 S.C. 1, 3, 518 S.E.2d 56, 58 (Ct.App.1999)(court's denial of the first motion for reconsideration restored the finality of the summary judgment motion); 12 James W. Moore et al., *Moore's Federal*

Practice ¶ 59.37 and 59.36 (3d ed. 1999) (When a court alters a judgment, the party aggrieved by the alteration may ask for correction. If the trial court denies such a motion, the finality of the judgment is restored and the appeal time begins to run from the date the order is entered.)

The subpoena on Ballard (under the Thompson caption) was served on July 30, 2011.[8] The Circuit Court did not rule on the Motion to Alter or Amend the disqualification order until August 15, 2011, after the discovery had been sent. Because the disqualification order had been divested of enforceability as a matter of law once the Motion to Alter or Amend was filed, Appellant was not in violation of any court order when he served the subpoena on Ballard.

II. The lower court erred in finding that the discovery sought by Appellant was frivolous where the Court of Appeals had already considered the same allegations and rejected them.

Our case law is very clear that an unappealed ruling, "right or wrong, is the law of the case...." Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970). This applies even in cases on appeal: "...the disposition of a case in the Court of Appeals when certiorari is not applied for nor granted becomes the law of the case." Barth v. Barth, 293 S.C. 305, 308, 360 S.E.2d 309, 310 (1987).

In 2011, the Anasti case was pending before this Court. After the Court dismissed the appeals, Truslow filed a motion for sanctions against Appellant (R. 368-421). This court denied the Motion on May 20, 2011. Truslow did not seek reconsideration of

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8 Appellant served discovery on Truslow and subpoenas on Truslow's witnesses in the Anasti case on March 8, 2012 in response to Truslow's assertion of damages in the amount of $500,000. Since Appellant was never disqualified in the Anasti case, he cannot have been in violation of any court order in serving such discovery.

that order, nor did he pursue the matter in a further appeal. Thus, any of the conduct on which Truslow based his motion on in this Court has been rejected and cannot form the basis for sanctions in this case.

The matter was remitted to the Circuit Court on October 7, 2011. On November 21, 2011, Truslow filed a new motion in Circuit Court that was entitled "Amended Motion for Rule 11, SCRCP." Truslow stated that the original sanctions motion was filed on November 7, 2007, but had not been heard due to the appeal. (R. 441). However, Truslow failed to inform the Circuit Court that this Court had considered a Motion for Sanctions and denied it. This Amended Motion asserted that the damages and sanctions were now expected to exceed $500,000. The Amended Motion also cited, as grounds for the sanctions, the fact that the appeals had been determined adversely to Appellant's client, but again, failed to mention that he moved for sanctions with regard to the appellate matter, but this Court had denied that motion. As noted, under the law of the case doctrine, any of the alleged sanctionable conduct on which Truslow's motion in this Court was based (and denied), cannot form the basis for the Amended Motion in the Circuit Court.

Moreover, the Amended Motion did not include any support for this claim of damages/sanctions in the amount of $500,000.[9] In a footnote, the Amended Motion purported to "supplement the prior motion so as to make clear that the sanctions are not sought against Defendant Lee...." but only against Appellant. The prior motion filed in 2007, to which this Footnote refers, did not specify the amount of sanctions sought.[10] Thus,

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9 Thus, it is unclear as to whether Truslow was trying to include the $183,000 he sought in this Court that had already been rejected.

10 Furthermore, while Truslow styled his motion as an "amended" motion, it is, in actuality, as completely separate motion than the original sanctions motions filed in 2007, as Judge Baxley recognized: "Prior to Megna's first appeal, Truslow filed a Rule 11

Appellant was entitled to contest the damages/sanctions sought, especially in light of the fact that the Court of Appeals had already denied Truslow's Motion requesting an assessment of $183,000, yet upon remand, Truslow sought more than double that amount.

III. The lower court erred in allowing Truslow to proceed on a motion for sanctions filed more than ten days after remittitur of the Anasti case.

After remittitur, a circuit court reacquires jurisdiction "to enforce the judgment and take any action consistent with the appellate court's ruling." Bunkum v. Manor Properties, 321 S.C. 95, 98-99, 467 S.E.2d 758, 760 (Ct. App. 1996). See also, Christy v. Christy, 317 S.C. 145, 151, 452 S.E.2d 1, 4 (Ct. App. 1994)("The final disposition of a case occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court."). Furthermore, all post-judgment motions, including those for sanctions, must be filed within ten days of receipt of notice of the entry of an order. Rule 59, SCRCP; Pitman v. Republic Leasing Co., Inc., 351 S.C. 429, 432-33, 570 S.E.2d 187, 189-90 (Ct. App. 2002) (holding that a motion for sanction must be made within ten days under Rule 59); Cox v. Fleetwood Homes of Ga., Inc., 334 S.C. 55, 58, 512 S.E.2d 498, 500 (1999) (trial judge loses jurisdiction after the time for post-trial motions has elapsed).

In the Anasti case, the dismissal of Gina Lee's appeals and the remittitur to the Circuit Court constitutes a final judgment. *See*, Bunkum and Christy, *supra.* Here, the remittitur was issued on October 7, 2011, but Truslow's motion was not filed until November 21, 2011 – much more than ten days after the remittitur. As it was untimely, the lower court no longer had jurisdiction to consider the matter. Pitman, *supra.* Since the motion itself was improper, Appellant's conduct in responding to the motion should not

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sanctions motion against Lee and Megna. **That motion has not been heard and is not addressed by this Order**...." (R. 90-119) (emphasis added).

constitute sanctionable conduct. Thus, the order granting the motion was an abuse of discretion and must be vacated.

IV. The lower court erred in finding Appellant's discovery efforts as improper because discovery was necessary to contest the sanctions and there was no order limiting discovery.

As a matter of due process, Appellant must be afforded an adequate opportunity to contest the sanctions. *See, e.g.*, In re Kunstler, 914 F.2d 505, 522 (4th Cir. 1990)("We find that appellants were not given an adequate opportunity to respond to the type and amount of sanction imposed, ***particularly in light of the large monetary sanction.***") (emphasis added).

Here, the Amended Motion, filed November 21, 2011, for sanctions sought more than $500,000 in damages and sanctions from Appellant. This amount was over twice as much as Truslow sought in the Court of Appeals (and which was denied). There was no affidavit or other attachment indicating how this enormous sum was reached. The only method by which Appellant could contest the sanctions and the large monetary amount was through discovery to determine the how the amount was calculated.

At the status conference on January 18, 2012, before the Honorable James R. Barber, Truslow provided a preliminary witness list for his motion that included Desa Ballard, Tom Earle, Curtis Dowling, Rene Josey, Celeste Jones, and Steve Licata. In addition, by letter dated January 9, 2102, Truslow listed as: Desa Ballard, Rene Josey, Celeste Jones and Bobby Stepp. (R. 241-260). Appellant was entitled to depose those witnesses in order to adequately contest the sanctions. While the lower court did limit the number of witnesses Truslow could call,[11] it put no restrictions on discovery. Furthermore,

11 The lower court, through Judge Baxley, ultimately ordered that no witness testimony would be permitted and only allowed affidavits of Truslow and Ballard.

there is no rule or case law that prohibits the use of discovery in sanctions proceeding. Thus, Appellant was not in violation of any case law, rule or court order in serving the discovery requests. Appellant was merely taking the necessary action to contest the sanctions, which was reasonable ***"particularly in light of the large monetary sanction."*** Kunstler, *supra.*12 The lower court's finding that the discovery was improper is not supported by the facts and/or is an error of law requiring reversal by this Court.

V. The lower court erred in awarding sanctions because South Carolina law provides that an attorney proceeding pro se is not entitled to attorney's fees and that attorney's fees cannot be awarded if not actually incurred.

South Carolina case law has repeatedly held, in a variety of situations, that an attorney acting pro se cannot be awarded attorney's fees. *See, e.g.,* Kay v. Ehrler, 499 U.S. 432, 111 S. Ct. 1435, 113 L. Ed. 2d 486 (1991)(Pro se lawyer/litigant is not entitled to fees under Civil Rights Attorney's Fees Awards Act); Hopkins v. Hopkins, 343 S.C. 301, 306, 540 S.E.2d 454, 457 (2000)(Court found that a *pro se* litigant, whether an attorney or layperson, does not become "liable for or subject to fees charged by an attorney"); First Union Nat. Bank of S. Carolina v. Soden, 333 S.C. 554, 571, 511 S.E.2d 372, 381 (Ct. App. 1998) (court would not allow pro se litigant to recover attorney fees for work of lawyer/husband). Furthermore, one main purpose of sanctions is to compensate the offended party for the losses or expenses incurred and must be related to those expenses. *See*, Floyd v. Floyd, 365 S.C. 56, 80, 615 S.E.2d 465, 478 (Ct. App. 2005)(civil sanctions

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12 The lower court also claims that in the Anasti matter, Appellant's client Gina Lee was not aware of the actions Appellant was taking. However, this finding is not supported by the facts, as Appellant's memorandum to Ms. Lee indicates that she was informed of the sanctions motion and that it was against Appellant only. Thus, there was no need for her to authorize discovery. Furthermore, Ms. Lee authorized all appeals and bankruptcy actions taken on her behalf, and recently achieved a successful result in her bankruptcy case.

are for the purpose of coercing compliance or compensating the complainant for losses); Karppi v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 543, 489 S.E.2d 679, 682 (Ct. App. 1997) (sanction should be aimed at the specific misconduct of the party sanctioned).

Here, Ballard appeared pro se, and did not incur fees or costs. Thus, she no suffered no losses and should not be awarded attorney's fees. The lower court's order attempts to avoid this well-established law by claiming that Ballard was awarded sanctions not attorney's fees. (R. 128-133). However, the amount awarded by the lower court was exactly the amount Ballard asserts she was due for the time involved in responding to discovery and in drafting the sanctions motion.[13] The Order itself notes that Ballard[14] submitted an "affidavit of attorney fees" (R.85) for her time and costs. Finally, the lower court concludes that the amount awarded:

> constitutes reimbursement for time and expenses set forth in Ms. Ballard's amended affidavit dated August 8, 2012. These sanctions are not punitive but are compensatory....

(R.86). The plain language of the order makes it apparent that Ballard is being awarded attorney's fees and costs for representing herself, which cannot be paid to a pro se attorney under South Carolina case law. Thus, the Order of sanctions as to Ballard was an error of law and must be reversed.

Similarly, Truslow is not entitled to attorney's fees. The record contains no evidence that Truslow's client ever "incurred" any attorney's fees or paid Truslow any

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13 A review of the Amended and Supplemental Affidavit of Ballard, dated August 12, 2012, indicates that only a small amount of time was spent in objecting to the subpoena, and the majority of the time was spend on trying to get a date for sanctions hearing and preparing and/or reviewing affidavits of Truslow.

14 Ballard herself acknowledges that she was appearing pro se: "Your Honor, I am Desa Ballard, and I am here pro se." (R. 264).

fees. Where there is no evidence that attorneys' fees and costs were actually incurred by a party, there cannot be an award for fees and costs assessed against another party. *See* Williamson v. Middleton, 383 S.C. 490, 681 S.E.2d 867 (2009) (holding that where there is no competent evidence that attorneys' fees and costs were actually incurred, they cannot be awarded).

It is undisputed that Ballard did not retain counsel and thus did not "actually incur" attorney's fees. Similarly, the record does not show that Truslow's client actually paid (and thus "incurred") any fees. Thus, the lower court erred in awarding such fees to Truslow and Ballard.

VI. The lower court erred in finding that Appellant misused the discovery process in Thompson to pursue discovery in Anasti.

The lower court held that the subpoenaed issued to Ballard under the Thompson caption sought "nothing relevant" to that case and was an impermissible attempt by Appellant to engage in discovery regarding the sanctions motion in Anasti. The court wrongly concluded that "there was no other purpose for the discovery sought" other than to use as a defense to Truslow's sanctions motion. However, at the time that Appellant issued the subpoena, he had a pending motion in Thompson to disqualify Rene Josey as counsel to the defendant, based upon the fact that Josey's partner was concurrently representing Pee Dee in a workers compensation case. After learning that Josey may have been in conferences with Ballard, who had also agreed to represent Pee Dee and who had been provided confidential information, Appellant had valid concerns regarding Josey's conflict of interest and Ballard's knowledge of those conflicts. Those concerns extended to her communications to other attorneys regarding Pee Dee. The subpoena sought written communications with the various attorneys involved in Pee Dee litigation. (R. 424-433).

It is important to note that the documents sought under the subpoena to Ballard were limited Pee Dee, its lawyers or employees. Id. (R. 424-433). These written communications were necessary to determine the conflict of interest of Josey and his law firm. In addition, the communications sought were needed to determine if any confidential information regarding Pee Dee had been disclosed to the attorneys in the Thompson case or other litigation involving Pee Dee.

VII. The lower court erred in finding Appellant had no good-faith basis to subpoena Ballard, who agreed to represent Appellant and Pee Dee, while at the same time consulting with attorneys who were directly adverse to Appellant and Pee Dee.

As noted in the Comment to Rule 1.7 (Conflict of Interest) in the Rules of Professional Conduct: "Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts can arise from a lawyer's responsibilities to another client, a former client or third person or from the lawyer's own interests." Furthermore, a conflict "may exist before representation is undertaken, in which representation must be declined...." Id.

Here, Ballard agreed to represent Appellant and Pee Dee, even though she already had involvement in and loyalties to other parties (James Anasti and Mr. Truslow) that were directly adverse to Megna. On October 12, 2010, Appellant contacted Ballard to represent him and Pee Dee[15] in litigation that arose in Lake City, South Carolina. (R. 1165-1167). He provided very confidential documentation to Ballard's office. Id. In an email dated October 15, 2010, Ballard's partner indicated that they would be "happy to participate" on behalf of Appellant/Pee Dee for an hourly fee.[16] Id.

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15 As noted previously, Appellant is CEO of Pee Dee.

16 At the hearing on May 15, 2012, Ballard stated that she told her partner or staff that

Neither Ballard nor her partner revealed that: 1) Ballard was involved in the Anasti litigation, including advising Truslow on sanctions against Appellant; or 2) Ballard and Truslow had consulted with attorneys in the Thompson case and in the Lake City litigation. When Truslow filed a Motion for Sanctions in the Anasti appeal on May 9, 2011, the filing was accompanied by both his affidavit and an affidavit by Ballard. (R. 398). The affidavits revealed the repeated conferences between Ballard and Truslow and conferences with the attorneys in other litigation that was directly adverse to Appellant and Pee Dee. Id. As Ballard herself has acknowledged, she is not representing any party in the Thompson case. (R. 421-440). Thus, because Ballard had received and reviewed confidential information about Pee Dee while at the same time she engaged in conversations with attorneys in Thompson and the Lake City litigation, Appellant had a good faith basis to investigate the substance of those conversations.

CONCLUSION

As set forth herein, the lower court's order was not supported by the facts and was based on errors of law. Thus, it is respectfully submitted that the lower court abused its discretion in awarding sanctions and the orders must be reversed.

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she did not want anything to do with a case involving Appellant and that her partner "did what we often is, we quote a fee, which will cause people to be less than interested in retaining our services." (R. 290). However, the emails show that no fee was actually quoted and that Ballard's firm indicated they would accept representation for an hourly fee.

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CERTIFICATE OF COUNSEL

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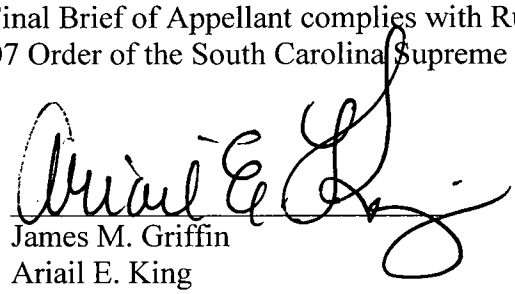
The undersigned hereby certifies that this Final Brief of Appellant complies with Rule 211(b) SCACR and with the August 13, 2007 Order of the South Carolina Supreme Court.



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