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ORIGINAL

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2013-CP-23-5177
Appellate Case No. 2013-002688

Beverley D. Wilson

Appellant,

v.

Stephen P. Williams

Respondent.

FINAL BRIEF OF APPELLANT

s/ Beverley D. Wilson
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SEP 12 2014

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. IN THE WILSON VS. WILLIAMS CASE, DID THE HONORABLE JUDGE D. GARRISON HILL ERR IN EXERCISING JUDICIAL DISCRETION BY NOT GRANTING APPELLANT'S MOTION FOR LEAVE OF COURT TO ADD AFFIDAVIT OF APPELLANT'S EXPERT WITNESS?
2. DID THE HONORABLE JUDGE D. GARRISON HILL'S DISMISSAL OF APPELLANT'S COMPLAINT RESULT IN A MISCARRIAGE OF JUSTICE?
3. DID THE HONORABLE JUDGE D. GARRISON HILL ERR BY DISMISSING APPELLANT'S COMPLAINT AND NOT CONSIDERING APPELLANT'S MOTION TO ADD HAYNSWORTH, SINKLER, BOYD, P.A. AS A CODEFENDANT IN THE WILSON VS. WILLIAMS CASE SUPPORT A MISCARRIAGE OF JUSTICE?
4. DID THE HONORABLE JUDGE D. GARRISON HILL ERR BY NOT GRANTING APPELLANT'S MOTION TO ADD HAYNSWORTH, SINKLER, BOYD, P.A. AS A CODEFENDANT IN THE WILSON VS. WILLIAMS CASE OR ORDERING A CHANGE OF VENUE FOR THE WILSON VS. WILLIAMS CASE?

STATEMENT OF THE CASE

Appellant filed original Complaint in Richland County Court of Common Pleas on May 22, 2013. Respondent filed an Answer to Complaint and a Motion to Dismiss along with a Motion to Change Venue to the Greenville County Court of Common Pleas on June 24, 2013.

On September 17, 2013, (sic) Order filed for hearing held August 28, 2013 before the Honorable Judge DeAndrea J. Benjamin of the Richland County Court of Common Pleas. The Court granted the Respondent's Motion to Change Venue from Richland to Greenville County, but did not hear the Respondent's Motion to Dismiss.

Respondent filed a Motion to Dismiss the Complaint with the Greenville County Court of Common Pleas on October 3, 2013.

Appellant filed Motions for Leave of Court along with Memoranda in Support of Motions for Leave of Court to Amend Complaint, Add Affidavit of Expert Witness along with Motion and Memorandum in Support of Motion to Appeal Change of Venue with the Greenville County Court of Common Pleas on November 6, 2013.

Hearing was held November 12, 2013 in Greenville County Court of Common Pleas before the Honorable Judge D. Garrison Hill. The Court denied Appellant's Motion to Amend Complaint, Add Affidavit of Expert Witness along with Appellant's Motion to Appeal Change of Venue. The Court granted the Respondent's Motion to Dismiss the Complaint.

On November 18, 2013, Orders were filed with the Greenville County Court of Common Pleas. On November 26, 2013, Appellant received written notification of the Orders filed with the Greenville County Court of Common Pleas.

Appellant filed Notice of Appeal on December 18, 2013 with the South Carolina Court of Appeals. The South Carolina Court of Appeals granted Appellant the right to appeal. Extreme extenuating circumstances prevented Appellant from timely complying with Rules 208 and 209 of the South Carolina Appellate Court Rules to file and serve the Initial Brief and Designation of Matter.

On February 19, 2014, the South Carolina Court of Appeals dismissed Appellant's Appeal due to Appellant's failure to timely comply with Rules 208 and 209 of the South Carolina Appellate Court Rules.

On March 5, 2014, Appellant filed Motion for Reinstatement of Appeals due to extreme extenuating circumstances that prohibited timely compliance with Rules 208 and 209 of the South Carolina Appellate Court Rules.

On April 11, 2014, Appellant submitted request for court transcripts from the court transcribers from Richland and Greenville Counties Courts of Common Pleas.

On April 23, 2014, payments were tendered by Appellant to the court transcribers from Richland and Greenville Counties Courts of Common Pleas. Transcripts were received from the court transcribers from Richland and Greenville Counties Courts of Common Pleas on April 28, 2014.

Appellant filed Initial Brief and Designation of Matter on May 28, 2014.

Amount ultimately involved on appeal should the honorable members of the South Carolina Court of Appeals grant the Appellant's petitions and this case concludes successfully for the Appellant is \$400,000 with any additional relief as the Court deems fit.

ARGUMENTS

1. RESPONDENT'S LEGAL COMPETENCE, CONDUCT, AND ACTIONS IN HIS LEGAL REPRESENTATION AND ADVISING OF THE APPELLANT FELL FAR BELOW THE STANDARD OF CARE EXPECTED FOR SOUTH CAROLINA ATTORNEYS AND ROSE TO THE LEVEL OF LEGAL NEGLIGENCE AND LEGAL MALPRACTICE.

Appellant has a limited understanding of legal malpractice litigation in all its many aspects, including statutes of limitation and Leaves of Court. It is reasonable to assume that an attorney as astute in legal knowledge and training as Respondent would be aware that his callous and unconscionable actions while representing and advising Appellant in matters related to Appellant's criminal case and other legal matters not related to the criminal case including future employment, appeals of her criminal case, restitution payments, and financial viability following her plea agreement, were unethical, grossly negligent, and could be disastrous to Appellant's legal, professional, financial, emotional, and overall well-being (See Appellant's Proposed Amended Complaint, pp. 3-8 (R.

pp. 47-52 and R. pp. 65-70), S.C. Rule 8.4(d and e), S.C. Rule 3.4(a), and S.C. Rule 3.4(f)(2)). Respondent placed Appellant at risk of financial peril greater than the risk of the underlying *prima facie* case (*Scognamillo vs. Olsen*, 795 P.2d 1357, 1361 (Colo. App. 1990)). It is reasonable to conclude that Respondent's legally negligent and morally reprehensible failure to properly represent and advise Appellant in her criminal case rose to a level sufficient to constitute legal malpractice (See Affidavit of Expert Witness (R. pp. 109-111), pp. 3-13 of Appellant's Proposed Amended Complaint (R. pp. 47-57, R. pp. 65-75), Exhibit E (R. p. 35), S.C. Rule 3.4(a), S.C. Rule 3.9, S.C. Rule 8.4(c, d, and e), and ABA-MRPC Rule 2.1).

2. THE GREENVILLE COUNTY COURT OF COMMON PLEAS ERRED IN NOT CONSIDERING THE EXTENT TO WHICH THE RESPONDENT'S ACTIONS AND MISCONDUCT CREATED EXTREME MITIGATING CIRCUMSTANCES FOR THE APPELLANT. THESE EXTREME MITIGATING CIRCUMSTANCES SHOULD HAVE BEEN GIVEN GREATER DELIBERATION IN THE GREENVILLE COUNTY COURT OF COMMON PLEAS' CONSIDERATION OF APPELLANT'S MOTIONS FOR LEAVE OF COURT TO AMEND HER COMPLAINT, ADD AFFIDAVIT OF EXPERT WITNESS, AND ADD HAYNSWORTH, SINKLER, BOYD, P.A. AS A CODEFENDANT AND HER MOTION TO (SIC APPEAL) CHANGE VENUE OF THE WILSON VS. WILLIAMS CASE FROM GREENVILLE TO RICHLAND COUNTY.

It is reasonable to assume that the Presiding Judge hearing this case would find that the alleged actions of Respondent were legally, morally, and ethically flawed and were sufficient to constitute legal negligence and malpractice. Respondent's legally, ethically, and morally reprehensible actions greatly contributed to Appellant's extreme mitigating circumstances, and should have compelled the Presiding Judge to grant Appellant a Leave of Court to Amend her Complaint and Add the Affidavit of her Expert Witness to her Complaint. Failure to grant Appellant Leave of Court given these extreme mitigating circumstances, despite the expiration of the statute of limitation, would result in a tremendous miscarriage of justice given the magnitude of Respondent's professional incompetence and negligence in his legal representation and advisement of Appellant (See Proposed Amended Complaint, pp. 3-17 (R. pp. 47-61 and R. pp. 65-79), S.C. Rule 8.4(a, b, c, d, and e), ABA-MRPC Rule 2.1).

3. THE GREENVILLE COUNTY COURT OF COMMON PLEAS' DISMISSAL OF APPELLANT'S COMPLAINT EXHIBITED A LACK OF JUDICIAL DISCRETION AND RESULTED IN A MISCARRIAGE OF JUSTICE.

As noted in discussion of Argument 2 above, the factors constituting legal negligence and malpractice by the Respondent and the subsequent extreme mitigating circumstances visited upon Appellant as a consequence of Respondent's reprehensible ethical, moral, and legal misconduct begs additional

judicial consideration be afforded Appellant despite the expiration of the statute of limitation to allow Appellant's Complaint be tried in court. Failure of the Greenville County Court of Common Pleas to grant Appellant Leave of Court given these extreme mitigating circumstances, despite the expiration of the statute of limitation, would result in a tremendous miscarriage of justice given the magnitude of Respondent's professional incompetence and negligence in his legal representation and advisement of Appellant (See Proposed Amended Complaint, pp. 3-17 (R. pp. 47-61 and R. pp. 65-79), S.C. Rule 8.4(a, b, c, d, and e), ABA-MRPC Rule 2.1).

4. THE GREENVILLE COUNTY COURT OF COMMON PLEAS' DENIAL OF APPELLANT'S MOTION TO ADD HAYNSWORTH, SINKLER, BOYD, P.A. AS A CODEFENDANT TO APPELLANT'S COMPLAINT FURTHER CONTRIBUTED TO THE MISCARRIAGE OF JUSTICE.

Haynsworth, Sinkler, Boyd, P.A. employed Respondent at the time of Respondent's legal representation of Appellant. Haynsworth, Sinkler, Boyd, P.A. had a supervisory employer relationship with Respondent at the time of Respondent's legal representation of Appellant and was vicariously responsible for the legal actions and conduct of Respondent (S.C. Code Section 15-38-15(C)(3)(a)). As an employer of Respondent, Haynsworth, Sinkler, Boyd, P.A. had a duty to supervise, review, and provide oversight of Respondent's legal activities (See Appellant's Proposed Amended Complaint, pp. 1-2 (R. p. 45, lines 17-22; R. p. 46, lines 1-17 and R. p. 63, lines 17-22; R. p. 64, lines 1-17)).

The majority of the meetings between Appellant and Respondent occurred in Haynsworth, Sinkler, Boyd, P.A.'s Columbia, South Carolina office, located in Richland County, South Carolina. Therefore, per S.C. Code Section 15-7-30A(10) and S.C. Code Section 15-7-30A(11D1), Richland County, South Carolina is the appropriate Venue for this case (See Appellant's Proposed Amended Complaint, pp. 2 (R. p. 46, lines 7-11 and R. p. 64, lines 7-11)). Respondent as a non-resident of Richland County, South Carolina performed business while employed by Haynsworth, Sinkler, Boyd, P.A., a corporation in Richland County, South Carolina, while legally engaged by Appellant in the case of State of South Carolina vs. Beverley D. Wilson, which gave rise to the course of action in this matter. Therefore, according to S.C. Code Section 15-7-100, Richland County, South Carolina is the proper Venue for this case (See Appellant's Proposed Amended Complaint, pp. 2 (R. p. 46, lines 12-17 and R. p. 64, lines 12-17)).

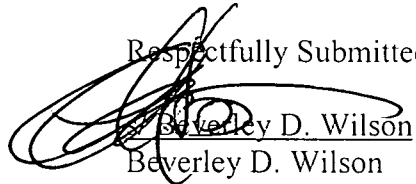
CONCLUSION

Appellant respectfully prays the Honorable Members of the South Carolina Court of Appeals would reverse the Honorable Judge D. Garrison Hill's Dismissal of Appellant's Complaint and grant the Appellant Leave of Court to Add Affidavit

of Appellant's Expert Witness to Appellant's Complaint and Amend Appellant's Complaint to Add Haynsworth, Sinkler, Boyd, P.A. as a Codefendant in Appellant's Amended Complaint and grant Appellant permission to Change the Venue of the case from the Greenville County Court of Common Pleas to the Richland County Court of Common Pleas and allow Appellant the opportunity to have the issues raised in her Complaint be tried before a jury.

August 4, 2014

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Beverley D. Wilson", is written over the printed name.

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