APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2019-000880
Circuit Court Case No. 2002-CP-10-1448
and after change of venue:
Circuit Court Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

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

Respondents.

Initial Brief of Appellant

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Statement of the Case

In 2002, the Appellant, Dr. Holmes, filed suit against the Respondent, a law firm which has changed names over time, but is commonly known as Sinkler Boyd. (Summons and Complaint April 2002; Amended Complaint 4-6-07) The caption in this case also includes two individual attorneys from Sinkler Boyd, Mr. Grier and Mr. Becker. Dr. Holmes hired the law firm and the attorneys to represent her regarding claims against a hospital, East Cooper, which was attempting to deny Dr. Holmes medical privileges to perform surgery in the hospital. Dr. Holmes, in her lawsuit against the Respondents, alleged that they had committed legal malpractice when they lost a temporary injunction preserving the doctor's privileges, held off on responding to a motion by the hospital in federal court while demanding more money from Dr. Holmes until the deadline had passed to respond, losing the federal lawsuit claims, and then abandoning Dr. Holmes when the State law claims were declined by the Federal Court and needed to be filed in the Charleston County Circuit Court. (Summons and Complaint April 2002; Amended Complaint 4-6-07)

The Respondents successfully convinced the Court to transfer jurisdiction in the legal malpractice case against them to Richland County in July of 2002. (Order for change of venue to Richland 7-22-02) Eventually, on April 6, 2007, the Richland Circuit Court changed venue again and returned the case to the Charleston County Circuit Court. (Order changing Venue to Charleston 4-6-07) The Defendants moved for Summary Judgment, which was denied. (Form 4 Order denying Summary Judgment; Order granting post-trial motions, 11-18-09 page 3) The Court granted a directed verdict, ending the jury trial before a verdict could be rendered. (Order granting Directed Verdict 7-14-09) After the directed verdict, the Respondents moved for sanctions against the Appellant and invoked S.C. Code 15-36-10, the South Carolina Frivolous Proceedings Sanctions Act (FPSA). Plaintiff responded, arguing that her claims could not be considered frivolous when the Court had found that the record

presented a genuine issue of fact for trial by denying summary judgment. (Plaintiff's return to motion for sanctions 9-21-09) The same judge who had denied summary judgment found the action to be frivolous and granted $200,000.00 in sanctions including interest, applying the 2005 version of the FPSA. (Order granting Sanctions 11-18-09) Appellant appealed the directed verdict and the sanctions award, but was unsuccessful.

In 2011, the Appellate Court issued an opinion in a case called *Southeastern Site Prep Llc v. Atl. Coast Builders*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App., 2011). in which it held that the 2005 FPSA, which allowed the Court to judge whether an action was frivolous or not based on a "reasonable attorney" standard (even when applied to non-attorneys) only applied to actions which arose after July of 2005. The Appellant had filed her action in 2002. Appellant filed Rule 59(e) request for reconsideration (Motion for Reconsideration 7-2-15) and a Rule 60 motion to alter or amend. (Rule 60 motion 8-5-15). Neither were ever set for a hearing by the Court.

Several months later, the Respondents mailed a verified petition to the Appellant on December 19, 2016 and filed a petition for supplemental proceedings. (Petition 1-3-17) The Court appointed Judge Scarborough as a special master on 1-3-17. On January 12, 2017, Appellant moved for sanctions against the Respondents who, she alleged, had submitted false statements in the verified petition. (Motion for Sanctions 1-12-17) On February 1, 2017, Appellant also moved for the Court to withdraw the Order appointing a special master and commencing supplemental proceedings because it had been done while her motions to alter or amend the judgment were pending. The Circuit Court Judge then issued a sua sponte order without notice or a hearing on February 9, 2017, rejecting all of Appellant's previously filed motions, citing to a 2009 Order from the case Appellant had pursued against East Cooper Hospital after having been abandoned by Respondents. In that Order the Court had prohibited Appellant from filing any further motions, pro se, relating to the challenge to the hospital's denial of

her medical privileges. (Order 2-9-17) On the following day, the Court issued another order vacating the original Order appointing a master and replacing it with another Order, as the initial one was improper due to a lack of a hearing date. (Order 2-10-17) Appellant appealed the February 9, 2017 Order on the basis that prohibiting her from filing any motions or taking any action to defend her assets and family home from Respondent's efforts to take affected her substantial rights and constitutionally protected rights to self-representation and due process. Despite the pending appeal, the Respondent and the Court went on to require the Appellant to submit to hearings and discovery (Order of 3-10-17), and granted motions to quash her attempts to depose the Respondents' witnesses. (Order 3-14-17) It also sanctioned her and holding her in contempt when she tried to explain that the Circuit Court did not have jurisdiction while the appeal was pending. (Motion to compel and for sanctions 6-5-17; Order 6-21-17; Order 6-23-17) Jurisdiction was returned to the Circuit Court in November of 2017 by remittitur (Order and Remittitur 11-30-17) after the Court had sanctioned the Appellant another $2,500.00 without jurisdiction to do so. On April 19, 2019, the Appellant filed a motion requesting relief on several grounds from the Circuit Court, enumerating the violations of due process and her constitutional rights which she alleged had been denied. (Appellant's motion 4-19-19) The Court's response was to issue an Order entitled "Order Denying Filing." (Order 5-24-19) In one paragraph Order, the Court cites to the *Doe v. Duncan* case Order from 2009 and quotes "Clerks of Court in this state to refuse to accept further filings from Petitioner in actions related in any way to the revocations of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than Petitioner, licensed to practice law in this state." The brief Order simply refuses to acknowledge anything that Appellant filed, thus denying her rights to due process and self-representation yet again. Appellant has timely appealed, challenging the consistent denials of her due process and self-representation rights throughout this case, as all orders in the underlying action are now appealable. The Appellant argues that the entire supplemental hearing and all orders arising

therefrom should be vacated. The Court should consider the new law which includes an interpretation of the clear statutory language of the FPSA to exclude application to the Appellant's 2002 case.

STANDARD OF REVIEW

Issues related to subject matter jurisdiction may be raised at any time. *In re November 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009); *Arnal v. Fraser*, 371 S.C. 512, 517 n. 2, 641 S.E.2d 419, 421, n. 2 (2007); *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998). *The State v. Oxner*, 391 S.C. 132, 705 S.E.2d 51 (S.C., 2011) The question of subject matter jurisdiction is a question of law. *Porter v. Labor Depot,* 372 S.C. 560, 567, 643 S.E.2d 96, 100 (Ct.App.2007). The issue of interpretation of a statute is a question of law for the court." *Jeter v. S.C. Dep't of Transp.,* 369 S.C. 433, 438, 633 S.E.2d 143, 146 (2006); *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). An appellate court may decide questions of law with no particular deference to the trial court. *In re Campbell,* 379 S.C. 593, 599, 666 S.E.2d 908, 911 (2008).

In a case raising a novel question of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court. *New York Times Co. v. Spartanburg County Sch. Dist. No. 7*, 374 S.C. 307, 309, 649 S.E.2d 28, 29 (2007).

The determination of whether attorney's fees should be awarded under the Act is treated as one in equity. *In re Beard,* 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct.App.2004) (applying an equitable standard of review of factual findings in action for sanctions under Rule 11 and the Act). In an action in equity tried by the judge alone, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Id.* The abuse of discretion standard plays a role in the appellate review of a sanctions award only in a case where the appellate court agrees with the trial

court's findings of fact. In that case, it reviews the decision to award sanctions under an abuse of discretion standard. *Id.*." *Ex parte Gregory,* 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). Under the abuse of discretion standard, the imposition of sanctions will not be disturbed on appeal unless the decision is controlled by an error of law or is based on unsupported factual conclusions. *Id.*, *Southeastern Site Prep, LLC v. Atlantic Coast Builders and Contractors, LLC*, 394 S.C. 97, 713 S.E.2d 650 (S.C.App. 2011)

ARGUMENT

I. The record reflects the Respondents, Becker and Grier, have admitted lack of standing, therefore, the lower court action, from its inception, must be dismissed as to those parties.

In a motion before the Circuit Court, Respondents James Y. Becker, Manton Grier asserted that they had no interest in the sum being sought by the law firm, Haynsworth Sinkler Boyd, P.A. The Court Granted the Motion. (Motion 9-29-17; Order 9-29-17) The individuals lack standing by their own admission which deprives the Court of subject matter jurisdiction regarding the individuals' claims. *District v. City of Columbia*, 290 S.C. 93, 348 S.E.2d 363 (1986). All Orders granting Messrs. Becker and Grier any relief in the case below should be vacated, as to those two parties, for lack of jurisdiction, going back to the initial Order granting sanctions from November 18, 2009 and including the supplemental proceedings.

II. The Appellate Court has Jurisdiction to review the Circuit Court's final Order of May 24, 2019, and all prior orders are appealed including, but not limited to, the order(s) of reference and orders entered June 23, 2017, February 9, 2017, and March 14, 2017.

When a party timely files its notice of intent to appeal from a judgment, the Appellate Court may review any intermediate order necessarily affecting that judgment. *SCDOT v. Faulkenberry*, 337 S.C. 140, 522 S.E.2dS 822 (Ct. App. 1999). Accordingly, the order entered May 24, 2019, and all prior orders in the history of the action below are appealed including, but not limited to, the orders entered

June 23, 2017, February 9, 2017, and March 14, 2017.

III. Because a notice of appeal as to an Order from February 9, 2017 was pending from February 11, 2107 to November of 2017, when Remittitur was returned, the Circuit Court did not have jurisdiction to issue the Orders of March 14, 2017, March 24, 2017 and June 23, 2017.

When deciding a jurisdictional question based on facts, a reviewing court has the power and the duty to review the entire record, find the jurisdictional facts within the entire record, and decide the jurisdictional question in accord with the preponderance of evidence. *Canady v. Chas. Cty. Sch. Dist.*, 265 S.C. 21, 216 S.E.2d 755 (1975). On 2-11-17, The Appellant filed a Notice of Appeal, challenging the Circuit Court's Order of February 9, 2017. (Amended NOA 4-13-17) It was given appellate case number 2017-000266. The February 9th Order had denied the Appellant the right to represent herself in her own case and struck all motions filed by the Appellant. (Order 2-9-2017) In *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), the Supreme Court held that an Order granting a motion to disqualify a party's attorney was immediately appealable. *Id.* At 708 The Notice of Appeal served on 2-11-17 notice of appeal established jurisdiction over the case in the Appellate Court, depriving the Circuit Court of jurisdiction while the matter was on appeal. Rule 205, SCACR, provides "Upon service of the notice of appeal, the appellate court shall have *exclusive jurisdiction* over the appeal." (Emphasis supplied.) The South Carolina code states that "[T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court." S.C. Code §14-8-200(a). Thus, from the date of the filing of the notice of appeal of the February 9th Order until remittitur on that appeal was entered, on November 30, 2107. (Order from Ct. App. And remittitur 9-25-17) the Circuit Court did not have jurisdiction over this case from February 11, 2017 (Notice of Appeal) to November 30, 2017 (Remittitur) because the appeal was pending. Whether the Circuit Court Judge who issued the Orders felt he had jurisdiction to issue the orders is inconsequential. The Circuit Court simply does not have jurisdiction to determine whether it has

jurisdiction during the pendency of the appeal. Any dispute regarding appellate jurisdiction is resolved in the appellate court. *Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (2014). Authority to resolve disputes concerning the application of automatic stays, such as in Appellate Case Number 2017-000266, does not reside in the lower court. *See State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000). The Appellant gave actual notice of this by sending a letter explaining it to the Respondent's attorney. The Court included this letter in its Supplemental proceeding order after a June 16, 2017 hearing. (Supplemental Proceeding Order 6-21-17) The Circuit Court Orders from March 14, 2017 (Order granting Defendant's motion to Quash 3-14-17), and June 23, 2017 (Order granting Motion to Compel and for Sanctions against Plaintiff 6-23-17) were issued by the Circuit Court without jurisdiction and should be dismissed.

IV. The February 9th Order from the Court strikes all motions filed by the Appellant and prohibits her from participating in defending her own case and confiscating all filing fees that she paid. The Order should be reversed and the motions that it nullified should be set for hearing before the Court.

The Court's February 9th Order was designed to and did effectively ensure that Appellant would not be able to present her legal challenge to of the use of the South Carolina Frivolous Proceeding Sanctions Act (FPSA) to issue the sanctions upon which the Respondents' supplemental proceedings were based. At the time the February 9th Order was issued, the Appellant had filed, but had not been heard two motions challenging the Court's FPSA based sanctions which were the basis of the 2017 supplemental proceedings. The pending motions were a Rule 59(e) request for reconsideration (Motion for Reconsideration 7-2-15) and a Rule 60 motion to alter or amend. (Rule 60 motion 8-5-15) In those motions, Appellant was making an attempt to have the Court acknowledge that, in the original orders from November 18, 2009 (Order awarding sanctions 11-18-09; Motion to reconsider 11-25-09; Order denying reconsideration 2-4-2010), the Court had mis-applied the FPSA. New law from 2011 supported her position. The Appellant had filed her complaint, alleging legal malpractice, against the

Respondent in 2002. (See Order Transferring Venue 4-8-07) In its 2009 Orders issuing sanctions against Appellant, the Court applied the 2005 version of the Frivolous Proceedings Sanction Act, which applied a "reasonable attorney" standard rather than the pre 2005 standard of requiring a finding that an action was frivolous to support an award of sanctions over Appellant's objections. In 2011, the Courts agreed with Appellant's stance in another case, *Southeastern Site Prep Llc v. Atl. Coast Builders*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App., 2011). As of the 2011 decision, South Carolina law required that the 2005 FPSA be applied prospectively, rather than retroactively as the legislature indicated that FSPA would apply to causes of action arising on or after July 1, 2005:

> We conclude the Act creates substantive rights and imposes new obligations by effectively changing the standard for imposing sanctions to a "reasonable attorney" standard. Therefore, the Act will apply prospectively absent clear indication to the contrary by the Legislature. In this case, the Legislature provided the revisions in the Act were to apply to causes of action arising on or after the effective date of the statute, July 1, 2005, and we find this indicates the Legislature did not intend retrospective application. Accordingly, we apply the Act as it existed prior to the revisions. *See generally Toth v. Square D Co.,* 298 S.C. 6, 8, 377 S.E.2d 584, 585 (1989) (stating judicial decisions which create liability where none previously existed must be given prospective application).
> *Southeastern Site Prep Llc v. Atl. Coast Builders* at 713 S.E.2d 655

The Court's recognition that the Pre 2005 standard should have applied to Appellant would have been material as Appellant's malpractice claims were upheld on summary judgment by the Circuit Court, legally dispelling any claim that her action was frivolous. Whether or not Appellant's motions may or may not have been successful is immaterial to this appeal. What the February 9th Order did was to clear the way for the Respondent to begin supplemental proceedings against the Appellant. As the Appellant's Rule 59 and Rule 60 motions challenged the Order upon which the judgment that the Respondent was seeking to enforce was based, it would have been improper to allow supplemental proceedings to begin before resolving them. If the motions were decided against the Appellant, she would have been entitled to appeal rights, and Respondents would have had to wait to start proceedings against her. Due to the February 9th Order, Appellant's motions, were removed from the roster and

were never heard or considered, nor were her filing fees ever returned.

A. Despite statements in the February 9, 2017, order to the contrary, there was no hearing, no notice, and no opportunity to be heard.

The February 9, 2017, order on appeal provides, "This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered." (Order 2-9-17) This is simply not true. The record reflects there was no hearing, no notice of any hearing, and, therefore, no opportunity for the Appellant to be heard. There was not even an effort made to allow Dr. Holmes to respond. Dr. Holmes was stripped of her constitutional right to represent herself in a matter in which a law firm was seeking to take her property without due process. The State, in vacating all the motions she filed, also took the filing fees she had paid, a direct taking without due process. Procedural due process requires, at the minimum (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008); See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. Courts are required to afford due process even before awarding Sua Sponte sanctions under Rule 11. "In order to pass constitutional muster, the persona against whom sanctions are to be imposed must be advised in advance of the charges against him. *Burns v. Universal Health Services, Inc.* 340 S.C. 509, 532 S.E.2d 6 (S.C. App. 2000). There was no notice, no motion, no hearing. The Judge simply issued a sua sponte order. From the text of the Order itself, it is apparent that the Judge issued the Order, which not only substantially affected, but blatantly denied not only Dr. Holmes' constitutional rights, but prohibited her from defending herself in Court Sua Sponte, without any notice to her and without any opportunity for her to respond after "being advised by the Clerk of Court's Office" about an Order from 2009 which instructed the Clerk not to accept filings of motions related to revocation of Dr. Holmes' medical privileges by a hospital. The case in which the February 9, 2017 Order was issued

originated from a legal malpractice case by Dr. Holmes against Haynsworth Sinkler Boyd. The matter before the Court was a proceeding in which Haynsworth Sinkler Boyd was seeking to take the Appellant's home by enforcing a judgment arising from the legal malpractice action. (Petition for Supplemental proceedings 1-3-17) Dr. Holmes certainly had grounds to dispute the applicability and the constitutionality of the 2009 Order, and would successfully have done so if she had been given the opportunity guaranteed to Citizens by this State's Constitution and laws.

B. The Court's reliance on a December 2009 order from a separate case between Appellant and another party was not explained and is untenable.

The February 9, 2017 Order recites and relies on a December 2009 order in a case called Doe v. Duncan. The February 9, 2017 Order does not include the text of the Oder that the Judge apparently heard about from the Clerk. It simply references that the Clerk told the Judge about such an Order. Because Appellant was not given notice or an opportunity to respond, she was never allowed or able to present the actual Order to the Court, nor was she ever allowed an opportunity to argue that the December 2009 Doe v. Duncan Order was restricted to one particular topic (the denial of medical privileges). The portion of the Order that the Judge cites in the February 9th Order brings into question whether it was meant to apply to this case, which involves claims of legal malpractice against a law firm, not "actions related in any way to the revocations of her medical staff privileges at East Cooper Community Hospital." (Order 2-9-17)

V. The June 23, 2017 Order granting Defendant's motion to Compel and for sanctions

A. The Court sanctioned Plaintiff for failing to produce records, but the record indicates that she did appear on March 10, 2017 to offer the records to the Court and the respondent.

On March 10, 2017, Appellant did appear before the Court to provide the financial information requested. (March 10, 2017, Transcript, p. 15-25) At that hearing Dr. Holmes told the Court she had brought the information requested and only asked that it be put under seal. When the Judge denied that,

she agreed to be put under oath, to present the information, and answer questions about her assets. Appellant told the Respondent and the Court "I have the information that you requested for me to bring. I'm happy to do that." (March 10, 2017 transcript p. 15) The Court allowed Respondent's attorney to review the documents that were provided and declined to put the Appellant under oath at that time. "You would be wise to accept their offer to take the deposition because if I have to sit here and listen to your testimony of what your assets are they're going to disappear in the Courtroom at that time. Okay? That's what I'm going to do. All right?" (March 10, 2017 transcript p. 22) For the Court to issue an Order holding her in contempt and fining the Appellant $2,500.00 for refusing to comply after the record appears to clearly show that she did comply by bringing the materials requested and offering to testify before the Court is simply wrong. The undersigned urges the Appellate Court to read the entire hearing transcript in order to really grasp the amount of sheer enmity, hostility, and outright rudeness that the Court heaped on her, including refusing to refer to her as Dr. Holmes when she is an MD, talking down to her, cutting her off, refusing to hear her out, and threatening her when she offered to cooperate by producing documents and testifying. (March 10 2017 Transcript)

B. If the sanction was meant to reimburse Respondent for attorney's fees, then the Court erred in finding that Respondent was entitled to attorney's fees.

As noted above, the Court's Order does not give any basis for the award of "sanctions" nor does it identify them, particularly, as attorney's fees. If the $2,500.00 sanction was meant to be attorney' fees, then it should be reversed, as Defendant was put on actual notice that the case was stayed by appeal and chose to proceed despite that. The record reflects that Defendants received timely notice that an appeal was pending, thereby vesting exclusive jurisdiction in the appellate court. The Appellant even wrote a letter to the Respondent's attorney explaining this. The letter was made part of the Court record by the Judge who presided at the June 16th hearing. (Supplemental Proceeding Order 6-16-17) The issue of jurisdiction and the pending notice of appeal, which was signed by the undersigned was discussed in

open court as well. (Transcript of hearing 6-16-17) As noted above, the final disposition of the appeal occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. Until that time the case is pending on appeal and the Circuit Court lacks jurisdiction.

VI. The Court's Order of May 24, 2019 provides a metaphorical bookend to the February 9, 2017 Order in this case, closing two years of a travesty of justice in which a Citizen was denied the right to file her own pro se motions, violating South Carolina law as well as her constitutional rights to self-representation and due process without giving any explanation or basis for applying a sentence from a 2009 Order in a separate case to the Appellant's attempts to defend her assets and family home.

On April 19, 2019, the Appellant filed a motion requesting relief on several grounds from the Circuit Court. (Appellant's motion 4-19-19) The Court's response was to issue an Order entitled "Order Denying Filing." (Order 5-24-19) In one paragraph Order, the Court cites to an Order from a different case in 2009, *Doe v. Duncan*, in which the Court denied a petition for certiorari in that case and mentioned the sanctions award instant case, and quotes "Clerks of Court in this state to refuse to accept further filings from Petitioner in actions related in any way to the revocations of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than Petitioner, licensed to practice law in this state." The instant case arises from legal malpractice claims against the Respondent, a law firm. The case against Sinkler Boyd is not about a denial of medical privileges. It alleged that the firm committed malpractice when it failed to timely respond to a federal judge's Order while demanding fees from its client (the Appellant), resulting in the loss of a restraining order which allowed her to continue to treat her patients at the hospital and the firm's abandonment of the Appellant after she paid the fees the firm had demanded when the federal claims were dismissed, leaving the viable State claims to pursue. (Summons and Complaint April 2002; Amended Complaint 2007) The Court, in its May 24th Order does not explain why it believed that the 2009 Order would give it the authority to deny the Appellant her constitutional right to defend herself in a supplemental

proceeding action, one in which the law firm she had sued for malpractice was seeking to take her family home from her. There are several reasons that this Order should be vacated. They are the same reasons that the February 9th, Sua Sponte Order which effectively did the same thing with the same lack of explanation or support should be vacated. Rather than re-print all of the arguments in the same brief, the undersigned will simply refer to an appellate case in which the Court has succinctly and directly listed the reasons that prohibiting someone from participating in his or her own case violates Constitutional law as well as State and Federal statutory law. In *Brooks v. S.C. Comm'n on Indigent Def.*, 419 S.C. 319, 797 S.E.2d 402 (S.C. App., 2017), the Appellate Court reviewed a case in which an attorney who was representing himself had been precluded from giving testimony in his own case by applying the rules of professional conduct and asserting that an attorney may not participate as an attorney and a witness in a trial. The Appellate Court overturned this, stating:

> The South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40–5–80 (2011) ("[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."); *Washington v. Washington* , 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016).
> *Brooks* at 419 S.C. 330

In *State v. Lee-Grigg*, 649 S.E.2d 41, 374 S.C. 388 (S.C. App., 2007), the Court identified certain errors, which affected certain rights as being "structural" as opposed to "procedural." Structural errors, which specifically include the right to self-representation, result in deprivations which completely collapse the integrity of the entire action by fundamentally and fatally crippling basic rights of a party:

> In *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991), the United State Supreme Court explained certain "structural defects in the constitution of the trial mechanism" result in deprivations that affect the entire framework within which the trial is conducted, from beginning to end. These "structural" defects compromise the reliability with which a criminal trial functions as a vehicle for determining guilt or innocence and are not subject to harmless error analysis. *Id. citing Rose v. Clark*, 478 U.S. 570, 577-78, 106 S.Ct.

> 3101, 92 L.Ed.2d 460 (1986). The Fulminante court identified the following examples of structural defects not subject to harmless error analysis: the total deprivation of the right to counsel at trial, *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963); the lack of an impartial judge, *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927); the unlawful exclusion of members of the defendant's race from a grand jury, *Vasquez v. Hillery*, 474 U.S. 254, 106 S.Ct. 617, 88 L.Ed.2d 598 (1986); the right to self-representation at trial, *McKaskle v. Wiggins*, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984); and the right to public trial, *Waller v. Georgia*, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984).
> *State v Lee-Grigg* at 649 S.E.2d 54-55

A review of what has happened to the Appellant in this case should make any licensed attorney or jurist cringe. The United States of America was founded on the ideal that individuals should have certain rights that were supposedly "self-evident." One of those rights, perhaps the most self-evident one is that citizens should have the right to participate in a system that allows them the right to at least defend themselves. The February 9, 2017 Order and the May 24, 2019 Order clearly provide metaphorical bookends to the two-year travesty of justice that occurred here. If this Court cares at all about whether citizens of South Carolina can have faith in this State's Court system in the future, this case must be addressed. All orders issued in the supplemental proceedings case, from the beginning to the end, should be immediately vacated and Dr. Holmes should be entitled to a refund of any of the sanctions against her that she paid.

CONCLUSION

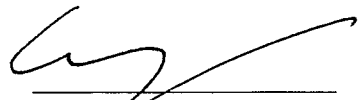
The Appellant believes that this case raises novel questions of law which should be addressed. In *Osprey Inc., v. Cabana Limited Partnership*, 340 S.C. 367, 532 S.E.2d 269 (2000), the Court was asked to address a legal issue which had not been raised since the 1800s. The Supreme Court noted: "We are free to decide a question of law with no particular deference to the lower court. See S.C. Const. art. V, §§ 5 and 9; S.C. Code Ann. §§ 14-3-320 and -330 (1976 & Supp.1999); S.C. Code Ann. § 14-8-200 (Supp.1999) (granting Supreme Court and Court of Appeals the jurisdiction to correct errors of law in both law and equity actions); *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d

716 (2000)." *Osprey, Inc. v. Cabana Ltd. Partnership*, 340 S.C. 367, 532 S.E.2d 269 (S.C., 2000) The Appellant has been subjected to a violation of due process and her constitutional rights to notice, opportunity to be heard, and an impartial judge both at the inception of this case (the 11-18-09 Order granting sanctions) and throughout the supplemental proceedings. Amended S.C. Code Section 15-36-10, the Frivolous proceedings Sanction Act, allows a violation of constitutional due process, as does the application of an Order from the Supreme Court to broadly prohibit a citizen from participating in her own defense. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. In order for justice to be done in this case, the Court should review the due process issues which have pervaded the case from the initial sanctions Order through the Order of May 24, 2019.

This case presents a series of errors with a common theme in that the Court, the Clerk of Court, and the Respondent consistently and successfully deprived the Appellant of her right and ability to defend herself from sanctions and the enforcement of those sanctions against her, even when her family home was threatened. Fundamental rules regarding jurisdiction, due process, and basic fairness have been put aside during the pendency of the actions in the Circuit Court. The Appellant is requesting that the Appellate Court reverse all of the Orders issued in the Supplemental Proceedings below and remand the case to the Circuit Court with instructions to calendar the Appellant's Rule 60 and Rule 59

motions that were filed prior to the initiating of the Supplemental proceedings.

Respectfully submitted,



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Attorney for the Appellant

November 30, 2019

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2019-000880
Circuit Court Case No. 2002-CP-10-1448
and after change of venue:
Circuit Court Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

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

Respondents.

PROOF OF SERVICE

APPELLANT'S INITIAL BRIEF
AND
APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

I certify that I have served a copy of the foregoing on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed to Respondent's counsel of record,, Mary M. Caskey, Esq. on this date at 1201 Main St. #2200, Columbia, SC 29201. A courtesy copy was also emailed to her at mcaskey@hsblawfirm.com on this date.

Dated November 30, 2019

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November 30, 2019

Clerk, South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

By fax to 803.734.1839 (29 pages, total)

Re: Holmes v. Becker et al
Case No. 2007-CP-10-1444
Appeal No. 2019-000880

Dear Clerk of Court:

Enclosed Please find the following:

1) Appellant's Initial Brief
2) Appellant's designation of matter to be included in the record on appeal
3) Proof of service and one copy
4) SASE for return or proof of service.

Would you please file the originals and return a clocked copy of the proof of service to me in the enclosed pre-stamped envelope? Thank you .

Sincerely,

Chalmers C. Johnson

cc:
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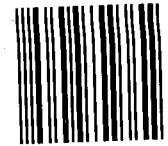

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